AMENDED
BOARD MEETING NOTICE
May 18-19, 2011

Four Points by Sheraton Sacramento International Airport
Natomas Room
4900 Duckhorn Drive
Sacramento, CA 95834

Participating via Teleconference on May 19th
925 Harbor Plaza
Long Beach, CA 90802

Wednesday May 18th
8:00 a.m.

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

I. Introductions

II. Approval of the February 23-24, 2011 Board Meeting Minutes

III. Approval of the March 24, 2011 Board Meeting Minutes

IV. Executive Officer's Report
   a. Budget Report
   b. Operations Report
   c. Personnel Update
   d. Mental Health Services Act Report

V. Department of Consumer Affairs Update
   a. Update on the BreEZe project

VI. Licensing and Examination Committee Report
   a. Discussion and Possible Rulemaking Action Regarding Implementation of Assembly Bill 2699 (Bass), Chapter 270, Statutes of 2010
   b. Discussion and Possible Action Regarding the National Counselor Examination and the National Clinical Mental Health Counselor Examination

VII. Update on the Licensed Professional Clinical Counselor Gap Examination
VIII. Discussion and Possible Legislative Action to amend Chapter 16 of Division 2 of the Business and Professions Code Relating to National Examination of Licensed Professional Clinical Counselors

IX. Discussion and Possible Action to Amend Business and Professions Code Section 4999.54 to Extend the Grandparenting Period for Licensed Professional Clinical Counselors

X. Discussion and Possible Legislative Action Regarding Hours of Experience Gained Under the Supervision of a Licensed Professional Clinical Counselors Pursuant to Business and Professions Code Section 4999.54

XI. Discussion and Possible Action to Amend Senate Bill 704 to Include Licensed Professional Clinical Counselors and Intent Language Relating to Marriage and Family Therapists

XII. Policy and Advocacy Committee Report
   a. Recommendation #1 - Support Assembly Bill 40 (Yamada)
   b. Recommendation #2 - Support Assembly Bill 154 (Beall)
   c. Recommendation #3 - Support Assembly Bill 171 (Beall) if amended
   d. Recommendation #4 - Support Assembly Bill 181 (Portantino)
   e. Recommendation #5 - Support Assembly Bill 367 (Smyth)
   f. Recommendation #6 - Support Assembly Bill 671 (Portantino) if amended
   g. Recommendation #7 - Oppose Assembly Bill 675 (Hagman) unless amended
   h. Recommendation #8 - Consider Assembly Bill 774 (Campos)
   i. Recommendation #9 - Support Assembly Bill 956 (Hernandez, R.) if amended
   j. Recommendation #10 - Oppose Assembly Bill 958 (Berryhill, B.)
   k. Recommendation #11 - Oppose Assembly Bill 993 (Wagner) unless amended
   l. Recommendation #12 - Consider Assembly Bill 1205 (Berryhill, B.)
   m. Recommendation #13 - Support Senate Bill 146 (Wyland)
   n. Recommendation #14 - Support Senate Bill 718 (Vargas)
   o. Recommendation #15 - Support Senate Bill 747 (Kehoe) if amended
   p. Legislative Update
   q. Rulemaking Update

XIII. Discussion and Possible Action on Senate Bill 541 and Senate Bill 544

XIV. Compliance and Enforcement Committee Report
   a. Update on Senate Bill 1441 Substance Abuse Coordination Committee
   b. Update on Retroactive Fingerprinting Project

XV. Election of Board Officers for 2011-2012

XVI. Suggestions for Future Agenda Items

XVII. Public Comment for Items Not on the Agenda
Thursday, May 19th
8:00 a.m.

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

XVIII. Introductions

XIX. Petition for Modification of Probation Terms, Dana Lynn Thomas, MFC 35710

FULL BOARD CLOSED SESSION

XX. 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

XXI. Public Comments for Items Not on the Agenda

XXII. Suggestions for Future Agenda Items

XXIII. Adjournment

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 is accessible to persons with disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Christina Kitamura at (916) 574-7835 or send a written request to Board of Behavioral Sciences, 1625 N. Market Blvd., Suite S-200, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.
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BOARD MEETING MINUTES - DRAFT
February 23-24, 2011

Alliant International University
10455 Pomerado Rd.
Green Hall
San Diego, CA 92131

Wednesday, February 23rd

MEMBERS PRESENT
Renee Lonner, Chair, LCSW Member
Elise Froistad, Vice Chair, MFT Member
Samara Ashley, Public Member
Jan Cone, LCSW Member
Donna DiGiorgio, Public Member
Harry Douglas, Public Member
Judy Johnson, LEP Member
Patricia Lock-Dawson, Public Member

STAFF PRESENT
Kim Madsen, Executive Officer
Tracy Rhine, Asst. Executive Officer
Rosanne Helms, Legislative Analyst
Christina Kitamura, Administrative Analyst
Michael Santiago, Legal Counsel

MEMBERS ABSENT
Christine Wietlisbach, Public Member

GUEST LIST
On file

FULL BOARD OPEN SESSION

Renee Lonner Board of Behavioral Sciences (Board) Chair called the meeting to order at approximately 8:10 a.m. Christina Kitamura called roll, and a quorum was established.

I. Introductions
Staff, Board members, and attendees introduced themselves.

II. Approval of the November 4-5, 2010 Board Meeting Minutes
Donna DiGiorgio noted a correction on page 19, item XV.a.: change “medication” to “modification.”

Jan Cone noted a correction on page 11, 5th paragraph, 3rd sentence: omit “very.” She also noted a correction on page 10, last sentence on the page: add “the” after “experience in.”
Ben Caldwell, Alliant International University and American Association for Marriage and Family Therapy California Division (AAMFT-CA), requested to be referred to as Mr. Caldwell, not Dr. Caldwell, in future meeting minutes.

Tracy Montez, Applied Measurement Services, LLC, noted a correction on page 8, 3rd bullet, last sentence: change sentence to read “The NCE passing rates are higher than BBS passing rates; however, the Board does not have to adopt both exams.”

Patricia Lock-Dawson moved to approve the November 4-5, 2010 Board meeting minutes as amended. Samara Ashley seconded. The Board voted unanimously (8-0) to pass the motion.

III. Approval of the January 13, 2011 Board Meeting Minutes

Renee Lonner moved to approve the January 13, 2011 Board meeting minutes. Jan Cone seconded. The Board voted unanimously (8-0) to pass the motion.

IV. Executive Officer’s Report

a. Budget Report

Kim Madsen reported the Board’s budget for 2010/2011 was recently revised to reflect the savings to be achieved through Executive Orders and directives to reduce spending. Previously, the Board’s budget was $8,308,000. The revised budget for the Board is now $7,986,577. The Board’s expenditures are $3,321,322. The expenditure projections for the remainder of the fiscal year indicate we will not exceed our current budget authority.

Ms. Madsen reported the MHSA Budget is $122,000. A recent review of the current expenditure projections reflected approximately a $30,000 deficit. The deficit is a direct result of a multi-year contract in which the final payment was made in this fiscal year and a reduction in funding. To address this deficit, the Board will transfer the remaining year’s personnel services expenditures to the BBS budget.

The Board’s current fund condition reflects an eight month reserve balance. Loans to the General Fund in 2002/2003 in the amount of $6,000,000 and $3,000,000 in 2008/2009 remain outstanding. Recent actions by the Governor projected another loan in the amount of 3.3 million in 2011/2012. This loan will leave the Board with a five month reserve.

A revenue collection report was provided in the meeting materials.


Ms. Madsen announced a new staff member will join the Board staff in March. Marina Karzag was hired in a departmental hiring policy whereby Department of Consumer Affairs (DCA) staff can be hired internally.

Through the same departmental policy, Patricia Fay was promoted to the position of Staff Services Analyst in the licensing unit, leaving a vacancy in the Board’s enforcement unit.

Ms. Madsen reported two employees have departed the Board. Additionally, two Board members have departed the Board.

The Board currently has 12 vacancies between the LPCC staff and existing positions. The vacancies are seriously impacting the existing programs. One staff person is processing all MFT and examination applications. Currently, this staff person is processing applications
received in October 2010. With the departure of the renewal cashier, the renewals are impacted. Currently, the renewals received up to January 24th have been processed. It is taking about 30-45 days to process renewals once they are received in the office. Existing staff is absorbing the workload of the vacant desks in addition to their own duties.

A notification regarding the delays in processing has been posted on the Board’s website. Board staff has also notified the associations.

Ms. Madsen reported on the suite expansion project. The Board is moving forward with its expansion plans. Bids for the construction have been received by DCA. We anticipate construction will begin in April. The cost is well under $100,000.

Ms. Madsen reported on the BreEZe project, DCA’s project to replace existing databases. The project is on schedule. DCA anticipates that the contract will be awarded July 2011. The first phase of implementation of the new database is scheduled for December 2012.

Ms. Madsen reported on the Sunset Review. Several DCA Boards are currently undergoing this review. The Board is scheduled for review January 1, 2013 and will begin preparing for the review late spring to early summer.

Ms. Madsen briefly reported on quarterly statistics: processing times are going up due to lack of staff; customer satisfaction is down as a result of that.

d. Licensed Professional Clinical Counselor Update

Ms. Madsen reported that the Licensed Professional Clinical Counselor (LPCC) regulation package remains pending at the State and Consumer Services Agency.

e. Strategic Plan Update

The Strategic Plan Update was provided for review. The Continuing Education Provider desk was recently filled; the processing times for that desk should go down. Enforcement staff recently completed training through the Council on Licensure, Enforcement, and Regulation (CLEAR). The Enforcement staff is scheduled to attend upcoming training courses.

Going back to operations and personnel updates, Ms. Madsen added that one of the Board’s enforcement field investigators is leaving the Board. This will bring the number of vacancies to 12. Staff is submitting exemption requests to the hiring freeze.

Elise Froistad asked how much time is devoted to the implementation of the LPCC program. Ms. Rhine responded that a lot of time is spent on the LPCC program. Ms. Froistad then asked how the implementation can be slowed down since staff is pulling from already strained resources; staff is already backlogged in the existing programs. Ms. Rhine responded that although this is a fair question, she is unsure how far staff can back off. Ms. Madsen added that statute requires January 1st as the start date; without a change to that date, staff must move forward.

V. Department of Consumer Affairs Update

LaVonne Powell from the Department of Consumer Affairs (DCA) Executive Office provided an update regarding DCA activities. She reported that the Governor has made very few appointments. Director Brian Stiger was asked to stay with DCA as Acting Director. DCA is waiting for Department of Finance and Department of Personnel Administration to provide more specific information regarding the hiring freeze. Ms. Powell added that Ms. Madsen is recruiting
for vacancies as soon as she can, and she is applying for exemptions. Cell phones and state-owned vehicles were reduced per Executive Order. DCA is discussing a delegated contract process to contract with expert consultants for enforcement cases. The BreEZe project – this will help speed up the enforcement process as well as with other areas of work. DCA is encouraging webcasting of meeting, and using Facebook and Twitter. Ms. Powell concluded her update encouraging morale boosters and team bonding activities for all employees.

The Board recessed at 9:08 a.m. and reconvened at 9:21 a.m.

VI. Licensing and Examination Committee Report

a. Discussion and Possible Action Regarding the National Counselor Examination and the National Clinical Mental Health Counselor Examination

Tracy Rhine reported on the national examination for LPCC licensure. Senate Bill (SB) 788 established the LPCC Act. The law allows the Board to administering a national exam or accepting a national exam for LPCC applicants instead of a Board-administered exam. The Board contracted with Dr. Tracy Montez, AMS, to perform the analysis necessary to determine if any national examination met the standards required by law. Dr. Montez analyzed the National Counselor Examination and the National Clinical Mental Health Counselor Examination. Dr. Montez presented her finding at the July 2010 Board meeting. Her findings were that the national exam met the standards required by law; however, there were some issues. The Board directed to staff to work with the National Board for Certified Counselors (NBCC) to work on the issues outlined in Dr. Montez’s report. NBCC has addressed some of those issues.

There were no questions, discussion, or action taken.

VII. Policy and Advocacy Committee Report

a. Discussion and Possible Legislative Action Regarding Licensed Professional Clinical Counselor Supervision of Marriage and Family Therapist Interns

Ms. Rhine presented. At its November 2010 meeting, the Board discussed changes that would allow LPCCs to supervise marriage and family therapist (MFT) interns, and draft language was presented.

Ms. Rhine explained two issues regarding the draft language. The first issue was that the draft language made changes to BPC section 4980.03 to allow LPCCs to supervise registrants without also making conforming changes to code sections that outline the relevant licensing law construction with other licensing acts. The second issue was brought forth by the public. It was noted the Board should consider clarifying that an LPCC may not supervise an MFT Intern unless the licensee has met the additional training and education requirements to treat couples and families.

For an LPCC to work with families and couples, current law states that they must meet the following requirements: 1) Six semester units or nine core units specifically focused on the theory and application of marriage and family therapy, and 2) a specialization or emphasis in the area on the qualifying degree of marriage and family therapy, and 3) no less than 500 hours of documented supervisory experience working directly with couples, families or children, and 4) six CE hours specific to marriage and family therapy completed at each license renewal.

Discussion: Should an LPCC that is supervising an MFT Intern also meet these requirements?
Jan Cummings, California Association of Licensed Professional Clinical Counselors (CALPCC), stated that BPC Section 4999.20 was an amendment that CALPCC agreed to in negotiations. CALPCC did not realize that this would impact an LPCC’s ability to supervise. It will impact resources and employment. Many LPCCs learn how to work with couples and children. They use alternative methodologies, but they have experience in their education and training. It should be based on scope of competence – based on experience, training, and education. Another concern CALPCC has is the impact in the community agencies. This requirement will impact employment.

Another representative from CALPCC stated that most students cover 60 semester units of coursework, which is more than the requirement. In that coursework, they are trained in a variety of theoretical approaches to working with clients. Students learn research-based, evidence-based practice. Students have a scope of competence. She suggested that this amendment not be passed.

Mary Riemersma, California Association of Marriage and Family Therapists (CAMFT), stated one of the unanticipated consequences is, for example, an LPCC from out of state is grandparented and may have experience working with couples, family and children, but they do not have the specific experience or education. That LPCC, for example, is hired by an agency to supervise associate social workers (ASW), and professional clinical counselor interns and trainees. CAMFT foresees that MFT interns and trainees would not be utilized because of the additional experience that the supervisor is required to have in order to provide the supervision. She is greatly concerned that clinical social workers, psychologists, and psychiatrists are not required to have any specific education or training to provide supervision. They all have to sign a supervisor responsibility statement that states they are knowledgeable in that area to provide supervision. CAMFT sees that as a hardship for their folks. Finding supervisors is increasingly difficult to do especially in this economic climate.

Mr. Caldwell, AAMFT-CA, expressed that he does not feel that an agency will hire an LPCC to supervise, and then realizes that LPCC cannot assess or treat couples or families, and cannot supervise MFT interns/trainees if this language is used, and then gets rid of their interns and trainees. It’s not unreasonable for the Board to put in language allowing the Board to make exceptions on the requirement. In terms of other licensees that can supervise MFT interns/trainees, those other licensees can do couple and family therapy in their scopes of practice. The concern is whether the Board is going to allow someone to supervise an activity that is not in the supervisor’s scope of practice. The concern is the activity, not the license type. The proposed language is the best solution.

Ms. Riemersma stated that if the Board is intent on moving forward with the proposed language, to at least consider doing this for those who began their graduate study on or after the effective date so they know what the restrictions are going to be, and not put the requirement on those who may have grandparented where they would be limited in providing supervision unless they have the specific education as part of their educational program and they did not have this as part of their hours of experience to qualify for the license.

A student in the audience expressed concerns regarding her supervision and how to know if her supervisor has the qualifications to guide her. If there is a requirement, it helps her to know that the supervisor has that experience and training.

Gerry Grossman suggested limiting the number of hours that an MFT intern or ASW can be supervised by an LPCC.
Olivia Loewy, AAMFT-CA, stated that if LPCCs coming to California have not met those requirements, their scope of competency would not qualify them to adequately supervise MFT interns and trainees.

A representative from CALPCC agreed with Ms. Riemersma’s suggestion to push the requirement out further so that the counselors and agencies are prepared.

Ms. Riemersma stated that it is very difficult for MFT interns and trainees to get hours of experience working with couples, families, and children. Given the economic climate, it is even more difficult for MFT interns and trainees to get the required hours.

Mr. Caldwell expressed interest in knowing how many hours are being completed in working with couples, families, and children by MFT interns under the recent incentive. Mr. Caldwell guessed that most MFTs meet that incentive and possible go beyond that within the program at Alliant International University. MFT interns and trainees are getting at least some of those hours. AAMFT-CA wants to ensure that the people supervising that activity are legally qualified to do so.

Ms. Riemersma made another suggestion to make this applicable to MFT trainees and not interns so that schools are in control and use the supervisors they need to ensure that the supervisors have the requisite education and experience. Furthermore, for the time being, allow MFT interns to work with supervisors across disciplines.

Jan Cone stated in supervising, it is the supervisor’s license on the line with the practice of those individuals. Supervision is a part of practice, so it is difficult to carve out supervision from practice within the proposed language.

Harry Douglas stated that he heard the concerns regarding employment and impact on the community. Two other concerns that he is hearing is about public safety and quality of education.

Judy Johnson added to Mr. Douglas’ statement. Board members need to approach this in a preventative and proactive way and to eliminate or minimize the unintended consequences when looking at training, scope of practice, and competence.

Carrie Lew, University of Southern California, stated that the current system, where it is difficult for MFT students to get hours in working with couples, families, and children, is based on very individualistic ideation. Consumers are much more family oriented than the consumers used to be. As policy makers, your policy will influence the future of the system. If you put in requirement that promotes best service to fit the characteristics of the consumers, the system would probably need to make some changes to fit the current status quo, not the Board’s requirements.

Mr. Caldwell stated that it would be difficult for an MFT intern to make a complaint against a supervisor that is a social worker, psychologist, or psychiatrist if the intern feels their supervision is inadequate. The benefit of having this standard in statute is that it is enforceable.

*Patricia Lock Dawson moved to accept the proposed language submitted by staff. Harry Douglas seconded. The Board voted unanimously (8-0) to pass the motion.*
b. Discussion and Possible Action Regarding HIV/AIDS Continuing Education Course Requirement for Licensed Professional Clinical Counselor

Rosanne Helms presented. Currently, MFTs and licensed clinical social workers (LCSWs) are required to take a one-time seven hour continuing education course covering the assessment and treatment of people living with human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS). Proposed regulations do not require LPCCs to take a continuing education course covering HIV/AIDS.

Ms. Helms explained that all MFTs, LCSWs, and LPCCs are required to complete 36 hours of continuing education (CE) relevant to their field of work during each renewal period. They must also complete a six-hour law and ethics course each renewal period. These courses cover a variety of topics: 1) Human Sexuality, 2) Child Abuse, 3) Spousal/Partner Abuse, 4) Aging and Long Term Care, and 5) Substance Abuse.

Ms. Helms added that in addition to the above requirements, MFTs and LCSWs are required to take a one-time, seven hour CE course covering the assessment and treatment of people living with HIV/AIDS as a condition of their renewal. There is currently no requirement in law that an LPCC have any coursework covering HIV/AIDS, either as CE or as part of a graduate degree program.

At its January 2011 meeting, the Policy and Advocacy Committee recommended that the Board consider requiring LPCCs to take a one-time, seven hour CE course covering the assessment and treatment of people living with HIV/AIDS.

Ms. Lonner stated that this would make it consistent. Ms. Froistad agreed.

Donna DiGiorgio moved to adopt the amended language to include the LPCCs. Elise Froistad seconded. The Board voted unanimously (8-0) to pass the motion.

c. Legislative Update

Ms. Helms presented the legislative update. Board staff is currently pursuing the following legislative proposals:

- **SB 704 Examination Restructure** - The proposed exam restructure would change the exam process for applicants seeking MFT and LCSW licensure.

- **Omnibus Legislation** – This bill proposes several non-substantive amendments which will add clarity and consistency to licensing law.

- **SB 363 – The MFT Experience and Supervision Bill** – This bill would allow an MFT trainee to continue counseling clients while not in practicum if the last enrollment was less than 45 days. This bill will be amended to include the MFT intern limitation of client centered advocacy hours to 500 hours and the LPCC supervision of MFT interns.

d. Rulemaking Update

Ms. Helms presented the rulemaking update. The rulemaking package relating to SB 788 was submitted to the State and Consumer Services Agency in October 2010. It is still awaiting approval. Once approved at Agency, it must be reviewed by the Department of Finance and then by the Office of Administrative Law.

The rulemaking package relating to the revision of advertising regulations revises the regulatory provisions related to advertising by Board licensees. The Board approved the
originally proposed text at its meeting in November 2009. Staff will address this rulemaking proposal in 2011 after the current pending regulatory proposal is approved.

VIII. Discussion and Possible Action Regarding Proposed Legislation Amending Business and Professions Code Section 4999.47, and Adding Sections 4989.13, 4991.1, 4999.13 Relating to Engaging in Practice, and Employee Status of Clinical Counselor Trainees and Interns

Staff recommends the following sections be added to LCSW, licensed educational psychologist (LEP), and LPCC licensing laws in order to be consistent with language in MFT licensing law:

Add BPC Sections 4989.13, 4991.1, 4999.13: Engaging in Practice – Current MFT law defines the act of engaging in practice. However, the LCSW and LPCC licensing laws do not define the act of engaging in practice although the licensing laws use the term “engaging in practice.” Staff recommends adding a section to the LCSW, LEP, and LPCC licensing laws which defines “engaging in practice.”

Amend BPC Section 4999.47: Employment; Trainee, Registered Intern and Applicants; Remuneration - Current law for both MFTs and LCSWs states that a MFT intern or ASW must, upon application for licensure, provide the board with copies of W-2 tax forms for each year of experience claimed if they were employed. If they were a volunteer, then upon application for licensure he or she must provide the board with a letter from his or her employer verifying the intern’s employment as a volunteer. However, this requirement is not currently required by law for a clinical counselor intern. Staff recommends an amendment to require clinical counselor interns to provide copies of W-2 tax forms for each year of experience claimed if employed or a letter from the employer verifying volunteer status if a volunteer.

Discussion took place regarding the definition of remuneration and bartering. It was noted that those terms are outlined in other areas of the law.

Samara Ashley moved to direct staff to make any non-substantive changes and submit draft language as amended, including the amendment of striking “who” in sections 4989.13, 4991.1, 4999.13, and striking “who” and replacing with “when he or she” in section 4980.10, to the legislature for Board-sponsored legislation. Judy Johnson seconded. The Board voted unanimously (8-0) to pass the motion.

IX. Discussion and Possible Action Regarding Acceptance of Post Degree Hours of Experience Toward Licensure as a Professional Clinical Counselor

Ms. Helms presented. Current law requires that candidates for licensure as an LPCC complete 3,000 post-degree hours of supervised clinical mental health experience. In order for post-degree hours of experience to be counted toward the 3,000 hours required for licensure, a candidate must register with the Board as an LPCC intern within 90 days of the granting of a qualifying degree.

Now that the Board will be offering the LPCC license, it is a possibility that some MFT interns may decide to instead switch toward becoming an LPCC and become an LPCC intern, or the MFT intern may decide to pursue dual MFT and LPCC licensure. This raises several issues not presently addressed under the law:

1. Can an MFT intern decide to re-register as an LPCC intern, taking his or her post-degree hours of supervised experience gained as an MFT intern with them? Currently, the law does not prohibit this, but counting of the hours would be limited by the 90-day rule.
2. If an MFT intern decides to pursue an LPCC internship in addition to their MFT internship, can hours of experience gained be double counted?

3. Current law requires a candidate to register with the Board as an LPCC intern within 90 days of the granting of a qualifying degree in order to count hours of experience gained before registration. Would an exception to this law be made for those already registered as MFT interns?

4. MFT and LPCC licensing law does not allow counting of experience hours gained more than six years prior to the date of application for examination eligibility. If allowed to transfer hours gained as an MFT intern to an LPCC internship, how would the six year rule apply?

5. If an LPCC intern later decides to become an MFT intern or pursue dual licensure, would the Board handle that the same way?

6. If any exceptions are made for MFT interns pursuing LPCC licensure, should the same exceptions be made for ASWs pursuing LPCC licensure?

Ms. Helms explained that the Policy and Advocacy Committee discussed a similar issue related to continuing education (CE) hours at its October 2010 meeting. The Board currently allows an individual who holds both an MFT and LCSW license to apply their CE coursework toward the renewal of both licenses as long as the courses meet the Board’s CE guidelines and the subject matter relates to both scopes of practice. A question was raised as to whether LPCC licensees should be allowed to double count CE units that they earn for another license toward their LPCC education requirement. The Committee voted to allow double counting if the courses taken meet the Board’s continuing education guidelines, and the subject matter relates to both scopes of practice.

The Board has also discussed the issue of counting experience hours at its meeting 2009 in a case where an MFT had subsequently completed a master’s degree in social work. A question was raised as to whether this person could be credited the required supervised experience hours they had gained during their MFT internship toward LCSW licensure. It was proposed that the Board permit the MFT intern hours toward the LCSW license if the applicant had been a licensed MFT for at least four years and had completed a master’s degree in social work. The Board rejected this proposal due to concerns about the equivalency of the experience hours, as well as known differences in MFT and LCSW scopes of practice.

Ms. Froistad stated that there has been discussion regarding the Gap exam, and it was determined that the LPCC practice was different. She asked how the hours can be counted when it was determined that the practice is different.

Ms. Johnson asked Dr. Montez what other states have duplicated this, and what have other states done. Dr. Montez responded that she does not have that information available for this discussion.

Ms. Riemersma responded to issue #2 and suggested that the hours be accepted across the two disciplines where there is overlap. As for the 90 day rule in issue #1, the LPCC hours cannot be counted until the individual applies for registration. That is the point where hours can be double counted.

Mr. Caldwell stated that if the hours meet requirements for both of the disciplines, the hours should count both. AAMFT-CA will work on recommendations for the Committee meeting in April.

Ms. Lonner stated that counting hours within the current constraints is reasonable for issues #1-#4.
Ms. Rhine shared feedback from the public, which is to allow double counting where it is applicable and within the current constraints.

The Board agreed to issue #5 in that it would be handled the same way.

Ms. Johnson responded to issue #6 by stating that the same exceptions should be made for ASWs if all the qualifications are met.

*Renee Lonner moved to direct staff to draft legislative amendments based on the discussion for inclusion at the April 7, 2011 Policy and Advocacy Committee meeting. Donna DiGiorgio seconded. The Board voted unanimously (8-0) to pass the motion.*

The Board took recessed for lunch.

X. Discussion and Possible Action Relating to the Licensed Professional Clinical Counselor Gap Examination

Kim Madsen reported. In October 2009, Governor Schwarzenegger signed Senate Bill 788, establishing the LPCC Act (Act). The Act authorized the Board to begin accepting applications for this new mental health profession effective January 1, 2011. The Act provides MFTs and LCSWs a method to obtain licensure as an LPCC if requirements are met and applications are received within a specified time period.

One requirement may include an examination on the differences between the practice of MFT and LPCC and the practice of LCSW and LPCC, and is specified in Business and Professions Code section 4999.54(b)(1)(2).

Ms. Madsen reviewed the chronology of the Board’s previous action. Board staff met with the Office of Professional Examination Services (OPES) staff in November 2009. The purpose of the meeting was to discuss whether OPES had the staff and resources to conduct a comprehensive audit required to identify differences, if any, in the practice of the three professions (MFT, LCSW, and LPCC). Following this meeting it was agreed that OPES was not able to perform this work necessary to meet the requirements of Senate Bill 788 due to budget constraints, existing workloads, and the short time to complete the work.

Subsequently, the Board initiated the steps to obtain bids from outside vendors that could perform the comprehensive analysis required by the Act. In January 2010, the contract was awarded to Applied Measurement Services, LLC (AMS). AMS completed the analysis in April 2010 and presented the findings in a public report.

The AMS Report was presented at the May 7, 2010 Board meeting. Following discussion of the findings, the Board voted unanimously to not adopt a separate examination (the Gap Examination) for MFT and LCSW candidates who seek LPCC licensure.

Following the vote, the Board received a letter AAMFT-CA. The AAMFT–CA letter argued that Business and Professions Code section 4999.54(b) requires the Board to develop an examination on any differences that may exist between the three professions and that it does not allow the Board to make an exception to the examination based on perceived significance of the differences.

At its July 28, 2010 board meeting, during an open session the Board discussed the AAMFT-CA letter, the AMS Report, listened to public comment, and received input from the Board’s legal counsel.
Following the July 2010 meeting, the Board received a letter from Richard Segal, an attorney with Pillsbury, Winthrop, Shaw and Pittman LLP, representing CAMFT. Mr. Segal expressed the view that the Board had violated the Bagley-Keene Open Meeting Act when it went into closed session on July 28, 2010 to discuss whether a Gap Examination should be required. The letter requested the Board acknowledge the defect in procedures and suggested the violation could be cured by taking action that would bring the Board to the point prior to when the violation occurred, and then the Board could proceed properly.

In the interest of improving public perception and relations, the Board met on September 9, 2010, to discuss and possibly rescind the decision made at the July 28, 2010 meeting to require a Gap Examination. The Board voted to rescind all decisions related to the Gap Examination. An open discussion was held with stakeholders, AMS presented its findings, and input was received from legal counsel.

At its September 9, 2010 the Board voted to find that a Gap Examination is necessary and directed staff to have an examination developed.

Michael Santiago explained that CAMFT petitioned for Writ of Mandate against the Board. CAMFT is basically requesting that the court make an order or a finding that the Board take an action. Mr. Santiago outlined the three areas in the petition.

- The Board erred in assessing the purported differences between the professions of clinical counseling, clinical social work, and marriage and family therapy, instead of assessing the differences, if any, between the practice of clinical counseling, clinical social work, and marriage and family therapy.
- The Board failed to consult with OPES in determining whether the Gap Examination is necessary.
- The Board failed to exercise its independent judgment in determining whether the Gap Examination is necessary.

Mr. Santiago stated that the court determined the following:

- The Board did not abuse its discretion in determining that practice and profession are essentially the same thing.
- The Board abused its discretion in failing to consult with OPES in determining whether the Gap Examination is necessary.
- The Board did not abuse its discretion in determining the Gap Examination is required if the Board determines there are “any” differences between the professions.

On February 14, 2011, the court issued a Peremptory Writ of Mandate that requires the following:

- The Board set aside its decision requiring the Gap Examination.
- The Board shall make its determination whether a Gap Examination is required “in consultation” with OPES.
- The Board will file a response to the court within 60 days after the issuance of the writ, setting forth what the Board has done to comply with the writ.

Mr. Santiago explained that the Board has already set aside its decision requiring the Gap Examination. The next step is to consult with OPES, which means to ask for advice or opinion of OPES. OPES has provided their opinion in a letter to the Board as to whether the Gap Examination is necessary.
Ms. Riemersma stated that the court ordered the Board to set aside its decision requiring the Gap Exam. Since the decision to require the Gap Exam was made at a public meeting, CAMFT expected that the Board would meet in public to discuss the judgment and the Writ of Mandate, and then vote at this meeting to set aside the Board’s previous decision to require a Gap Exam. Ms. Riemersma stated that the Board did not comply with the law in consulting with OPES, and the penalty was that the Board set aside its decision. She added that the Chair does not have the authority to act in place of the Board nor could the Board have held an unnoticed or closed meeting to take action to set aside the Gap Exam. The setting aside of the Gap Exam should be happening today at this meeting.

Mr. Santiago responded that there is no discretion; the court has ordered the Board to do this. A vote is not required.

Ms. Riemersma stated that OPES could not do the work because they were overburdened with work. When the Writ of Mandate is issued, OPES now has the time to perform a complicated analysis and review Dr. Montez’s work, and did so rapidly. From CAMFT’s perspective, it seems as if “this was a sham.” She added that Dr. Montez identified that there were no meaningful or significant differences, and there were no differences that would affect public health and safety, yet the Board is still moving forward using the state’s money to test people who have already been tested.

LaVonne Powell responded that OPES is a highly professional office. They would never do anything that is a “sham.” There was a court order, and OPES put its work down to comply with the order.

Mr. Santiago stated that the OPES time frames is not the discussion here. The focus is on the Writ. The court stated in its findings that the Board’s interpretation in “any difference” to require the Gap Exam is a reasonable construction of the statutory scheme. It does not have to be a “meaningful” difference.

*Renee Lonner moved that after consulting with OPES regarding the differences between the practice of professional clinical counseling and marriage and family therapy, and between the practice of professional clinical counseling and clinical social work, that the Board finds that a Gap Examination is necessary. Judy Johnson seconded. The Board voted unanimously (8-0) to pass the motion.*

*Judy Johnson moved to direct staff to jointly develop a Gap Examination with OPES to address the differences between the practice of professional clinical counseling and marriage and family therapy and the practice professional clinical counseling and clinical social work. Donna DiGiorgio seconded. The Board voted unanimously (8-0) to pass the motion.*

**XI. Mental Health Services Act Report**

Ms. Madsen reported that the Board along with other state agencies is in partnership with the Department of Mental Health (DMH). The Board receives feedback from DMH that the Board is one of the premier partners in what the Board has accomplished.

The Memorandum of Understanding for funding that the Board receives from Proposition 63 expires at the end of the fiscal year. Staff is meeting with DMH to negotiate a new Memorandum of Understanding.

Ms. Lonner took the next two agenda items out of order. Item XIII was heard before item XII.
XIII. Suggestions for Future Agenda Items

Ms. Riemersma requested consideration be given to meeting locations. Scheduling meetings at a particular school seems to give preference to that particular school. She stated that other schools have made comments regarding multiple meetings held at Alliant International University. She also requested consideration given to locations that are easily accessible and accessible to lunch places.

Ms. Riemersma requested discussion regarding the terms LMFT vs. MFT, specifically, she requested that MFT be changed to LMFT in any section of law that refers to MFT. This adds consistency across the disciplines and makes it clear that it is a licensed profession.

Ms. Riemersma requested discussion regarding continuing education providers. She stated that the Board is getting into the content of continuing education courses, and feels that is beyond the Board's authority in requesting specific content.

Ms. Froistad requested discussion regarding fees charged for psychiatric evaluations when Board licensees are required to have a psychiatric evaluation.

Mr. Grossman requested discussion regarding the laws relating to consensual sex involving minors. He stated if a minor discloses in counseling that they are engaging in oral or anal sex, that this is a mandatory report. Mr. Grossman stated that there is a discrepancy in current law regarding the type of sexual acts the minor is involved in.

XII. Compliance and Enforcement Committee Report

Ms. Madsen reported that the next Compliance and Enforcement Committee meeting will be held on March 24, 2011 in Sacramento.

Ms. Madsen presented statistics for Enforcement Program for review. She pointed out a few numbers and provided brief clarification.

XIV. Public Comment for Items Not on the Agenda

No public comments were made for items not on the agenda.

The open session meeting was closed at approximately 1:20 p.m., and the Board moved to closed session.

FULL BOARD CLOSED SESSION

XV. Pursuant to Government Code Section 11126(a)(1), the Board Will Meet in Closed Session for the Purpose of Evaluation of the Executive Officer

The Board met in closed session, and the meeting adjourned at the end of closed session.
Thursday, February 24th

Members Present
Renee Lonner, Chair, LCSW Member
Elise Froistad, Vice Chair, MFT Member
Jan Cone, LCSW Member
Donna DiGiorgio, Public Member
Harry Douglas, Public Member
Judy Johnson, LEP Member
Patricia Lock-Dawson, Public Member

Staff Present
Kim Madsen, Executive Officer
Tracy Rhine, Asst. Executive Officer
Rosanne Helms, Legislative Analyst
Christina Kitamura, Administrative Analyst
Michael Santiago, Legal Counsel
Ann Glassmoyer, Enforcement

Members Absent
Samara Ashley, Public Member
Christine Wietlisbach, Public Member

Guest List
On file
Christina Thomas, DAG

FULL BOARD OPEN SESSION

Renee Lonner Board of Behavioral Sciences (Board) Chair called the meeting to order at approximately 8:07 a.m. Christina Kitamura called roll, and a quorum was established.

XVI. Introductions
Administrative Law Judge Walker opened the hearing. DAG Christina Thomas represented the Board. Judge Walker called Barton Lewis Gibson to present his testimony.

b. Petition for Modification of Probation Terms, Barton Lewis Gibson, LCS 10389
Mr. Barton Lewis Gibson presented his request to modify the terms of his probation.

The Board recessed for a break at 9:42 a.m., and reconvened at 9:55 a.m.

a. Petition for Modification of Probation Terms, Patricia Ann Evans, MFC 48187
Ms. Patricia Ann Evans presented her request to modify the terms of her probation.

The Board recessed for a break at 10:55 a.m., and reconvened in closed session.

FULL BOARD CLOSED SESSION

XVII. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters
The Board met in closed session to discuss and take action on disciplinary matters.

FULL BOARD OPEN SESSION

XVIII. Adjournment
The Board re-opened the meeting to the public and adjourned at 12:25 p.m.
BOARD MEETING MINUTES - DRAFT
March 24, 2011

Department of Consumer Affairs
El Dorado Room
1625 North Market Blvd., Suite N220
Sacramento, CA 95834

Via Teleconference:
Pioneer High School 10800 E. Benavon St.
Whittier, CA  90606
415 Karla Court
Novato, CA  94949

Members Present
Elise Froistad, Vice Chair, MFT Member
Samara Ashley, Public Member
Gordonna (Donna) DiGiorgio, Public Member
Harry Douglas, Public Member
Judy Johnson, LEP Member
Patricia Lock Dawson, Public Member
Christine Wietlisbach, Public Member

Staff Present
Kim Madsen, Executive Officer
Tracy Rhine, Assistant Executive Officer
Michael Santiago, Legal Counsel
Christina Kitamura, Administrative Analyst

Members Absent
Renee Lonner, Chair, LCSW Member

Guest List
On file

FULL BOARD OPEN SESSION

I. Call to Order & Establishment of Quorum
Elise Froistad, Acting Board Chair, called the meeting to order at 8:40 a.m. Christina Kitamura called roll, and a quorum was established.

The Board entered into closed session.

FULL BOARD CLOSED SESSION

II. Pursuant to Government Code Section 11126(e)(1) the Board Will Confer With Legal Counsel to Discuss Writ of Mandate:
California Association of Marriage and Family Therapists, a California Non-Profit Mutual Benefit Corporation vs. Board of Behavioral Sciences, Case Number 34-2010-80000689

Michael Santiago conferred with the Board in closed session.
FULL BOARD OPEN SESSION

III. Discussion and Possible Action to comply with the Writ of Mandate Regarding the Gap Examination

Ms. Froistad reopened the meeting to the public at 8:46 a.m. and explained that during closed session, the Board discussed the Writ of Mandate that was ordered by the Sacramento Superior Court (Court) on February 14, 2011. She outlined the Court’s three findings:

1. The Board did not abuse its discretion in determining that “practice” and “profession” are essentially the same.
2. The Board abused its discretion in failing to consult with Office of Professional Examination Services (OPES) in determining whether the Gap Examination is necessary.
3. The Board did not abuse its discretion in determining the Gap Examination is required if the Board determines there are “any” differences between the professions.

Ms. Froistad reported that the Court also ordered the Board to set aside its prior decision requiring the Gap examination due to the Board’s failure to “consult with” OPES as required in Business and Professions Code section 4999.54, subdivision (b).

Christina Wietlisbach moved to set aside the decision the Board made on September 9, 2010 finding that a “Gap” examination is necessary to address the differences between the practice of professional clinical counseling, and the practice of marriage and family therapy, and between the practice of professional clinical counseling and the practice of clinical social work. Samara Ashley seconded.

Ms. Froistad opened discussion to the Board. There was no Board discussion. Ms. Froistad opened the floor for public comment. There were no public comments.

With the motion on the floor, Ms. Froistad called for a vote, and a roll call vote was taken.

The Board voted unanimously (7-0) to pass the motion.

Ms. Froistad reported that during its meeting on February 23, 2011, the Board considered the question whether a “Gap Examination” was necessary. Consistent with the Court’s mandate that the Board consult with the OPES, Board staff asked that OPES review the analysis and report prepared by Dr. Traci Montez on this question, and that OPES provide a written opinion on the necessity of a “Gap Examination.” Ms. Froistad stated that the Board members received a copy of the written opinion prior to the February 23, 2011 meeting. Bob Holmgren, Supervising Personnel Consultant with OPES, was in attendance and available for any questions about OPES’ opinion. Ms. Froistad stated that none of the Board members had any questions about OPES’ opinion or recommendation.

Ms. Froistad reported that the Board then considered and adopted the following two decisions based on a review of the February 11, 2011 Memo from OPES and the April 29, 2010 report from Dr. Montez:
1. That after consulting with OPES on the differences between the practice of professional clinical counseling and marriage and family therapy, and between the practice of professional clinical counseling and the practice of clinical social work, the Board finds that a “Gap Examination” is necessary.

2. That staff will jointly develop the “Gap Examination” with OPES to address the differences between the practice of professional clinical counseling and the practice of marriage and family therapy, and between the practice of professional clinical counseling and the practice of clinical social work.

Harry Douglas moved to ratify the Board’s prior two decisions, as previously stated, that were made at the February 23, 2011 Board Meeting in reference to the “Gap Examination.” Christine Wietlisbach seconded.

Ms. Froistad opened discussion to the Board. There was no Board discussion. Ms. Froistad opened the floor for public comment.

Cathy Atkins, California Association of Marriage and Family Therapists (CAMFT), asked for clarification on the motion, specifically what was being ratified. Ms. Froistad responded that the decisions the Board made at the February 23, 2011 Board meeting, were being ratified: 1) that a “Gap Examination” was necessary, and 2) that staff will jointly develop the “Gap Examination” with OPES to address the differences between the practice of professional clinical counseling and the practice of marriage and family therapy, and between the practice of professional clinical counseling and the practice of clinical social work.

Janlee Wong, National Association of Social Workers (NASW), asked if this will impact the application deadline of those licensees that would like to be grandparented, and if the deadline will be moved to a sooner or later date. Ms. Froistad responded that this will not make a difference in the deadline.

Ms. Atkins expressed CAMFT’s concerns. She stated that there was a vote to take the exam off the table; then there was a vote to put the exam back on the agenda. The Board was working with OPES at the same time that these votes were going forward, so there was never a good faith effort to take the exam off of the table so that the Board can take a look at the materials. CAMFT feels that these steps were being done at the same time, not in the order that CAMFT feels the court ordered. CAMFT does not agree with the Board’s analysis on the second point of the court order. CAMFT’s interpretation of the second point in regards to failing to consult with OPES was a reason, not a finding.

With the motion on the floor, Ms. Froistad called for a vote, and a roll call vote was taken.

The Board voted unanimously (7-0) to pass the motion.

IV. Public Comment for Items Not on the Agenda

Mr. Wong, NASW, read a letter from a Board licensee regarding license renewals. The licensee suggested that Board staff process the renewals in order of license expiration date, not first come, first served. The licensee’s reason for the request is so that licensees are not unlicensed for a period of time while their renewals are being processed and so that there is not interruption of behavioral health services.
V. Adjournment

The meeting was adjourned at 8:57 a.m.
**Fiscal Year 2010/2011**

**Board Budget**

The Board’s 2010/2011 budget is $7,986,577. As of March 31, 2011, Board expenditures total $5,253,293 which reflects 68% of the Board’s total budget. Regarding expenditures to date, the Board has spent 23% on personnel services and 17% on Attorney General and Office of Administrative Hearing expenses. The remaining expenses are attributed to operating expenses, equipment, and examination development.

Projected expenses through the end of the fiscal year reflect an unencumbered balance of $157,661.

**MHSA Budget**

The MHSA 2010/2011 budget is $122,000. Expenditures through March 31, 2011, total $86,969 which reflects 71% of the total budget. Regarding expenditures to date, personnel services account for 54% of the budget with just 17% spent on operating expenses and equipment.

At the February board meeting MHSA expenditure projections indicated a $30,000 deficit. Revised projections now indicate a $25,274 unencumbered balance.

**Fund Condition**

The Board’s current fund condition reflects an eight (8) month reserve balance. Loans to the General Fund in 2002/2003 in the amount of $6,000,000 and $3,000,000 in 2008/2009 remain outstanding.

**Revenue**

Revenue collected through March 31, 2011 totals $5,312,643.

**Fiscal Year End**

With the end of the fiscal year approaching typical budget closure directives are implemented (purchase restrictions, submission of travel claims). These directives are an effort to assist the budget office and the Board in processing all expenditures related to the 2010/2011 fiscal year.

**Fiscal Year 2011/2012 Looking Ahead**

Work on the 2011/2012 state budget began early 2011. To date, a final agreement on the state budget has not materialized. In the event a budget agreement is not in place by July 1, 2011, the Board is prohibited from spending any money from its $7,778,000 budget. So that the Board’s core functions are not affected by a potential delay in reaching a budget agreement, Board staff is in the midst of the necessary preparations to ensure minimal impact to our programs.
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## BBS Expenditure Report FY 2010/11

<table>
<thead>
<tr>
<th>OBJECT DESCRIPTION</th>
<th>09/10 ACTUAL EXPENDITURES</th>
<th>BUDGET ALLOTMENT CURRENT AS OF 3/31/2011</th>
<th>PROJECTIONS TO YEAR END</th>
<th>UNENCUMBERED BALANCE</th>
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Reimbursements

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<tr>
<th>Reimbursements</th>
<th>FY 09/10 Actuals</th>
<th>Budget Alotment</th>
<th>Current as of 3/31/2011</th>
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<td>Fingerprints</td>
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<td>(24,000)</td>
<td>(40,921)</td>
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<td>Unscheduled Reimbursements</td>
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<tr>
<td>Total Reimbursements</td>
<td>(133,659)</td>
<td>(50,000)</td>
<td>(97,216)</td>
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BLUE PRINT INDICATES THE ITEMS ARE SOMEWHAT DISCRETIONARY.
### 0773 - Behavioral Science

**Analysis of Fund Condition**

(Dollars in Thousands)

NOTE: $6.0 Million General Fund Outstanding (2002/03) plus $3.0 Million General Fund Outstanding (2008/09)

| Proposed FY 2011-12 Governor’s Budget SB 788 Revenue & AB 2191 Revenue Loss |
|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| BEGINNING BALANCE | $ 4,493         | $ 4,885         | $ 5,246         | $ 6,962         | $ 7,741         | $ 8,857         | $ 9,994         |
| Prior Year Adjustment | $ 107         | -               | -               | -               | -               | -               | -               |
| Adjusted Beginning Balance | $ 4,600       | $ 4,885         | $ 5,246         | $ 6,962         | $ 7,741         | $ 8,857         | $ 9,994         |

### Revenues and Transfers

**Revenues:**

- **125600** Other regulatory fees

- **125700** Other regulatory licenses and permits

- **125800** Renewal fees

- **125900** Delinquent fees

- **141200** Sales of documents

- **142500** Miscellaneous services to the public

- **150300** Income from surplus money investments

- **160400** Sale of fixed assets

- **161000** Escheat of unclaimed checks and warrants

- **161400** Miscellaneous revenues

**Additional SB 788 Revenue**

**AB 2191 Revenue Loss**

**Totals, Revenues**

$ 6,211

**Transfers from Other Funds**

**F00683 Teale Data Center (CS 15.00, Bud Act of 2005)**

**Transfers to Other Funds**

**T00001 GF loan per item, BA of 2008**

**Totals, Revenues and Transfers**

$ 6,211

**Totals, Resources**

$ 10,811

### EXPENDITURES

**Disbursements:**

- **8860 FSCU (State Operations)**

- **8880 Financial Information System for California**

- **1110 Program Expenditures (State Operations)**

**1111-04 Governor’s Proposed**

**Net Reimbursements**

**Total Disbursements**

$ 5,926

### FUND BALANCE

- **Reserve for economic uncertainties**

**Months in Reserve**

7.4

8.1

10.6

11.6

13.0

14.3

**NOTES:**

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED FOR 2010-11 AND ONGOING.

B. ASSUMES INTEREST RATE AT 1%.

C. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR.
<table>
<thead>
<tr>
<th>OBJECT DESCRIPTION</th>
<th>2009/10</th>
<th>FY 2010/11</th>
</tr>
</thead>
<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>61,483</td>
<td>73,542</td>
</tr>
<tr>
<td>Totals Staff Benefits</td>
<td>25,736</td>
<td>26,511</td>
</tr>
<tr>
<td>Salary Savings</td>
<td></td>
<td>(3,083)</td>
</tr>
<tr>
<td>TOTALS, PERSONAL SERVICES</td>
<td>87,219</td>
<td>96,970</td>
</tr>
<tr>
<td>OPERATING EXP &amp; EQUIP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Expense</td>
<td>1,965</td>
<td>404</td>
</tr>
<tr>
<td>Communication</td>
<td>644</td>
<td>0</td>
</tr>
<tr>
<td>Postage</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Travel, In State</td>
<td>3,057</td>
<td>0</td>
</tr>
<tr>
<td>Training</td>
<td>5,180</td>
<td>0</td>
</tr>
<tr>
<td>Facilities Operations</td>
<td>2,360</td>
<td>2,000</td>
</tr>
<tr>
<td>Minor Equipment (226)</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>C&amp;P Svs - External (402)</td>
<td>163,860</td>
<td>0</td>
</tr>
<tr>
<td>Statewide Prorata (438)</td>
<td>7,116</td>
<td>22,626</td>
</tr>
<tr>
<td>TOTAL, OE&amp;E</td>
<td>184,182</td>
<td>25,030</td>
</tr>
<tr>
<td>TOTAL EXPENDITURES</td>
<td>271,401</td>
<td>$122,000</td>
</tr>
</tbody>
</table>

Index - 3085
PCA - 18385
DGS Code - 057472
<table>
<thead>
<tr>
<th>Month</th>
<th>FY 10/11 Revenue by Month</th>
<th>Actual Receipts Y-T-D (Revenue)</th>
</tr>
</thead>
<tbody>
<tr>
<td>July</td>
<td>$762,284.90</td>
<td>$762,284.90</td>
</tr>
<tr>
<td>August</td>
<td>$612,879.75</td>
<td>$1,375,164.65</td>
</tr>
<tr>
<td>September</td>
<td>$888,896.00</td>
<td>$2,264,060.65</td>
</tr>
<tr>
<td>October</td>
<td>$560,370.10</td>
<td>$2,824,430.75</td>
</tr>
<tr>
<td>November</td>
<td>$393,690.35</td>
<td>$3,218,121.10</td>
</tr>
<tr>
<td>December</td>
<td>$560,118.27</td>
<td>$3,778,239.37</td>
</tr>
<tr>
<td>January</td>
<td>$527,079.68</td>
<td>$4,305,319.05</td>
</tr>
<tr>
<td>February</td>
<td>$409,637.17</td>
<td>$4,714,956.22</td>
</tr>
<tr>
<td>March</td>
<td>$597,687.20</td>
<td>$5,312,643.42</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Month</th>
<th>FY 09/10 Revenue by Month</th>
<th>Actual Receipts Y-T-D (Revenue)</th>
</tr>
</thead>
<tbody>
<tr>
<td>July</td>
<td>$443,240.40</td>
<td>$443,240.40</td>
</tr>
<tr>
<td>August</td>
<td>$882,032.22</td>
<td>$1,325,272.62</td>
</tr>
<tr>
<td>September</td>
<td>$866,668.07</td>
<td>$2,191,940.69</td>
</tr>
<tr>
<td>October</td>
<td>$560,398.81</td>
<td>$2,752,339.50</td>
</tr>
<tr>
<td>November</td>
<td>$423,006.21</td>
<td>$3,175,345.71</td>
</tr>
<tr>
<td>December</td>
<td>$503,837.85</td>
<td>$3,679,183.56</td>
</tr>
<tr>
<td>January</td>
<td>$431,585.53</td>
<td>$4,110,769.09</td>
</tr>
<tr>
<td>February</td>
<td>$430,200.00</td>
<td>$4,640,969.09</td>
</tr>
<tr>
<td>March</td>
<td>$569,946.20</td>
<td>$5,210,915.29</td>
</tr>
<tr>
<td>April</td>
<td>$411,491.57</td>
<td>$5,622,406.86</td>
</tr>
<tr>
<td>May</td>
<td>$338,009.28</td>
<td>$5,960,416.14</td>
</tr>
<tr>
<td>June</td>
<td>$378,260.00</td>
<td>$6,338,676.14</td>
</tr>
<tr>
<td>FM 13</td>
<td>$6,175.21</td>
<td>$6,344,851.35</td>
</tr>
</tbody>
</table>
Attached for your review are the quarterly performance statistics. Processing times represent an average for the quarter.

The Board staff is comprised of 44 positions which include five staff members for the Licensed Professional Clinical Counselor (LPCC) program. Currently, a total of nine vacancies exist. The Board is making every effort to fill the vacancies within the parameters of the current hiring freeze order.

The Licensing and Examination Program is responsible for evaluating registrant, examination, continuing education provider, and initial licensing applications for all of the Board’s license types. Two of the twelve positions are currently vacant. The current vacancies are in the fingerprint unit and the Licensed Educational Psychologist desk. The Board has prioritized and reassigned a number of the duties associated with these vacancies to existing staff. The additional workload has impacted all licensing and examination programs.

Effective May 1, 2011 the Board filled the vacancy within the Marriage and Family Therapist (MFT) unit which evaluates all MFT applications for examination. This position has been vacant since September 2010. Consequently, the Board had just one person to evaluate these applications. As a result, applicants for the MFT examination are experiencing significant delays. On average, the Board receives 168 MFT examination applications per month. Over the next several months we anticipate that the processing delays will begin to decline in the MFT unit.

Current processing times are noted below. Figures are as of March 31, 2011 and reflect the processing time for March.

<table>
<thead>
<tr>
<th>License type</th>
<th>Processing Times</th>
</tr>
</thead>
<tbody>
<tr>
<td>MFT Intern</td>
<td>33 days</td>
</tr>
<tr>
<td>MFT Examination</td>
<td>157 days</td>
</tr>
<tr>
<td>ASW</td>
<td>39 days</td>
</tr>
<tr>
<td>LCSW Examination</td>
<td>75 days</td>
</tr>
<tr>
<td>LEP Examination</td>
<td>42 days</td>
</tr>
<tr>
<td>CE Provider</td>
<td>31 days</td>
</tr>
</tbody>
</table>

Administration Program
The Board was successful in its recruitment efforts to fill the vacancy in the cashiering unit. Renewal applicants were experiencing a six week delay to renew their license or registration. Since filling this vacancy in April the cashiering unit has reduced the delay by half.

Enforcement Program
Two vacancies currently exist within the Enforcement Unit. This unit has the responsibility to review, investigate all consumer complaints and criminal arrest notifications, subsequent disciplinary action, and probation monitoring. The Consumer Complaint Intake desk is currently
vacant in addition to the Field Investigator position. The critical workload associated with these positions is being reassigned to existing staff. On average the Enforcement Program receives 158 consumer complaints and criminal conviction notices per month.

**Licensed Professional Clinical Counselors**

Five positions are allocated to the LPCC program. All five positions are currently vacant and an exemption request from the hiring freeze order has been submitted. To date, the request remains pending.

**Board Facilities**

Construction to expand the Board’s suite began late April. The expansion will provide the Board with secure cashiering room, a larger file room, and space to accommodate existing and future staff. We anticipate completion of the suite by mid May.

**Board Outreach Program**

Due to the ongoing budget deficit, travel restrictions, and insufficient staffing, the Board is unable to participate in school presentations and other outreach events. Board staff feels that a continuing presence at these types of events is important. To this end, staff is researching alternative methods to present the information at outreach events.

**Customer Satisfaction Survey**

The impact of existing vacancies is directly reflected in the Customer Satisfaction Survey Report. In comparing the averages for the same time period one year ago, stakeholders overall satisfaction with the Board has decreased from 3.4 to 2.9. Successful service declined from 61.0 to 50.0. Accessibility to the Board decreased from 3.2 to 2.6. The courtesy rating of the Board remains unchanged at 3.9.

**Executive Orders**

On April 26, 2011, Governor Brown issued Executive Order B-06-11, which restricts in-state and out-of-state travel. Specifically, no travel will be permitted unless it is mission critical or at no cost to the state. Mission critical travel is defined as travel directly related to enforcement responsibilities, auditing, revenue collection, a function required by statute, contract or executive directive, and job required training necessary to maintain licensure or similar standards required for holding a position.

The Board will continue to evaluate all travel for compliance with the Executive Order and its statutory mandates.
Board of Behavioral Sciences  
Quarterly Statistical Report - as of March 31, 2011

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

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

<table>
<thead>
<tr>
<th>Sparkbars (Current Val) (Low/High)</th>
<th>Q209</th>
<th>Q309</th>
<th>Q409</th>
<th>Q110</th>
<th>Q210</th>
<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>Total/Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Processed</td>
<td>1405</td>
<td>1681</td>
<td>1524</td>
<td>1509</td>
<td>1571</td>
<td>1898</td>
<td>1587</td>
<td>1581</td>
<td>12756</td>
</tr>
<tr>
<td>Received</td>
<td>1325</td>
<td>1580</td>
<td>1449</td>
<td>1336</td>
<td>1374</td>
<td>1665</td>
<td>1487</td>
<td>1124</td>
<td>11340</td>
</tr>
<tr>
<td>Proc Time</td>
<td>11</td>
<td>9</td>
<td>9</td>
<td>11</td>
<td>12</td>
<td>8</td>
<td>10</td>
<td>22</td>
<td>12</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Sparkbars (Current Val) (Low/High)</th>
<th>Q209</th>
<th>Q309</th>
<th>Q409</th>
<th>Q110</th>
<th>Q210</th>
<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>Total/Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Processed</td>
<td>4593</td>
<td>5454</td>
<td>4400</td>
<td>4624</td>
<td>5161</td>
<td>5864</td>
<td>4696</td>
<td>4279</td>
<td>39071</td>
</tr>
<tr>
<td>Received</td>
<td>4644</td>
<td>5362</td>
<td>4446</td>
<td>4752</td>
<td>5207</td>
<td>5742</td>
<td>4611</td>
<td>4512</td>
<td>39276</td>
</tr>
<tr>
<td>Proc Time</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>6</td>
<td>6</td>
<td>6</td>
<td>10</td>
<td>12</td>
<td>7</td>
</tr>
</tbody>
</table>

Initial Licenses Issued*

<table>
<thead>
<tr>
<th>Sparkbars (Current Val) (Low/High)</th>
<th>Q209</th>
<th>Q309</th>
<th>Q409</th>
<th>Q110</th>
<th>Q210</th>
<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>Total/Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>LCS</td>
<td>265</td>
<td>265</td>
<td>227</td>
<td>195</td>
<td>172</td>
<td>191</td>
<td>209</td>
<td>173</td>
<td>1697</td>
</tr>
<tr>
<td>LEP</td>
<td>12</td>
<td>34</td>
<td>21</td>
<td>14</td>
<td>12</td>
<td>36</td>
<td>12</td>
<td>13</td>
<td>154</td>
</tr>
<tr>
<td>MFT</td>
<td>333</td>
<td>305</td>
<td>302</td>
<td>314</td>
<td>352</td>
<td>342</td>
<td>409</td>
<td>221</td>
<td>2578</td>
</tr>
<tr>
<td>PCE</td>
<td>73</td>
<td>72</td>
<td>68</td>
<td>54</td>
<td>65</td>
<td>66</td>
<td>38</td>
<td>59</td>
<td>495</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.

**Complaint Intake** *

<table>
<thead>
<tr>
<th>Complaints</th>
<th>Q110</th>
<th>Q210</th>
<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Received</td>
<td>265</td>
<td>247</td>
<td>261</td>
<td>242</td>
<td>210</td>
<td>1225</td>
</tr>
<tr>
<td>Closed without Assignment for Investigation</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Assigned for Investigation</td>
<td>264</td>
<td>247</td>
<td>261</td>
<td>242</td>
<td>210</td>
<td>1224</td>
</tr>
<tr>
<td>Average Days to Close or Assigned for Investigation</td>
<td>6</td>
<td>6</td>
<td>7</td>
<td>6</td>
<td>5</td>
<td>+</td>
</tr>
<tr>
<td>Pending</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

**Convictions/Arrest Reports**

<table>
<thead>
<tr>
<th>Convictions/Arrest Reports</th>
<th>Q110</th>
<th>Q210</th>
<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Received</td>
<td>259</td>
<td>289</td>
<td>315</td>
<td>258</td>
<td>228</td>
<td>1349</td>
</tr>
<tr>
<td>Closed / Assigned for Investigation</td>
<td>259</td>
<td>290</td>
<td>315</td>
<td>258</td>
<td>228</td>
<td>1350</td>
</tr>
<tr>
<td>Average Days to Close</td>
<td>3</td>
<td>4</td>
<td>4</td>
<td>2</td>
<td>4</td>
<td>+</td>
</tr>
<tr>
<td>Pending</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

**Investigation**

**Desk Investigation**

<table>
<thead>
<tr>
<th>Desk Investigation</th>
<th>Q110</th>
<th>Q210</th>
<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assigned</td>
<td>523</td>
<td>537</td>
<td>576</td>
<td>500</td>
<td>438</td>
<td>2574</td>
</tr>
<tr>
<td>Closed</td>
<td>424</td>
<td>549</td>
<td>433</td>
<td>394</td>
<td>495</td>
<td>2295</td>
</tr>
<tr>
<td>Average Days to Close</td>
<td>104</td>
<td>91</td>
<td>115</td>
<td>124</td>
<td>135</td>
<td>+</td>
</tr>
<tr>
<td>Pending</td>
<td>596</td>
<td>583</td>
<td>707</td>
<td>813</td>
<td>752</td>
<td>813</td>
</tr>
</tbody>
</table>

**Field Investigation (Non-Sworn)**

<table>
<thead>
<tr>
<th>Field Investigation (Non-Sworn)</th>
<th>Q110</th>
<th>Q210</th>
<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assigned</td>
<td>15</td>
<td>10</td>
<td>11</td>
<td>3</td>
<td>8</td>
<td>47</td>
</tr>
<tr>
<td>Closed</td>
<td>9</td>
<td>11</td>
<td>24</td>
<td>14</td>
<td>10</td>
<td>68</td>
</tr>
<tr>
<td>Average Days to Close</td>
<td>380</td>
<td>424</td>
<td>371</td>
<td>372</td>
<td>386</td>
<td>+</td>
</tr>
<tr>
<td>Pending</td>
<td>55</td>
<td>53</td>
<td>42</td>
<td>30</td>
<td>28</td>
<td>30</td>
</tr>
</tbody>
</table>

**Field Investigation (Sworn)**

<table>
<thead>
<tr>
<th>Field Investigation (Sworn)</th>
<th>Q110</th>
<th>Q210</th>
<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assigned</td>
<td>1</td>
<td>3</td>
<td>9</td>
<td>6</td>
<td>2</td>
<td>21</td>
</tr>
<tr>
<td>Closed</td>
<td>7</td>
<td>6</td>
<td>4</td>
<td>6</td>
<td>4</td>
<td>27</td>
</tr>
<tr>
<td>Average Days to Close</td>
<td>786</td>
<td>591</td>
<td>927</td>
<td>518</td>
<td>362</td>
<td>+</td>
</tr>
<tr>
<td>Pending</td>
<td>20</td>
<td>17</td>
<td>22</td>
<td>20</td>
<td>18</td>
<td>20</td>
</tr>
</tbody>
</table>

**All Investigations**

<table>
<thead>
<tr>
<th>All Investigations</th>
<th>Q110</th>
<th>Q210</th>
<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Assignments</td>
<td>526</td>
<td>537</td>
<td>576</td>
<td>500</td>
<td>438</td>
<td>2577</td>
</tr>
<tr>
<td>Closed</td>
<td>440</td>
<td>566</td>
<td>461</td>
<td>414</td>
<td>509</td>
<td>2390</td>
</tr>
<tr>
<td>Average Days to Close</td>
<td>119</td>
<td>103</td>
<td>135</td>
<td>138</td>
<td>142</td>
<td>+</td>
</tr>
<tr>
<td>Pending</td>
<td>671</td>
<td>653</td>
<td>771</td>
<td>863</td>
<td>798</td>
<td>863</td>
</tr>
</tbody>
</table>
**Enforcement Actions**

This section does not include subsequent discipline on a license.

<table>
<thead>
<tr>
<th></th>
<th>Q110</th>
<th>Q210</th>
<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>AG Cases Initiated</td>
<td>20</td>
<td>29</td>
<td>35</td>
<td>19</td>
<td>22</td>
<td>125</td>
</tr>
<tr>
<td>AG Cases Pending</td>
<td>147</td>
<td>147</td>
<td>153</td>
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**Disciplinary Orders**

<table>
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<td>89</td>
<td>294</td>
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</table>

**Complaint Intake**

Complaints Received by the Program. Measured from date received to assignment for investigation or closure without action.

**Investigations**

Complaints investigated by the program whether by desk investigation or by field 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.

**Disciplinary Orders Average Days to Complete***

Measured by the date the complaint is received to the date the order became effective.

**Citations****

Measured by the date the complaint is received to the date the citation was issued.

+ unable to capture average data for more than a 12 month cycle

**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></th>
<th>Q209</th>
<th>Q309</th>
<th>Q409</th>
<th>Q110</th>
<th>Q210</th>
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### MFT Examination Eligibility Applications

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### LEP Examination Eligibility Applications

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### ASW Registration Applications

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### MFT Intern Registration Applications

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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

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<td>66</td>
<td>31</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.

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<th>Q409</th>
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<td>4.0</td>
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<td>2.0</td>
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<td>3.1</td>
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<td>35</td>
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<td>61</td>
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<td>Total Respondents</td>
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<td>176</td>
<td>132</td>
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Performance Measures

Q3 Report *(January - March 2011)*

To ensure stakeholders can review the Board’s progress in meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

In future reports, the Department will request additional measures, such as consumer satisfaction. These measures are being collected internally at this time and will be released once sufficient data is available.

### Volume

Number of complaints and convictions received.

**Q3 Total:** 438

*Complaints:* 210  *Convictions:* 228

**Q3 Monthly Average:** 146

![Graph showing volume comparison](image)

### Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

**Target:** 5 Days

**Q3 Average:** 5 Days

![Graph showing intake comparison](image)
**Intake & Investigation**

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

**Target: 180 Days**

**Q3 Average: 132 Days**

<table>
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<th>March</th>
</tr>
</thead>
<tbody>
<tr>
<td>Target</td>
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<td>180</td>
<td>180</td>
</tr>
<tr>
<td>Actual</td>
<td>117</td>
<td>151</td>
<td>137</td>
</tr>
</tbody>
</table>

**Formal Discipline**

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Bureau, and prosecution by the AG)

**Target: 540 Days**

**Q3 Average: 896 Days**

<table>
<thead>
<tr>
<th></th>
<th>January</th>
<th>February</th>
<th>March</th>
</tr>
</thead>
<tbody>
<tr>
<td>Target</td>
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<td>540</td>
<td>540</td>
</tr>
<tr>
<td>Actual</td>
<td>981</td>
<td>818</td>
<td>880</td>
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</table>

**Probation Intake**

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

**Target: 10 Days**

**Q3 Average: 1 Days**

<table>
<thead>
<tr>
<th></th>
<th>January</th>
<th>February</th>
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</thead>
<tbody>
<tr>
<td>Target</td>
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<tr>
<td>Actual</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>
Probation Violation Response
Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

Target: 7 Days

Q3 Average: N/A

The Board did not handle any probation violations this quarter.

Note: Cycle times are affected by the current hiring freeze and are subject to outside agencies workload and staffing constraints.
Blank Page
New Employees

Terri Jauregui joined the Board staff on March 14, 2011, to fill an Office Technician position within the Licensing Unit. She was responsible for LEP Evaluations and backup to the front office and public counter. Terri transferred to the Board from the California Consumer Information Division within the Department of Consumer Affairs (DCA). She has worked in different capacities within DCA for 15 years. Prior to her transfer, Terri handled the duties as a case management representative of consumer complaints submitted to the Department.

Terri Jauregui has accepted a promotion to the Management Services Technician vacancy to perform the functions of an MFT Evaluator effective May 1, 2011. Thus, she will be vacating the Office Technician position that she has held with the Board since March 14, 2011.

Linda Nash transferred to the Board on April 1, 2011, from the Central Cashiering Unit within DCA. She is performing the duties as a cashier within the Licensing Unit. Linda joins the Board with a wealth of cashiering experience as she worked as a cashier within Central Cashiering for 10 years. She has filled the vacated cashiering position of Kari O’Connor who transferred to the Board of Accountancy.

Departures

Kimberly deLong accepted a promotional position as a Special Investigator with the California Medical Emergency Services effective March 2, 2011. Kimberly worked as an Investigative Analyst within the Enforcement Unit.

Vacancies

The Board has not been successful in recruiting for the current vacancies due to the Governor’s Office Executive Order B-3-11 Statewide Hiring Freeze. The Board currently has a total of 9 vacancies. Four vacancies are within our existing programs and five are associated with the LPCC program.
Blank Page
To: Board Members                                Date: May 4, 2011

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

Subject: Mental Health Services Act Update

Background

In January 2005, Proposition 63 became a law known as the Mental Health Services Act (MHSA). The MHSA was designed to transform the public mental health system in California. The MHSA sought to implement changes in the public mental health system by incorporating a recovery-oriented approach to treatment, increase access to services, and establish prevention and early intervention programs as well as innovative programs. The MHSA components include Community Services and Support, Prevention and Early Intervention, Workforce Education and Training, Innovation, and Capital Facilities and Technological Needs.

The California Department of Mental Health (DMH) developed a five year plan to implement this vision and collaborated with a variety of state and county agencies to implement the changes to public mental health. In June 2009, the Board of Behavioral Sciences (BBS) and DMH entered into a Memorandum of Understanding (MOU). BBS was tasked with reviewing the educational and testing requirements for its licensees to determine if the MHSA components can be incorporated. The MOU identified funding the BBS would receive from MHSA. This funding supported one staff member and activities associated with MHSA.

Future MHSA Funding

The Governors’ proposal to realign government services will impact MHSA funding to the BBS. The proposal seeks to reduce state administrative support related to the implementation of the MHSA in order to direct more MHSA funding to county mental health programs. As a result, effective June 30, 2011, MHSA funding to BBS will end.

The position that was funded through MHSA funds was transferred to the BBS fund effective March 2, 2011.
To: Board Members  
From: Tracy Rhine  
Assistant Executive Officer  
Subject: Department of Consumer Affairs Update  

Date: May 10, 2011  
Telephone: (916) 574-7847  

A Representative from the Department of Consumer Affairs (DCA) Executive Office will provide an update regarding DCA activities.
Blank Page
Debbie Balaam, Chief Information Officer, and Brandon Rutschmann, BreEZe Project Manager, from the Department of Consumer Affairs will provide an update regarding the BreEZe Project. Please see the power point presentation attached.
Blank Page
Project Overview
California Board of Behavioral Sciences
Today’s Topics

- Brief Project Summary
- Project Concept
- Benefits
- Transaction Fee
- Key Success Factors
- Project Leadership
- Recent Activities & Next Steps
- Tentative Implementation Schedule
Project Summary

- Integrated Licensing & Enforcement solution
- Completely replaces legacy licensing and enforcement systems (CAS, ATS, & Others)
- Replaces the iLicensing & CRIMS projects
- Incorporates document image storage
Project Concept

Online Applications
Online Renewals
Online Maintenance
Online Look-up
Exams (Registration)
Reports
Auditing
Online Payment
Workflow
Licensing
Mobile
Enforcement
Imaging (Replaces ScanRRs)
Geo-Spatial (GIS)
Case Management
Complaint Resolution
Continuing Education
Security
External Interfaces

BreEZe

Other States
DOJ
PSI
Schools
EDD
IVR

External
CA Partners
DCA Systems
One System.....Many Boards

Question: How will one system work for 40+ unique entities?

Answer: Individual Board controlled configuration...
Conceptual Design

Board & Bureau Staff

DCA IT (Includes Board IT)

Required Items

Routing Rules

Approval Rules

System Interfaces

User Security

Availability

Vendor

Routing Engine

User Interfaces

Data Architecture
What’s in it for Us?

- Customers
  - Self-Service and single point of entry
  - Electronic Applications and Renewals
  - Electronic Payments
  - Expedited processing

- Staff
  - Pre-screened applications
  - Automated routing
  - Single system with DCA-wide view
Transaction Fee

- Initial Vendor payment for software and Detail Design only
- After Deployment, transaction fee assessed to Board for new initial applications and renewals
Strong Project Leadership

**Keys to Success**

Procure solution with proven success

Joint review of business requirements

Active executive support

Active business ownership (Not IT driven)

_Strong Project Leadership_
Project Leadership

Executive Sponsor
Brian Stiger

Board/Bureau Sponsor
Kimberly Kirchmeyer

Steering Committee
Board/Bureau Leadership

Project Director
Debbie Balaam

Project Manager
Brandon Rutschmann

Business PM
Sean O'Connor

Solution Vendor
TBD

Technical PM
TBD

Oversight
CoTA
Business Activities To-Date

- Business project manager selected
- Data Conversion, Forms Consolidation, & Reports workgroups initiated
- Documenting application specific requirement workflows
- On-going outreach and communication
Procurement Activities To-Date

- Initial Request For Proposal (RFP) released
- Pre-qualified bidders selected
  - Accenture & Verizon
- Working Sessions completed
- Final RFP released
- Final proposals received
Next Steps

- Negotiate proposed costs with responsive bidder
- Submit Special Project Report (SPR)
- Project approved to move forward
## Implementation Schedule

<table>
<thead>
<tr>
<th>Key Action (Activity)</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Phase Implementation (BBS)</td>
<td>July 2012</td>
</tr>
<tr>
<td>Phase 2 Implementation</td>
<td>February 2013</td>
</tr>
<tr>
<td>Phase 3 Implementation</td>
<td>September 2013</td>
</tr>
</tbody>
</table>
As a result of AB 2699 (Bass, Chapter 270, Statute of 2010), beginning January 1, 2010, health care practitioners licensed or certified in good standing in another state may be temporarily exempted from California licensing requirements if the following conditions are met:

a) Care is to uninsured or underinsured persons;
b) Care is on a short-term, voluntary basis not to exceed 10 calendar days per event;
c) Care is in association with a sponsoring entity that registers with the applicable healing arts board and provides specified information to the county health department of the county in which the health care services will be provided;
d) It is without charge to the recipient or to a third party on behalf of the recipient; and

e) The health care practitioner obtains authorization from the Board to participate in the sponsored event by submitting a copy of his or her license and a request for authorization to practice without a license, and paying a fee established by the regulating board through regulation.

This law sunsets on January 1, 2014.

Background

In August 2009, the Remote Area Medical Volunteer Corps (RAM) conducted an eight-day health event in Los Angeles County. RAM experienced a shortage of volunteer medical, dental, and vision providers because of restrictions in state laws which prohibit specific out-of-state licensed medical personnel volunteers from providing short-term services and RAM was forced to turn thousands of residents away.

AB 2699 allows a nonprofit or community-based organization or a local government to sponsor an event where free health care is provided and utilize the services of health care practitioners licensed in another state in order to prevent the situation that occurred in Los Angeles County.
State laws did not allow RAM to utilize certain types of out-of-state licensees. However, under BBS statutes, RAM, as a nonprofit charitable institution, would have been able to utilize any individual that is not licensed in the state of California to provide mental health services only if those individuals were under the sole supervision of RAM. Specifically, Business and Professions Code (BPC) sections 4980.1, 4996.14, and 4999.22 exempt an employee or volunteer working for and under the supervision of a governmental entity or an institution that is both nonprofit and charitable from the statutes that regulate Marriage and Family Therapists, Licensed Clinical Social Workers, and Licensed Professional Clinical Counselors.

The laws established by AB 2699 specifically apply to out-of-state licensed practitioners. Under these statutes, a sponsoring entity would be able to utilize the services of an out-of-state licensee without providing sole supervision of the licensee by adhering to the specified requirements. AB 2699 does not affect individuals, except for out-of-state licensees, that would fall under the exemption criteria under BPC sections 4980.1, 4996.14, and 4999.22.

AB 2699 includes all healing arts boards under the Department of Consumer Affairs (DCA), therefore, BBS must establish regulations that implement the process in which out-of-state licensed health care practitioners apply for authorization from the board to participate in free health care events.

**Proposed Regulations**

Before this law can be implemented, regulations must be approved which specify the methods of its implementation. DCA drafted a model regulation package for each of its healing arts boards to use as a standardized framework.

The regulation package written by DCA does the following:

1. **Specifies Registration and Recordkeeping Requirements for the Sponsoring Entity**: Creates a form upon which a sponsoring entity must apply for registration at a sponsored event. Describes recordkeeping and reporting requirements for the sponsoring entity.

2. **Defines the Application Process for an Out-of-State Practitioner to Participate in a Sponsored Event**: Specifies the procedure for an out-of-state practitioner to request authorization to participate in a sponsored event, and outlines the process for approval or denial of the request.

3. **Defines Grounds for Termination of Authorization to Participate**: Describes conditions under which the Board may terminate a practitioner’s authorization to participate, and outlines an appeal process.

**Licensing and Examination Committee Recommended Modifications**

The regulations package drafted by DCA leaves several decisions to each Board’s discretion. At its March 24, 2011, meeting, the Licensing and Examination Committee reviewed the draft regulations and approved specific modifications, as follows:

1. **Section 1820.2(a)**: A health care practitioner requesting authorization to practice from the board would pay a $25 application processing fee.

2. **Section 1820.2(c)(2)**: The Board may deny the applicant’s request for authorization to participate if the applicant’s license type is not substantially equivalent to a license type regulated by the Board. The Board may determine equivalency on a case-by-case basis.

In addition to the Committee’s recommendations, staff also recommends the following modifications to the proposed regulations:
1. **Section 1820.2(a):** A health care practitioner requesting authorization to practice from the board would pay a $28 application processing fee instead of the initially recommended $25 fee. This recommendation is based on staff’s re-evaluation of the costs associated with processing the application. The cost estimates are based on the average salary of staff that would be evaluating the application and the estimated number of hours required to process each application (See Attachment A of the Initial Statement of Reasons).

2. **Section 1820.2(a):** The Board would require that the health care practitioner must submit with his/her application either a full set of fingerprints or a Live Scan inquiry in order to establish the identity of the applicant and to permit the Board to conduct a criminal history record check. The applicant is responsible for paying any fees associated with the criminal history record check.

3. **Section 1820.2(c)(5):** The Medical Board has already submitted its initial rulemaking package to the Office of Administrative Law. The Medical Board recently changed its originally proposed language in collaboration with the DCA Legal Office. Staff recommends making one of the changes made by the Medical Board, which would require the Board to deny a practitioner’s request for authorization to practice if the Board does not receive the results of the criminal history check within a sufficient timeframe.

4. **Section 1820.3(e):** Requires the Executive Officer to hold an informal conference, if requested by the practitioner due to termination of authorization to practice, within 90 days from receipt of the request for an informal conference. The DCA’s originally proposed language required the Executive Officer to hold an informal conference within 30 days. Staff believes 90 days would allow sufficient time for the Executive Officer to conduct a thorough review of the request and schedule an informal conference.

5. **“Request for Authorization to Practice Without a License at a Registered Free Health Care Event,” Form 37M-809 (New 5/2011):** Include a question on the form that asks the applicant whether or not he/she has committed or been convicted of a crime that would constitute grounds for denial of licensure under BPC 480.

**Recommendation**

Discuss the Committee and staff recommendations. Direct staff to work with Legal Counsel to address outstanding technical issues and submit the final rulemaking proposal for Board approval at its next meeting.

**Attachments**

A. Notice of Proposed Rulemaking

B. Proposed Language *(Note: Recommendations are Underlined)*
   i. Form 901-A (New 5/2011): Registration of Sponsoring Entity Under Business & Professions Code Section 901
   ii. Form 37M-809 (New 5/2011): Request for Authorization to Practice Without a License at a Registered Free Health Care Event

C. Initial Statement of Reasons

D. AB 2699 – Chaptered Version

E. Relevant Code Sections
NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (BBS) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice must be received by the BBS at its office not later than 5:00 p.m. on [DATE].

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

**Authority and Reference:** Pursuant to the authority vested by Sections 901, 4980.60, 4988.2, and 4990.20 of the Business and Professions Code (BPC), and to implement, interpret, or make specific Section 901 of the BPC, the BBS is considering adding Article 3 of Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

**INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW**

This rulemaking action would implement, interpret, and make specific the requirements and procedures for health care events administered by either a local government or nonprofit organization at which free care is offered to uninsured or under-insured individuals by volunteer health care practitioners where those practitioners may include individuals who may be licensed in one or more states but are not licensed in California.

BPC Section 901 exempts certain health care practitioners from licensure and regulation requirements under specified conditions. Specifically, BPC Section 901 sets the requirements for out-of-state licensees to voluntarily provide free health care services to uninsured or under-insured individuals at events sponsored by a nonprofit or community-based organization or local government agency, without performing the work under the supervision of the sponsoring entity. BPC Section 901 defines “sponsoring entities,” “sponsored events,” and “health care practitioners,” and sets forth requirements for registration of sponsoring entities and authorization for participation by practitioners licensed in other states by the various boards responsible for licensure and regulation of healing arts.

BPC Section 901 does not set the education and experience requirements for out-of-state practitioners requesting authorization to practice. BPC Section 901 stipulates that the board must prescribe the form on which the practitioner requests authorization to practice and set the fee for the application. BPC Section 901 also allows the board to develop regulations that establish the grounds for termination of a participant’s authorization. BPC Section 901 does not establish procedures for the participant to appeal the termination of authorization. This proposed rulemaking will establish these regulations and procedures.

The proposed regulations would add the following sections:

**Section 1820 - Definitions**
Section 1820 defines “community-based organization” and “out-of-state practitioner”.
Section 1820.1 - Sponsoring Entity Registration and Recordkeeping Requirements
Section 1820.1 establishes the registration requirements for sponsoring entities, the recordkeeping requirements for sponsoring entities, and the post health event reporting requirements.

Section 1820.2 - Out-of-State Practitioner Authorization to Participate in Sponsored Event
Section 1820.2 establishes the application requirements for out-of-state practitioners requesting authorization from the Board, the grounds for denying a practitioner’s request for authorization, and the practitioner’s right to appeal a denial.

Section 1820.3 - Termination of Authorization and Appeal
Section 1820.3 establishes the grounds for termination of a practitioner’s authorization to participate, the consequences of termination, and the appeal process.

Forms Incorporated by Reference
This proposed rulemaking adds two new forms by reference:

- Section 1820.1: “Registration of Sponsoring Entity Under Business and Professions Code Section 901,” Form 901-A (New 5/2011)
- Section 1820.2: “Request for Authorization to Practice Without a License at a Registered Free Health Care Event,” Form 37M-809 (New 5/2011)

FISCAL IMPACT ESTIMATES

Local Mandate: None

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact: The BBS has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impacts on Representative Private Persons or Businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. The purpose of this rulemaking is to allow volunteer out-of-state mental health practitioners to
offer free health care services to uninsured or under-insured Californians without the supervision of the entity sponsoring the health care event.

CONSIDERATION OF ALTERNATIVES

The BBS must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations as stated in this Notice.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

Copies of the exact language of the proposed regulations and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Contact Person listed below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The BBS, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the Contact Person named below.

You may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a written request to the Contact Person named below (or by accessing the Web site listed below).

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Tracy Rhine
Address: 1625 North Market Blvd., Suite S200
Sacramento, CA 95834
Telephone: 916-574-7847
Fax: 916-574-8626
Email: tracy.rhine@dca.ca.gov

The back-up contact person for these inquiries is:
If the regulations adopted by the BBS differ from and are substantially related to the action proposed, the text of the proposed regulations with changes clearly indicated will be made available to the public for 15 days prior to the date of adoption.

WEB SITE ACCESS

Materials regarding this proposal can be found at www.bbs.ca.gov.
Add Article 3 in Division 18 of Title 16, California Code Regulations to read as follows:

**Article 3.**
**Sponsored Free Health Care Events—Requirements for Exemption.**

§1820. Definitions.

For the purposes of section 901 of the code:

(a) “Community-based organization” means a public or private nonprofit organization that is representative of a community or a significant segment of a community, and is engaged in meeting human, educational, environmental, or public safety community needs.

(b) “Out-of-state practitioner” means a person who is not licensed in California to engage in the practice of Marriage and Family Therapy, Clinical Social Work, Educational Psychology, or Professional Clinical Counseling, but who holds a current valid license in good standing in another state, district, or territory of the United States to practice Marriage and Family Therapy, Clinical Social Work, Educational Psychology, or Professional Clinical Counseling.


§1820.1. Sponsoring Entity Registration and Recordkeeping Requirements.

(a) A sponsoring entity that wishes to provide, or arrange for the provision of, health care services at a sponsored event under section 901 of the code shall register with the board not later than 90 calendar days prior to the date on which the sponsored event is scheduled to begin. A sponsoring entity shall register with the board by submitting to the board a completed “Registration of Sponsoring Entity under Business and Professions Code Section 901” form (Form 901-A (New 5/2011)), which is hereby incorporated by reference.

(b) The board may, by resolution, delegate to the Department of Consumer Affairs the authority to receive and process Form 37M-809 on behalf of the board. The board or its delegatee shall inform the sponsoring entity within 15 calendar days of receipt of the “Registration of Sponsoring Entity Under Business and Professions Code Section 901” form in writing that the form is either complete and the sponsoring entity is registered or that the form is deficient and what specific information or documentation is required to complete the form and be registered. The board or its delegate shall reject the registration if all of the identified deficiencies have not been corrected at least 30 days prior to the commencement of the sponsored event.
(c) Regardless of where it is located, a sponsoring entity shall maintain at a physical location in California a copy of all records required by section 901 as well as a copy of the authorization for participation issued by the board to an out-of-state practitioner. The sponsoring entity shall maintain these records for a period of at least five years following the provision of health care services under this section. The records may be maintained in either paper or electronic form. The sponsoring entity shall notify the board at the time of registration as to the form in which it will maintain the records. In addition, the sponsoring entity shall keep a copy of all records required by section 901(g) of the code at the physical location of the sponsored event until that event has ended. These records shall be available for inspection and copying during the operating hours of the sponsored event upon request of any representative of the board.

(d) A sponsoring entity shall not permit an out-of-state practitioner to participate in a sponsored event unless and until the sponsoring entity has received written approval from the board.

(e) Within 15 calendar days of the provision of health care, the sponsoring entity shall file a report with the board summarizing the details of the sponsored event. This report may be in a form of the sponsoring entity’s choosing, but shall include, at a minimum, the following information:

1. The date(s) of the sponsored event;
2. The location(s) of the sponsored event;
3. The type(s) and general description of all health care services provided at the sponsored event; and
4. A list of each out-of-state practitioner granted authorization pursuant to this article who participated in the sponsored event, along with the license number of that practitioner.


§1820.2. Out-of-State Practitioner Authorization to Participate in Sponsored Event

(a) An out-of-state practitioner (“applicant”) may request authorization from the board to participate in a sponsored event and provide such health care services at the sponsored event as would be permitted if the applicant were licensed by the board to provide those services. An applicant shall request authorization by submitting to the board a completed “Request for Authorization to Practice Without a License at a Registered Free Health Care Event” (Form 37M-810 (New 5/2011)), which is hereby incorporated by reference, accompanied by a non-refundable, non-transferable, processing fee of $28. The applicant shall also furnish either a full set of fingerprints or
submit a Live Scan inquiry to establish the identity of the applicant and to permit the board to conduct a criminal history record check. The applicant shall pay any costs for furnishing the fingerprints and conducting the criminal history record check.

(b) Within 20 calendar days of receiving a completed request for applicant authorization, the board shall notify the sponsoring entity or local government entity administering the sponsored event whether that request is approved or denied.

(c) The board shall deny a request for authorization to participate if:

(1) The submitted “Request for Authorization to Practice Without a License at a Registered Free Health Care Event” is incomplete and the applicant has not responded within seven calendar days to the board’s request for additional information.

(2) The applicant’s license type is not substantially equivalent to a license type regulated by the board. The board may determine equivalency at its own discretion.

(3) The applicant has failed to comply with a requirement of this article or has committed any act that would constitute grounds for denial of an application for licensure by the board.

(4) The applicant does not possess a current valid active license in good standing. The term “good standing” means the applicant:

   (A) Has not been charged with an offense for any act substantially related to the practice for which the applicant is licensed by any public agency;

   (B) Has not entered into any consent agreement or been subject to an administrative decision that contains conditions placed upon the applicant’s professional conduct or practice, including any voluntary surrender of license;

   (C) Has not been the subject of an adverse judgment resulting from the practice for which the applicant is licensed that the board determines constitutes evidence of a pattern or negligence or incompetence.

(5) The board has been unable to obtain a timely report of the results of the criminal history check.

(d) The board may deny a request for authorization to participate if:

(1) The request is received less than 20 calendars days before the date on which the sponsored event will begin.
(2) The applicant has been previously denied a request for authorization by the board to participate in a sponsored event.

(3) The applicant has previously had an authorization to participate in a sponsored event terminated by the board.

(e) An applicant requesting authorization to participate in a sponsored event may appeal the denial of such request by following the procedures set forth in section 1820.3.


§1820.3. Termination of Authorization and Appeal.

(a) The Board may terminate an out-of-state practitioner’s authorization to participate in a sponsored event for any of the following reasons:

(1) The out-of-state practitioner has failed to comply with any applicable provision of this article, or any applicable practice requirement or regulation of the board.

(2) The out-of-state practitioner has committed an act that would constitute grounds for discipline if done by a licensee of the board.

(3) The board has received a credible complaint indicating that the out-of-state practitioner is unfit to practice at the sponsored event or has otherwise endangered consumers of the practitioner’s services.

(b) The board shall provide either the sponsoring entity or local government entity and the out-of-state practitioner with a written notice of the termination, including the basis for the termination. If the written notice is provided during a sponsored event, the board may provide the notice to any representative of the sponsored event on the premises of the event.

(c) An out-of-state practitioner shall immediately cease his or her participation in a sponsored event upon receipt of the written notice of termination.

(d) Termination of authority to participate in a sponsored event shall be deemed a disciplinary measure reportable to the national practitioner data banks. In addition, the board shall provide a copy of the written notice of termination to the licensing authority of each jurisdiction in which the out-of-state practitioner is licensed.

(e) The out-of-state practitioner may request an informal conference with the executive officer regarding the reasons for the termination of authorization to participate. The executive officer shall, within 90 days from receipt of the request, hold an informal conference with the out-of-state practitioner. At the conclusion of the informal conference, the executive officer may affirm or dismiss the termination of authorization to participate. The executive officer shall state in writing the reasons for his or her
action and mail a copy of his or her findings and decision to the out-of-state practitioner within ten days from the date of the informal conference.

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REGISTRATION OF SPONSORING ENTITY UNDER BUSINESS & PROFESSIONS CODE SECTION 901

In accordance with California Business and Professions Code Section 901(d), a non-government organization administering an event to provide health care services to uninsured and underinsured individuals at no cost may include participation by certain health care practitioners licensed outside of California if the organization registers with the California licensing authorities having jurisdiction over those professions. This form shall be completed and submitted by the sponsoring organization at least 90 calendar days prior to the sponsored event. Note that the information required by Business and Professions Code Section 901(d) must also be provided to the county health department having jurisdiction in each county in which the sponsored event will take place.

Only one form (per event) should be completed and submitted to the Department of Consumer Affairs. The Department of Consumer Affairs will forward a copy of the completed registration form to each of the licensing authorities indicated on this form.

**PART 1 – ORGANIZATIONAL INFORMATION**

1. Organization Name: ___________________________________________________________

2. Organization Contact Information (use principal office address):

<table>
<thead>
<tr>
<th>Address Line 1</th>
<th>Phone Number of Principal Office</th>
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<tbody>
<tr>
<td>Address Line 2</td>
<td>Alternate Phone</td>
</tr>
<tr>
<td>City, State, Zip</td>
<td>Website</td>
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</table>

| County |

Organization Contact Information in California (if different):

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<thead>
<tr>
<th>Address Line 1</th>
<th>Phone Number</th>
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</thead>
<tbody>
<tr>
<td>Address Line 2</td>
<td>Alternate Phone</td>
</tr>
<tr>
<td>City, State, Zip</td>
<td>County</td>
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</tbody>
</table>

901-A (New 05/2011)
3. Type of Organization:

Is the organization operating pursuant to Section 501(c)(3) of the Internal Revenue Code?  ____ Yes  ____ No

If not, is the organization a community-based organization*?  ____ Yes  ____ No

Organization’s Tax Identification Number  __________________________

If a community-based organization, please describe the mission, goals and activities of the organization (attach separate sheet(s) if necessary): __________________________

* A “community based organization” means a public or private nonprofit organization that is representative of a community or a significant segment of a community, and is engaged in meeting human, educational, environmental, or public safety community needs.

### PART 2 – RESPONSIBLE ORGANIZATION OFFICIALS

Please list the following information for each of the principal individual(s) who are the officers or officials of the organization responsible for operation of the sponsoring entity.

**Individual 1:**

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<th>Name</th>
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**Individual 2:**

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<th>City, State, Zip</th>
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Individual 3:

Name ........................................................................................................
Title ........................................................................................................
Address Line 1 ........................................................................................
Phone ......................................................................................................
Address Line 2 ........................................................................................
Alternate Phone ......................................................................................
City, State, Zip .........................................................................................
E-mail address ........................................................................................
County ......................................................................................................

(Attach additional sheets if needed to list additional principal organizational individuals)

PART 3 – EVENT DETAILS

1. Name of event, if any: ____________________________________________

2. Date(s) of event (not to exceed ten calendar days): __________________

3. Location(s) of the event (be as specific as possible, including address):
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________

4. Describe the intended event, including a list of all types of healthcare services
intended to be provided (attach additional sheet(s) if necessary): ______________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________

5. Attach a list of all out-of-state health care practitioners who you currently believe
intend to apply for authorization to participate in the event. The list should include the
name, profession, and state of licensure of each identified individual.

___ Check here to indicate that list is attached.

6. Please check each licensing authority that will have jurisdiction over an out-of-state
licensed health practitioner who intends to participate in the event:

___ Acupuncture Board
___ Board of Behavioral Sciences
___ Board of Chiropractic Examiners
___ Dental Board
___ Dental Hygiene Committee
___ Physician Assistant Committee
___ Physical Therapy Board
___ Board of Podiatric Medicine
___ Board of Psychology
___ Board of Registered Nursing
Note:
- Each individual out-of-state practitioner must request authorization to participate in the event by submitting an application (Form 37M-809) to the applicable licensing board/committee.
- The organization will be notified in writing whether authorization for an individual out-of-state practitioner has been granted.

This form, and any attachments, shall be submitted to:
Department of Consumer Affairs
Attn: Division of Legislative & Policy Review
1625 North Market Blvd., Suite S-204
Sacramento, CA 95834

Questions regarding the completion of this form should be directed to:
Department of Consumer Affairs, Division of Legislative & Policy Review
(916) 574-7800
lprdivision@dca.ca.gov

PART 4 – ACKNOWLEDGMENT/CERTIFICATION

I understand the recordkeeping requirements imposed by California Business and Professions Code section 901 and the applicable sections of Title 16, California Code of Regulations for the agencies listed above to maintain records in either electronic or paper form at both at the sponsored event and for five (5) years in California.

I understand that our organization must file a report with each applicable board/committee within fifteen (15) calendar days of the completion of the event.

I certify under penalty of perjury that the information provided on this form and any attachments is true and current and that I am authorized to sign this form on behalf of the organization:

Name Printed _______________________________ Title _______________________________
Signature _______________________________ Date _______________________________

901-A (New 05/2011)
REQUEST FOR AUTHORIZATION TO PRACTICE WITHOUT A LICENSE AT A REGISTERED FREE HEALTH CARE EVENT

In accordance with California Business and Professions Code (BPC) Section 901 any mental health practitioner licensed/certified and in good standing in another state, district, or territory in the United States may request authorization from the Board of Behavioral Sciences (Board) to participate in a free health care event offered by a local government or a sponsoring entity registered with the board pursuant to BPC section 901, for a period not to exceed ten (10) days.

PART 1 - APPLICATION INSTRUCTIONS

An application must be complete and must be accompanied by all of the following:

- A processing fee of $28, made payable to the Board of Behavioral Sciences.
- A copy of each valid and current license authorizing the applicant to engage in the practice of marriage and family therapy, clinical social work, professional clinical counseling, or educational psychology issued by any state, district, or territory of the United States.
- A copy of a valid photo identification of the applicant issued by one of the jurisdictions in which the applicant holds a license or certificate to practice.
- A full set of fingerprints or a Live Scan inquiry and the associated fee; this will be used to establish your identity and to conduct a criminal history record check.

The Board will not grant authorization until this form has been completed in its entirety, all required enclosures have been received by the Board, and any additional information requested by the board has been provided by the applicant and reviewed by the Board, and a determination made to grant authorization.

The Board shall process this request and shall notify the sponsoring entity or local government entity named in this form whether the request is approved or denied within 20 calendar days of receipt. If the board requires additional or clarifying information, the board will contact you directly, but written approval or denial of requests will be provided directly to the sponsoring entity or local government entity. It is the applicant’s responsibility to maintain contact with the sponsoring entity or the local government entity.
PART 2 – NAME AND CONTACT INFORMATION

1. Applicant Name: _____________________________________________________
   First               Middle               Last

2. Social Security Number*: _____ - ____ - ______   Date of Birth: ________________

3. Applicant’s Contact Information:

   Address Line 1       Phone
   Address Line 2       Alternate Phone
   City, State, Zip    E-mail address

4. Applicant’s Employer: _____________________________________________

   Employer’s Contact Information:

   Address Line 1       Phone
   Address Line 2       Facsimile
   City, State, Zip    E-mail address (if available)

PART 3 – LICENSURE INFORMATION

1. Do you hold a current license, certification, or registration in good standing issued by a state, district, or territory of the United States authorizing the unrestricted practice of mental health services in your jurisdiction(s)?

   No ☐ If no, you are not eligible to participate as an out-of-state practitioner in the sponsored event.

   Yes ☐ If yes, list every license, certificate, and registration authorizing you to engage in the practice of marriage and family therapy, clinical social work, professional clinical counseling, or educational psychology in the following table. If there are not enough boxes to include all the relevant information please attach an addendum to this form. Please also attach a copy of each of your current licenses, certificates, and registrations.

*Disclosure of your social security number is mandatory. Section 30 of the Business and Professions Code and Public Law 94-455 (42 USCA 405 (c) (2) (c)) authorizes collection of your social security number. Your social security number will be used exclusively for tax enforcement purposes, for purposes of compliance with any judgment or order for family support in accordance with Section 17520 of the Family Code, or for verification of licensure or examination status by a licensing or examination entity which utilizes a national examination and where licensure is reciprocal with the requesting state. If you fail to disclose your social security number, your application for initial or renewal license will not be processed AND you will be reported to the Franchise Tax Board, which may assess a $100 penalty against you.
2. Have you ever had a license or certification to practice marriage and family therapy, clinical social work, professional clinical counseling, or educational psychology revoked or suspended?  
___ Yes  ___ No

3. Have you ever been subject to any disciplinary action or proceeding by any licensing body?  
___ Yes  ___ No

4. Have you ever allowed any license or certification to practice marriage and family therapy, clinical social work, professional clinical counseling, or educational psychology to cancel or to remain in expired status without renewal?  
___ Yes  ___ No

5. Have you ever committed any act or been convicted of a crime constituting grounds for denial of licensure*?  
___ Yes  ___ No

6. If you answered “Yes” to any of questions 2-5, please explain (attach additional page(s) if necessary):  

<table>
<thead>
<tr>
<th>State/Jurisdiction</th>
<th>Issuing Agency/Authority</th>
<th>License Number</th>
<th>Expiration Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

* Business and Professions Code section 480 states: (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following: (1) been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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. (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another. (3) (A) done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. (B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. (b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482 (c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.

37M-809 (New 5/2011)
### PART 4 – SPONSORED EVENT

1. Name and address of local government entity or non-profit or community-based organization (the “sponsoring entity”) hosting the free healthcare event: __________________________

2. Name of event: __________________________

3. Date(s) & location(s) of the event: __________________________

4. Date(s) & location(s) applicant will be performing healthcare services (if different): __________________________

5. Please specify the healthcare services you intend to provide: __________________________

6. Name and phone number of contact person with sponsoring entity or local government entity: __________________________

### PART 5 – ACKNOWLEDGMENT/CERTIFICATION

I, the undersigned, declare under penalty of perjury under the laws of the State of California and acknowledge that:

- I have not committed any act or been convicted of a crime constituting grounds for denial of licensure by the board.

- I am in good standing with the licensing authority or authorities of all jurisdictions in which I hold licensure and/or certification to practice Marriage Family Therapy, Clinical Social Work, Educational Psychology, or Professional Clinical Counseling.

- I will comply with all applicable practice requirements required of licensed Marriage Family Therapists, Clinical Social Workers, Educational Psychologists, and Professional Clinical Counselors and all regulations of the board.

- In accordance with Business and Professions Code Section 901(i), I will only practice within the scope of my licensure and/or certification and within the scope of practice for California-licensed Marriage Family Therapists, Clinical Social Workers, Educational Psychologists, and Professional Clinical Counselors.

- I will provide the services authorized by this request and Business and Professions Code Section 901 to uninsured and underinsured persons only and shall receive no compensation for such services.
• I will provide the services authorized by this request and Business and Professions
  Code Section 901 only in association with the sponsoring entity or local government
  entity listed herein and only on the dates and at the locations listed herein for a period
  not to exceed 10 calendar days.

• I am responsible for knowing and complying with California law and practice standards
  while participating in a sponsored event located in California.

• I understand that practice of a regulated profession in California without proper
  licensure and/or authorization may subject me to potential administrative, civil and/or
  criminal penalties.

• I understand that the board may notify the licensing authority of my home jurisdiction of
  a termination of my authorization to participate.

• I understand that termination of my authorization to participate is deemed a disciplinary
  measure reportable to the national practitioner data banks.

• All information provided by me in this application is true and complete to the best of my
  knowledge. By submitting this application and signing below, I am granting permission
  to the board to verify the information provided and to perform any investigation
  pertaining to the information I have provided as the board deems necessary.

_________________________________________  ______________________________
Signature                                      Date

_________________________________________  ______________________________
Name Printed                                  License No.
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Hearing Date: Upon Request

Subject Matter of Proposed Regulations: Sponsored Free Health Care Events

Section(s) Affected: Add Sections 1820, 1820.1, 1820.2, and 1820.3 in Article 3 of Division 18 of Title 16 of the California Code of Regulations

Introduction

On September 23, 2010, Governor Arnold Schwarzenegger signed AB 2699 (Bass, Chapter 270, Statutes of 2010), enacting Business and Professions Code (BPC) section 901, which took effect January 1, 2011. This statute provides a regulatory framework for health care events administered by either a local government or nonprofit organization at which free care is offered to uninsured or under-insured individuals by volunteer health care practitioners where those practitioners may include individuals who may be licensed in one or more states but are not licensed in California. Prior to this enactment, licensing laws precluded the participation of volunteers licensed outside of California without the sole supervision of the entity administering the event. Section 901 defines “sponsoring entities,” “sponsored events,” and “health care practitioners,” and sets forth requirements for registration of sponsoring entities and authorization for participation by practitioners licensed in other states by the various boards responsible for licensure and regulation of healing arts.

These proposed regulations would implement, interpret, and make specific the provisions of section 901 by specifying procedures and forms to be used by sponsoring entities and out-of-state practitioners who desire to participate in sponsored events. The board’s highest priority is the protection of the public and these proposed regulations are intended to implement Section 901 in a manner that will provide the greatest protection for the people of California.

Specific Purpose of each adoption, amendment, or repeal:

Add section 1820 (Definitions) – This section is needed to clarify the language of the statute. Specifically, the definition of “community-based organization” is necessary because there is no statutory definition. The definition of “out-of-state practitioner” is needed to clarify which practitioners the proposed regulations are intended to affect.
Factual Basis/Rationale:

“Community-based organization” is listed in the statute as one type of sponsoring entity. There is no definition of such an entity in state statute. The proposed definition of this term therefore is derived from a federal law (Title 20 USCA section 7801 related to education law) that does contain a definition of “community-based organization.” This definition provides much-needed clarity to the term.

The statute defines “health care practitioner” as any person who engages in acts subject to licensure under Division 2 of the Business and Professions Code. The proposed regulations, along with the operative provisions of section 901, however, concern specifically health care practitioners licensed to practice marriage and family therapy, clinical social work, educational psychology, and professional clinical counseling in other states and territories. Therefore, in order to provide clarity for purposes of the text of the regulations, the definition of “out-of-state practitioner” is proposed. The definition is based upon the criteria set forth in section 901(b).

Add section 1820.1(a) – This section establishes a timeframe for submission of a sponsoring entity’s registration form and prescribes a registration form to be used.

Factual Basis/Rationale:

Sponsoring entities are required under section 901 (d) to register with the board if they will have out-of-state practitioners participating in their sponsored event. Therefore, the proposed regulation implements the statute by providing a form that a sponsoring entity can use to meet this requirement. The form includes space for all of the information required to be submitted under the statute. Also, the proposed regulation requires that sponsoring entities submit their registration forms no later than 90 days prior to the sponsored events. This is proposed in order to allow for sufficient time for review of the registration information and to have the registration in place prior to receipt of participation authorization requests from out-of-state practitioners.

Add section 1820.1(b) – This section provides a mechanism for the board to delegate the receipt and review of the sponsoring entity registration form along with criteria for accepting or rejecting the registration.

Factual Basis/Rationale:

Because sponsoring entities may be required to register with multiple boards under section 901 (d), the proposed regulation allows the board to delegate the authority to receive and process the registration form to the Department of Consumer Affairs. Assuming that all applicable boards make this delegation, the sponsoring entity need only file one registration form and the Department will notify the boards that the
sponsoring entity submitted a complete form. This proposed regulation also specifies
that the registration form must be complete in order to be accepted and that all
deficiencies must be corrected at least 30 days prior to the commencement of the
sponsored event. This requirement is needed in order to ensure the board that the
entity has provided all required information including the correct contact information for
the sponsoring entity when the event commences.

Add section 1820.1(c) – This section implements and makes specific the recordkeeping
requirements of sponsoring entities set forth in section 901(g).

Factual Basis/Rationale:

Section 901(g) specifies certain records that sponsoring entities must maintain and
requires entities to furnish these records upon request to the board. In order to
implement these requirements, the proposed regulation specifies that these records
must be kept both at the physical premises of the sponsoring event and at a location in
California for the statutorily required five-year period. Having these records available at
the event and, thereafter, at a location in California is necessary in order to provide the
board with access to the records. Further, the proposed regulation specifies that the
records may be kept in either paper or electronic form and that the sponsoring entity
shall notify the board upon registration of the form of its records. This provision clarifies
that either form of records is acceptable to the board.

Add section 1820.1(d) – This section clarifies that authorization must be provided
before a sponsoring entity may allow an out-of-state practitioner to participate in a
sponsored event.

Factual Basis/Rationale:

Section 901 provides for authorization requirements for out-of-state practitioners and for
registration requirements of sponsoring entities. This proposed regulation connects the
two requirements by clarifying that a sponsoring entity may not permit an out-of-state
practitioner to participate in its event unless and until it receives authorization from the
board.

Add section 1820.1(e) – This section specifies the information to be provided in the
report required under section 901(f).

Factual Basis/Rationale:

Section 901(f) requires a report to be filed with the board by a sponsoring entity within
15 days after a sponsored event and sets forth the minimum information to be included.
The statute, however, does not provide any information as to the form of the report.
The proposed regulation makes clear the board will accept a report in whichever form the sponsoring entity chooses. Also, the proposed regulation includes a requirement of each participating out-of-state practitioner that the license number be included in the report. This information is necessary for the board to identify the participants involved.

Add section 1820.2(a) – This section provides the mechanism by which an out-of-state practitioner may request authorization to participate in a sponsored event.

Factual Basis/Rationale:

Out-of-state practitioners who desire to participate in a sponsored event must request authorization from the board in accordance with section 901(b). The statute specifically requires the board to prescribe a form and set a processing fee for this purpose. The proposed regulation implements section 901(b) by incorporating proposed “Request for Authorization to Practice Without a License at a Registered Free Health Care Event” (FORM 37M-809) to be submitted by the out-of-state practitioner to the board to request authorization to participate. The form provides space for the applicant to include all of the information required by the statute.

The fee of $28 has been determined by the board as the necessary amount to cover the costs to the board for developing the authorization procedure and processing the authorization. The $28 fee is based on the average salary of staff that would be evaluating the proposed “Request for Authorization to Practice Without a License at a Registered Free Health Care Event” and the estimated processing for one request for authorization to participate (Attachment A).

Additionally, the regulation requires the applicant to submit additional material not specifically listed in the statute. First, the applicant must submit personal identifying information including contact information, the individual’s social security number, employer’s contact information and either a full set of fingerprints or a Live Scan inquiry. These requirement are necessary in order for the board to verify the requirement of section 901(b)(1)(B)(i) that the applicant has, “not committed any act or been convicted of a crime constituting grounds for denial of licensure or registration under BPC section 480.” BPC section 480 authorizes a board to deny licensure based on an applicant’s conviction of a crime. In order to conduct a criminal background check, the board needs as much personal identifying information as possible. BPC Section 30 requires all licensees to provide their social security number to the board.

Add section 1820.2(b) – This section sets forth the standard timeframe in which the board shall grant or deny the authorization request.
Factual Basis/Rationale:

Section 901(b)(1)(A) provides that the board shall notify the sponsoring entity within 20 days of receiving a request for authorization to participate whether that request is approved or denied. The proposed regulation sets forth this statutory requirement and is necessary in order to restate the standard timeframe for response by the board within the context of the regulations.

Add section 1820.2(c) – This section sets forth the criteria under which the board must deny a request for authorization to participate.

Factual Basis/Rationale:

The statute provides that the board must authorize the participation of out-of-state practitioners in sponsored events, but it does not list specific criteria for denial of authorization other than if a practitioner “fails to comply with the requirements of this section or for any act that would be grounds for denial of an application for licensure.” Therefore, it is necessary to provide specific detail as to the criteria the board will use beyond the general authorization to deny an application.

The board has determined that the failure of an applicant to respond within seven days to a request for additional information will result in an automatic denial of a request. Because the board only has 20 days in which to grant or deny a request, timing is critical and the board’s opinion is that failure of an applicant to respond within seven calendar days will sufficiently jeopardize the board’s ability to effectively review a complete application within the allotted time.

In order to ensure the applicant’s out-of-state license allows practice that is equivalent to the practice of California licensees, the applicant must have a substantially equivalent license type. The board may determine the equivalency of out-of-state licenses on a case-by-case basis due to the different license classifications in other states.

The board must deny a license if it does not receive the criminal history check within a reasonable timeframe. The board only has 20 days in which to grant or deny a request and the absence of criminal history check results would prevent the board from making a timely determination of the applicant’s eligibility. The criminal history check results are essential to the board’s evaluation of the applicant’s identity and criminal history.

Add section 1820.2(d) – This section sets forth the criteria under which the board may deny a request for authorization to participate.

Section 901(b)(1)(A) provides that If the Board does not receive the application within
20 days prior to the event, then the board shall use reasonable efforts to notify the sponsoring entity within this time. The proposed regulation provides needed clarity to the statute that, in the event that the statutorily required reasonable efforts are insufficient to review the application in advance of the event, the board may then deny the request. It would be counter to the board’s consumer protection mandate to require it to grant authorization to an individual whose request is submitted in so short a time before the scheduled event that it cannot adequately be reviewed.

The other discretionary reasons for denial are based upon the past actions of the board with respect to that particular individual. Current pending legislation (SB 943, Introduced March 21, 2011) establishes prior revocation, suspension or restriction of a license, registration or certificate to practice marriage and family therapy, clinical social work, professional clinical counseling, or education psychology as grounds for disciplinary action by the board. The proposed language allows the board to apply the same criteria to the denial of a practitioner’s request for authorization. Because the time for review of the authorization is only 20 days, the board may not have time to revisit the case of an individual who has already been determined by the board as unfit to participate. The proposed language allows the board to reevaluate a particular individual’s circumstances as appropriate if sufficient time exists to do so without compromising public protection.

Add section 1820.2(e) – This section provides an appeal procedure for an applicant who has had a request for authorization to participate denied by the board.

Factual Basis/Rationale:

Section 901 allows for the denial of a request for authorization to participate, but it does not provide any appeal procedure for the denied individual. In order to ensure due process, applicants should have access to the same appeal procedure available for an out-of-state practitioner who has had his or her authorization terminated. Therefore, the proposed regulation references the appeal procedure in section 1820.3 of these proposed regulations, discussed below. This will provide consistency in the two appeal processes.

Add section 1820.3(a) – This section provides the grounds upon which the board may terminate the authorization to participate previously granted to an out-of-state practitioner.

Factual Basis/Rationale:

The first two grounds for termination listed in the proposed regulation are consistent with section 901(j)(1). As an additional ground for termination, this proposed regulation adds the receipt of a credible complaint indicating that the practitioner is unfit to practice
or is endangering the public. This provision is necessary in order for the board to act consistently with its mandate that protection of the public is its highest priority. Because of the permissive and temporary nature of the licensure exemption granted under section 901, and the limited time which the board has to review and verify the qualifications of the out-of-state practitioner, the board feels that it is essential that it may act immediately to terminate the authorization to participate granted to the non-California licensed individual when a credible complaint of endangerment is received.

Add section 1820.3(b) – This section specifies written notice of a termination may be given during a sponsored event.

Factual Basis/Rationale:

The statute provides that written notice of a termination shall be given to both the sponsoring entity as well as the individual practitioner. This proposed regulation is necessary to clarify that in the event a termination is issued during the course of a sponsored event, the board may provide the written termination notice to any representative of the sponsoring entity on the premises of the event. The most expeditious way to notify the entity is at the event itself to ensure the out-of-state practitioner will cease practice immediately.

Add section 1820.3(c) – This section specifies how the board will report the fact of the termination.

Factual Basis/Rationale:

Section 901(j)(3) provides that out-of-state practitioners shall not provide services under this statute following a termination of authorization. The proposed regulation specifies that the practitioner shall “immediately” cease their participation in the event. The board feels that this clarification is necessary in the event that a termination is issued during the course of an event. In case there is any confusion as to when the termination becomes effective, this proposed provision would be necessary to remove any doubt that the practitioner must immediately desist from participation as soon as the termination notice is received.

Add section 1820.3(d) – This section sets forth the consequences of a termination of an authorization to participate.

The proposed regulation provides that the board will consider a termination of authorization a disciplinary measure that is reportable to the national practitioner data banks and the individual’s out-of-state licensing authority(ies). The board views these provisions as reasonably necessary and logical in order to protect the public. The grounds for termination are criteria that the board itself would consider as disciplinary
measures for its own licensees - BPC sections 475, 480, and violations of the Board of Behavioral Sciences Statutes and Regulations. Therefore, because the board does not have licensing authority over the out-of-state practitioner, its only disciplinary remedy is to report the conduct to the individual’s home jurisdiction and applicable national practitioner databases. If the conduct is such that it would lead to action against the practitioner’s out-of-state license, then the board would have that information available to it in the event that the individual applied for either a subsequent authorization to participate in a future sponsored event or a license to practice in California.

Add section 1820.3(e) – This section provides an appeal process for out-of-state practitioners whose authorization to participate has been terminated.

Factual Basis/Rationale:

Section 901(j) allows for the filing of an appeal by an out-of-state practitioner. This proposed regulation offers the appealing out-of-state practitioner the option of an informal conference with the board’s executive officer to try and resolve the appeal. This proposed regulation is consistent with the board’s practice for its own licensees who have been issued a citation (Title 16, California Code of Regulations section 1886.7).

Underlying Data

Technical, theoretical or empirical studies or reports relied upon (if any):

Attachment A – Form 37M-809 Processing Cost Estimate

Business Impact

X This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

The regulation only impacts local governments or nonprofit organizations sponsoring free health care events and practitioners from other states volunteering in California. There is some impact to the out-of-state volunteers in that they will be required to submit the processing fee to receive authorization to participate. This fee will have to be factored into the cost of that individual’s volunteerism. The fee may be covered by sponsoring entities, who will also incur minor costs with respect to maintaining records of their volunteers, reporting to boards after events and filing a registration as appropriate. Those costs are imposed by the statute and not by these regulations.
Description of alternatives which would lessen any significant adverse impact on business:

N/A

Specific Technologies or Equipment

X This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation. The board is directed by statute to develop these regulations and there is, thus, no other method of developing the forms and procedure for registering sponsoring entities and granting authorization for requests by out-of-state practitioners to participate in sponsored events.

One possible alternative is to delay or refrain from promulgating any regulations – i.e., maintain the status quo. This is not reasonable because the statute contemplates a registration and fee process to be developed by the board to implement the statute. By not creating a procedure, the board would frustrate the purpose of the statute, which is intended to provide an opportunity for out-of-state licensed volunteers to participate in certain free health care events. Also, it is not reasonable to delay because the statute has a sunset date of January 1, 2014. Because the statute is only effective for three years, it is incumbent on the board to implement the required processes as soon as possible.
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## Staff Cost Breakout

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<tr>
<th></th>
<th>OT - Fingerprinting</th>
<th>SSA - Enforcement Analyst</th>
<th>OT - Cashiering</th>
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<td>3632</td>
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## Application Costs

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Assembly Bill No. 2699

CHAPTER 270

An act to amend Section 900 of, and to add and repeal Section 901 of, the Business and Professions Code, relating to healing arts.

[Approved by Governor September 23, 2010. Filed with Secretary of State September 24, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2699, Bass. Healing arts: licensure exemption.

Existing law provides for the licensure and regulation of various healing arts practitioners by boards within the Department of Consumer Affairs. Existing law provides an exemption from these requirements for a health care practitioner licensed in another state who offers or provides health care for which he or she is licensed during a state of emergency, as defined, and upon request of the Director of the Emergency Medical Services Authority, as specified.

This bill would also provide, until January 1, 2014, an exemption from the licensure and regulation requirements for a health care practitioner, as defined, licensed or certified in good standing in another state or states, who offers or provides health care services for which he or she is licensed or certified through a sponsored event, as defined, (1) to uninsured or underinsured persons, (2) on a short-term voluntary basis, (3) in association with a sponsoring entity that registers with the applicable healing arts board, as defined, and provides specified information to the county health department of the county in which the health care services will be provided, and (4) without charge to the recipient or a 3rd party on behalf of the recipient, as specified. The bill would also require an exempt health care practitioner to obtain prior authorization to provide these services from the applicable licensing board, as defined, and to satisfy other specified requirements, including payment of a fee as determined by the applicable licensing board. The bill would require the applicable licensing board to notify the sponsoring entity, as defined, of the sponsored event whether the board approves or denies a request for authorization to provide these services within 20 days of receipt of the request. The bill would also prohibit a contract of liability insurance issued, amended, or renewed on or after January 1, 2011, from excluding coverage of these practitioners or a sponsoring entity for providing care under these provisions.

Because this bill would expand the definition of certain crimes, the bill would create a state-mandated local program.

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

900. (a) Nothing in this division applies to a health care practitioner licensed in another state or territory of the United States who offers or provides health care for which he or she is licensed, if the health care is provided only during a state of emergency as defined in subdivision (b) of Section 8558 of the Government Code, which emergency overwhelms the response capabilities of California health care practitioners and only upon the request of the Director of the Emergency Medical Services Authority.

(b) The director shall be the medical control and shall designate the licensure and specialty health care practitioners required for the specific emergency and shall designate the areas to which they may be deployed.

(c) Health care practitioners shall provide, upon request, a valid copy of a professional license and a photograph identification issued by the state in which the practitioner holds licensure before being deployed by the director.

(d) Health care practitioners deployed pursuant to this chapter shall provide the appropriate California licensing authority with verification of licensure upon request.

(e) Health care practitioners providing health care pursuant to this chapter shall have immunity from liability for services rendered as specified in Section 8659 of the Government Code.

(f) For the purposes of this section, “health care practitioner” means any person who engages in acts which are the subject of licensure or regulation under this division or under any initiative act referred to in this division.

(g) For purposes of this section, “director” means the Director of the Emergency Medical Services Authority who shall have the powers specified in Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

SEC. 2. Section 901 is added to the Business and Professions Code, to read:

901. (a) For purposes of this section, the following provisions apply:

(1) “Board” means the applicable healing arts board, under this division or an initiative act referred to in this division, responsible for the licensure or regulation in this state of the respective health care practitioners.

(2) “Health care practitioner” means any person who engages in acts that are subject to licensure or regulation under this division or under any initiative act referred to in this division.

(3) “Sponsored event” means an event, not to exceed 10 calendar days, administered by either a sponsoring entity or a local government, or both, through which health care is provided to the public without compensation to the health care practitioner.
(4) “Sponsoring entity” means a nonprofit organization organized pursuant to Section 501(c)(3) of the Internal Revenue Code or a community-based organization.

(5) “Uninsured or underinsured person” means a person who does not have health care coverage, including private coverage or coverage through a program funded in whole or in part by a governmental entity, or a person who has health care coverage, but the coverage is not adequate to obtain those health care services offered by the health care practitioner under this section.

(b) A health care practitioner licensed or certified in good standing in another state, district, or territory of the United States who offers or provides health care services for which he or she is licensed or certified is exempt from the requirement for licensure if all of the following requirements are met:

(1) Prior to providing those services, he or she:
   (A) Obtains authorization from the board to participate in the sponsored event after submitting to the board a copy of his or her valid license or certificate from each state in which he or she holds licensure or certification and a photographic identification issued by one of the states in which he or she holds licensure or certification. The board shall notify the sponsoring entity, within 20 calendar days of receiving a request for authorization, whether that request is approved or denied, provided that, if the board receives a request for authorization less than 20 days prior to the date of the sponsored event, the board shall make reasonable efforts to notify the sponsoring entity whether that request is approved or denied prior to the date of that sponsored event.
   (B) Satisfies the following requirements:
      (i) The health care practitioner has not committed any act or been convicted of a crime constituting grounds for denial of licensure or registration under Section 480 and is in good standing in each state in which he or she holds licensure or certification.
      (ii) The health care practitioner has the appropriate education and experience to participate in a sponsored event, as determined by the board.
      (iii) The health care practitioner shall agree to comply with all applicable practice requirements set forth in this division and the regulations adopted pursuant to this division.
   (C) Submits to the board, on a form prescribed by the board, a request for authorization to practice without a license, and pays a fee, in an amount determined by the board by regulation, which shall be available, upon appropriation, to cover the cost of developing the authorization process and processing the request.

(2) The services are provided under all of the following circumstances:
   (A) To uninsured or underinsured persons.
   (B) On a short-term voluntary basis, not to exceed a 10-calendar-day period per sponsored event.
   (C) In association with a sponsoring entity that complies with subdivision (c).
(D) Without charge to the recipient or to a third party on behalf of the recipient.

(c) The board may deny a health care practitioner authorization to practice without a license if the health care practitioner fails to comply with the requirements of this section or for any act that would be grounds for denial of an application for licensure.

(d) A sponsoring entity seeking to provide, or arrange for the provision of, health care services under this section shall do both of the following:
   (1) Register with each applicable board under this division for which an out-of-state health care practitioner is participating in the sponsored event by completing a registration form that shall include all of the following:
      (A) The name of the sponsoring entity.
      (B) The name of the principal individual or individuals who are the officers or organizational officials responsible for the operation of the sponsoring entity.
      (C) The address, including street, city, ZIP Code, and county, of the sponsoring entity’s principal office and each individual listed pursuant to subparagraph (B).
      (D) The telephone number for the principal office of the sponsoring entity and each individual listed pursuant to subparagraph (B).
      (E) Any additional information required by the board.
   (2) Provide the information listed in paragraph (1) to the county health department of the county in which the health care services will be provided, along with any additional information that may be required by that department.

(e) The sponsoring entity shall notify the board and the county health department described in paragraph (2) of subdivision (d) in writing of any change to the information required under subdivision (d) within 30 calendar days of the change.

(f) Within 15 calendar days of the provision of health care services pursuant to this section, the sponsoring entity shall file a report with the board and the county health department of the county in which the health care services were provided. This report shall contain the date, place, type, and general description of the care provided, along with a listing of the health care practitioners who participated in providing that care.

(g) The sponsoring entity shall maintain a list of health care practitioners associated with the provision of health care services under this section. The sponsoring entity shall maintain a copy of each health care practitioner’s current license or certification and shall require each health care practitioner to attest in writing that his or her license or certificate is not suspended or revoked pursuant to disciplinary proceedings in any jurisdiction. The sponsoring entity shall maintain these records for a period of at least five years following the provision of health care services under this section and shall, upon request, furnish those records to the board or any county health department.

(h) A contract of liability insurance issued, amended, or renewed in this state on or after January 1, 2011, shall not exclude coverage of a health care
practitioner or a sponsoring entity that provides, or arranges for the provision of, health care services under this section, provided that the practitioner or entity complies with this section.

(i) Subdivision (b) shall not be construed to authorize a health care practitioner to render care outside the scope of practice authorized by his or her license or certificate or this division.

(j) (1) The board may terminate authorization for a health care practitioner to provide health care services pursuant to this section for failure to comply with this section, any applicable practice requirement set forth in this division, any regulations adopted pursuant to this division, or for any act that would be grounds for discipline if done by a licensee of that board.

(2) The board shall provide both the sponsoring entity and the health care practitioner with a written notice of termination including the basis for that termination. The health care practitioner may, within 30 days after the date of the receipt of notice of termination, file a written appeal to the board. The appeal shall include any documentation the health care practitioner wishes to present to the board.

(3) A health care practitioner whose authorization to provide health care services pursuant to this section has been terminated shall not provide health care services pursuant to this section unless and until a subsequent request for authorization has been approved by the board. A health care practitioner who provides health care services in violation of this paragraph shall be deemed to be practicing health care in violation of the applicable provisions of this division, and be subject to any applicable administrative, civil, or criminal fines, penalties, and other sanctions provided in this division.

(k) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(l) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B 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.
Attachment E: Relevant Code Sections

§4980.01. CONSTRUCTION WITH OTHER LAWS; NONAPPLICATION TO CERTAIN PROFESSIONALS AND EMPLOYEES

(a) Nothing in this chapter shall be construed to constrict, limit, or withdraw the Medical Practice Act, the Social Work Licensing Law, the Nursing Practice Act, or the Psychology Licensing Act.

(b) This chapter shall not apply to any priest, rabbi, or minister of the gospel of any religious denomination when performing counseling services as part of his or her pastoral or professional duties, or to any person who is admitted to practice law in the state, or who is licensed to practice medicine, when providing counseling services as part of his or her professional practice.

(c) (1) This chapter shall not apply to an employee working in any of the following settings if his or her work is performed solely under the supervision of the employer:

   (A) A governmental entity.

   (B) A school, college, or university.

   (C) An institution that is both nonprofit and charitable.

   (2) This chapter shall not apply to a volunteer working in any of the settings described in paragraph (1) if his or her work is performed solely under the supervision of the entity, school, or institution.

(d) A marriage and family therapist licensed under this chapter is a licentiate for purposes of paragraph (2) of subdivision (a) of Section 805, and thus is a health care practitioner subject to the provisions of Section 2290.5 pursuant to subdivision (b) of that section.

(e) Notwithstanding subdivisions (b) and (c), all persons registered as interns or licensed under this chapter shall not be exempt from this chapter or the jurisdiction of the board

§4996.14. EMPLOYEES OF CERTAIN ORGANIZATIONS; ACTIVITIES OF PSYCHOSOCIAL NATURE

(a) This chapter shall not apply to an employee who is working in any of the following settings if his or her work is performed solely under the supervision of the employer:

   (1) A governmental entity.

   (2) A school, college, or university.

   (3) An institution that is both nonprofit and charitable.

(b) This chapter shall not apply to a volunteer who is working in any of the settings described in subdivision (a) if his or her work is performed solely under the supervision of the entity, school, college, university, or institution.
(c) This chapter shall not apply to a person using hypnotic techniques by referral from any of the following persons if his or her practice is performed solely under the supervision of the employer:

1. A person licensed to practice medicine.
2. A person licensed to practice dentistry.
3. A person licensed to practice psychology.

(d) This chapter shall not apply to a person using hypnotic techniques that offer vocational self-improvement, and the person is not performing therapy for emotional or mental disorders.

§4999.22. CONSTRUCTION WITH OTHER LAWS; NONAPPLICATION TO CERTAIN PROFESSIONALS AND EMPLOYEES

(a) Nothing in this chapter shall prevent qualified persons from doing work of a psychosocial nature consistent with the standards and ethics of their respective professions. However, these qualified persons shall not hold themselves out to the public by any title or description of services incorporating the words “licensed professional clinical counselor” and shall not state that they are licensed to practice professional clinical counseling, unless they are otherwise licensed to provide professional clinical counseling services.

(b) Nothing in this chapter shall be construed to constrict, limit, or withdraw provisions of the Medical Practice Act, the Clinical Social Worker Practice Act, the Nursing Practice Act, the Psychology Licensing Law, or the Marriage and Family Therapy.

(c) This chapter shall not apply to any priest, rabbi, or minister of the gospel of any religious denomination who performs counseling services as part of his or her pastoral or professional duties, or to any person who is admitted to practice law in this state, or who is licensed to practice medicine, who provides counseling services as part of his or her professional practice.

(d) This chapter shall not apply to an employee of a governmental entity or a school, college, or university, or of an institution both nonprofit and charitable, if his or her practice is performed solely under the supervision of the entity, school, college, university, or institution by which he or she is employed, and if he or she performs those functions as part of the position for which he or she is employed.

(e) All persons registered as interns or licensed under this chapter shall not be exempt from this chapter or the jurisdiction of the board.
To: Board Members  
Date: May 10, 2011

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

Subject: Discussion and Possible Action Regarding the National Clinical Mental Health Counselor Examination

Background

During the July 28, 2010 Board meeting, the Board directed staff to continue working with the National Board for Certified Counselors (NBCC) to address Board concerns with the national exam in an effort to continue moving forward toward California acceptance of the national exam for Licensed Professional Clinical Counselor (LPCC) licensure.

At the November 4, 2010 Board meeting, Dr. Tracy Montez, Applied Measurement Services, LLC (AMS), provided an update regarding the efforts to address the concerns with NBCC. Dr. Montez emphasized that NBCC is very willing to work with the Board. Further, AMS had received permission from NBCC to present information from their discussions in a public format.

Dr. Montez specified the concerns and provided the response from NBCC as noted below.

- **Job analysis work**: This is also known as the occupational analysis. The job analysis involved a limited number of Subject Matter Experts (SMEs), and they typically worked with a committee. In California, there are several committees and many SMEs are involved in the job (occupational) analysis. NBCC responded that they will explore using larger groups and SMEs from California in their next occupational analysis.

- **Examination Development**: This involved a limited number of SMEs, and they typically worked with a committee. In California, there are several committees involved in examination development and many SMEs are also involved. NBCC responded that they will explore using larger groups and SMEs from California in their next examination development.

- **Passing scores**: NBCC agreed that if California would become a jurisdiction, NBCC would release their detailed content outline, also known as the examination plan, which they keep confidential. Candidates should know what they are being tested on. NBCC shared their passing rates, which range from the low 60’s to the high 80’s.
with the average around 78-80% for the National Counselor Examination (NCE). The passing rates for the other clinical exam, National Clinical Mental Health Counselor Examination (NCMHCE), ranged between the 60’s to 70’s. These passing rates are high; however, the Board does not have to adopt both exams.

- **Test administration:** NBCC contracts with a vendor that uses sites that are used for other non-testing purposes. California’s vendor is not allowed to use its sites for anything other than testing. NBCC provided reports outlining security procedures. Dr. Montez stated that it appears that the integrity of the testing process is not compromised by the business conducted at those sites.

- **Transparency of examination programs and test security:** NBCC holds close its testing materials, as does California. When joining a national organization, there is an expectation of being able to review data and understanding the process. Dr. Montez explained to NBCC that the Board and its psychometric vendor will request frequent updates, not annual updates. Most national programs provide only annual updates. NBCC agreed to negotiate contract language allowing the Board access to that data to the extent that it does not compromise the exams.

Dr. Montez recommended the Board continue these discussions with NBCC and the Office of Professional Examination Services (OPES), and move forward with determining which of the NBCC exams would be suitable given that NBCC had shown good faith in committing to resolve the issues identified. The Board concurred with Dr. Montez’s recommendation.

At its March 24, 2011 meeting the Licensing and Examination Committee reviewed recommendations from OPES and AMS regarding the use of the National Clinical Mental Health Counselor Examination (NCMHCE) for LPCC licensure in California. Both OPES and AMS recommended to the Committee that the Board consider the NCMHCE, along with a Board administered law and ethic examination for licensure, if all previously noted issues were addressed by NBCC.

The NCMHCE Self Assessment was sent to Board members in April to allow each member to review and evaluate the materials. Shawn O’Brien, NBCC Vice President, Center for Credentialing and Education will present additional information to the Board and will be available to answer any questions the Board may have regarding the NCMHCE.

**Recommendation**

Conduct an open discussion regarding the recommendation by the Licensing and Examination Committee that the Board accept the NCMHCE exam for LPCC licensure, along with a California specific examination.

If the Board determines that the NCMHCE is acceptable, direct staff to initiate a contract on behalf of the Board with NBCC to use the NCMHCE.

**Attachments**

A. Memorandum, March 15, 2011, OPES
B. Letter, March 14, 2011, AMS
C. An Assessment of the National Board for Certified Counselors National Counselor and National Clinical Mental Health Counseling Examination, December 2010 Final Report, AMS
DATE: March 15, 2011

TO: Kim Madsen, Executive Officer, Board of Behavioral Sciences

FROM: Sonja Merold, Chief, Office of Professional Examination Services

SUBJECT: Licensed Professional Clinical Counselor National Assessment

Office of Professional Examination Services’ Role

In a March 8, 2011 memo, you requested that the Office of Professional Examination Services (OPES) make a recommendation regarding whether to use of the National Board of Certified Counselors’ (NBCC) National Counselor Examination (NCE) and/or National Clinical Mental Health Counselor Examination (NCMHCE) as part of the requirements for licensure as a Licensed Professional Clinical Counselor (LPCC).

As you are aware, due to staffing issues, OPES could not perform the National Assessment of the NCE and NCMHCE. Instead, OPES suggested that BBS hire an outside contractor to perform the study.

Dr. Tracy Montez of Applied Measurement Services, LLC, was hired and conducted a study on this topic. Her work is documented in a report entitled, “An Assessment of the National Board for Certified Clinical Counselors National Counselor and National Clinical Mental Health Counseling Examinations” dated December 2010.

OPES has reviewed a copy of this report plus several other documents including:

- The confidential detailed examination specifications for the NCE and NCMHCE from NBCC;
- Several letters from Dr. Montez to you;
- BBS Board Meeting minutes for the July 28, 2010 and November 4-5, 2010 meetings;
- A cover letter and set of confidential project notes from Dr. Montez to Bob Holmgren, OPES Supervising Personnel Selection Consultant, on Dr. Montez’s national assessment of the NCE and NCMHCE;
- A letter from Dr. Montez to you dated March 14, 2011, making a recommendation regarding BBS’ use of NBCC examinations as part of the LPCC licensure process; and
- A confidential copy of the NCMHCE Self-Assessment Examination Directions and Explanations booklet and the Simulation Examination booklet.
Conclusions of Dr. Montez’s Study

Chapter 8: Overall Conclusions of Dr. Montez’s December 2010 study lists eight areas of concern regarding the use of NBCCC examinations:

1. Job Analysis:
   “Limited number of SMEs involved in the process”; “task statements lacking depth and specificity”; “detailed content outlines are not considered a public document” (page 24)

2. Examination Development:
   “Limited number of SMEs involved in examination development activities”; some off-site item writing” (page 24)

3. Passing Scores:
   “Ability of jurisdictions to adjust passing score”; “passing scores” (page 24)

4. Test Administration:
   “Test Centers used for purposes other than credentialing/licensing examinations” (page 24)

5. Examination Performance:
   “Passing Rates” (page 24). [Issue 6 (see page 14) clarifies this concern.] Local jurisdictions have the option of adjusting the national cut score. Although no state has chosen this option to date, it could potentially lead to having one state license individuals who would be deemed unqualified to be licensed in another state.

6. Information Available to Candidates:
   “Third-party vendor advertising for study guide and test preparation materials on NBCC website” (page 25) This is a potential security concern.

7. Test Security:
   “Ability for state board jurisdictions to review complete examinations”; “ability of candidates to review items appealed” (page 25) Candidates who appeal may review their test questions. This is a potential security concern.

8. Overall:
   “Recognize ongoing review of examination program expectation” (page 25)

Dr. Montez states that despite these technical issues, NBCC has “demonstrated a commitment to responding to BBS' expectations.” (page 24). NBCC has demonstrated its commitment to responding positively to BBS’ needs by meeting with Dr. Montez to discuss the issues and authorizing Dr. Montez to present confidential information to the Board in its public session at the November 4-5, 2010 Board Meeting.
Dr. Montez’s Recommendations

Dr. Montez’s recommendation is: “[T]he BBS use the NBCC National Clinical Mental Health Counseling Examination (NCMHCE) to assess entry-level competence to practice as a Licensed Professional Clinical Counselor (LPCC) in California.”

This recommendation is made with the following (paraphrased) conditions:

1. The eight concerns listed above be addressed by NBCC and BBS;
2. BBS perform an occupational analysis on the newly California licensed LPCCs in two to three years;
3. BBS include in the LPCC licensure examination test battery a California supplemental examination that tests for knowledge of California-specific laws and ethics rules and any other (not yet identified) critical competencies not tested in the NCMHCE; and,
4. BBS implement regulations authorizing the use of any national examination(s) and state examination(s) for LPCC licensure deemed appropriate by BBS.

OPES Comments on Dr. Montez’s Recommendations

The rationale for recommending the NCMHCE rather than the NCE or the combined NCE and NCMHCE is contained in Dr. Montez’s reports. Based on Dr. Montez’s reports and a review of the confidential detailed examination specifications for the NCE and the NCMHCE, it is clear that the NCE is primarily a certification examination, not a licensure examination. The scope of knowledge tested is quite broad and not focused on the knowledge necessary to perform specific tasks that a clinical counselor would perform on the job. The NCMHCE is more focused on the knowledge required to perform specific clinical counseling tasks.

In choosing between the NCE and the NCMHCE as the licensure examination for LPCC, the NCMHCE is the clear choice (plus a California-specific examination). In this regard, OPES concurs with Dr. Montez’s recommendation.

OPES also concurs with the need to resolve the eight concerns regarding using any exam from NBCC. Using an NBCC exam must be conditional on NBCC’s meeting Dr. Montez’s concerns about exam development and administration, including:

1. Involving California LPCCs in any future occupational analysis and examination development process;
2. Providing detailed content outlines of the examination to candidates for the examination;
3. Eliminating off-site item writing;

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1 According to Kara Schmitt, in a chapter entitled, What is Licensure? in a book edited by James Impara, Licensure Testing: Purposes, Procedures, and Practices (1995), “Certification is . . . more traditionally considered a voluntary mechanism implemented by a nongovernmental entity for the purpose of recognizing more advanced or specialized skills.” (page 18). “Licensure, on the other hand, is mandatory and must be obtained from a state government . . . “ (page 18) The essential difference is that a licensed individual has demonstrated, at the time of initial licensure, the requisite minimal level of knowledge, skills, and abilities determined necessary to practice competently.” (page 4).
4. Notifying BBS of any potential or actual adjustment of the national passing score by another state to permit BBS to voice its concerns and adapt as necessary;
5. Assuring that the examination cannot be compromised while being used at testing centers;
6. Allowing BBS to monitor passing rates for the examination at least quarterly;
7. Carefully monitoring the impact (security risk) of training provided by the vendor that advertises on the NBCC Web site. Making certain that no test questions have been compromised by this association with NBCC; and
8. Making certain that no test questions have been compromised by allowing individual examinees or states to review complete examinations.

In addition, OPES is in agreement that BBS should conduct an occupational analysis of California LPCCs two to three years after licensure begins in California and that a California-specific examination should be added to the licensure test battery. The California-specific examination should contain items on the California Laws and Ethics rules to be followed by LPCCs and any additional (yet to be determined) California-specific knowledges not covered by the NCMHCE.

The recommendation to implement regulations authorizing the use of the NCMHCE for LPCC licensure must be conditional on meeting the above requirements. However, since OPES is already under an Intra-Agency Contract with BBS to create a full LPCC licensure examination, failure of NBCC to meet the requirements in Dr. Montez's and OPES' recommendations would allow BBS to use the OPES-developed examination.

If you have any questions about this information, please do not hesitate to contact me at (916) 575-7265.

cc: Bob Holmgren, Supervising Personnel Selection Consultant, Office of Professional Examination Services
    Tracy Rhine, Assistant Executive Officer, Board of Behavioral Sciences
    Tracy Montez, Ph.D., President, Applied Measurement Services, LLC
March 14, 2011

Kim Madsen, Executive Officer
California Department of Consumer Affairs
Board of Behavioral Sciences
1625 N. Market Blvd., Ste. S-200
Sacramento, CA 95834

Dear Ms. Madsen:

As a result of actions taken at the November 4, 2010 Board of Behavioral Sciences (BBS) meeting and discussions with the National Board for Certified Counselors (NBCC) and the Office of Professional Examination Services (OPES), Applied Measurement Services, LLC (AMS) recommends that the BBS use the NBCC National Clinical Mental Health Counseling Examination (NCMHCE) to assess entry-level competence to practice as a Licensed Professional Clinical Counselor (LPCC) in California.

This recommendation is based on AMS’ assessment performed on the NBCC NCE and NCMHCE examination program, follow up discussions and reviews of additional documents.

Further, this recommendation is contingent upon the following important conditions being met:

- The NBCC and BBS coordinate efforts to address the technical issues noted in the final assessment report (e.g., making public a more detailed examination plan/content outline).
- The BBS begin performing an occupational analysis 2 to 3 years after issuing LPCC licenses and use the resulting data to compare with the NCMHCE.
- The BBS utilize a supplemental examination to assess critical competencies, such as California law and ethics, not measured in the NCMHCE.
- The BBS implement regulations that authorize the use of either a national examination or a state examination for LPCC licensure.

Consistent with the methodology used in the assessment, this recommendation is based on the professional guidelines and technical standards outlined in the Standards for Educational and Psychological Testing and the Federal Uniform Guidelines on Employee Selection Procedures.

If you have comments or questions about this recommendation, you may contact me at 530.788.5346, or at Tracymontez@sbcglobal.net.

Sincerely,

Tracy A. Montez, Ph.D.
President
Blank Page
An Assessment of the National Board for Certified Clinical Counselors National Counselor and National Clinical Mental Health Counseling Examinations

Performed for the California Department of Consumer Affairs Board of Behavioral Sciences

Performed by Applied Measurement Services, LLC Tracy A. Montez, Ph.D.

December 2010

FINAL REPORT

(Confidential Progress Report Presented July 2010)
Executive Summary

Licensing boards and bureaus within the California Department of Consumer Affairs (DCA) are required to ensure that examination programs being considered for use in the California licensure process are in compliance with psychometric guidelines and legal standards. The public must be reasonably confident that an individual passing a licensing examination has the requisite knowledge and skills to competently and safely practice in the respective profession.

In January 2010, the DCA Board of Behavioral Sciences (BBS) contracted with Applied Measurement Services, LLC (AMS) to conduct an assessment of the National Board for Certified Counselors, Inc. (NBCC) and Affiliates National Counselor Examination (NCE) and National Clinical Mental Health Counseling Examination (NCMHCE). The contract concluded December 2010.

The NBCC was incorporated in 1982 to establish and monitor a national certification system, to identify counselors who have voluntarily sought and obtained certification, and to maintain a register of those counselors (http://www.nbcc.org).

The NBCC Board of Directors is composed of 6 National Certified Counselors (NCC) and one public member who have staggered terms. The board directors are elected to serve three-year terms and may be re-elected to a second three-year term. The NBCC Nominations Committee, a sub-committee of the NBCC Board, disseminates a notice to all NCCs when a position needs to be filled. Interested NCCs are provided a nomination packet. Then, the Nominations Committee studies the needs of the Board of Directors and prepares a list of possible candidates, which then involves an interview process and voting by the full NBCC Board (NBCC, personal communication, June 18, 2010, p. 1).

The NBCC is accredited by the National Commission for Certifying Agencies, the accrediting body for the National Organization for Competency Assurance. The mission of the NBCC and Affiliates is to promote counseling through certification.

In pursuit of this mission, NBCC promotes quality assurance in counseling practice; promotes the value of counseling; promotes public awareness of quality counseling practice; promotes professionalism in counseling; promotes leadership in credentialing. (http://www.nbcc.org)

AMS worked with the NBCC through Shawn O’Brien, Vice President, Center for Credentialing and Education. AMS received and reviewed NCE and NCMHCE program documents provided by the NBCC and BBS. An evaluation of these documents was made to determine whether the (a) job analysis¹, (b) examination development, (c) passing scores², (d) test administration, (e) examination performance, and (f) test security

¹ A job analysis is also known as a practice analysis, an occupational analysis, or a task analysis.
² A passing score is also known as a pass point, cut score, or standard score.
procedures meet professional guidelines and technical standards outlined in the *Standards for Educational and Psychological Testing (Standards)*\(^3\) and the DCA *Examination Validation Policy*\(^4\). It should be noted that since the statistical data presented in the documents were considered credible, they were not reanalyzed.

AMS concluded its assessment of the NBCC NCE and NCMHCE programs. Although technical issues were noted and the initial recommendation was made *not* to become a NBCC jurisdiction, follow up communications and actions by the NBCC have demonstrated a commitment to responding to BBS’ expectations. The BBS recognizes that NBCC adheres to professional guidelines and technical standards, but also knows that additional strategies are implemented to further add to the body of evidence supporting the decisions made as a result of the BBS examination programs. Therefore, in being consistent with other assessments of national examination programs and Business and Professions Code Section 139 (Assembly Bill 1105, Chapter 67, Statutes of 1999), AMS recommends that the BBS continue its dialog with the NBCC to address technical issues and to establish a psychometric relationship between the NBCC and BBS’ current testing vendor, the Office of Professional Examination Services (OPES).

AMS appreciates the cooperation of representatives from both the BBS and the NBCC in conducting the assessment to ensure access to critical information.

The BBS should be recognized for its efforts to meet professional guidelines and technical standards outlined in Business and Professions Code Section 139 (Assembly Bill 1105, Chapter 67, Statutes of 1999).

The BBS appears to carry out the mission of the DCA by protecting consumers yet still recognizing the need to provide defensible hurdle to licensure while expanding the mental health workforce and supporting transportability.

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Chapter 1: Job Analysis

Standards

The most relevant standard from the *Standards* relating to job analyses, as applied to credentialing or licensing examinations, is:

**Standard 14.14**

The content domain to be covered by a credentialing test should be defined clearly and justified in terms of the importance of the content for credential-worthy performance in an occupation or profession. A rationale should be provided to support a claim that the knowledge or skills being assessed are required for credential-worthy performance in an occupation and are consistent with the purpose for which the licensing or certification program was instituted. (p. 161)

The comment following *Standard 14.14* emphasizes its relevance:

*Comment:* Some form of job or practice analysis provides the primary basis for defining the content domain. If the same examination is used in the licensure or certification of people employed in a variety of settings and specialties, a number of different practice settings may need to be analyzed. Although the practice analysis techniques may be similar to those used in employment testing, the emphasis for licensure is limited appropriately to knowledge and skills necessary for the effective practice . . . In tests used for licensure, skills that may be important to success but are not directly related to the purpose of licensure (e.g., protecting the public) should not be included. (p. 161)

California Business and Professions Code, Section 139 requires that every board, bureau, commission, and program report annually on the frequency of their occupational analysis, examination validation and development. The DCA *Examination Validation Policy* states:

Occupational analyses and/or validations should be conducted every three to seven years, with a recommended standard of five years, unless the board, program, bureau, or division can provide verifiable evidence through subject matter experts or a similar procedure that the existing occupational analysis continues to represent current practice standards, task, and technology. (p. 2)

Findings and Technical Issues

In collaboration with the Center for Credentialing and Education, the NBCC conducted two job analyses of the counseling profession (i.e., professional counselor and clinical mental health counselor), producing final reports early 2010. Specifically, the NBCC documented these studies in reports titled *A National Job Analysis of the Professional Counselor* and *A National Job Analysis of the Clinical Mental Health Counselor*. The
reports summarize the major steps in each of the studies. This final assessment report highlights relevant methodology associated with the major steps, noting findings and technical issues. It is important to note that this report reflects actions taken by the NBCC to address initial technical issues noted in the first phase of the contracted services. Therefore, the number of technical issues has been reduced from the number initially reported at the July 28, 2010 board meeting.

Job Analysis Studies – Purpose, Mechanism, and Timeframe

According to the reports, the purpose of the job analyses was to provide a basis for the continued development of the NCE and NCMHCE for licensure and certification (CCE, 2010, p. 4; CCE, 2010b, p. 5). The mechanism used to achieve the stated purpose was a job analysis survey. The entire NCE job analysis process took 14 months to complete; whereas the entire NCMHCE job analysis process took 15 months to complete. Typically, the job analysis process is completed in 12 months (NBCC, personal communication, October 14, 2010, p. 1).

Finding 1. The purpose, mechanism, and timeframe in which the job analysis studies were conducted are considered to be current, valid, and legally defensible. “The NBCC conducts a job analysis every 5 to 7 years” (NBCC, personal communication, June 18, 2010, p. 2).

Job Analysis – Use of Subject Matter Experts, Development of Draft Survey, and Selection of Rating Scales

For each of the job analysis studies, the NBCC appointed an Advisory Committee (AC) to provide content expertise as Subject Matter Experts (SMEs). The 11 NCE AC members and 10 NCMHCE AC members were selected to reflect diverse backgrounds within the profession.

With one minor exception, the same members of the NCE AC participated in all phases of the job analysis study (NBCC, personal communication, June 18, 2010, p. 2). The same members of the NCMHCE AC participated in all phases of the job analysis study (NBCC, personal communication, October 14, 2010, p. 1). It is important to note that different groups of SMEs were used for the NCE and NCMHCE job analysis studies.

Finding 2. AC member/SME recruitment is consistent with professional guidelines and technical standards.

Issue 1. While some job analysis methods support using a limited number of SMEs, research predominately supports using multiple and diverse groups of SMEs during job analysis phases to strengthen defensibility. Since the job analysis studies held several meetings, an opportunity to use different groups of SMEs existed but did not occur.
The ACs developed initial lists of job tasks. The NCE list consisted of 196 task statements with corresponding rating scales. The NCMHCE list consisted of 156 task statements, 44 clinical issues, and 21 diagnostic issues with corresponding rating scales. Next, the ACs reviewed and modified demographic questions to be included in the survey for the purpose of gathering information about the counselor survey respondent (CCE, 2010, pp. 7-8, CCE, 2010b, p. 10).

The survey sections were compiled into a draft survey and reviewed by the ACs via an internet based web format. Feedback was received and revisions were made to the survey prior to distribution (CCE, 2010, p. 8, CCE, 2010b, p. 10).

Finding 3. The process used to develop the task statements, clinical issues, diagnostic issues, demographic questions and rating scales is consistent with professional guidelines and technical standards.

Issue 2. Although the process used to develop the task statements is consistent with professional guidelines and technical standards, the depth and complexity of the statements is difficult to evaluate. Follow up communication confirmed that knowledge statements are not included in the job analysis survey. However, the statements exist and are linked by another group of SMEs (NBCC, personal communication, August 31, 2010).

Job Analysis – Final Survey, Survey Sampling Plan and Survey Distribution

The final NCE survey and cover letter were sent to 3,287 professional counselors throughout the United States. The final NCMHCE survey and cover letter were sent to 1,850 professional clinical mental health counselors throughout the United States. Both samples were stratified across geographic region to facilitate representative proportions within and across nine regions (i.e., New England, Middle Atlantic, East North Central, West North Central, South Atlantic, East South Central, West South Central, Mountain and Pacific). According to the reports, “stratifying by state would eliminate many states with small populations from proper scrutiny (CCE, 2010, p. 8, CCE, 2010b, p. 10).

Although stratifying by length of time licensed was not mentioned as a sampling variable, the results indicated that 26% of respondents had 0 to 5 years experience as a professional counselor (CCE, 2010, p. 41). And, 18% of respondents had 0 to 5 years experience as a professional clinical mental health counselor (CCE, 2010b, p. 15).

In addition to the cover letter announcing the survey, a follow up email blast and a reminder postcard were distributed to strengthen the response rate. Further, the NBCC newsletter was used as a mechanism to publicize the job analysis studies (NBCC, personal communications, June 18, 2010, p. 3 & August 31, 2010).

It should also be noted that the anonymity of the NCE and NCMHCE job analysis respondents was maintained (NBCC, personal communications, June 18, 2010, p. 3 & October 14, 2010, p. 1).
Finding 4. The additional communications beyond the initial survey cover letter have been found to significantly strengthen the rate of survey response.

Job Analysis – Survey Response Rates and Demographic Characteristics

After administering the job analysis surveys and collecting data, the NBCC established that data quality requirements were met (NBCC, personal communication, June 18, 2010, p. 3), computed response rates and evaluated demographic characteristics.

As a result of the NCE sampling plan, 880 useable surveys were completed (i.e., with a corrected response rate of 27.7%). The NCMHCE sampling plan resulted in 421 useable surveys (i.e., with a corrected response rate of 23.06%).

Finding 5. The typical counselor respondent was Caucasian, female, and with a Master’s degree in counseling. Her primary work settings included an academic setting (21%), individual practice (17%) or outpatient/mental health setting (18%). Her client population is primarily individuals, and she works full time with 6-15 years of experience (CCE, 2010, pp. 10-16).

Finding 6. The typical clinical counselor respondent was female, and with a Master’s degree in counseling. Her primary work setting is a private office (48%). Her client population is primarily individuals, and spends most time in client care/direct service activities with 6-10 years of experience (CCE, 2010b, pp. 14-20).

Job Analysis – Analysis of Survey Data

Next, the NBCC computed task and respondent rating reliabilities and task/category/clinical issue/diagnostic issue means, standard deviations and t-scores. For the NCE, Frequency ratings were given priority. Tasks were ranked by mean Frequency rating and t-score within each category. For the NCMHCE, categories were ranked by Frequency and Importance t-scores.

For the NCE, factor analysis was also performed to identify item clustering and item relationship. It should be clarified that the term “item” refers to the individual task statements not test items. The results were used to finalize the NCE content outline.

Finding 7. The criteria used to calculate the task, clinical issue, and diagnostic issue rankings (i.e., how important is the task to your safe and effective performance as a practicing counselor and how often do you perform the activity?) meet professional guidelines and technical standards.

Job Analysis – Final Detailed Content Outlines

After reviewing the data, the AC chose to consolidate some of the original categories for both NCE and NCMHCE. The resulting NCE and NCMHCE detailed content outlines
consist of five factors or categories and three categories, respectively. Also, the NCE detailed content outline includes specific weights representing the number of items on the examination measuring that content (CCE, 2010, p. 20). The NCMHCE examination specification provides the detailed blueprint for each form of the NCMHCE (CCE, 2010b, p. 40).

**Finding 8.** The methodology used to construct the NCE and NCMHCE detailed content outlines is defensible, meeting professional guidelines and technical standards associated with a content-related validation study. However, two issues are noted below.

**Issue 3.** The task statements listed in the final content outlines do not provide a descriptive reference to level of competency, specificity, or function when compared to the methodology used by the BBS to create its task statements. The lack of descriptive context may impact the use of the content outline for examination development purposes and/or candidate examination preparation.

**Issue 4.** The detailed content outlines are not a public document which is inconsistent with BBS practice. However, follow up discussions with NBCC have resulted in an understanding that BBS has the expectation of public content outlines. Therefore, if BBS were to become a NBCC jurisdiction, it would expect these documents to be public.

**Conclusions**

Although four technical issues were noted, the overall job analysis methodology and findings demonstrate a sufficient level of validity, meeting professional guidelines and technical standards. Three of the four issues can easily be addressed during the next job analysis study. The fourth issue should be addressed prior to becoming a NBCC jurisdiction.
Chapter 2: Examination Development

Standards

Examination development includes many steps within an examination program, from the development and evaluation of a job analysis to scoring and analyzing questions or items following the administration of an examination. Specific activities evaluated in this section of the report include item writing, linking to content outline, and developing examination forms.

The most relevant standards from the Standards relating to examination development, as applied to credentialing or licensing examinations, are:

**Standard 3.6**
The type of items, the response formats, scoring procedures, and test administration procedures should be selected based on the purposes of the test . . . The qualifications, relevant experiences, and demographic characteristics of expert judges should also be documented. (p. 44)

**Standard 3.7**
The procedures used to develop, review, and try out items, and to select items from the item pool should be documented. If the items were classified into different categories or subtests according to the test specifications, the procedures used for the classification and the appropriateness and accuracy of the classification should be documented. (p. 44)

**Standard 3.11**
Test developers should document the extent to which the content domain of a test represents the defined domain and test specifications. (p. 45)

Findings and Technical Issues

The NBCC provided the following handouts documenting examination development activities and techniques: National Counselor Examination for Licensure and Certification (NCE) and National Clinical Mental Health Counseling Examination (NCMHCE) Development Process handouts, National Counselor Examination for Licensure and Certification (NCE) and National Clinical Mental Health Counseling Examination (NCMHCE) Content and Design handouts, NCE Examination Committee Reference Sheet, Item Development Committee Checklist for Reviewing Test Items, Item Writing Guide for Multiple Choice Exams handout, and National Clinical Mental Health Counseling Examination (NCMHCE) Examination Specifications document. It should be noted that basic procedures used to develop the NCE are also used to construct the NCMHCE. Therefore, redundant material was not supplied to AMS.
Examination Development - Use and Training of SMEs and Item Writing

The NBCC actively recruits individuals who are licensed professional counselors to work as item writers. NBCC staff and examination consultants train all new item writers and this training is reviewed annually.

Volunteer item writers are instructed to produce a specific number of items. Item writing occurs both on-site and off-site. Every NCE and NCMHCE item is reviewed by the NCE and NCMHCE Examination Development Committee. Each committee is comprised of 12 subject matter experts representing a variety of degree levels and work settings. Committee members serve 3 to 5 years and are required to sign a non-disclosure form. Member appointments are made at staff-level (NBCC, personal communications, June 18, 2010, p. 5 & October 14, 2010, p. 1).

Finding 9. The criteria used to select SMEs as item writers are consistent with professional guidelines and technical standards.

Finding 10. Item writers are required to sign non-disclosure and item contributor forms and are instructed about examination security which is consistent with professional guidelines and technical standards.

Finding 11. The SME training material contained in the Item Writing Guide for Multiple Choice handout reflects professional guidelines and technical standards associated with item/question development.

Finding 12. Also consistent with professional guidelines, item data are used in the item development process (NBCC, personal communication, July 6, 2010).

Issue 5. Although there are usually 20 to 25 item writers under contract at any given time, the 12-member Examination Development Committee conducts the final review and editing of the items. Members are appointed to serve for 3 to 5 years. Therefore, each member is potentially involved in final review and editing for a five-year period. Hence, the final review could be restricted to a relatively small number of SMEs. As a point of reference, the BBS has approximately 143 marriage and family therapist SMEs, 134 licensed clinical social worker SMEs, and 39 licensed educational psychologist SMEs. Follow up communications with NBCC has indicated a commitment to increasing the size of their SME pool. To date, the NBCC has begun recruiting SMEs from California.

Finding 13. Given the point presented in Issue 5, the other policies associated with participation as an Examination Development Committee member are consistent with professional guidelines and technical standards.
Examination Development – Linkage to Content Outline and Use of References

SMEs are instructed that exam questions should assess examinees’ abilities to apply their knowledge in ways that define safe and effective professional practice. Further, The Examination Development Committee is responsible for classifying items according to the respective detailed content outlines.

According to the NCBB, the Examination Development Committee establishes a list for use as examination reference materials. NBCC also maintains an onsite library containing over 1,000 counseling reference materials. However, individual items in the item bank are not directly associated with specific materials (NBCC, personal communication, June 18, 2010, p. 6). It should be noted that NBCC has now begun the process of linking items to reference materials (NBCC, personal communication, August 31, 2010).

**Finding 14.** The strategy of linking items to the detailed content outlines and use of reference materials meets professional guidelines and technical standards.

Examination Development – Examination Forms

The NBCC pre-selects the examination items based on content outline, item performance, base exam, etc. The forms are reviewed by the Examination Development Committee for final approval (NBCC, personal communication, June 18, 2010, p. 8).

Multiple forms are available at the assessment centers at any given time. Testing is normally the first two weeks of each month (see Chapter 4: Test Administration for additional information).

**Finding 15.** The criteria applied to create new exam forms, including item overlap (i.e., items common with a previous form) meet professional guidelines and technical standards.

**Finding 16.** Given the guidelines for item writers and reviewers, it appears items discriminating between minimally competent and incompetent candidates for licensure should result from examination development activities.

Table 1 presents the examination, number of items and the time allowed for exam administration.

**Table 1 – Examination Information**

<table>
<thead>
<tr>
<th>Examination</th>
<th>Number of Scored Items</th>
<th>Number of Pretest (Non-scored) Items</th>
<th>Time Allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>NCE</td>
<td>160 multiple-choice</td>
<td>40</td>
<td>4 hours</td>
</tr>
<tr>
<td>NCMHCE</td>
<td>10 simulations</td>
<td>1</td>
<td>4 hours</td>
</tr>
</tbody>
</table>
Examination Development – Size of Item Banks and Quality of Items

For purposes of consumer protection as well as access to examination opportunities, certification and licensure examination programs should have a sufficient number of items to construct new forms in the event of subversion.

The NBCC recognizes the importance of having a sufficient number of items within their item banks, having enough items to generate multiple forms in the event of a security breach (NBCC, personal communication, June 18, 2010, p. 7).

Finding 17. The statistical criteria used to define “high performing” items are consistent with professional guidelines and technical standards as well as the strategy for maintaining a sizable item bank.

Conclusions

Given the Findings and Technical Issues, the examination development conducted by the NBCC demonstrates a sufficient degree of validity, meeting professional guidelines and technical standards.
Chapter 3: Passing Scores

Standards

The passing score of an examination is the score that represents the cut off that divides those candidates for certification or licensure who are minimally competent and those who are incompetent.

The most relevant standards from the Standards relating to passing scores, points, cut scores, or standard scores as applied to credentialing or licensing examinations, are:

**Standard 4.21**
When cut scores defining pass-fail or proficiency categories are based on direct judgments about the adequacy of item or test performance or performance levels, the judgmental process should be designed so that judges can bring their knowledge and experience to bear in a reasonable way. (p. 60)

**Standard 14.17**
The level of performance required for passing a credentialing test should depend on the knowledge and skills necessary for acceptable performance in the occupation or profession and should not be adjusted to regulate the number or proportion of persons passing the test. (p. 162)

The supporting commentary on passing or cut scores in the Standards, Chapter 4 – Scales, Norms, and Score Comparability states that there can be no single method for determining cut scores for all tests and all purposes. The process used should be clearly documented and defensible. The qualifications of the judges involved, and the process of selection should be part of the documentation. A sufficiently large and representative group of judges should be involved, and care must be taken to assure that judges understand what they are to do.

In addition, the supporting commentary in the Standards – Chapter 14 – Testing in Employment and Credentialing states that the focus of credentialing standards is on “levels of knowledge and performance necessary for safe and appropriate practice” (p. 156). “Standards must be high enough to protect the public, as well as the practitioner, but not so high as to be unreasonably limiting” (p. 157).

Findings and Technical Issues

The NBCC provided The National Counselor Examination for Licensure and Certification Minimum Criterion Score handout for review and a written explanation of the passing score process for the NCMHCE.

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5 Recall a passing score is also known as a pass point, cut score, or standard score.
Passing Scores – Purpose, Use of Subject Matter Experts, and Methodology

The process of establishing passing scores for licensure exams relies upon the expertise and judgment of SMEs. Eighteen judges participated in the passing score study used to establish the passing score for the base form of the NCE. All judges (SMEs) were counseling professionals selected to be representative of all general practice counselors. Other demographic variables were considered for selection purposes.

NBCC uses the passing score approach referred to as the “Modified Angoff Method.” The NBCC staff and examination consultants trained the SMEs in the modified Angoff method and facilitated the passing score study.

Finding 18. The purpose of the passing score study was to determine the passing standard for the NCE and the NCMHCE.

Finding 19. The training of the SMEs and the application of the modified Angoff method appears to be consistent with professional guidelines and technical standards, although specific examples of minimum acceptable competence were not provided to AMS.

Finding 20. The number of SMEs used in the NCE passing score study met professional guidelines and technical standards. The number of SMEs used in the NCMHCE passing score study was not provided to AMS.

Passing Scores – Analysis and Results

The NBCC conducted an analysis of the SMEs ratings produced during the passing score study. AMS did not review the passing score data or specific analyses performed on the data.

Passing Scores – Equating Forms

Recall that NBCC produces different forms of the NCE and the NCMHCE. The resulting score from the passing score study represents the passing score for the base exam. Through a process called equating, the passing score is adjusted up or down depending on the difficulty levels of the individual items within the new forms. Therefore, regardless of the examination form taken, the level of competency that must be demonstrated by a candidate remains the same across forms and jurisdictions.

Finding 21. The NBCC uses an acceptable statistical procedure to evaluate items and equate exam forms.
Passing Scores – Adjustment by Jurisdictions

Issue 6. According to NBCC, jurisdictions do have the option of adjusting the NCE passing score. However, at this time, all jurisdictions use the national cut score (NBCC, personal communications, June 18, 2010, p. 8).

Conclusions

Given the Findings and Technical Issue, the NBCC passing score study demonstrates a sufficient degree of validity, meeting professional guidelines and technical standards. If the BBS becomes a jurisdiction, AMS recommends that BBS closely monitoring pass rates, passing scores and the ability of jurisdictions to adjust the resulting passing score (see Chapter 5: Examination Performance for additional information).
Chapter 4: Test Administration

Standards

The most relevant standards from the Standards relating to test administration, as applied to credentialing or licensing examinations, are:

**Standard 5.1**
Test administrators should follow carefully the standardized procedures for administration and scoring specified by the test developer, unless the situation or a test taker’s disability dictates that an exception should be made. (p. 63)

**Standard 5.2**
Modifications or disruptions of standardized test administration procedures or scoring should be documented. (p. 63)

**Standard 5.5**
Instructions to test takers should clearly indicate how to make responses. Instructions should also be given in the use of any equipment likely to be unfamiliar to test takers. Opportunity to practice responding should be given when equipment is involved, unless use of the equipment is being assessed. (p. 63)

Findings and Technical Issues

The NBCC has contracted with Applied Measurement Professionals, Inc. (AMP) to assist in the administration and scoring of the NCE and the NCMHCE. AMP, a Kansas City headquartered company founded in 1982, is a provider of licensing and certification examinations. AMP provides certification organizations, government agencies, professional associations and private (http://www.goAMP.com).

In January 2000, AMP launched its national Assessment Center Network to conduct secure, standardized, computer-based examinations (AMP, 2007). Approximately five employees are assigned to carry out the contracted services with NBCC (NBCC, personal communications, July 6, 2010).

AMP Computer-Based Testing Services, AMP Crisis Management, AMP Security Measures and Problem Monitoring and Resolution handouts were provided to AMS for the purposes of this report.

Test Administration – Supervisor’s Manual

AMP publishes an *AMP Assessment Center Supervisor’s Manual* that is designed to help standardize computer examination administration and maintain the security of the examination content (AMP, 2007).
Finding 22. The supervisor’s manual is detailed and comprehensive and includes the following sections:

1. AMP Contact Information
2. Overview of the Supervisor’s Job Duties (e.g., candidate verification)
3. Examination Administration Procedures (e.g., monitoring candidates and conditions during the examination)
4. Troubleshooting (e.g., power failure or system malfunction)

Test Administration – Computer-Based Testing (CBT) Centers

There are over 150 assessment centers across the nation designed for CBT. Thirteen centers are located in California (e.g., Fresno, Los Angeles, Sacramento, San Diego, San Jose, Santa Maria, and Upland). The centers are used for purposes other than testing. Most centers are located in H&R Block offices.

Finding 23. It appears that the NBCC and AMP have taken significant measures to ensure that candidates have access to convenient CBT centers with trained proctors.

Issue 7. Although the centers are used for purposes other than administration of NBCC licensing examinations, the integrity of the testing process and the security of the exams do not appear to be compromised.

Test Administration – Registration of Candidates

The NBCC has a detailed registration process that can be found in the publication Candidate Handbook for State Credentialing as well as the NBCC website.

Finding 24. The NBCC registration process appears straightforward. The information available to candidates is detailed and thorough, stating NBCC policies when necessary.

Test Administration – Special Accommodations and Arrangements

The NBCC along with the respective jurisdiction approve any necessary accommodations under the Americans with Disabilities Act (ADA). The requests are then forwarded to AMP who in turn forwards the specific accommodations directly to the assessment center (NBCC, personal communication, July 6, 2010).

Although English-as-a-second-language (ESL) is not covered under ADA, the NBCC does make special arrangements for those candidates requesting an ESL provision so long as the special arrangements are authorized by the individual jurisdictions based on their respective state laws (NBCC, personal communication, June 18, 2010, p. 3).
Finding 25. The special accommodation procedure appears to meet professional guidelines and technical standards.

Test Administration – Candidate Feedback

Candidates are asked to complete a short on-line survey about their examination experience prior to receiving their scores. Facility questionnaire CBT summaries were provided to AMS for candidates testing between January 1, 2000 and September 7, 2010. One summary presented survey results for California test centers and another summary presented survey results for all H&R Block/AMP test centers. The results showed high satisfaction across many aspects associated with the CBT experience (e.g., convenience of test center location, ease of software, overall testing environment).

Test Administration – Exam Security

AMS confirmed that administrative procedures have been established to accommodate emergency closures, weather-related situations, and security-related incidents (e.g., AMP Assessment Center Supervisor’s Manual). AMP also has a complete Disaster Recovery Plan on file at AMP Headquarters.

Further, AMS also confirmed that NBCC monitors the assessment centers to ensure that procedures are adhered to ensure the integrity of the testing process. Monitoring occurs in the form of in-person visits and feedback from candidates reported via the survey at the end of their test sessions. The NBCC staff has also taken exams to audit the administration process. Member boards are encouraged to do the same (NBCC, personal communication, July 6, 2010).

Finding 26. The exam security protocols in place as they pertain to test administration appear to meet professional guidelines and technical standards (see Chapter 7: Test Security for additional information).

Conclusions

Given the Findings and Technical Issue, the test administration protocols in place by NBCC appear to meet professional guidelines and technical standards.
Chapter 5: Examination Performance

Standards

The most relevant standards from the Standards relating to examination performance, as applied to credentialing or licensing examinations, are:

**Standard 2.1**
For each total score, subscore, or combination of scores that is to be interpreted, estimates of relevant reliabilities and standard errors of measurement or test information functions should be reported. (p. 31)

**Standard 3.9**
When a test developer evaluates the psychometric properties of items, the classical or item response theory (IRT) model used for evaluating the psychometric properties of items should be documented. The sample used for estimating item properties should be described and should be of adequate size and diversity for the procedure. The process by which items are selected and the data used for item selection, such as item difficulty, item discrimination, and/or item information, should also be documented. When IRT is used to estimate item parameters in test development, the item response model, estimation procedures, and evidence of model fit should be documented. (pp. 44-45)

Findings

The NBCC supplied a confidential report titled Test Analysis Report National Counselor Examination for Licensure and Certification (2008) and an item analysis of the NCMHCE.

Examination Performance – Analyses

Analyses are performed on all forms of the NCE and NCMHCE to ensure all scored items are valid. NBCC uses both item statistics and candidate comments to flag poorly performing items. Flagged items are then reviewed by the Examination Committee and a decision is made whether to retain the item(s) as scored.

Each form of the NCE includes 40 pretest items. An item is not changed to “active” until it has survived three administrations without any modifications. Each form of the NCMHCE includes 1 pretest case. Because of quality item writing, few items revisions are needed (NBCC, personal communication, June 18, 2010, p. 7).

Descriptive test statistics (e.g., mean, standard deviation, standard error of measurement, test reliability, single-administration decision consistency index) were calculated. Resulting statistics were typical for licensure examinations (NBCC, 2008). Item Response Theory (IRT) is planned for all examination forms based on the new job analysis (NBCC, personal communication, June 18, 2010, p. 9). It should be noted that
no individual item statistics with accompanying test items were reviewed for this assessment.

Finding 27. The analyses performed on the exams meet professional guidelines and technical standards.

Examination Performance – Differential Item Functioning

Differential Item Functioning (DIF), a measure of item bias, occurs when candidates from different groups (e.g., gender, ethnicity) have different rates of performance on a particular item. In addition to performing traditional statistical analyses, the NBCC monitors item bias by utilizing procedures to measure DIF. It should be noted that NBCC has access to subgroup information which allows for DIF, the BBS does not.

Examination Performance – NCE and NCMHCE Pass Rates

Finding 28. Tables 2 and 3 present the NCE and NCMHCE pass rates for the past three years.

Table 2 – NCMHCE Pass Rates

<table>
<thead>
<tr>
<th>NCE</th>
<th>Average Passing Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>81.5%</td>
</tr>
<tr>
<td>2008</td>
<td>83.0%</td>
</tr>
<tr>
<td>2007</td>
<td>83.5%</td>
</tr>
</tbody>
</table>

Table 3 – NCMHCE Pass Rates

<table>
<thead>
<tr>
<th>NCMHCE</th>
<th>Average Passing Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>69.0%</td>
</tr>
<tr>
<td>2008</td>
<td>68.0%</td>
</tr>
<tr>
<td>2007</td>
<td>67.0%</td>
</tr>
</tbody>
</table>

It should be noted that although pass rates are higher than BBS pass rates, first time takers of the NCE have a pass rate of 83% and repeaters have a pass rate of 39%. For the NCMHCE, first time takers pass at 74% and repeaters 55%.

Also, a review of individual state passing rates, show a passing rate range from 61% to 88% for the NCE. For the NCMHCE, the passing rates range from 62% to 85%. It should be noted that individual state names and number of examinees were omitted from the data.
Conclusions

Given the Findings, the steps taken by the NBCC to evaluate examination performance are sufficiently valid and legally defensible, meeting professional guidelines and technical standards. However, if the BBS were to become a NBCC jurisdiction, AMS recommends that BBS closely monitor passing rates to ensure that expectations associated with minimum acceptable competence are maintained and represented in the passing score process and outcome.
Chapter 6: Information Available to Candidates

The most relevant standards from the Standards relating to candidate information, as applied to credentialing or licensing examinations, are:

**Standard 8.1**
Any information about test content and purposes that is available to any test taker prior to testing should be available to all test takers. Important information should be available free of charge and in accessible formats. (p. 86)

**Standard 8.2**
Where appropriate, test takers should be provided, in advance, as much information about the test, the testing process, the intended test use, test scoring criteria, testing policy, and confidentiality protection as is consistent with valid responses. (p. 86)

Findings and Technical Issues

The NBCC website is located at www.nbcc.org. It provides extensive information about the NBCC as a central resource for information for both counselors and the general public.

**Finding 29.** By clicking on “Certification,” candidates can locate the following informational items in this section of the homepage.

- National Certified Counselor
- Certified Clinical Mental Health Counselor
- FAQ
- Appeals
- Score Verifications
- Study Guides

**Finding 30.** By clicking on “State Licensure,” candidates can locate the following informational items in this section of the homepage.

- Registration
- State Board Directory
- Scoring
- Exams
- Statistics
- Study Guides

**Finding 31.** The *NBCC Official Preparation Guide for the NCE for Licensure and Certification* contains detailed information on how to prepare and take the examination. The cost is $34.95 to purchase the guide. The *NBCC Official Preparation Guide for the NCMHC* costs $44.95 to purchase.
Issue 8. In addition to the NBCC preparation guides, several other study guide and preparation materials are listed on the NBCC website. According to the website,

NBCC does not endorse or uphold any claims made by vendors of study materials listed. NBCC does not guarantee enhanced performance on any NBCC exam as a result of using study materials. No enhanced performance on any NBCC exam is expressed or implied for individuals purchasing or using ANY of the study materials listed below. NBCC does not guarantee the accuracy of information provided by study material advertisers (http://nbcc.org/study/).

When questioned as to why these vendors are included on the NBCC website if not endorsed, NBCC responded that it wants to make sure candidates have access to resources to prepare them for the examination and NBCC believes in transparency of what the market holds for candidates (NBCC, personal communication, June 18, 2010, p. 9).

Conclusions

Given the Findings and Technical Issue, the information provided to candidates about the NBCC NCE and NCMHCE programs is comprehensive, meeting professional guidelines. However, if the BBS were to adopt the NCE and/or NCMHCE, it should consider the implication of the Issue 8.
Chapter 7: Test Security

Standards

The most relevant standards from the Standards relating to test security, as applied to credentialing or licensing examinations, are:

**Standard 5.6**
Reasonable efforts should be made to assure the integrity of test scores by eliminating opportunities for test takers to attain scores by fraudulent means. (p. 64)

**Standard 5.7**
Test users have the responsibility of protecting the security of test materials at all times. (p. 64)

Findings and Technical Issues

AMS was provided with copies of the *AMP Assessment Center Supervisor’s Manual* (2007), *Candidate Handbook for State Credentialing* (2005), and the report titled *Analysis of Test Compromise Using Test Result Data* for review. According to the NBCC, Assessment Program Security Standards are incorporated into these documents and are based on industry standards (NBCC, personal communication, June 18, 2010, pp. 9-10).

**Finding 32.** Areas addressed in these documents, for example, include the following:
- Candidate identification
- Security at the assessment centers
- Examination restrictions
- Monitoring candidates and conditions during the examination
- Handling additional examination irregularities

**Finding 33.** According to the NBCC, no breaches of security have occurred. Further, a data forensics analysis of the NCE reported no indications of a security breach (NBCC, personal communication, June 18, 2010, p. 10).

**Issue 9.** State licensure boards are allowed to review the NCE under strict security conditions. Candidates who appeal their results may be offered a secure review of the item(s) in question (NBCC, personal communication, June 18, 2010, p. 10). Since the NCE is a national examination, this policy, although reasonable, allows for greater exposure of the NCE and NCMHCE content.

Conclusions

Given the Findings and Technical Issue, the policies and procedures outlined in the manual and handbook appear to meet professional guidelines and technical standards.
AMS has concluded its assessment of the NBCC examination programs (NCE & NCMHCE). Although technical issues were noted and the initial recommendation was made not to become a NBCC jurisdiction, follow up communications and actions by the NBCC have demonstrated a commitment to responding to BBS’ expectations. The BBS recognizes that NBCC adheres to professional guidelines and technical standards, but also knows that additional strategies are implemented to further add to the body of evidence supporting the validity of the decisions made as a result of the BBS examination programs. Therefore, in being consistent with other assessments of national examination programs, AMS recommends that the BBS continue its dialog with the NBCC to address technical issues and to establish a psychometric relationship between the NBCC and BBS’ current testing vendor, the OPES.

The following phases of examination validation provide points that should be pursued if the BBS chooses to become a NBCC jurisdiction:

**Job Analysis:**
- Limited number of SMEs involved in process (Action: address in next job analysis)
- Task statements lacking depth and specificity (Action: address in next job analysis)
- Detailed content outlines are not considered a public document (Action: address prior to becoming a jurisdiction)

**Examination Development:**
- Limited number of SMEs involved in examination development activities (Action: continue to add California SMEs and expand current pool of counselors)
- Some off-site item writing (20%) (Action: suggest removing off-site item writing option)

**Passing Scores:**
- Ability of jurisdictions to adjust passing score (Action: monitor)
- Passing scores (Action: monitor)

**Test Administration:**
- Test centers used for purposes other than credentialing/licensing examinations (Action: monitor and have OPES Integrated Examination Program Services representative conduct site visit annually)

**Examination Performance:**
- Passing rates (Action: monitor)
Information Available to Candidates:
- Third-party vendor advertising for study guide and test preparation materials on NBCC website (Action: consult with DCA Legal Division prior to becoming a jurisdiction)

Test Security:
- Ability of state board jurisdictions to review complete examinations (Action: monitor frequency of requests)
- Ability of candidates to review items appealed (Action: monitor frequency of requests and process)

Overall:
- Recognize ongoing review of examination program expectation (Action: establish policy for BBS and its qualified psychometric vendor to review specific types of data and specific time intervals consistent with protocols offered to other NBCC jurisdictions)

As a final recommendation, AMS requests that the BBS work with the OPES to determine if one or both of the NBCC examinations (i.e., NCE and NCMHCE) should be used in the licensure process for LPCCs practicing in California.

AMS appreciates the cooperation of representatives from both the BBS and the NBCC in conducting the assessment to ensure access to critical information.

The BBS should be recognized for its efforts to meet professional guidelines and technical standards outlined in Business and Professions Code Section 139 (Assembly Bill 1105, Chapter 67, Statutes of 1999).

The BBS appears to carry out the mission of the DCA by protecting consumers yet still recognizing the need to provide defensible hurdle to licensure while expanding the mental health workforce and supporting transportability.
References


Applied Measurement Professionals, Inc. *AMP computer-based testing services*. (Available at AMP, 18000 W. 105th Street, Olathe, KS 66061-7543).


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To: Board Members                                      Date:      May 4, 2011

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

Subject: Update on the Licensed Professional Clinical Counselor Gap Examination

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Kim Madsen, Executive Officer
Board of Behavioral Sciences
California Department of Consumer Affairs
1625 N Market Blvd., Suite S-200
Sacramento, CA 95834

Dear Ms. Madsen,

The purpose of this letter is to provide an update on the status of the development of the Gap examination for Licensed Clinical Professional Counselor. Attached is a public progress report that will be presented at the May 18-19, 2011 BBS board meeting in Sacramento.

Thank you,

William E. Donnoe, Ed.D.
Industrial Psychologist / President
Donnoe & Associates, Inc.
Background

The Board of Behavioral Sciences (BBS) contracted with Applied Measurement Services, LLC (AMS) to conduct an analysis of the “gap” between the professions of Marriage and Family Therapist (MFT) and Licensed Professional Clinical Counselor (LPCC), and Licensed Clinical Social Worker (LCSW) and LPCC. In April of 2010, AMS presented a progress report on this analysis to the BBS. Additionally, AMS presented a confidential report to the BBS in a closed session of the board. Collectively the AMS public report and confidential report to the BBS will be referred to as the GAP Analysis. This GAP Analysis was used as the foundation for development of the GAP exam by Donnoe & Associates, Inc.

Development of an Exam Content Outline for the GAP Exam

In December 2010, the BBS contracted Donnoe & Associates, Inc. (Donnoe) to develop the GAP exam for current Marriage and Family Therapists (MFTs) and Licensed Clinical Social Worker (LCSWs) who would “grandparent” to the newly created Licensed Professional Clinical Counselor (LPCC).

The first step in this contract was to develop an exam content outline from which the GAP examination could be developed. The methodology that was followed by Donnoe in development of the GAP exam outline is consistent with the Examination Validation Policy of the Department of Consumer Affairs, Office of Professional Examination Services (OPES), and relevant professional standards. This methodology included use of a panel of subject matter experts (SMEs) to review the GAP Analysis and identify tasks and knowledge related to the GAP, rate the tasks and knowledge, set and apply rating cutoffs to identify final exam content domain, and link tasks and knowledge that would be included in the exam content outline. This was completed and presented in a report to the BBS in January 2011.

The exam content outline includes a “common GAP” where both MFTs and LCSWs are similarly different than LPCC, and a GAP that is unique to MFT. That is, all areas where LCSWs are different than LPCC are common to MFTs; then MFTs also have a further GAP that is not shared with LCSW. This results in approximately a 75% overlap in exam content for MFT and LCSW (common GAP). This is explained in the Exam Plan report. This also results in a unique GAP exam for MFT and LCSW, with an approximate 75% overlap in items or content.

Development of the GAP Exam. With the exam content outline in place, the next step in the process was development of the GAP exam and recommendation for a passing score on this exam. This was completed in January 2011 and a report was presented to the BBS. The resultant GAP Exam for MFT includes 75 multiple choice test items; the
GAP Exam for LCSW also includes 75 multiple choice test items – 58 items that are common to both, and 17 items that are unique to each.

In the example shown below in Table 1, 20% of the GAP exam is addressed under the content domain “Fundamental Counseling Issues.” Within this, four “topics” are identified, three of which are common GAP and one that is MFT unique GAP. This results in overlap or common exam items, and unique items for MFT.

Table 1.

<table>
<thead>
<tr>
<th>Content Domain</th>
<th>LCSW GAP Weight</th>
<th>MFT GAP Weight</th>
<th>LCSW / Common GAP Number of Items by Topic</th>
<th>MFT Unique GAP Number of Items by Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. FUNDAMENTAL COUNSELING ISSUES (Common GAP, applicable to LCSW + MFT)</td>
<td>20%</td>
<td>16%</td>
<td>15</td>
<td>12</td>
</tr>
<tr>
<td>Using computer-based career information systems</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Using dynamics</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Writing clinical reports</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. FUNDAMENTAL COUNSELING ISSUES (GAP Topics Unique to MFT)</td>
<td>4%</td>
<td></td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Directing / conducting distance counseling</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(e.g., on-line, phone)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The exam development and pass point methodology included use of a panel of subject matter experts (SMEs) to develop, review and edit exam questions, link these to the exam content outline, and assemble the GAP exam. Then, SMEs established a criterion-based passing score recommendation for the GAP exam.

Next Steps

Donnoe will continue to work with OPES to implement the Gap exam. This will include working with the Board and OPES 1) transfer test materials to OPES in a format that is consistent with their needs for test administration, 2) develop candidate information materials, 3) ensure reliable scoring of the Gap exam, 4) evaluate Gap exam performance, 5) prepare updates for the Board, and 6) prepare a final report to the Board.
To: Board Members

From: Christina Kitamura
Administrative Analyst

Date: May 10, 2011

Telephone: (916) 574-7835

Subject: Discussion and Possible Legislative Action to Amend Chapter 16 of Division 2 of the Business and Professions Code Relating to National Examination of Licensed Professional Clinical Counselors

Materials for agenda item VIII will be provided in a supplemental package and will be posted on the website at that time.
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To: Board Members

From: Tracy Rhine
Assistant Executive Officer

Date: May 10, 2011

Subject: Amendments to Business and Professions Code Section 4999.54(a); extension of the LPCC grandparenting period.

Background
Senate Bill 788 (Wyland) Chapter 619, Statutes of 2009, established the Licensed Professional Clinical Counselor Act (Act) that required the Board of Behavioral Sciences (Board) to license and regulate Professional Clinical Counselors (LPCCs).

Pursuant to the Act, the Board was required to begin accepting application for licensure January 1, 2011. Specifically, Business and Professions Code (BPC) section 4999.54 requires the Board to accept applications during a grandparenting period from January 1, 2011 through June 30, 2011. After the expiration of the grandparenting period, applicants must meet the more rigorous requirements for LPCC licensure set forth in BPC Sections 4999.32 and 4999.33.

Issue
The Board has been unable to accept applications for registration or licensure, and continue to be unable to implement the program, due to pending regulations that allow the Board to accept the fees associated with the LPCC program. The rulemaking package is in process of review by the Office of Administrative Law and the decision to approve or reject the proposal must be rendered by May 27, 2011. If the regulations are approved, the Board will begin accepting applications as soon as possible.

Recommendation
In order to allow a six month period for individuals to apply under the grandparenting requirements, consistent with the intent of SB 788, staff has attached proposed legislative amendments to BPC 4999.54(a) that would allow the Board to accept grandparenting applications through December 31, 2011. If the Board determines it is necessary to extend the grandparenting period, direct staff to submit draft language to the legislature for Board sponsored legislation. In order to make this change effective before January 1, 2012, the proposed amendments would have to be included in an urgency measure.
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§4999.54. (a) Notwithstanding Section 4999.50, the board may issue a license to any person who submits an application for a license between January 1, 2011, and December 31, 2011, provided that all documentation is submitted within 12 months of the board's evaluation of the application, and provided he or she meets one of the following sets of criteria:

(1) He or she meets all of the following requirements:

(A) Has a master's or doctoral degree from a school, college, or university as specified in Section 4999.32, that is counseling or psychotherapy in content. If the person's degree does not include all the graduate coursework in all nine core content areas as required by paragraph (1) of subdivision (c) of Section 4999.32, a person shall provide documentation that he or she has completed the required coursework prior to licensure pursuant to this chapter. Except as specified in clause (ii), a qualifying degree must include the supervised practicum or field study experience as required in paragraph (3) of subdivision (c) of Section 4999.32.

(i) A counselor educator whose degree contains at least seven of the nine required core content areas shall be given credit for coursework not contained in the degree if the counselor educator provides documentation that he or she has taught the equivalent of the required core content areas in a graduate program in counseling or a related area.

(ii) Degrees issued prior to 1996 shall include a minimum of 30 semester units or 45 quarter units and at least six of the nine required core content areas specified in paragraph (1) of subdivision (c) of Section 4999.32 and three semester units or four and one-half quarter units of supervised practicum or field study experience. The total number of units shall be no less than 48 semester units or 72 quarter units.

(iii) Degrees issued in 1996 and after shall include a minimum of 48 semester units or 72 quarter units and at least seven of the nine core content areas specified in paragraph (1) of subdivision (c) of Section 4999.32.

(B) Has completed all of the coursework or training specified in subdivision (e) of Section 4999.32.

(C) Has at least two years, full-time or the equivalent, of postdegree counseling experience, that includes at least 1,700 hours of experience in a clinical setting supervised by a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, a licensed physician and surgeon specializing in psychiatry, or a master's level counselor or therapist who is certified by a national certifying or registering organization, including, but not limited to, the National Board for Certified Counselors or the Commission on Rehabilitation Counselor Certification.

(D) Has a passing score on the following examinations:

(i) The National Counselor Examination for Licensure and Certification or the Certified
Rehabilitation Counselor Examination.

(ii) The National Clinical Mental Health Counselor Examination.

(iii) A California jurisprudence and ethics examination, when developed by the board.

(2) Is currently licensed as a marriage and family therapist in the State of California, meets the coursework requirements described in subparagraph (A) of paragraph (1), and passes the examination described in subdivision (b).

(3) Is currently licensed as a clinical social worker in the State of California, meets the coursework requirements described in subparagraph (A) of paragraph (1), and passes the examination described in subdivision (b).

(b) (1) The board and the Office of Professional Examination Services shall jointly develop an examination on the differences, if any differences exist, between the following:

(A) The practice of professional clinical counseling and the practice of marriage and family therapy.

(B) The practice of professional clinical counseling and the practice of clinical social work.

(2) If the board, in consultation with the Office of Professional Examination Services, determines that an examination is necessary pursuant to this subdivision, an applicant described in paragraphs (2) and (3) of subdivision (a) shall pass the examination as a condition of licensure.

(c) Nothing in this section shall be construed to expand or constrict the scope of practice of professional clinical counseling, as defined in Section 4999.20.
To: Board Members

From: Tracy Rhine
Assistant Executive Officer

Subject: Supervision of LPCC During the Grandparenting Period

Date: May 10, 2011

Telephone: (916) 574-7847

Background
Senate Bill 788 (Wyland) Chapter 619, Statutes of 2009, established the Licensed Professional Clinical Counselor Act (Act) that required the Board of Behavioral Sciences (Board) to license and regulate Professional Clinical Counselors (LPCCs).

Business and Professions Code (BPC) section 4999.54 requires the Board to accept applications during a grandparenting period from January 1, 2011 through June 30, 2011. After the expiration of the grandparenting period, applicants must meet the more rigorous requirements for LPCC licensure set forth in BPC Sections 4999.32 and 4999.33.

Experience Requirements during Grandparenting Period
Experience requirements during the grandparenting period require "at least two years, full-time or the equivalent, of postdegree counseling experience, that includes at least 1,700 hours of experience in a clinical setting supervised by a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, a licensed physician and surgeon specializing in psychiatry or a master's level counselor or therapist who is certified by a national certifying or registering organization, including, but not limited to, the National Board for Certified Counselors or the Commission on Rehabilitation Counselor Certification [emphasis added]." The intent of the emphasized language was to allow experience hours earned in another state, under the supervision of a licensed professional counselor in that state, to be accepted toward the requirements for California licensure during the grandparenting period.

Issue
It has been brought to the attention of Board staff that the above cited language may exclude some licensed professional counselors providing supervision in other states because the licensee does not meet the requirement of being certified by a national certifying or registering organization, even though the individual is licensed by the state in which they independently practice psychotherapy.

While all states require professional counselors to take an examination that would qualify them for national certification, certification is not conferred upon completion of the examination; certification by the National Board for Certified Counselors or the Commission on Rehabilitation Counselor Certification requires
meeting education and experience requirements and applying for that specific certification. Certification is not required for licensure. Many practitioners, once licensed by the state in which they practice, do not pursue certification by a national organization, and therefore, many state licensed individuals providing supervision in other states will not meet the requirements of BPC section 4999.54, and some individuals with experience supervised by a professional clinical counselor will not be eligible for a license during the grandparenting period.

Recommendation
Conduct an open discussion regarding the supervision requirements for applicants seeking licensure during the grandparenting period. If the Board determines that LPCCs licensed in another jurisdiction are appropriate practitioners to supervise clinical experience, direct staff to submit legislative amendments for Board sponsored legislation. Because this change would need to become effective immediately, this proposal would have to be included in an urgency measure.

Attachments
A. State Licensure Usage of NCE and NCMHCE
B. Proposed amendments to BPC Section 4999.54
§4999.54. (a) Notwithstanding Section 4999.50, the board may issue a license to any person who submits an application for a license between January 1, 2011, and June 30, 2011, provided that all documentation is submitted within 12 months of the board’s evaluation of the application, and provided he or she meets one of the following sets of criteria:

(1) He or she meets all of the following requirements:

(A) Has a master's or doctoral degree from a school, college, or university as specified in Section 4999.32, that is counseling or psychotherapy in content. If the person’s degree does not include all the graduate coursework in all nine core content areas as required by paragraph (1) of subdivision (c) of Section 4999.32, a person shall provide documentation that he or she has completed the required coursework prior to licensure pursuant to this chapter. Except as specified in clause (ii), a qualifying degree must include the supervised practicum or field study experience as required in paragraph (3) of subdivision (c) of Section 4999.32.

(i) A counselor educator whose degree contains at least seven of the nine required core content areas shall be given credit for coursework not contained in the degree if the counselor educator provides documentation that he or she has taught the equivalent of the required core content areas in a graduate program in counseling or a related area.

(ii) Degrees issued prior to 1996 shall include a minimum of 30 semester units or 45 quarter units and at least six of the nine required core content areas specified in paragraph (1) of subdivision (c) of Section 4999.32 and three semester units or four and one-half quarter units of supervised practicum or field study experience. The total number of units shall be no less than 48 semester units or 72 quarter units.

(iii) Degrees issued in 1996 and after shall include a minimum of 48 semester units or 72 quarter units and at least seven of the nine core content areas specified in paragraph (1) of subdivision (c) of Section 4999.32.

(B) Has completed all of the coursework or training specified in subdivision (e) of Section 4999.32.

(C) Has at least two years, full-time or the equivalent, of postdegree counseling experience, that includes at least 1,700 hours of experience in a clinical setting supervised by a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, a licensed physician and surgeon specializing in psychiatry, a professional counselor licensed in another jurisdiction, or a master's level counselor or therapist who is certified by a national certifying or registering organization, including, but not limited to, the National Board for Certified Counselors or the Commission on Rehabilitation Counselor Certification.

(D) Has a passing score on the following examinations:
(i) The National Counselor Examination for Licensure and Certification or the Certified Rehabilitation Counselor Examination.

(ii) The National Clinical Mental Health Counselor Examination.

(iii) A California jurisprudence and ethics examination, when developed by the board.

(2) Is currently licensed as a marriage and family therapist in the State of California, meets the coursework requirements described in subparagraph (A) of paragraph (1), and passes the examination described in subdivision (b).

(3) Is currently licensed as a clinical social worker in the State of California, meets the coursework requirements described in subparagraph (A) of paragraph (1), and passes the examination described in subdivision (b).

(b) (1) The board and the Office of Professional Examination Services shall jointly develop an examination on the differences, if any differences exist, between the following:

(A) The practice of professional clinical counseling and the practice of marriage and family therapy.

(B) The practice of professional clinical counseling and the practice of clinical social work.

(2) If the board, in consultation with the Office of Professional Examination Services, determines that an examination is necessary pursuant to this subdivision, an applicant described in paragraphs (2) and (3) of subdivision (a) shall pass the examination as a condition of licensure.

(c) Nothing in this section shall be construed to expand or constrict the scope of practice of professional clinical counseling, as defined in Section 4999.20.
Presently twenty (20) states, the District of Columbia, and Puerto Rico use the NCE® exclusively, while seven (7) states use the NCMHCE exclusively. A total of twenty two states use a combination of the NCE® and NCMHCE. Some of these states allow the candidates to choose the exam they will take (10); others may require the candidate to take both (2) and still others have two levels of licensure and require the candidate to take the NCE® or the NCMHCE, depending on the licensure they apply for (10).
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To: Board Members

From: Rosanne Helms
Legislative Analyst

Subject: Proposed Exam Re-Structure for LPCC License and MFT Intent Language

Date: May 10, 2011
Telephone: (916) 574-7897

The Board of Behavioral Sciences (Board) is currently sponsoring SB 704 (Negrete McLeod), which seeks to re-structure the examination process for applicants seeking Marriage and Family Therapist (MFT) and Clinical Social Worker (LCSW) licensure on or after January 1, 2013. The major components of the exam re-structure are highlighted below.

Exam Overview

Effective January 1, 2013, applicants for MFT and LCSW licensure shall pass two exams: a California law and ethics examination (law and ethics exam) and a clinical examination (clinical exam). These new exams replace the standard written and the clinical vignette exams currently in place.

Law and Ethics Exam

- A new registrant with the Board would be required to take the law and ethics exam. This exam must be taken within the first year of registration with the Board.

- If the law and ethics exam is not passed within the first renewal period, the registrant must complete a 12 hour law and ethics course in order to be eligible to take the exam in the next renewal cycle. The exam must be re-taken in each renewal cycle until passed. In addition, in each year the exam is not passed, the 12 hour law and ethics course must be taken to establish examination eligibility.

- According to current law, a registration cannot be renewed after six years. If a registrant’s registration expires, he or she must pass the law and ethics exam in order to obtain a subsequent registration number.

Clinical Exam

- Once a registrant has completed all supervised work experience, completed all education requirements, and passed the law and ethics exam, he or she may take the clinical exam. This exam must be passed within seven years of an individual’s first attempt. If it is not passed within this timeframe, the individual’s eligibility to further attempt the exam is placed on hold. He
or she must then pass the current version of the law and ethics exam before re-establishing eligibility to take the clinical exam.

**Restructure for LPCCs**

As written, SB 704 does not seek to re-structure the examination process for applicants seeking a professional clinical counselor (LPCC) license. In order to maintain consistency and to afford LPCCs with the same consumer protection measures as the Board’s other licenses, staff recommends the Board consider adopting the proposed examination restructure for LPCC applicants as well.

**Intent Language - National Examination for MFTs**

SB 704 contains language stating that it is the intent of the Legislature for the Board to evaluate the national licensing exam used to license clinical social workers. If the Board finds that this examination meets the prevailing standards for validation and use of the licensing and certification tests in California, the Board may establish by regulation that this examination is to be used as the clinical examination.

Currently SB 704 contains no similar language for MFTs, although the Board intends to evaluate the national licensing exam for MFTs. Staff recommends that the Board consider adopting similar intent language for the national MFT examination.

**Recommendation**

Direct staff to sponsor legislation to implement the proposed changes and to make any non-substantive changes to the draft language if needed.

**Attachments**

Attached is a general language framework for submission to Legislative Counsel so that they may begin drafting the proposed amendments.

A copy of SB 704 is also attached for reference.
ADD BPC §4999.53. EXAMINATION PROCESS (FOR CLINICAL COUNSELOR INTERNS ON OR AFTER JANUARY 1, 2013)

(a) Effective January 1, 2013, clinical counselor interns applying for licensure shall pass two examinations as prescribed by the Board
   1. A California law and ethics examination; and
   2. A clinical examination administered by the Board, or the National Clinical Mental Health Counselor Examination if the Board finds that this examination meets the prevailing standards for validation and use of the licensing and certification tests in California.

(b) Upon registration with the Board, a professional clinical counselor intern shall, within the first year of registration, take an examination on California law and ethics.

(c) A registrant may only take the clinical examination or the National Clinical Mental Health Counselor Examination, as established by the Board through regulation, upon meeting all of the following requirements:
   a. Completion of all required supervised work experience;
   b. Completion of all education requirements;
   c. Passage of the California law and ethics examination.

(d) The provisions of this section shall become effective on January 1, 2013.

ADD BPC §4999.55 REEXAMINATION: LAW AND ETHICS EXAM

(a) An applicant and registrant shall obtain a passing score on a board administered law and ethics examination in order to qualify for licensure.

(b) A registrant shall participate in a board administered law and ethics examination prior to his or her registration renewal.

(c) If an applicant fails the California law and ethics exam, he or she may re-take the examination, upon payment of the required fees, without further application except for as provided in subdivision (d).

(d) If a registrant fails to obtain a passing score on the law and ethics examination described in subdivision (a) within his or her first renewal period on or after the operative date of this section, he or she shall complete, at minimum, a twelve (12) hour course in California law and ethics in order to be eligible to participate in the California law and ethics examination. Registrants shall only take the twelve hour California law and ethics course once during a renewal period. The twelve (12) hour law and ethics course required by this section shall be taken through a Board-approved continuing education provider, a county, state or governmental entity, or a college or university.
The board shall not issue a subsequent registration number unless the registrant has passed the California law and ethics examination.

The provisions of this section shall become operative January 1, 2013.

AMEND BPC §4999.45. INTERN EMPLOYMENT; DUTIES, RESPONSIBILITIES AND LIMITATIONS

An intern employed under this chapter shall:

(a) Not perform any duties, except for those services provided as a clinical counselor trainee, until registered as an intern.

(b) Not be employed or volunteer in a private practice until registered as an intern.

(c) Inform each client prior to performing any professional services that he or she is unlicensed and under supervision.

(d) File for renewal annually for a maximum of five years after initial registration with the board.

(e) Cease continued employment as an intern after six years unless the requirements of subdivision (f) are met.

(f) When no further renewals are possible, an applicant may apply for and obtain a new intern registration if the applicant meets the educational requirements for registration in effect at the time of the application for a new intern registration. An applicant issued a subsequent intern registration pursuant to this subdivision may be employed or volunteer in any allowable work setting except private practice.

(g) The provisions of this section shall become inoperative on December 31, 2012.

ADD BPC §4999.45. INTERN EMPLOYMENT; DUTIES, RESPONSIBILITIES AND LIMITATIONS

An intern employed under this chapter shall:

(a) Not perform any duties, except for those services provided as a clinical counselor trainee, until registered as an intern.

(b) Not be employed or volunteer in a private practice until registered as an intern.

(c) Inform each client prior to performing any professional services that he or she is unlicensed and under supervision.

(d) File for renewal annually for a maximum of five years after initial registration with the board.
(e) Cease continued employment as an intern after six years unless the requirements of subdivision (f) are met.

(f) When no further renewals are possible, an applicant may apply for and obtain a new intern registration if the applicant meets the educational requirements for registration in effect at the time of the application for a new intern registration and has passed the California law and ethics examination described in Section 4999.53. An applicant issued a subsequent intern registration pursuant to this subdivision may be employed or volunteer in any allowable work setting except private practice.

(g) The provisions of this section shall become operative on January 1, 2013.

AMEND BPC §4999.46. SUPERVISED EXPERIENCE REQUIREMENTS; QUALIFICATION FOR LICENSURE EXAMINATION

(a) To qualify for the licensure examinations specified by subsection (c) of section 4999.52, applicants shall complete clinical mental health experience under the general supervision of an approved supervisor as defined in Section 4999.12.

(b) The experience shall include a minimum of 3,000 postdegree hours of supervised clinical mental health experience related to the practice of professional clinical counseling, performed over a period of not less than two years (104 weeks) which shall include:

1. Not more than 40 hours in any seven consecutive days.
2. Not less than 1,750 hours of direct counseling with individuals or groups in a setting described in Section 4999.44 using a variety of psychotherapeutic techniques and recognized counseling interventions within the scope of practice of licensed professional clinical counselors.
3. Not more than 500 hours of experience providing group therapy or group counseling.
4. Not more than 250 hours of experience providing counseling or crisis counseling on the telephone.
5. Not less than 150 hours of clinical experience in a hospital or community mental health setting.
6. Not more than a combined total of 1,250 hours of experience in the following related activities:
   (A) Direct supervisor contact.
   (B) Client centered advocacy.
   (C) Not more than 250 hours of experience administering tests and evaluating psychological tests of clients, writing clinical reports, writing progress notes, or writing process notes.
(D) Not more than 250 hours of verified attendance at workshops, training sessions, or conferences directly related to professional clinical counseling that are approved by the applicant's supervisor.

(c) No hours of clinical mental health experience may be gained more than six years prior to the date the application for examination eligibility was filed.

(d) An applicant shall register with the board as an intern in order to be credited for postdegree hours of experience toward licensure. Postdegree hours of experience shall be credited toward licensure, provided that the applicant applies for intern registration within 90 days of the granting of the qualifying degree and is registered as an intern by the board.

(e) All applicants and interns 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 professional clinical counseling.

(f) Experience obtained under the supervision of a spouse or relative by blood or marriage shall not be credited toward the required hours of supervised experience. Experience obtained under the supervision of a supervisor with whom the applicant has had or currently has a personal, professional, or business relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.

(g) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting.

   (1) No more than five hours of supervision, whether individual or group, shall be credited during any single week.

   (2) An intern shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy is performed in each setting in which experience is gained.

   (3) For purposes of this section, "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons in segments lasting no less than one continuous hour.

   (4) 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.

(h) This section shall become inoperative on December 31, 2012.

ADD BPC §4999.46. SUPERVISED EXPERIENCE REQUIREMENTS; QUALIFICATION FOR LICENSURE EXAMINATION
(a) To qualify for the licensure examination specified by subdivision (a) paragraph (2) of Section 4999.53, applicants shall complete clinical mental health experience under the general supervision of an approved supervisor as defined in Section 4999.12.

(b) The experience shall include a minimum of 3,000 postdegree hours of supervised clinical mental health experience related to the practice of professional clinical counseling, performed over a period of not less than two years (104 weeks) which shall include:

(1) Not more than 40 hours in any seven consecutive days.

(2) Not less than 1,750 hours of direct counseling with individuals or groups in a setting described in Section 4999.44 using a variety of psychotherapeutic techniques and recognized counseling interventions within the scope of practice of licensed professional clinical counselors.

(3) Not more than 500 hours of experience providing group therapy or group counseling.

(4) Not more than 250 hours of experience providing counseling or crisis counseling on the telephone.

(5) Not less than 150 hours of clinical experience in a hospital or community mental health setting.

(6) Not more than a combined total of 1,250 hours of experience in the following related activities:

(A) Direct supervisor contact.

(B) Client centered advocacy.

(C) Not more than 250 hours of experience administering tests and evaluating psychological tests of clients, writing clinical reports, writing progress notes, or writing process notes.

(D) Not more than 250 hours of verified attendance at workshops, training sessions, or conferences directly related to professional clinical counseling that are approved by the applicant's supervisor.

(c) No hours of clinical mental health experience may be gained more than six years prior to the date the application for examination eligibility was filed.

(d) An applicant shall register with the board as an intern in order to be credited for postdegree hours of experience toward licensure. Postdegree hours of experience shall be credited toward licensure, provided that the applicant applies for intern registration within 90 days of the granting of the qualifying degree and is registered as an intern by the board.

(e) All applicants and interns 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 professional clinical counseling.

(f) Experience obtained under the supervision of a spouse or relative by blood or marriage shall not be credited toward the required hours of supervised experience. Experience obtained under the supervision of a supervisor with whom the applicant has had or currently has a personal, professional, or business relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.

(g) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting.

(1) No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(2) An intern shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy is performed in each setting in which experience is gained.

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons in segments lasting no less than one continuous hour.

(4) 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.

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

AMEND BPC §4999.50. ISSUANCE OF LICENSE; REQUIREMENTS
(a) The board may issue a professional clinical counselor license to any person who meets all of the following requirements:

(1) He or she has received a master's or doctoral degree described in Section 4999.32 or 4999.33, as applicable.

(2) He or she has completed at least 3,000 hours of supervised experience in the practice of professional clinical counseling as provided in Section 4999.46.

(3) He or she provides evidence of a passing score, as determined by the board, on examinations designated by the board pursuant to Section 4999.52.
(b) An applicant who has satisfied the requirements of this chapter shall be issued a license as a professional clinical counselor in the form that the board may deem appropriate.

(c) The board shall begin accepting applications for examination eligibility on January 1, 2012.

(d) The provisions of this section shall become inoperative on December 31, 2012.

ADD BPC §4999.50. ISSUANCE OF LICENSE; REQUIREMENTS
(a) The board may issue a professional clinical counselor license to any person who meets all of the following requirements:

(1) He or she has received a master's or doctoral degree described in Section 4999.32 or 4999.33, as applicable.

(2) He or she has completed at least 3,000 hours of supervised experience in the practice of professional clinical counseling as provided in Section 4999.46.

(3) He or she provides evidence of a passing score, as determined by the board, on the examinations designated in Section 4999.53.

(b) An applicant who has satisfied the requirements of this chapter shall be issued a license as a professional clinical counselor in the form that the board may deem appropriate.

(c) The provisions of this section shall become operative on January 1, 2013.

AMEND BPC §4999.52. EXAMINATION; BOARD DETERMINATION; EXAMINATION ADMISSION DENIAL
(a) Except as provided in Sections 4999.54 and 4999.56, every applicant for a license as a professional clinical counselor shall be examined by the board. The board shall examine the candidate with regard to his or her knowledge and professional skills and his or her judgment in the utilization of appropriate techniques and methods.

(b) The examinations shall be given at least twice a year at a time and place and under supervision as the board may determine.

(c) (1) It is the intent of the Legislature that national licensing examinations, such as the National Counselor Examination for Licensure and Certification (NCE) and the National Clinical Mental Health Counselor Examination (NCMHCE), be evaluated by the board as requirements for licensure as a professional clinical counselor.

(2) The board shall evaluate various national examinations in order to determine whether they meet the prevailing standards for the validation and use of licensing and certification tests in California.

(3) The Department of Consumer Affairs' Office of Professional Examination Services shall review the occupational analysis that was used for developing the national...
examinations in order to determine if it adequately describes the licensing group and adequately determines the tasks, knowledge, skills, and abilities the licensed professional clinical counselor would need to perform the functions under this chapter.

(4) Examinations shall measure knowledge and abilities demonstrably important to the safe, effective practice of the profession.

(5) If national examinations do not meet the standards specified in paragraph (2), the board may require a passing score on either of the following:
   (A) The national examinations plus one or more board-developed examinations.
   (B) One or more board-developed examinations.

(6) The licensing examinations shall also incorporate a California jurisprudence and ethics examination element that is acceptable to the board, or, as an alternative, the board may develop a separate California jurisprudence and ethics examination.

(d) The board shall not deny any applicant who has submitted a complete application for examination admission to the licensure examinations required by this section if the applicant meets the educational and experience requirements of this chapter, and has not committed any acts or engaged in any conduct that would constitute grounds to deny licensure.

(e) The board shall not deny any applicant whose application for licensure is complete admission to the examinations, nor shall the board postpone or delay any applicant's examinations or delay informing the candidate of the results of the examinations, solely upon the receipt by the board of a complaint alleging acts or conduct that would constitute grounds to deny licensure.

(f) If an applicant for 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 examinations, but may notify the applicant that licensure will not be granted pending completion of the investigation.

(g) Notwithstanding Section 135, the board may deny any applicant who has previously failed an examination permission to retake that examination pending completion of the investigation of any complaints against the applicant.

(h) 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, respectively, or the application has been denied in accordance with subdivision (b) of Section 485.

(i) Notwithstanding any other provision of law, the board may destroy all examination materials two years following the date of an examination.

(j) The provisions of this section shall become inoperative on December 31, 2012.
ADD BPC §4999.52. EXAMINATION; BOARD DETERMINATION; EXAMINATION ADMISSION DENIAL

(a) Except as provided in Sections 4999.54 and 4999.56, every applicant for a license as a professional clinical counselor shall be examined by the board. The board shall examine the candidate with regard to his or her knowledge and professional skills and his or her judgment in the utilization of appropriate techniques and methods.

(b) The examinations shall be given at least twice a year at a time and place and under supervision as the board may determine.

(c) The board shall not deny any applicant who has submitted a complete application for examination admission to the licensure examinations required by this section if the applicant meets the educational and experience requirements of this chapter, and has not committed any acts or engaged in any conduct that would constitute grounds to deny licensure.

(d) The board shall not deny any applicant whose application for licensure is complete admission to the examinations specified by subdivision (a) paragraph (2) of Section 4999.53, nor shall the board postpone or delay this examination for any applicant or delay informing the candidate of the results of this 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 the examination specified by subdivision (a) paragraph (2) of Section 4999.53, who has passed the California law and ethics 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 this examination, but may 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 California law and ethics examination, or the examination specified by subdivision (a) paragraph (2) of Section 4999.53, permission to retake either examination pending completion of the investigation of any complaints against the applicant.

(g) 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, respectively, or the application has been denied in accordance with subdivision (b) of Section 485.

(h) Notwithstanding any other provision of law, the board may destroy all examination materials two years following the date of an examination.

(i) Effective January 1, 2013, the examination specified by subdivision (a) paragraph (2) of Section 4999.53, shall be passed within seven years of an applicant’s initial attempt.

(j) No applicant shall be eligible to participate in the examination specified by subdivision (a) paragraph (2) of Section 4999.53, if he or she fails to obtain a passing score on this examination within seven years from his or her initial attempt. If the applicant fails to obtain a passing score within seven years of initial attempt, he or she shall obtain a passing score on the current
version of the California law and ethics examination in order to be eligible to retake this examination.

(k) The provisions of this section shall become operative on January 1, 2013.

AMEND BPC §4999.100. EXPIRATION OF INTERN REGISTRATION; RENEWAL OF UNEXPIRED REGISTRATION

(a) An intern registration shall expire one year from the last day of the month in which it was issued.

(b) To renew a registration, the registrant shall, on or before the expiration date of the registration, do the following:

(1) Apply for a renewal on a form prescribed by the board.
(2) Pay a renewal fee prescribed by the board.
(3) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the registrant's last renewal.

(c) This section shall become inoperative on December 31, 2012.

ADD BPC §4999.100. EXPIRATION OF INTERN REGISTRATION; RENEWAL OF UNEXPIRED REGISTRATION

(a) An intern registration shall expire one year from the last day of the month in which it was issued.

(b) To renew a registration, the registrant shall, on or before the expiration date of the registration, do the following:

(1) Apply for a renewal on a form prescribed by the board.
(2) Pay a renewal fee prescribed by the board.
(3) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the registrant's last renewal.
(4) Participate in the California law and ethics examination pursuant to Section 4999.53 each year until successful completion of this examination.
(c) The registration may be renewed a maximum of five times. No registration shall be renewed or reinstated beyond six years from the last day of the month during which it was issued, regardless of whether it has been revoked. When no further renewals are possible, an applicant may apply for and obtain a new intern registration if the applicant meets the educational requirements for registration in effect at the time of the application for a new intern registration and has passed the California law and ethics examination described in Section 4999.53. An applicant who is issued a subsequent intern registration pursuant to this subdivision may be employed or volunteer in any allowable work setting except private practice.

(d) The provisions of this section shall become operative on January 1, 2013.

AMEND BPC §4999.120. FEES
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 board administered clinical examination, if the board chooses to adopt this examination in regulations, shall be up to two hundred fifty dollars ($250).
(e) The fee for the jurisprudence law and ethics examination required by Section 4999.54 shall be up to one hundred fifty dollars ($150).
(f) The fee for the examination described in subdivision (b) of Section 4999.54 shall be up to one hundred dollars ($100).
(g) The fee for the written examination 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).
ADD BPC §4999.63 TIME LIMIT FOR EXAMINATION RESULTS

(a) For applicants who submit an application for a license on or before December 31, 2012, a valid passing score on the examination referenced in subsection (c) of section 4999.52 must have been obtained less than seven years prior to the application date.

(b) For applicants who submit an application for a license on January 1, 2013 or thereafter, a valid passing score on the examination referenced in paragraph (2) of subdivision (a) of section 4999.53 must have been obtained less than seven years prior to the application date.

ADD BPC §4999.64. REEXAMINATION: CLINICAL EXAMINATION; NEW APPLICATION REQUIREMENT
Effective January 1, 2013, an applicant who fails the examination specified by subdivision (a) paragraph (2) of Section 4999.53 may within one year from the notification date of that failure, retake the examination as regularly scheduled without further application upon payment of the fee for the examination. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all requirements in effect on the date of application, and pays all required fees. The provisions of this section shall become operative on January 1, 2013.
This proposed amendment would be placed in an uncodified section at the beginning of the bill:

*It is the intent of the Legislature that the Board of Behavioral Sciences expedite its efforts to evaluate the Examination in Marital and Family Therapy administered by the Association of Marital and Family Therapy Regulatory Board as a requirement for licensure as a marriage and family therapist and establish by regulation that this examination is to be used as the clinical examination, if the board finds that this examination meets the prevailing standards for validation and use of licensing and certification tests in California.*
An act to amend Section 4996.28 of, to amend, add, and repeal Sections 4992.1, 4996.1, 4996.3, and 4996.4 of, to amend, repeal, and add Sections 4980.40, 4980.50, 4984.01, 4984.7, and 4984.72 of, and to add Sections 4980.397, 4980.398, 4980.399, 4992.05, 4992.07, and 4992.09 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL’S DIGEST

SB 704, as introduced, Negrete McLeod. Healing arts: licensees: Board of Behavioral Sciences.

Existing law provides for the licensure and regulation of marriage and family therapists and marriage and family therapist interns by the Board of Behavioral Sciences. Existing law requires the issuance of a license to practice marriage and family therapy to qualified applicants who pass a board-administered written or oral examination or, under specified circumstances, a clinical vignette written examination. Existing law also provides for the licensure and regulation of social workers by the Board of Behavioral Sciences. Existing law requires each applicant to be examined by the board and, on and after January 1, 2014, upon a specified determination by the board, requires the issuance of a license to each applicant or registrant meeting specified requirements who successfully passes the Association of Social Work Boards Clinical Level Examination administered by the Association of Social Work Boards and a separate California jurisprudence and ethics examination incorporated or developed and administered by the board.

This bill would repeal those provisions that would have become operative on January 1, 2014. The bill would instead, for the practice areas of marriage and family therapy and social work, revise and recast
provisions related to examinations to require, on and after January 1, 2013, the passage of specified clinical examinations and a California law and ethics examination, subject to specified fees. The bill would require applicants for licensure to retake the law and ethics examination under certain circumstances. The bill would, on and after January 1, 2013, require marriage and family therapist interns and associate clinical social workers to take the law and ethics examination, subject to specified fees. The bill would authorize the board to adopt the Association of Social Work Boards Clinical Level Examination as the clinical examination for social workers, upon a specified determination.


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

SECTION 1. Section 4980.397 is added to the Business and Professions Code, to read:

4980.397. (a) Effective January 1, 2013, an applicant for licensure as a marriage and family therapist shall pass the following two examinations as prescribed by the board:

(1) A California law and ethics examination.

(2) A clinical examination.

(b) Upon registration with the board, a marriage and family therapist intern shall, within the first year of registration, take an examination on California law and ethics.

(c) A registrant may take the clinical examination only upon meeting all of the following requirements:

(1) Completion of all required supervised work experience.

(2) Completion of all education requirements.

(3) Passage of the California law and ethics examination.

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

SEC. 2. Section 4980.398 is added to the Business and Professions Code, to read:

4980.398. (a) Each applicant who had previously taken and passed the standard written examination shall also obtain a passing score on the clinical examination in order to be eligible for licensure.

(b) An applicant who had previously failed to obtain a passing score on the standard written examination shall obtain a passing
score on the California law and ethics examination and the clinical
examination.
(c) An applicant who had previously failed to obtain a passing
score on the clinical vignette examination shall obtain a passing
score on the clinical examination.
(d) An applicant who had obtained eligibility for the standard
written examination shall take the California law and ethics
examination and the clinical examination.
(e) This section shall become operative on January 1, 2013.
SEC. 3. Section 4980.399 is added to the Business and
Professions Code, to read:
4980.399. (a) Each applicant and registrant shall obtain a
passing score on a board-administered California law and ethics
examination in order to qualify for licensure.
(b) A registrant shall participate in a board-administered
California law and ethics examination prior to his or her registration
renewal.
(c) If an applicant fails the California law and ethics
examination, he or she may retake the examination, upon payment
of the required fees, without further application except as provided
in subdivision (d).
(d) If a registrant fails to obtain a passing score on the California
law and ethics examination described in subdivision (a) within his
or her first renewal period on or after the operative date of this
section, he or she shall complete, at a minimum, a 12-hour course
in California law and ethics in order to be eligible to participate
in the California law and ethics examination. Registrants shall only
take the 12-hour California law and ethics course once during a
renewal period. The 12-hour law and ethics course required by the
section shall be taken through a board-approved continuing
education provider, a county, state or governmental entity, or a
college or university.
(e) The board shall not issue a subsequent registration number
unless the registrant has passed the California law and ethics
examination.
(f) This section shall become operative on January 1, 2013.
SEC. 4. Section 4980.40 of the Business and Professions Code
is amended to read:
4980.40. To qualify for a license, an applicant shall have all
of the following qualifications:
(a) Meet the educational requirements of Section 4980.36 or both Sections 4980.37 and 4980.41, as applicable.

(b) Be at least 18 years of age.

(c) Have at least two years of experience that meet the requirements of Section 4980.43.

(d) Pass a board administered written or oral examination or both types of examinations, except that an applicant who passed a written examination and who has not taken and passed an oral examination shall instead be required to take and pass a clinical vignette written examination.

(e) Not have committed acts or crimes constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(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. 5. Section 4980.40 is added to the Business and Professions Code, to read:

4980.40. To qualify for a license, an applicant shall have all the following qualifications:

(a) Meet the educational requirements of Section 4980.36 or both Sections 4980.37 and 4980.41, as applicable.

(b) Be at least 18 years of age.

(c) Have at least two years of experience that meet the requirements of Section 4980.43.

(d) Effective January 1, 2013, successfully pass a California law and ethics examination and a clinical examination. An applicant who has successfully passed a previously administered written examination may be subsequently required to take and pass another written examination.

(e) Not have committed acts or crimes constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register.
pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

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

SEC. 6. Section 4980.50 of the Business and Professions Code is amended to read:

4980.50. (a) Every applicant who meets the educational and experience requirements and applies for a license as a marriage and family therapist shall be examined by the board. The examinations shall be as set forth in subdivision (d) of Section 4980.40. The examinations shall be given at least twice a year at a time and place and under supervision as the board may determine. The board shall examine the candidate with regard to his or her knowledge and professional skills and his or her judgment in the utilization of appropriate techniques and methods.

(b) The board shall not deny any applicant, who has submitted a complete application for examination, admission to the licensure examinations required by this section if the applicant meets the educational and experience requirements of this chapter, and has not committed any acts or engaged in any conduct that would constitute grounds to deny licensure.

(c) 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.

(d) 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.

(e) 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 complaints 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 Sections 11503 and
11504 of the Government Code, respectively, or the applicant has
been denied in accordance with subdivision (b) of Section 485.
(f) Notwithstanding any other provision of law, the board may
destroy all examination materials two years following the date of
an examination.
(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) An applicant who has qualified pursuant to this chapter shall
be issued a license as a marriage and family therapist in the form
that the board may deem appropriate.
(i) 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. 7. Section 4980.50 is added to the Business and
Professions Code, to read:
4980.50. Effective January 1, 2013, the following shall apply:
(a) Every applicant who meets the educational and experience
requirements and applies for a license as a marriage and family
therapist shall be examined by the board. The examinations shall
be as set forth in subdivision (d) of Section 4980.40. The
examinations shall be given at least twice a year at a time and place
and under supervision as the board may determine. The board shall
examine the candidate with regard to his or her knowledge and
professional skills and his or her judgment in the utilization of
appropriate techniques and methods.
(b) The board shall not deny any applicant, who has submitted
a complete application for examination, admission to the licensure
examinations required by this section if the applicant meets the
educational and experience requirements of this chapter, and has
not committed any acts or engaged in any conduct that would
constitute grounds to deny licensure.
(c) The board shall not deny any applicant, whose application
for licensure is complete, admission to the clinical examination,
or shall the board postpone or delay any applicant’s clinical
examination or delay informing the candidate of the results of the clinical examination, solely upon the receipt by the board of a complaint alleging acts or conduct that would constitute grounds to deny licensure.

(d) If an applicant for examination who has passed the California law and ethics 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 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.

(e) Notwithstanding Section 135, the board may deny any applicant who has previously failed either the California law and ethics examination or the clinical examination permission to retake either examination pending completion of the investigation of any complaints 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 Sections 11503 and 11504 of the Government Code, respectively, or the applicant has been denied in accordance with subdivision (b) of Section 485.

(f) Notwithstanding any other provision of law, the board may destroy all examination materials two years following the date of an examination.

(g) Effective January 1, 2013, no applicant shall be eligible to participate in the clinical examination if he or she fails to obtain a passing score on the clinical examination within seven years from his or her initial attempt, unless he or she takes and obtains a passing score on the current version of the California law and ethics examination.

(h) An applicant who has qualified pursuant to this chapter shall be issued a license as a marriage and family therapist in the form that the board may deem appropriate.

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

SEC. 8. Section 4984.01 of the Business and Professions Code is amended to read:
4984.01. (a) The marriage and family therapist intern registration shall expire one year from the last day of the month in which it was issued.
(b) To renew the registration, the registrant shall, on or before the expiration date of the registration, complete all of the following actions:
   (1) Apply for renewal on a form prescribed by the board.
   (2) Pay a renewal fee prescribed by the board.
   (3) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, and whether any disciplinary action has been taken against him or her by a regulatory or licensing board in this or any other state subsequent to the last renewal of the registration.
(c) The registration may be renewed a maximum of five times. No registration shall be renewed or reinstated beyond six years from the last day of the month during which it was issued, regardless of whether it has been revoked. When no further renewals are possible, an applicant may apply for and obtain a new intern registration if the applicant meets the educational requirements for registration in effect at the time of the application for a new intern registration. An applicant who is issued a subsequent intern registration pursuant to this subdivision may be employed or volunteer in any allowable work setting except private practice.
(d) 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. 9. Section 4984.01 is added to the Business and Professions Code, to read:
4984.01. (a) The marriage and family therapist intern registration shall expire one year from the last day of the month in which it was issued.
(b) To renew the registration, the registrant shall, on or before the expiration date of the registration, complete all of the following actions:
   (1) Apply for renewal on a form prescribed by the board.
   (2) Pay a renewal fee prescribed by the board.
   (3) Participate in the California law and ethics examination pursuant to Section 4980.399 each year until successful completion of this examination.
(4) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, and whether any disciplinary action has been taken against him or her by a regulatory or licensing board in this or any other state subsequent to the last renewal of the registration.

(c) The registration may be renewed a maximum of five times. No registration shall be renewed or reinstated beyond six years from the last day of the month during which it was issued, regardless of whether it has been revoked. When no further renewals are possible, an applicant may apply for and obtain a new intern registration if the applicant meets the educational requirements for registration in effect at the time of the application for a new intern registration and has passed the California law and ethics examination described in Section 4980.399. An applicant who is issued a subsequent intern registration pursuant to this subdivision may be employed or volunteer in any allowable work setting except private practice.

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

SEC. 10. 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.

(c) 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. 11. Section 4984.7 is added to the Business and Professions Code, 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 clinical examination shall be one hundred dollars ($100). The fee for the California law and ethics 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.

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

SEC. 12. Section 4984.72 of the Business and Professions Code is amended to read:

4984.72. (a) An applicant who fails a standard or clinical vignette written examination may, within one year from the notification date of that failure, retake the examination as regularly scheduled without further application upon payment of the fee for the examination. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all requirements in effect on the date of application, and pays all required fees.

(b) 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. 13. Section 4984.72 is added to the Business and Professions Code, to read:

4984.72. (a) Effective January 1, 2013, an applicant who fails the clinical examination may, within one year from the notification date of that failure, retake the examination as regularly scheduled without further application upon payment of the fee for the examination. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all requirements in effect on the date of application, and pays all required fees.

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

SEC. 14. Section 4992.05 is added to the Business and Professions Code, to read:

4992.05. (a) Effective January 1, 2013, an applicant for licensure as a clinical social worker shall pass the following two examinations as prescribed by the board:

(1) A California law and ethics examination.

(2) A clinical examination.

(b) Upon registration with the board, an associate social worker registrant shall, within the first year of registration, take an examination on California law and ethics.

(c) A registrant may take the clinical examination only upon meeting all of the following requirements:

(1) Completion of all education requirements.

(2) Passage of the California law and ethics examination.

(3) Completion of all required supervised work experience.

(d) It is the intent of the Legislature that the national licensing examination, the Association of Social Work Boards Clinical Level Examination administered by the Association of Social Work Boards, be evaluated by the board as a requirement for licensure as a clinical social worker. If the board finds that this examination meets the prevailing standards for validation and use of the licensing and certification tests in California, the board may establish by regulation that this examination is to be used as the clinical examination.

(e) This section shall become operative on January 1, 2013.
4992.07. (a) An applicant who had previously taken and passed
the standard written examination shall also obtain a passing score
on the clinical examination in order to be eligible for licensure.
(b) An applicant who had previously failed to obtain a passing
score on the standard written examination shall obtain a passing
score on the California law and ethics examination and the clinical
examination.
(c) An applicant who had previously failed to obtain a passing
score on the clinical vignette examination shall obtain a passing
score on the clinical examination.
(d) An applicant who had obtained eligibility for the standard
written examination shall take the California law and ethics
examination and the clinical examination.
(e) This section shall become operative on January 1, 2013.

SEC. 16. Section 4992.09 is added to the Business and
Professions Code, to read:
4992.09. (a) An applicant and registrant shall obtain a passing
score on a board-administered California law and ethics
examination in order to qualify for licensure.
(b) A registrant shall participate in a board-administered
California law and ethics examination prior to his or her registration
renewal.
(c) If an applicant fails the California law and ethics
examination, he or she may retake the examination, upon payment
of the required fees, without further application except for as
provided in subdivision (d).
(d) If a registrant fails to obtain a passing score on the California
law and ethics examination described in subdivision (a) within his
or her first renewal period on or after the operative date of this
section, he or she shall complete, at a minimum, a 12-hour course
in California law and ethics in order to be eligible to participate
in the California law and ethics examination. Registrants shall only
take the 12-hour California law and ethics course once during a
renewal period. The 12-hour law and ethics course required by the
section shall be taken through a board-approved continuing
education provider, a county, state or governmental entity, or a
college or university.
(e) The board shall not issue a subsequent registration number
unless the registrant has passed the California law and ethics
examination.
(f) This section shall become operative on January 1, 2013.

SEC. 17. Section 4992.1 of the Business and Professions Code, as amended by Section 1 of Chapter 546 of the Statutes of 2010, 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 become inoperative on the date that Section
4996.1, as added by Section 4 of the act adding this subdivision,
becomes operative.

(i) This section is repealed as of the January 1 following the
date that it becomes inoperative.

(h) 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. 18. 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 an
examination under this chapter.

(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 clinical examination,
nor shall the board postpone or delay any applicant’s clinical
examination or delay informing the candidate of the results of the
clinical 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 California
law and ethics 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 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 California law and
ethics examination or the clinical 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) Effective January 1, 2013, no applicant shall be eligible to
participate in the clinical examination if he or she fails to obtain
a passing score on the clinical examination within seven years
from his or her initial attempt, unless he or she takes and obtains
a passing score on the current version of the California law and
ethics examination.

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

SEC. 19. Section 4992.1 of the Business and Professions Code,
as added by Section 2 of Chapter 546 of the Statutes of 2010, is
repealed.

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 the date that Section 4996.1, as added by Section 4 of the act adding this subdivision, becomes operative.

SEC. 20. Section 4996.1 of the Business and Professions Code, as amended by Section 3 of Chapter 546 of the Statutes of 2010, 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 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. 21. Section 4996.1 is added to the Business and Professions Code, to read:

4996.1. (a) Effective January 1, 2013, the board shall issue a clinical social worker license to each applicant who qualifies pursuant to this article and who successfully passes a California law and ethics examination and a clinical examination. 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, 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. 22. Section 4996.1 of the Business and Professions Code, as added by Section 4 of Chapter 546 of the Statutes of 2010, is repealed.

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:

(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, 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. 23. Section 4996.3 of the Business and Professions Code, as amended by Section 5.3 of Chapter 548 of the Statutes of 2010, 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.

(c) This section shall become inoperative on the date that Section 4996.1, as added by Section 4 of Assembly Bill 2167 of the 2009–10 Regular Session, becomes operative.

(d) This section is repealed as of the January 1 following the date that it becomes inoperative.

(c) 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. 24. 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 clinical examination shall be one hundred dollars ($100). The fee for the California law and ethics 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.

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

SEC. 25. Section 4996.3 of the Business and Professions Code, as added by Section 6 of Chapter 546 of the Statutes of 2010, is repealed.

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 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 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).

(8) 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 the date that Section 4996.1, as added by Section 4 of the act adding this subdivision, becomes operative.

SEC. 26. Section 4996.3 of the Business and Professions Code, as added by Section 5.6 of Chapter 548 of the Statutes of 2010, is repealed.

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 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 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).

(8) 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).

(11) 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.

(c) This section shall become operative on the date that Section 4996.1, as added by Section 4 of Assembly Bill 2167 of the 2009–10 Regular Session, becomes operative.

SEC. 27. Section 4996.4 of the Business and Professions Code, as amended by Section 7 of Chapter 546 of the Statutes of 2010, 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 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.
(b) 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. 28. Section 4996.4 is added to the Business and
Professions Code, to read:
4996.4. (a) Effective January 1, 2013, an applicant who fails
the clinical 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, 2013.
SEC. 29. Section 4996.4 of the Business and Professions Code,
as added by Section 8 of Chapter 546 of the Statutes of 2010, is
repealed.
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 the date that Section
4996.1, as added by Section 4 of the act adding this subdivision,
becomes operative.
SEC. 30. Section 4996.28 of the Business and Professions
Code is amended to read:
4996.28. (a) Registration as an associate clinical social worker
shall expire one year from the last day of the month during which
it was issued. To renew a registration, the registrant shall, on or
before the expiration date of the registration, complete all of the following actions:

(1) Apply for renewal on a form prescribed by the board.

(2) Pay a renewal fee prescribed by the board.

(3) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, and whether any disciplinary action has been taken by a regulatory or licensing board in this or any other state, subsequent to the last renewal of the registration.

(4) On and after January 1, 2013, obtain a passing score on the California law and ethics examination pursuant to Section 4992.09.

(b) A registration as an associate clinical social worker may be renewed a maximum of five times. When no further renewals are possible, an applicant may apply for and obtain a new associate clinical social worker registration if the applicant meets all requirements for registration in effect at the time of his or her application for a new associate clinical social worker registration. An applicant issued a subsequent associate registration pursuant to this subdivision may be employed or volunteer in any allowable work setting except private practice.
CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES
BILL ANALYSIS

BILL NUMBER: AB 40  VERSION: AMENDED MARCH 21, 2011
AUTHOR: YAMADA  SPONSOR: YAMADA

RECOMMENDED POSITION: SUPPORT
SUBJECT: ELDER ABUSE: REPORTING

Existing Law:

1) Specifies that certain individuals, including Marriage Family Therapists, Licensed Clinical Social Workers, and Licensed Educational Psychologists, are “mandated reporters” of suspected instances of elder and dependent adult abuse and must report abuse that occurred in a long-term care facility, except as specified, by calling either the local ombudsman or the local law enforcement agency immediately, or as soon as possible (Welfare and Institutions Code [WIC] Section 15630).

2) Requires a mandated reporter to submit a written report to the agency within two working days (WIC Section 15630).

3) Restricts local ombudsman programs from sharing reports of elder or adult abuse with local law enforcement agencies without the consent of the subject of the reported abuse or his or her legal representative (Section 712 of Chapter 2 of Title VII of the Older Americans Act).

4) Requires a mandated reported to report suspected financial abuse of an elder or dependent adult that occurred in a long-term care facility to either the local ombudsman or local law enforcement agency (WIC Section 15630.1).

5) Allows non-mandated reporters to report suspected instances of abuse of elders or dependent adults that occurred in a long-term care facility to a long-term care ombudsman program or local law enforcement agency (WIC Section 15631).

This Bill:

1) Requires mandated reporters to report suspected instances of elder or dependent adult abuse that occurred in a long-term care facility to both the local ombudsman and local law enforcement agency (WIC Section 15630).

2) Requires mandated reporters to report suspected instances of elder or dependent adult financial abuse that occurred in a long-term care facility to both the local ombudsman and local law enforcement agency (WIC Section 15630.1).

3) Allows non-mandated reporters to report suspected instances of elder or dependent adult financial abuse that occurred in a long-term care facility to either the local long-term care ombudsman program or the local law enforcement agency or both entities (WIC Section 15631).
1) **Author’s Intent.** According to the Author’s Office, the local ombudsman’s limited ability to share information on reported abuses with local law enforcement may inhibit a thorough investigation, and ultimately, resolution of certain elder and dependent adult abuse reports. Requiring mandated reporters to report suspected abuse that occurred in a long-term care facility with both the local ombudsman and local law enforcement would ensure that law enforcement is aware of all reports of this type of criminal activity.

2) **Issue of Trust.** Mandated reporters may not report suspected instances of abuse to local law enforcement for fear of losing the trust of the subject/client. However, Welfare and Institutions Code Section 15633.5 ensures the confidentiality of the identity of the reporter, except as disclosed to specified agencies and under specified circumstances, such as by court order. Section 15633.5 also states that a reporter is not required to disclose his or her identity in the report. This statute suggests that the level of trust between a mandated reporter and the subject of the abuse may not be compromised by submitting the report of abuse to the law enforcement agency.

3) **Recommended Position.** At its meeting on April 7, 2011, the Policy and Advocacy Committee recommended the Board take a support position on this bill.

4) **Support and Opposition.**

*Support:* The Association of Retarded Citizens of California
The Arc of California
California Advocates for Nursing Home Reform (CANHR)
California Commission on Aging (CCoA)
California District Attorneys Association (CDAA)
California Police Chiefs Association
California Senior Legislature (CSL)
Contra Costa County Advisory Council on Aging
Crime Victims United of California (CVUC)
San Luis Obispo County Adult Abuse Prevention Council

*Opposition:* California Association of Health Facilities (CAHF)
California Association of Marriage and Family Therapists
California Hospital Association

5) **History**

**2011**

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
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<tbody>
<tr>
<td>Mar. 30</td>
<td>From committee: Do pass and re-refer to Com. on PUB. S. (Ayes 4, Noes 2.) (March 29). Re-referred to Com. on PUB. S.</td>
</tr>
<tr>
<td>Mar. 22</td>
<td>Re-referred to Com. on AGING &amp; L.T.C.</td>
</tr>
<tr>
<td>Mar. 21</td>
<td>From committee chair, with author's amendments: Amend, and re-refer to Com. on AGING &amp; L.T.C. Read second time and amended.</td>
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<tr>
<td>Jan. 24</td>
<td>Referred to Coms. on AGING &amp; L.T.C. and PUB. S.</td>
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**2010**

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<tr>
<td>Dec. 7</td>
<td>From printer. May be heard in committee January 6.</td>
</tr>
<tr>
<td>Dec. 6</td>
<td>Read first time. To print.</td>
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Attachments

A. Older Americans Act, Title VII, Chapter 2, Section 712
B. Relevant Code Sections (Welfare and Institutions Code Section 9725 and Welfare and Institutions Code Section 15633.5)
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Introduction by Assembly Member Yamada

December 6, 2010

An act to amend Sections 15630, 15630.1, and 15631 of the Welfare and Institutions Code, relating to elder abuse.

LEGISLATIVE COUNSEL’S DIGEST

AB 40, as amended, Yamada. Elder abuse: reporting.

The Elder Abuse and Dependent Adult Civil Protection Act establishes various procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. The act requires certain persons, called mandated reporters, to report known or suspected instances of elder or dependent adult abuse. The act requires a mandated reporter, and authorizes any person who is not a mandated reporter, to report the abuse to the local ombudsman or the local law enforcement agency if the abuse occurs in a long-term care facility. Failure to report physical abuse and financial abuse of an elder or dependent adult under the act is a misdemeanor.

This bill would, instead, require the mandated reporter, and authorize any person who is not a mandated reporter, to report the abuse to both the local ombudsman and the local law enforcement agency. This bill would also make various technical, nonsubstantive changes.

Existing law requires a mandated reporter of suspected financial abuse of an elder or dependent adult, as defined, to report a known or suspected instance of financial abuse, as described, to the local ombudsman or the local law enforcement agency if the mandated
reporter knows that the elder or dependent adult resides in a long-term care facility.

This bill would, instead, require the mandated reporter to report the abuse to both the local ombudsman and the local law enforcement agency. This bill would also make various technical nonsubstantive changes.

By changing the scope of an existing crime, this bill would impose a state-mandated local program. By increasing the duties of local law enforcement agencies, this bill would impose a state-mandated local program.

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. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.

(b) (1) Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an
elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone immediately or as soon as practicably possible, and by written report sent within two working days, as follows:

(A) If the abuse has occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the report shall be made to both the local ombudsperson and the local law enforcement agency.

The local ombudsperson and the local law enforcement agency shall, as soon as practicable, except in the case of an emergency or pursuant to a report required to be made pursuant to clause (v), in which case these actions shall be taken immediately, do all of the following:

(i) Report to the State Department of Public Health any case of known or suspected abuse occurring in a long-term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.

(ii) Report to the State Department of Social Services any case of known or suspected abuse occurring in a residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or in an adult day care facility, as defined in paragraph (2) of subdivision (a) of Section 1502.

(iii) Report to the State Department of Public Health and the California Department of Aging any case of known or suspected abuse occurring in an adult day health care center, as defined in subdivision (b) of Section 1570.7 of the Health and Safety Code.

(iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse any case of known or suspected criminal activity.

(v) Report all cases of known or suspected physical abuse and financial abuse to the local district attorney’s office in the county where the abuse occurred.

(B) If the suspected or alleged abuse occurred in a state mental hospital or a state developmental center, the report shall be made to designated investigators of the State Department of Mental Health or the State Department of Developmental Services, or to the local law enforcement agency.
Except in an emergency, the local law enforcement agency shall, as soon as practicable, report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.

(C) If the abuse has occurred any place other than one described in subparagraph (A), the report shall be made to the adult protective services agency or the local law enforcement agency.

(2) (A) A mandated reporter who is a clergy member who acquires knowledge or reasonable suspicion of elder or dependent adult abuse during a penitential communication is not subject to paragraph (1). For purposes of this subdivision, “penitential communication” means a communication that is 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.

(B) This subdivision shall not be construed to modify or limit a clergy member’s duty to report known or suspected elder and dependent adult abuse if he or she is acting in the capacity of a care custodian, health practitioner, or employee of an adult protective services agency.

(C) Notwithstanding any other provision in this section, a clergy member who is not regularly employed on either a full-time or part-time basis in a long-term care facility or does not have care or custody of an elder or dependent adult shall not be responsible for reporting abuse or neglect that is not reasonably observable or discernible to a reasonably prudent person having no specialized training or experience in elder or dependent care.

(3) (A) A mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist, as defined in Section 1010 of the Evidence Code, shall not be required to report, pursuant to paragraph (1), an incident if all of the following conditions exist:

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect.
(ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(iii) The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia.

(iv) In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the psychotherapist, as defined in Section 1010 of the Evidence Code, reasonably believes that the abuse did not occur.

(B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

(4) (A) In a long-term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident if all of the following conditions exist:

(i) The mandated reporter is aware that there is a proper plan of care.

(ii) The mandated reporter is aware that the plan of care was properly provided or executed.

(iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).

(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

(B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Public Health determines, upon approval by the Bureau of Medi-Cal Fraud and Elder Abuse and the state long-term care ombudsman, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.

(c) (1) Any mandated reporter who has knowledge, or reasonably suspects, that types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult, or that his or her emotional well-being
is endangered in any other way, may report the known or suspected instance of abuse.

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsperson ombudsman program. Except in an emergency, the local ombudsperson ombudsman shall report any case of known or suspected abuse to the State Department of Public Health and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services or to a local law enforcement agency or to the local ombudsperson ombudsman. Except in an emergency, the local ombudsperson ombudsman and the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.

(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) If two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and 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.

(e) A telephone report of a known or suspected instance of elder or dependent adult abuse shall include, if known, the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other adult responsible for the elder’s or dependent adult’s care, the
nature and extent of the elder’s or dependent adult’s condition, the
date of the incident, and any other information, including
information that led that person to suspect elder or dependent adult
abuse, as requested by the agency receiving the report.

(f) The reporting duties under this section are individual, and
no supervisor or administrator shall impede or inhibit the reporting
duties, and no person making the report shall be subject to any
sanction for making the report. However, internal procedures to
facilitate reporting, ensure confidentiality, and apprise supervisors
and administrators of reports may be established, provided they
are not inconsistent with this chapter.

(g) (1) Whenever this section requires a county adult protective
services agency to report to a law enforcement agency, the law
enforcement agency shall, immediately upon request, provide a
copy of its investigative report concerning the reported matter to
that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency
to report to a county adult protective services agency, the county
adult protective services agency shall, immediately upon request,
provide to that law enforcement agency a copy of its investigative
report concerning the reported matter.

(3) The requirement to disclose investigative reports pursuant
to this subdivision shall not include the disclosure of social services
records or case files that are confidential, nor shall this subdivision
be construed to allow disclosure of any reports or records if the
disclosure would be prohibited by any other provision of state or
federal law.

(h) Failure to report, or impeding or inhibiting a report of,
physical abuse, as defined in Section 15610.63, abandonment,
abduction, isolation, financial abuse, or neglect of an elder or
dependent adult, in violation of this section, is a misdemeanor,
punishable by not more than six months in the county jail, by a
fine of not more than one thousand dollars ($1,000), or by both
that fine and imprisonment. Any mandated reporter who willfully
fails to report, or impedes or inhibits a report of, physical abuse,
as defined in Section 15610.63, abandonment, abduction, isolation,
financial abuse, or neglect of an elder or dependent adult, in
violation of this section, if that abuse results in death or great bodily
injury, shall be punished by not more than one year in a county
jail, by a fine of not more than five thousand dollars ($5,000), or
by both that fine and imprisonment. 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 a law enforcement agency specified in paragraph (1) of subdivision (b) of Section 15630 discovers the offense.

(i) For purposes of this section, “dependent adult” shall have the same meaning as in Section 15610.23.

SEC. 2. Section 15630.1 of the Welfare and Institutions Code is amended to read:

15630.1. (a) As used in this section, “mandated reporter of suspected financial abuse of an elder or dependent adult” means all officers and employees of financial institutions.

(b) As used in this section, the term “financial institution” means any of the following:

(1) A depository institution, as defined in Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).

(2) An institution-affiliated party, as defined in Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).

(3) A federal credit union or state credit union, as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752), including, but not limited to, an institution-affiliated party of a credit union, as defined in Section 206(r) of the Federal Credit Union Act (12 U.S.C. Sec. 1786(r)).

(c) As used in this section, “financial abuse” has the same meaning as in Section 15610.30.

(d) (1) Any mandated reporter of suspected financial abuse of an elder or dependent adult who has direct contact with the elder or dependent adult or who reviews or approves the elder or dependent adult’s financial documents, records, or transactions, in connection with providing financial services with respect to an elder or dependent adult, and who, within the scope of his or her employment or professional practice, has observed or has knowledge of an incident, that is directly related to the transaction or matter that is within that scope of employment or professional practice, that reasonably appears to be financial abuse, or who reasonably suspects that abuse, based solely on the information before him or her at the time of reviewing or approving the document, record, or transaction in the case of mandated reporters who do not have direct contact with the elder or dependent adult,
shall report the known or suspected instance of financial abuse by
telephone immediately, or as soon as practicably possible, and by
written report sent within two working days to the local adult
protective services agency or the local law enforcement agency.
(2) When two or more mandated reporters jointly have
knowledge or reasonably suspect that financial abuse of an elder
or a dependent adult for which the report is mandated has occurred,
and when there is an agreement among them, the telephone report
may be made by a member of the reporting team who is selected
by mutual agreement. A single report may be made and signed by
the selected member of the reporting team. Any member of the
team who has knowledge that the member designated to report has
failed to do so shall thereafter make that report.
(3) If the mandated reporter knows that the elder or dependent
adult resides in a long-term care facility, as defined in Section
15610.47, the report shall be made to the local ombudsman or
local law enforcement agency.
(e) An allegation by the elder or dependent adult, or any other
person, that financial abuse has occurred is not sufficient to trigger
the reporting requirement under this section if both of the following
conditions are met:
(1) The mandated reporter of suspected financial abuse of an
elder or dependent adult is aware of no other corroborating or
independent evidence of the alleged financial abuse of an elder or
dependent adult. The mandated reporter of suspected financial
abuse of an elder or dependent adult is not required to investigate
any accusations.
(2) In the exercise of his or her professional judgment, the
mandated reporter of suspected financial abuse of an elder or
dependent adult reasonably believes that financial abuse of an
elder or dependent adult did not occur.
(f) Failure to report financial abuse under this section shall be
subject to a civil penalty not exceeding one thousand dollars
($1,000) or if the failure to report is willful, a civil penalty not
exceeding five thousand dollars ($5,000), which shall be paid by
the financial institution that is the employer of the mandated
reporter to the party bringing the action. Subdivision (h) of Section
15630 shall not apply to violations of this section.
(g) (1) The civil penalty provided for in subdivision (f) shall
be recovered only in a civil action brought against the financial
institution by the Attorney General, district attorney, or county
counsel. No action shall be brought under this section by any
person other than the Attorney General, district attorney, or county
counsel. Multiple actions for the civil penalty may not be brought
for the same violation.

(2) Nothing in the Financial Elder Abuse Reporting Act of 2005
shall be construed to limit, expand, or otherwise modify any civil
liability or remedy that may exist under this or any other law.

(h) As used in this section, “suspected financial abuse of an
elder or dependent adult” occurs when a person who is required
to report under subdivision (a) observes or has knowledge of
behavior or unusual circumstances or transactions, or a pattern of
behavior or unusual circumstances or transactions, that would lead
an individual with like training or experience, based on the same
facts, to form a reasonable belief that an elder or dependent adult
is the victim of financial abuse as defined in Section 15610.30.

(i) Reports of suspected financial abuse of an elder or dependent
adult made by an employee or officer of a financial institution
pursuant to this section are covered under subdivision (b) of Section
47 of the Civil Code.

(j) 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. 3. Section 15631 of the Welfare and Institutions Code is
amended to read:

15631. (a) Any person who is not a mandated reporter under
Section 15630, who knows, or reasonably suspects, that an elder
or a dependent adult has been the victim of abuse may report that
abuse to a long-term care ombudsman program or local law
enforcement agency or both the long-term care ombudsman
program and local law enforcement agency when the abuse is
alleged to have occurred in a long-term care facility.

(b) Any person who is not a mandated reporter under Section
15630, who knows, or reasonably suspects, that an elder or a
dependent adult has been the victim of abuse in any place other
than a long-term care facility may report the abuse to the county
adult protective services agency or local law enforcement agency.

SEC. 4. No reimbursement is required by this act pursuant to
Section 6 of Article XIII B of the California Constitution for certain
costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution. However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
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OLDER AMERICANS ACT OF 1965

As Amended In 2006 (Public Law 109-365)

TITLE VII—ALLOTMENTS FOR VULNERABLE ELDER RIGHTS
PROTECTION ACTIVITIES
Subtitle A—State Provision

CHAPTER 2—OMBDUSMAN PROGRAMS

Section 712. STATE LONG-TERM CARE OMBUDSMAN PROGRAM.

(d) DISCLOSURE.
   (1) IN GENERAL.—The State agency shall establish procedures for the disclosure
by the Ombudsman or local Ombudsman entities of files maintained by the
program, including records described in subsection (b)(1) or (c).

   (2) IDENTITY OF COMPLAINANT OR RESIDENT.—The procedures described in
paragraph (1) shall—

   (A) provide that, subject to subparagraph (B), the files and records described in
paragraph (1) may be disclosed only at the discretion of the Ombudsman (or the
person designated by the Ombudsman to disclose the files and records); and

   (B) prohibit the disclosure of the identity of any complainant or resident with
respect to whom the Office maintains such files or records unless—

   (i) the complainant or resident, or the legal representative of the complainant
   or resident, consents to the disclosure and the consent is given in writing;

   (ii) (I) the complainant or resident gives consent orally; and

   (II) the consent is documented contemporaneously in a writing made by a
representative of the Office in accordance with such requirements as the
State agency shall establish; or

   (iii) the disclosure is required by court order.
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Relevant Code Sections

Welfare and Institutions Code Section 9725

§9725

All records and files of the office relating to any complaint or investigation made pursuant to this chapter and the identities of complainants, witnesses, patients, or residents shall remain confidential, unless disclosure is authorized by the patient or resident or his or her conservator of the person or legal representative, required by court order, or release of the information is to a law enforcement agency, public protective service agency, licensing or certification agency in a manner consistent with federal laws and regulations.

Welfare and Institutions Code Section 15633.5

§15633.5

(a) Information relevant to the incident of elder or dependent adult abuse may be given to an investigator from an adult protective services agency, a local law enforcement agency, the office of the district attorney, the office of the public guardian, the probate court, the bureau, or an investigator of the Department of Consumer Affairs, Division of Investigation who is investigating a known or suspected case of elder or dependent adult abuse.

(b) The identity of any person who reports under this chapter shall be confidential and disclosed only among the following agencies or persons representing an agency:

   (1) An adult protective services agency.
   (2) A long-term care ombudsperson program.
   (3) A licensing agency.
   (4) A local law enforcement agency.
   (5) The office of the district attorney.
   (6) The office of the public guardian.
   (7) The probate court.
   (8) The bureau.
   (9) The Department of Consumer Affairs, Division of Investigation.
   (10) Counsel representing an adult protective services agency.

(c) The identity of a person who reports under this chapter may also be disclosed under the following circumstances:

   (1) To the district attorney in a criminal prosecution.
   (2) When a person reporting waives confidentiality.
   (3) By court order.
   (d) Notwithstanding subdivisions (a), (b), and (c), any person reporting pursuant to Section 15631 shall not be required to include his or her name in the report.
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1) Requires health care service plan contracts and disability insurance policies that provide hospital, medical or surgical coverage to provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses, regardless of age, and of serious emotional disturbances of a child. (Health and Safety Code §1374.72(a), Insurance Code 10144.5(a)).

2) Defines “severe mental illnesses” as follows (HSC §1374.72(d), IC §10144.5(d)):
   - Schizophrenia.
   - Schizoaffective disorder.
   - Bipolar disorder (manic-depressive illness).
   - Major depressive disorders.
   - Panic disorder.
   - Obsessive-compulsive disorder.
   - Pervasive developmental disorder or autism.
   - Anorexia nervosa.
   - Bulimia nervosa.

3) Defines “serious emotional disturbances of a child” as a child who has one or more mental disorders as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders IV (DSM IV) (other than a primary substance use disorder or development disorder) that results in age-inappropriate behavior (HSC §1374.72(e), IC §10144.5(e)). One or more of the following criteria must also be met (HSC §5600.3(a)(2)):
   
   (A) As a result of the mental disorder, the child has substantial impairment in at least two of the following areas: self-care, school functioning, family relationships, or ability to function in the community; and either of the following occur:
   
   (i) The child is at risk of removal from home or has already been removed from the home.
   (ii) The mental disorder and impairments have been present for more than six months or are likely to continue for more than one year without treatment.
   
   (B) The child displays one of the following: psychotic features, risk of suicide or risk of violence due to a mental disorder.
(C) The child meets special education eligibility requirements under Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

4) Requires the benefits provided to include outpatient services, inpatient hospital services, partial hospital services, and prescription drugs (if the plan includes prescription drug coverage). (HSC §1374.72(b), IC §10144.5(b)).

5) Requires that maximum lifetime benefits, copayments, and individual and family deductibles that apply to these benefits have the same terms and conditions as they do for any other benefits under the plan contract. (HSC §1374.72(c), IC §10144.5(c)).

This Bill:

1) Permits the Board of Administration of the Public Employees’ Retirement System to purchase a health care benefit plan or contract or a health insurance policy that includes mental health coverage as described in Section 1374.74 of the Health and Safety Code or Section 10144.8 of the Insurance Code. (Government Code §22856).

2) Requires a health care services plan contract or health insurance policy that provides hospital, medical, or surgical coverage that is issued, amended, or renewed on or after January 1, 2012 to provide coverage for the diagnosis and medically necessary treatment of a mental illness of a person of any age, including a child, under the same terms and conditions applied to other medical conditions. (HSC 1374.74(a), IC §10144.8(a)).

3) The benefits provided under this legislation must include the following(HSC §1374.74(a), IC §10144.8(a)):
   a. Outpatient services;
   b. Inpatient hospital services;
   c. Partial hospital services; and
   d. Prescription drugs, if the plan contract includes coverage for prescription drugs.

4) Defines “mental illness” as a mental disorder defined in the Diagnostic and Statistical Manual of Mental Disorders IV (DSM IV), published by the American Psychiatric Association, and includes substance abuse. However, treatment of the following diagnoses are excluded: (HSC §1374.74(b)(1), IC §10144.8(b)(1)).
   (A) Noncompliance With Treatment (V15.81).
   (B) Partner Relational Problem (V61.1).
   (C) Physical/Sexual Abuse of an Adult (V61.12).
   (D) Parent-Child Relational Problem (V61.20).
   (E) Child Neglect (V61.21).
   (F) Physical/Sexual Abuse of a Child (V61.21).
   (G) Sibling Relational Problem (V61.8).
   (H) Relational Problem Related to a Mental Disorder or General Medical Condition (V61.9).
   (I) Occupational Problem (V62.29).
   (J) Academic Problem (V62.3).
   (K) Acculturation Problem (V62.4).
   (L) Relational Problems (V62.81).
5) Provides that the definition of “mental illness” must be revised to conform to any revisions to the list of mental disorders defined in the most current version of the DSM IV. (HSC §1374.74(b)(2), IC §10144.8(b)(2)).

6) Requires any revision of the definition of “mental illness” to be established by regulation. (HSC §1374.74(b)(3), IC §10144.8(b)(3)).

7) Permits a plan or insurer to provide coverage for all or part of the mental health services required through a separate specialized health care service plan or mental health plan. The plan or insurer is not required to obtain an additional or specialized license for this purpose. (HSC § 1374.74(c)(1), IC §10144.8(c)(1)).

8) Requires a plan or insurer to provide mental health coverage in its entire service area and in emergency situations as required by law and regulation (HSC §1374.74(c)(2), IC §10144.8(c)(2)).

9) Does not apply to contracts entered into between the State Department of Health Care Services and a health care service plan for enrolled Medi-Cal beneficiaries. (HSC §1374.74(e)).

10) Does not apply to a health care benefit plan or contract entered into with the Board of Administration of the Public Employees’ Retirement System unless the board elects to purchase a health care benefit plan or contract that provides mental health coverage as described in this legislation. (HSC §1374.74(f), IC §10144.8(e)).

11) Does not apply to accident-only, specified disease, hospital indemnity, Medicare supplement, dental-only, or vision-only health care service plan contracts. (HSC §1374.74(g)).

Comments:

1) Author’s Intent. The intent of this bill is to end discrimination against patients with mental disorders and substance abuse issues by requiring treatment and coverage of those illnesses at a level equitable to the coverage provided for other medical illnesses. The author notes that many health plans do not provide coverage for mental disorders, and the plans that do impose much stricter limits on mental health care coverage than on other medical care.

Research provided by the author’s office notes that individuals with mental illnesses quickly exhaust their limited coverage and personal savings, becoming dependent on taxpayer
supported benefits. This creates costs to the counties’ indigent health care pool, the emergency room, and the corrections system.

2) **Parity Laws.** Parity laws require insurance coverage for mental health to be equal to or better than insurance already provided for other medical and surgical benefits, including maximum lifetime benefits, co-payments, and deductibles.

3) **Federal Mental Health Parity Act.** The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Act) was enacted in October 2008. The Act amended the Mental Health Parity Act of 1996. The Act banned differences in co-pays, deductibles, coinsurance, out of network coverage, out of pocket expenses and treatment limitations such as caps on visits, limits on days, and limits on duration of treatment for mental health or addiction therapy. This law does not apply to employers with fewer than 50 employees.

The passage of the Act did not mandate mental health or substance use disorder benefit coverage but only stated that if mental health/substance use disorder benefits are offered through a health insurance plan, that those benefits must not be more restrictive or limiting than those offered for medical and surgical coverage under the plan.

Two major limitations were included in the Act. The first, as with the original 1996 parity law, allows a small employer exemption, making the parity requirements contained therein applicable only to group health plans with more than fifty-one employees. Secondly, the Act states that if a group health plan experiences an increase in actual total costs with respect to medical/surgical and mental health/substance use benefits of 1% as a result of the parity requirements (2% in the first plan year to which this Act is applicable), the plan can be exempted from the law for the following plan year.

4) **National Health Care Reform.** The 2010 Patient Protection and Affordable Care Act (PPACA, also known as national health care reform) requires private insurance plans to include certain mental health and substance use disorder treatment beginning in 2014. The mental health and substance use disorders covered are to be determined through rulemaking.

The PPACA would also require health insurance plans sold through the state-based health insurance Exchanges to include mental health and substance use disorder services at parity.

5) **State of California Mental Health Parity.** California’s current mental health parity law, AB 88, was enacted in 2000. The bill requires health plans to provide coverage for mental health services that are equal to medical services. However, they are required to cover only certain diagnoses that are defined as a severe mental illness or a serious emotional disturbance of a child. This bill would extend parity to mental illnesses not currently defined as a serious mental illness, as well as substance use disorders.

6) **Necessity of AB 154 with Passage of National Health Care Reform.** Although the PPACA requires health insurance plans to provide mental health and substance use disorder treatment beginning, the law does not yet define mental health and substance use treatments to be covered. Additionally, the law does not go into effect until 2014, leaving many uncovered until then.

7) **Previous Legislation and Board Position.** AB 423 (Beall, 2007), AB 1887 (Beall, 2008) and AB 244 (Beall, 2009) were all very similar to this bill. All three were vetoed by Governor Schwarzenegger. The Board took a position of “support” on these bills, recognizing that
mental health parity is a large and complex issue, and that support was grounded in the
general idea that people should have access to mental health care.

The Board did not take a position on last year’s version of this bill, AB 1600 (Beall, 2010).
AB 1600 was also vetoed by the Governor, with the following veto message:

I am returning Assembly Bill 1600 without my signature.
This is the fourth time that I have vetoed this measure. In addition
to the concerns that I have consistently cited over the last three
vetoes regarding the overall rising cost of healthcare and lack of
affordability for employers and individuals struggling to keep their
existing coverage, I am now able to add a new concern. The federal
health reform provisions that take effect in 2014 will require states
to pay the entire cost of mandates that go above and beyond the
definition of "essential benefits." This bill certainly requires a
higher level of service than contemplated on a federal level and as
such, will mandate California to spend new General Fund dollars for
these benefits.
I cannot agree to a significant expenditure of new funds when we are
struggling to provide basic levels of coverage to our most needy and
fragile populations.

8) Related Legislation. A similar bill, AB 171 (Beall) seeks to end health care discrimination
against those with autism spectrum disorder (ASD). It would require every health care
service plan contract or health insurance policy issued, amended, or renewed after January
1, 2012, that provides hospital, medical, or surgical coverage must provide coverage for the
screening, diagnosis, and treatment of autism spectrum disorders. Current law lacks detail
as to the nature of coverage that must be provided for ASD. This bill would make the law
more explicit about what must be covered.

9) Suggested Amendment. Insurance Code §10144.8(d) states that “This section shall not
apply to accident-only, specified disease, hospital indemnity, or Medicare supplement
insurance policies, or specialized health insurance policies, except behavioral health-only
policies.” Health and Safety Code §1374.74(g) has similar language that exempts certain
health care service plan contracts, but does not have an exception for behavioral health-only
policies. Staff recommends that language providing an exception for behavioral health-only
policies should be added to Health and Safety Code §1374.74(g).

10) Recommended Position. At its meeting on April 7, 2011, the Policy and Advocacy
Committee recommended the Board take a support position on this bill.

11) Support and Opposition.

Support:
• Access Coalition
• American Federation of State, County and Municipal Employees
• Bonita House
• California Academy of Family Physicians
• California Alliance of Child and Family Services
• California Association of Marriage and Family Therapists
• California Coalition for Mental Health
• California Communities United Institute
• California Council of Community Mental Health Agencies
• California Emergency Nurses Association
• California Hospital Association
• California Medical Association
• California Mental Health Directors Association
• California Primary Care Association
• California Psychiatric Association
• California Psychological Association
• California State Association of Counties
• California Youth Empowerment Network
• County Alcohol & Drug Program Administrators Association of
  California
• Developmental Disabilities Area Board 10
• Disability Rights California
• Drug Policy Alliance
• Health Access California
• Mental Health Association in California
• National Alliance on Mental Illness, California
• National Association of Social Workers
• San Bernardino County Board of Supervisors
• Santa Clara County Board of Supervisors

Oppose:
• America’s Health Insurance Plans
• California Association of Health Plans
• California Chamber of Commerce
• Citizens Commission on Human Rights
• Health Net

12) History

2011
Apr. 13 In committee: Set, first hearing. Referred to APPR. Suspense file.
Apr. 6 From committee: Do pass and re-refer to Com. on APPR. (Ayes 12. Noes 5.) (April
5). Re-referred to Com. on APPR.
Mar. 25 Re-referred to Com. on HEALTH.
Mar. 24 From committee chair, with author's amendments: Amend, and re-refer to Com. on
HEALTH. Read second time and amended.
Feb. 3 Referred to Com. on HEALTH.
Jan. 19 From printer. May be heard in committee February 18.
Jan. 18 Read first time. To print.

Amended in Assembly March 24, 2011

California Legislature—2011–12 Regular Session

Assembly Bill No. 154

Introduced by Assembly Member Beall

January 18, 2011

An act to add Section 22856 to the Government Code, to add Section 1374.74 to the Health and Safety Code, and to add Section 10144.8 to the Insurance Code, relating to health care coverage.

Legislative Counsel's Digest

AB 154, as amended, Beall. Health care coverage: mental health services.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Under existing law, a health care service plan contract and a health insurance policy are required to provide coverage for the diagnosis and treatment of severe mental illnesses of a person of any age. Existing law does not define “severe mental illnesses” for this purpose but describes it as including several conditions.

This bill would expand this coverage requirement for certain health care service plan contracts and health insurance policies issued, amended, or renewed on or after January 1, 2012, to include the diagnosis and treatment of a mental illness of a person of any age and would define mental illness for this purpose as a mental disorder defined in the Diagnostic and Statistical Manual of Mental Disorders IV, including substance abuse but excluding nicotine dependence and...
specified diagnoses defined in the manual, subject to regulatory revision, as specified. The bill would specify that this requirement does not apply to a health care benefit plan, contract, or health insurance policy with the Board of Administration of the Public Employees’ Retirement System unless the board elects to purchase a plan, contract, or policy that provides mental health coverage.

Because this bill would expand coverage requirements for health care service plans, the willful violation of which would be a crime, it would impose a state-mandated local program.

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 22856 is added to the Government Code, to read:

22856. The board may purchase a health care benefit plan or contract or a health insurance policy that includes mental health coverage as described in Section 1374.74 of the Health and Safety Code or Section 10144.8 of the Insurance Code.

SEC. 2. Section 1374.74 is added to the Health and Safety Code, to read:

1374.74. (a) A health care service plan contract issued, amended, or renewed on or after January 1, 2012, that provides hospital, medical, or surgical coverage shall provide coverage for the diagnosis and medically necessary treatment of a mental illness of a person of any age, including a child, under the same terms and conditions applied to other medical conditions as specified in subdivision (c) of Section 1374.72. The benefits provided under this section shall include all those set forth in subdivision (b) of Section 1374.72.

(b) (1) “Mental illness” for the purposes of this section means a mental disorder defined in the Diagnostic and Statistical Manual of Mental Disorders IV, published by the American Psychiatric
Association, and includes substance abuse, but excludes treatment of the following diagnoses, all as defined in the manual:

(A) Noncompliance With Treatment (V15.81).
(B) Partner Relational Problem (V61.1).
(C) Physical/Sexual Abuse of an Adult (V61.12).
(D) Parent-Child Relational Problem (V61.20).
(E) Child Neglect (V61.21).
(F) Physical/Sexual Abuse of a Child (V61.21).
(G) Sibling Relational Problem (V61.8).
(H) Relational Problem Related to a Mental Disorder or General Medical Condition (V61.9).
(I) Occupational Problem (V62.29).
(J) Academic Problem (V62.3).
(K) Acculturation Problem (V62.4).
(L) Relational Problems (V62.81).
(M) Bereavement (V62.82).
(N) Physical/Sexual Abuse of an Adult (V62.83).
(O) Borderline Intellectual Functioning (V62.89).
(P) Phase of Life Problem (V62.89).
(Q) Religious or Spiritual Problem (V62.89).
(R) Malingering (V65.2).
(S) Adult Antisocial Behavior (V71.01).
(T) Child or Adolescent Antisocial Behavior (V71.02).
(U) There is not a Diagnosis or a Condition on Axis I (V71.09).
(V) There is not a Diagnosis on Axis II (V71.09).
(W) Nicotine Dependence (305.10).

(2) Following publication of each subsequent volume of the manual, the definition of “mental illness” shall be subject to revision to conform to, in whole or in part, the list of mental disorders defined in the then-current volume of the manual.

(3) Any revision to the definition of “mental illness” pursuant to paragraph (2) shall be established by regulation promulgated jointly by the department and the Department of Insurance.

(c) (1) For the purpose of compliance with this section, a plan may provide coverage for all or part of the mental health services required by this section through a separate specialized health care service plan or mental health plan and shall not be required to obtain an additional or specialized license for this purpose.

(2) A plan shall provide the mental health coverage required by this section in its entire service area and in emergency situations.
as may be required by applicable laws and regulations. For
purposes of this section, health care service plan contracts that
provide benefits to enrollees through preferred provider contracting
arrangements are not precluded from requiring enrollees who reside
or work in geographic areas served by specialized health care
service plans or mental health plans to secure all or part of their
mental health services within those geographic areas served by
specialized health care service plans or mental health plans.

(3) In the provision of benefits required by this section, a health
care service plan may utilize case management, network providers,
utilization review techniques, prior authorization, copayments, or
other cost sharing to the extent permitted by law or regulation.

(d) Nothing in this section shall be construed to deny or restrict
in any way the department’s authority to ensure plan compliance
with this chapter when a plan provides coverage for prescription
drugs.

(e) This section shall not apply to contracts entered into pursuant
to Chapter 7 (commencing with Section 14000) or Chapter 8
(commencing with Section 14200) of Part 3 of Division 9 of the
Welfare and Institutions Code, between the State Department of
Health Care Services and a health care service plan for enrolled
Medi-Cal beneficiaries.

(f) This section shall not apply to a health care benefit plan or
contract entered into with the Board of Administration of the Public
Employees’ Retirement System pursuant to the Public Employees’
Medical and Hospital Care Act (Part 5 (commencing with Section
22750) of Division 5 of Title 2 of the Government Code) unless
the board elects, pursuant to Section 22856 of the Government
Code, to purchase a health care benefit plan or contract that
provides mental health coverage as described in this section.

(g) This section shall not apply to accident-only, specified
disease, hospital indemnity, Medicare supplement, dental-only, or
vision-only health care service plan contracts.

SEC. 3. Section 10144.8 is added to the Insurance Code, to
read:
10144.8. (a) A policy of health insurance that covers hospital,
medical, or surgical expenses in this state that is issued, amended,
or renewed on or after January 1, 2012, shall provide coverage for
the diagnosis and medically necessary treatment of a mental illness
of a person of any age, including a child, under the same terms
and conditions applied to other medical conditions as specified in subdivision (c) of Section 10144.5. The benefits provided under this section shall include all those set forth in subdivision (b) of Section 10144.5.

(b) (1) “Mental illness” for the purposes of this section means a mental disorder defined in the Diagnostic and Statistical Manual of Mental Disorders IV, published by the American Psychiatric Association, and includes substance abuse, but excludes treatment of the following diagnoses, all as defined in the manual:

(A) Noncompliance With Treatment (V15.81).
(B) Partner Relational Problem (V61.1).
(C) Physical/Sexual Abuse of an Adult (V61.12).
(D) Parent-Child Relational Problem (V61.20).
(E) Child Neglect (V61.21).
(F) Physical/Sexual Abuse of a Child (V61.21).
(G) Sibling Relational Problem (V61.8).
(H) Relational Problem Related to a Mental Disorder or General Medical Condition (V61.9).
(I) Occupational Problem (V62.29).
(J) Academic Problem (V62.3).
(K) Acculturation Problem (V62.4).
(L) Relational Problems (V62.81).
(M) Bereavement (V62.82).
(N) Physical/Sexual Abuse of an Adult (V62.83).
(O) Borderline Intellectual Functioning (V62.89).
(P) Phase of Life Problem (V62.89).
(Q) Religious or Spiritual Problem (V62.89).
(R) Malingering (V65.2).
(S) Adult Antisocial Behavior (V71.01).
(T) Child or Adolescent Antisocial Behavior (V71.02).
(U) There is not a Diagnosis or a Condition on Axis I (V71.09).
(V) There is not a Diagnosis on Axis II (V71.09).
(W) Nicotine Dependence (305.10).

(2) Following publication of each subsequent volume of the manual, the definition of “mental illness” shall be subject to revision to conform to, in whole or in part, the list of mental disorders defined in the then-current volume of the manual.

(3) Any revision to the definition of “mental illness” pursuant to paragraph (2) shall be established by regulation promulgated...
jointly by the department and the Department of Managed Health Care.

(c) (1) For the purpose of compliance with this section, a health insurer may provide coverage for all or part of the mental health services required by this section through a separate specialized health care service plan or mental health plan and shall not be required to obtain an additional or specialized license for this purpose.

(2) A health insurer shall provide the mental health coverage required by this section in its entire in-state service area and in emergency situations as may be required by applicable laws and regulations. For purposes of this section, health insurers are not precluded from requiring insureds who reside or work in geographic areas served by specialized health care service plans or mental health plans to secure all or part of their mental health services within those geographic areas served by specialized health care service plans or mental health plans.

(3) In the provision of benefits required by this section, a health insurer may utilize case management, managed care, or utilization review to the extent permitted by law or regulation.

(4) Any action that a health insurer takes to implement this section, including, but not limited to, contracting with preferred provider organizations, shall not be deemed to be an action that would otherwise require licensure as a health care service plan under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(d) This section shall not apply to accident-only, specified disease, hospital indemnity, or Medicare supplement insurance policies, or specialized health insurance policies, except behavioral health-only policies.

(e) This section shall not apply to a policy of health insurance purchased by the Board of Administration of the Public Employees’ Retirement System pursuant to the Public Employees’ Medical and Hospital Care Act (Part 5 (commencing with Section 22750) of Division 5 of Title 2 of the Government Code) unless the board elects, pursuant to Section 22856 of the Government Code, to purchase a policy of health insurance that covers mental health services as described in this section.
SEC. 4. This act shall not be deemed to require a qualified health plan that participates in the California Health Benefit Exchange to provide any greater coverage than is required pursuant to the minimum essential benefits package, as set forth in Section 1311 of the federal Patient Protection and Affordable Care Act (Public Law 111-148).

SEC. 5. 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.
PATH TO CARE
How Federal Legislation Requiring Mental Health and Substance Use Disorder Treatment Will Impact California

Nearly 1 in 5 California adults suffers from a mental disorder, about 1 in 25 has signs of a serious mental illness, and nearly 1 in 10 abuses or is dependent on illicit drugs or alcohol.

Federal and state lawmakers are trying to address gaps in behavioral health insurance coverage either by mandating coverage or requiring parity. Parity laws require insurance coverage for mental health to be equal to or better than the insurance already provided for other medical and surgical benefits, including maximum lifetime benefits, co-payments, and deductibles.

California’s Current Coverage

California’s mental health parity law (Assembly Bill 88, Chapter 534, Statutes of 1999) requires health plans and disability insurance policies to diagnose and provide medically necessary treatment for nine severe mental illnesses to people of all ages, as well as serious emotional disturbances in children. This must be done under the same terms that apply to physical illnesses. For example, an insurance policy cannot limit the number of visits for a covered mental health condition if it does not limit the number of visits for treatment of a covered diabetes condition.

California’s parity law applies to all private policies and plans and to small businesses; the law does not require substance use treatment services, and plans that provide health care to low-income Californians through the government-funded Medi-Cal program are not included.

New Federal Laws Require Equal Coverage for Mental Health and Substance Use Disorders

National health care reform and a federal parity law require insurance plans to provide mental health and substance use disorders coverage equal to the coverage of other physical ailments. Discussion is under way at the national level to define specific regulations, and as a result, California will have its own policy decisions to make in the near future.
New Federal Legislation

The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (introduced by U.S. Representative Patrick Kennedy) applies to group health plans that already offer mental health or substance use disorder benefits. If these benefits already are being offered, they can no longer be less generous than the plans' existing medical and surgical benefits.

In Medi-Cal plans, this law applies only to those with patients in managed health care (such as Kaiser) or Pre-Paid Inpatient Health Plans. It does not apply to plans insuring employees in small businesses (those with 50 workers or fewer). The federal government will issue regulations governing Medicaid plan requirements.

The 2010 Patient Protection and Affordable Care Act—also known as national health care reform—requires private insurance plans to include mental health and substance use disorder treatment beginning in 2014.

For all Medi-Cal health plans, national health care reform expands coverage for mental health and substance use disorders and requires coverage for those services. It also creates a new, no-cost insurance category for poor, childless adults who previously were ineligible for Medi-Cal and are at or below 133 percent of the federal poverty level.

Implications for California

> Indigent Adults Without Disabilities or Children. Prior to national health care reform, California did not provide Medi-Cal for poor, childless people who did not have disabilities; now, however, they will qualify for health benefits as of 2014. Those who live with mental illness or a substance use disorder are expected to be heavily represented in this group. States will be responsible for defining the scope of these benefits within established federal guidelines, which are forthcoming. Benefit options may include inpatient and outpatient care and a broader range of rehabilitation and therapeutic services, among other possibilities.

> Definition of Substance Use Disorders. National health care reform requires substance use disorder treatment to be provided in health plans as of 2014. The federal government will define parameters for coverage. Presently, California has not defined at what point substance use becomes a medical issue that requires treatment or the level of services recommended for various stages of substance abuse.

> Mental Health Structure. In most counties, Medi-Cal patients with serious and persistent mental illness or serious emotional disturbances beyond what a primary care physician can typically treat are now referred to county mental health departments. This shift in responsibility from the state to the counties for treatment and funding is sometimes referred to as a "carve-out," because the responsibility was shifted from (or carved out of) the state's Medi-Cal health plan. The county-based mental health system provides an array of federally authorized inpatient and outpatient care, including case management and rehabilitation.

California and the federal government already are working to integrate the Medi-Cal mental health and primary health care systems. The national health-care reform act encourages integration of behavioral and physical health systems in a variety of settings. How this path to care ultimately will be achieved will be played out over the next several years.
Existing Law:

1) Requires health care service plan contracts and disability insurance policies that provide hospital, medical or surgical coverage to provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses, regardless of age, and of serious emotional disturbances of a child. (Health and Safety Code §1374.72(a), Insurance Code 10144.5(a)).

2) Defines “severe mental illnesses” as follows (HSC §1374.72(d), IC §10144.5(d)):
   - Schizophrenia.
   - Schizoaffective disorder.
   - Bipolar disorder (manic-depressive illness).
   - Major depressive disorders.
   - Panic disorder.
   - Obsessive-compulsive disorder.
   - Pervasive developmental disorder or autism.
   - Anorexia nervosa.
   - Bulimia nervosa.

3) Defines “serious emotional disturbances of a child” as a child who has one or more mental disorders as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM IV) (other than a primary substance use disorder or development disorder) that results in age-inappropriate behavior (HSC §1374.72(3), IC §10144.5(e))). One or more of the following criteria must also be met (HSC §5600.3(a)(2)):

   (A) As a result of the mental disorder, the child has substantial impairment in at least two of the following areas: self-care, school functioning, family relationships, or ability to function in the community; and either of the following occur:

   (i) The child is at risk of removal from home or has already been removed from the home.
   (ii) The mental disorder and impairments have been present for more than six months or are likely to continue for more than one year without treatment.

   (B) The child displays one of the following: psychotic features, risk of suicide or risk of violence due to a mental disorder.
(C) The child meets special education eligibility requirements under Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

4) Requires the benefits provided to include outpatient services, inpatient hospital services, partial hospital services, and prescription drugs (if the plan includes prescription drug coverage). (HSC §1374.72(b), IC §10144.5(b)).

5) Requires that maximum lifetime benefits, copayments, and individual and family deductibles that apply to these benefits have the same terms and conditions as they do for any other benefits under the plan contract. (HSC §1374.72(c), IC §10144.5(c)).

This Bill:

1) Would require every health care service plan contract or health insurance policy issued, amended, or renewed after January 1, 2012, that provides hospital, medical, or surgical coverage must provide coverage for the screening, diagnosis, and treatment of autism spectrum disorders. (HSC §1374.73(a), IC §10144.51(a))

2) Defines “autism spectrum disorder” as a neurobiological condition that includes autistic disorder, Asperger’s disorder, Rett’s disorder, childhood disintegrative disorder, and pervasive developmental disorder not otherwise specified. (HSC §1374.73 (h)(1), IC §10144.51(h)(1))

3) Defines “diagnosis of autism spectrum disorders” as medically necessary assessment, evaluations, or tests to diagnose whether one has an autism spectrum disorder (HSC §1374.73(h)(4), IC §10144.51(h)(4))

4) Defines “treatment for autism spectrum disorders” to mean the following care, and necessary equipment, that is ordered for an individual with autism spectrum disorder by an appropriately licensed or certified provider who deems it medically necessary (HSC §1374.73(h)(10), IC§10144.51(h)(10)):

   • Behavioral health treatment
   • Pharmacy care
   • Psychiatric care
   • Psychological care
   • Therapeutic care
   • Any other care for individuals with autism spectrum disorders that is demonstrated, based on best practices or evidence based research, to be medically necessary.

5) Prohibits a health care service plan from terminating coverage or refusing to deliver, execute, issue, amend, adjust, or renew coverage to an enrollee solely because that person is diagnosed with or has received treatment for an autism spectrum disorder. (HSC §1374.73(a), IC§10144.51(a))

6) Requires coverage to include all medically necessary services and prohibits any limitations based on age, number of visits, or dollar amounts. (HSC §1374.73(b), IC §10144.51(b))
7) Provisions for lifetime maximums, deductibles, copayments, coinsurance or other terms and conditions for coverage of autism spectrum disorders must not be less favorable than the provisions that apply to general physical illnesses covered by the plan. (HSC §1374.73(b), IC §10144.51(b))

8) Prohibits coverage for autism spectrum disorder from being denied on the basis that treatment is habilitative, nonrestorative, educational, academic, or custodial in nature. (HSC §1374.73(c), IC §10144.51(c))

9) Requires a health care service plan and health insurer to establish and maintain an adequate network of qualified autism service providers, with appropriate training and experience in autism spectrum disorders so that patients have a choice of providers, timely access, continuity of care, and ready referral to the services required to be provided by this bill. (HSC §1374.73(e), IC §10144.51(e))

10) Provides that no benefits are required to be provided by a health benefit plan offered through the California Health Benefit Exchange that are in excess of federally required essential health benefits as defined by Federal Law. (HSC §1374.73(g), IC §10144.51(g)).

Comments:

1) **Author’s Intent.** Due to loopholes in current law, those with autism spectrum disorders (ASD) are frequently denied coverage for their disorder. When they are denied coverage, those with ASD must either go without treatment, pay for treatment privately, or spend time appealing health plan and insurer denials. Many with health insurance who are denied coverage for ASD seek treatment through Regional Centers, school districts, or counties, shifting the cost burden to the taxpayers. The goal of this bill is to end health care discrimination against those with ASD by specifically requiring health plans and insurers to cover screening, diagnosis, and all medically necessary treatment related to the disorder.

2) **Expansion of Current Law.** Current law requires coverage for the diagnosis and medically necessary treatment of pervasive developmental disorder or autism. However, lack of detail as to the nature of this coverage provides loopholes for insurers to frequently deny coverage for treatments. For example, they may say the treatment is not medically necessary, non-medical, experimental, or educational only. This bill would make the law more explicit about what must be covered.

3) **Previous Legislation.** In 2010 SB 1282 (Steinberg) was introduced. At the time the Board took a position on this bill, it established the California Behavioral Certification Organization (CBCO), a nonprofit organization that provides for the certification and registration of applied behavioral analysis practitioners if they submit a written application, pay fees as required by CBCO, meet specified educational and professional requirements, and submit fingerprints. At its May meeting the Board voted to take an “oppose” position on this bill.

This bill was later amended and the above language was removed. The bill was amended to state that it is the intent of the Legislature to enact legislation clarifying the duties of health care service plans and insurers to inform consumers about the coverage provided to them for the diagnosis and treatment of autism and pervasive developmental disorders under the existing mental health parity law. SB 1282 failed passage.

4) **Current Legislation.** Senator Steinberg has introduced SB 166, entitled “Health Care Coverage: Autism Spectrum Disorders.” It proposes adding the same sections to the Health and Safety Code and Insurance Code, although the content of the added sections is less
specific at this time. SB 166 would require those health care service plan contracts and health insurance policies to also provide coverage for behavioral intervention therapy to treat autism.

5) **Suggested Amendment.** This bill would require insurers to provide coverage for the screening, diagnosis, and treatment of autism spectrum disorders. The bill specifically defines “diagnosis of autism spectrum disorders” and “treatment of autism spectrum disorders,” citing specific care that these entail. However, there is no definition of “screening of autism spectrum disorders.” As the purpose of this bill is to close loopholes allowing denial of medically necessary coverage, it is suggested that “screening of autism spectrum disorders” also be specifically defined.

6) **Recommended Position.** At its meeting on April 7, 2011, the Policy and Advocacy Committee recommended the Board take a support position on this bill if the term “screening of autism spectrum disorders” is defined.

7) **Support and Opposition.**

Support:

- Alliance of California Autism Organizations (sponsor)
- Alameda County Developmental Disabilities Council
- American Association of University Women California
- Area 4 Board, State Council of Developmental Disabilities
- Area 10 Board, State Council of Developmental Disabilities
- Association of Regional Center Agencies
- Autism Deserves Equal Coverage
- Autism Speaks
- California Association of Marriage and Family Therapists
- California Association of School Psychologists
- California Communities United Institute
- California Primary Care Association
- California School Boards Association
- Contra Costa Health Services
- Developmental Disabilities Area Board 10, State of California
- People's Care
- San Francisco Unified School District
- Solano County Families for Effective Autism Treatment
- State Council on Developmental Disabilities
- The Arc of California
- Several individuals

Oppose:

- America's Health Insurance Plans
- Association of California Life & Health Insurance Companies
- California Association of Health Plans
- California Chamber of Commerce

8) **History**

2011

May 2  From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 12. Noes 6.) (April 26).

Apr. 7  Re-referred to Com. on HEALTH.
Apr. 6  From committee chair, with author's amendments: Amend, and re-refer to Com. on
HEALTH. Read second time and amended.

Feb. 3  Referred to Com. on HEALTH.

Jan. 21  From printer. May be heard in committee February 20.

Jan. 20  Read first time. To print.
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Introduced by Assembly Member Beall
(Coauthors: Assembly Members Ammiano, Blumenfield, Brownley, Carter, Chesbro, Eng, Huffman, Mitchell, Swanson, Williams, and Yamada)

An act to add Section 1374.73 to the Health and Safety Code, and to add Section 10144.51 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL’S DIGEST

AB 171, as amended, Beall. Autism spectrum disorder.
(1) Existing law provides for licensing and regulation of health care service plans by the Department of Managed Health Care. A willful violation of these provisions is a crime. Existing law provides for licensing and regulation of health insurers by the Insurance Commissioner. Existing law requires health care service plan contracts and health insurance policies to provide benefits for specified conditions, including certain mental health conditions.

This bill would require health care service plan contracts and health insurance policies to provide coverage for the screening, diagnosis, and treatment of autism spectrum disorders. The bill would, however, provide that no benefits are required to be provided by a health benefit plan offered through the California Health Benefit Exchange that exceed the essential health benefits required under federal law. The bill would prohibit coverage from being denied for specified reasons. Because the
bill would change the definition of a crime with respect to health care service plans, it would thereby impose a state-mandated local program.

(2) 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:_

1  SECTION 1. Section 1374.73 is added to the Health and Safety Code, to read:
2  1374.73. (a) Every health care service plan contract issued, amended, or renewed on or after January 1, 2012, that provides hospital, medical, or surgical coverage shall provide coverage for the screening, diagnosis, and treatment of autism spectrum disorders.
3  (b) A health care service plan shall not terminate coverage, or refuse to deliver, execute, issue, amend, adjust, or renew coverage, to an enrollee solely because the individual is diagnosed with, or has received treatment for, an autism spectrum disorder.
4  (c) Coverage required to be provided under this section shall extend to all medically necessary services and shall not be subject to any limits regarding age, number of visits, or dollar amounts. Coverage required to be provided under this section shall not be subject to provisions relating to lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that are less favorable to an enrollee than lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that apply to physical illness generally under the plan contract.
5  (d) Coverage required to be provided under this section is a health care service and a covered health care benefit for purposes of this chapter. Coverage shall not be denied on the basis that the treatment is habilitative, nonrestorative, educational, academic, or custodial in nature.

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(e) A health care service plan may request, no more than once annually, a review of treatment provided to an enrollee for autism spectrum disorders. The cost of obtaining the review shall be borne by the plan. This subdivision does not apply to inpatient services.

(f) A health care service plan shall establish and maintain an adequate network of qualified autism service providers with appropriate training and experience in autism spectrum disorders to ensure that enrollees have a choice of providers, and have timely access, continuity of care, and ready referral to all services required to be provided by this section consistent with Sections 1367 and 1367.03 and the regulations adopted pursuant thereto.

(g) (1) This section shall not be construed as reducing any obligation to provide services to an enrollee under an individualized family service plan, an individualized program plan, a prevention program plan, an individualized education program, or an individualized service plan.

(2) This section shall not be construed as limiting benefits that are otherwise available to an enrollee under a health care service plan.

(3) This section shall not be construed as affecting litigation that is pending on January 1, 2012.

(h) On and after January 1, 2014, to the extent that this section requires health benefits to be provided that exceed the essential health benefits required to be provided under Section 1302(b) of the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) by qualified health plans offering those benefits in the California Health Benefit Exchange pursuant to Title 22 (commencing with Section 100500) of the Government Code, the specific benefits that exceed the federally required essential health benefits are not required to be provided when offered by a health care service plan contract through the Exchange. However, those specific benefits are required to be provided if offered by a health care service plan contract outside of the Exchange.
(i) As used in this section, the following terms shall have the following meanings:

1. “Autism spectrum disorder” means a neurobiological condition that includes autistic disorder, Asperger’s disorder, Rett’s disorder, childhood disintegrative disorder, and pervasive developmental disorder not otherwise specified.

2. “Behavioral health treatment” means professional services and treatment programs, including behavioral intervention therapy, applied behavioral analysis, and other intensive behavioral programs, that have demonstrated efficacy to develop, maintain, or restore, to the maximum extent practicable, the functioning or quality of life of an individual and that have been demonstrated to treat the core symptoms associated with autism spectrum disorder.

3. “Behavioral intervention therapy” means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in behaviors, including the use of direct observation, measurement, and functional analyses of the relationship between environment and behavior.

4. “Diagnosis of autism spectrum disorders” means medically necessary assessment, evaluations, or tests to diagnose whether an individual has one of the autism spectrum disorders.

5. “Evidence-based research” means research that applies rigorous, systematic, and objective procedures to obtain valid knowledge relevant to autism spectrum disorders.

6. “Pharmacy care” means medications prescribed by a licensed physician and surgeon or other appropriately licensed or certified provider and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.

7. “Psychiatric care” means direct or consultative psychiatric services provided by a psychiatrist or any other appropriately licensed or certified provider.

8. “Psychological care” means direct or consultative psychological services provided by a psychologist or any other appropriately licensed or certified provider.

9. “Therapeutic care” means services provided by licensed or certified speech therapists, occupational therapists, or physical therapists or any other appropriately licensed or certified provider.
(10) “Treatment for autism spectrum disorders” means all of the following care, including necessary equipment, prescribed or ordered for an individual diagnosed with one of the autism spectrum disorders by a licensed physician and surgeon or a licensed psychologist or any other appropriately licensed or certified provider who determines the care to be medically necessary:

(A) Behavioral health treatment.
(B) Pharmacy care.
(C) Psychiatric care.
(D) Psychological care.
(E) Therapeutic care.
(F) Any care for individuals with autism spectrum disorders that is demonstrated, based upon best practices or evidence-based research, to be medically necessary.

(j) This section, with the exception of subdivision (b), shall not apply to dental-only or vision-only health care service plan contracts.

SEC. 2. Section 10144.51 is added to the Insurance Code, to read:

10144.51. (a) Every health insurance policy issued, amended, or renewed on or after January 1, 2012, that provides hospital, medical, or surgical coverage shall provide coverage for the screening, diagnosis, and treatment of autism spectrum disorders.

(b) A health insurer shall not terminate coverage, or refuse to deliver, execute, issue, amend, adjust, or renew coverage, to an insured solely because the individual is diagnosed with, or has received treatment for, an autism spectrum disorder.

(c) Coverage required to be provided under this section shall extend to all medically necessary services and shall not be subject to any limits regarding age, number of visits, or dollar amounts. Coverage required to be provided under this section shall not be subject to provisions relating to lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that are less favorable to an insured than lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that apply to physical illness generally under the policy.
(d) Coverage required to be provided under this section is a health care service and a covered health care benefit for purposes of this part. Coverage shall not be denied on the basis that the treatment is habilitative, nonrestorative, educational, academic, or custodial in nature.

(e) A health insurer may request, no more than once annually, a review of treatment provided to an insured for autism spectrum disorders. The cost of obtaining the review shall be borne by the insurer. This subdivision does not apply to inpatient services.

(f) A health insurer shall establish and maintain an adequate network of qualified autism service providers with appropriate training and experience in autism spectrum disorders to ensure that insureds have a choice of providers, and have timely access, continuity of care, and ready referral to all services required to be provided by this section consistent with Sections 10133.5 and 10133.55 and the regulations adopted pursuant thereto.

(g) (1) This section shall not be construed as reducing any obligation to provide services to an insured under an individualized family service plan, an individualized program plan, a prevention program plan, an individualized education program, or an individualized service plan.

(2) This section shall not be construed as limiting benefits that are otherwise available to an enrollee under a health insurance policy.

(3) This section shall not be construed as affecting litigation that is pending on January 1, 2012.

(h) On and after January 1, 2014, to the extent that this section requires health benefits to be provided that exceed the essential health benefits required to be provided under Section 1302(b) of the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) by qualified health plans offering those benefits in the California Health Benefit Exchange pursuant to Title 22 (commencing with Section 100500) of the Government Code, the specific benefits that exceed the federally required essential health benefits are not
required to be provided when offered by a health insurance policy through the Exchange. However, those specific benefits are required to be provided if offered by a health insurance policy outside of the Exchange.

(i) As used in this section, the following terms shall have the following meanings:

1. “Autism spectrum disorder” means a neurobiological condition that includes autistic disorder, Asperger’s disorder, Rett’s disorder, childhood disintegrative disorder, and pervasive developmental disorder not otherwise specified.

2. “Behavioral health treatment” means professional services and treatment programs, including behavioral intervention therapy, applied behavioral analysis, and other intensive behavioral programs, that have demonstrated efficacy to develop, maintain, or restore, to the maximum extent practicable, the functioning or quality of life of an individual and that have been demonstrated to treat the core symptoms associated with autism spectrum disorder.

3. “Behavioral intervention therapy” means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in behaviors, including the use of direct observation, measurement, and functional analyses of the relationship between environment and behavior.

4. “Diagnosis of autism spectrum disorders” means medically necessary assessment, evaluations, or tests to diagnose whether an individual has one of the autism spectrum disorders.

5. “Evidence-based research” means research that applies rigorous, systematic, and objective procedures to obtain valid knowledge relevant to autism spectrum disorders.

6. “Pharmacy care” means medications prescribed by a licensed physician and surgeon or other appropriately licensed or certified provider and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.

7. “Psychiatric care” means direct or consultative psychiatric services provided by a psychiatrist or any other appropriately licensed or certified provider.
(8) “Psychological care” means direct or consultative psychological services provided by a psychologist or any other appropriately licensed or certified provider.

(9) “Therapeutic care” means services provided by licensed or certified speech therapists, occupational therapists, or physical therapists or any other appropriately licensed or certified provider.

(10) “Treatment for autism spectrum disorders” means all of the following care, including necessary equipment, prescribed or ordered for an individual diagnosed with one of the autism spectrum disorders by a licensed physician and surgeon or a licensed psychologist or any other appropriately licensed or certified provider who determines the care to be medically necessary:

(A) Behavioral health treatment.

(B) Pharmacy care.

(C) Psychiatric care.

(D) Psychological care.

(E) Therapeutic care.

(F) Any care for individuals with autism spectrum disorders that is demonstrated, based upon best practices or evidence-based research, to be medically necessary.

(j) This section, with the exception of subdivision (b), shall not apply to dental-only or vision-only health insurance policies.

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 181 VERSION:     AMENDED APRIL 28, 2011
AUTHOR:    PORTANTINO AND BEALL SPONSOR: CALIFORNIA YOUTH CONNECTION
RECOMMENDED POSITION:     SUPPORT
SUBJECT:    FOSTER YOUTH: MENTAL HEALTH BILL OF RIGHTS

Existing Law:

1. Requires that when a child is removed from his or her family and placed into foster care, that placement must provide the child as nearly as possible the same custody, care, and discipline that should have been provided by the parents. (Welfare and Institutions Code (WIC) §16000(a))

2. Establishes a list of rights for children in foster care, which includes the right “to receive medical, dental, vision, and mental health services.” (WIC §16001.9(a)(4))

3. Establishes the Office of the State Foster Care Ombudsperson for the purposes of providing foster children with a way to resolve issues related to their care, placement, or services. (WIC §16161)

4. Requires the Office of the State Foster Care Ombudsperson to disseminate information on the rights of foster children. (WIC §16164(a)(1))

This Bill:

1. Creates a list of rights for children in foster care and transition-age foster youth relating to mental health services, as follows: (WIC §16001.10(a))
   a. To receive developmentally appropriate and medically necessary mental health screenings, assessments, and services.
   b. To receive a mental health screening to determine whether mental health services are needed if the placement is at risk due to behavior issues.
   c. To be treated by a mental health professional who is culturally sensitive and qualified to treat children of that age and symptoms.
   d. To interview a therapist prior to beginning treatment, and to request a new therapist at any time, based on availability.
   e. To continue services with the same therapist for at least one year after a change in placement or a reunification.
   f. To refuse mental health treatment, unless a danger to self or others.
g. If age 12 or older, to initiate and consent to mental health services.

h. To be presented with all available mental health treatment services.

i. To access mental health services in the least restrictive environment, including out of the place of residence if the child desires.

j. To be provided with information on how to seek mental health services.

k. To receive timely mental health services.

l. To be given developmentally appropriate information on drug interactions if prescribed more than one medication.

m. To receive developmentally appropriate information on possible side effects of prescribed psychotropic medications.

n. To refuse or discontinue psychotropic medications.

o. To be guaranteed privacy and confidentiality with mental health professional, unless a danger to self or others or if child abuse is suspected.

p. To have access to mental health records as permitted by law.

q. To be provided with copies of mental health records at no cost if unable to pay.

2. Requires the Office of the State Foster Care Ombudsperson to develop standardized information explaining the above rights in an age-appropriate manner by July 1, 2012. (WIC §16001.10(b))

3. Requires the Office of the State Foster Care Ombudsperson to disseminate the information pursuant to the provisions of this bill. (WIC §16164(a)(1))

Comment:

1) **Author’s Intent.** According to the author’s office, although mental health treatment is listed as one of the foster youth’s rights, barriers often prevent foster children from receiving the mental health care that they need. The goal of this bill is to provide additional rights to foster youth related to mental health services.

2) **Lack of Treatment.** According to research provided by the author’s office, children entering the foster care system are at risk for mental health issues for several reasons. They cite research that shows that 50-60% of children in foster care have moderate to severe mental health problems. However, only 28% of these children receive mental health services during the year after their contact with the child welfare system.

3) **Recommended Position.** At its meeting on April 7, 2011, the Policy and Advocacy Committee recommended the Board take a support position on this bill. The list of mental health rights has been amended since this time.

4) **Support and Opposition.**

Support:
- American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO
• Aspiranet
• California Alliance of Child and Family Services (if amended)
• California Association of Marriage and Family Therapists (CAMFT)
• California Youth Connection (Sponsor)
• County Welfare Directors Association of California (CWDA)
• Disability Rights California
• Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM)
• State Council on Developmental Disabilities (SCDD)
• State Public Affairs Committee (SPAC) Jr. Leagues of CA

Opposition: None on file.

5) History

2011
May 2  Re-referred to Com. on APPR.
Apr. 28  Read second time and amended.
Apr. 27  From committee: Do pass as amended and re-refer to Com. on APPR.  (Ayes 4. Noes 0.) (April 26).
Mar. 22  Re-referred to Com. on HUM. S. In committee: Hearing postponed by committee.
Mar. 21  From committee chair, with author’s amendments: Amend, and re-refer to Com. on HUM. S. Read second time and amended.
Mar. 16  Re-referred to Com. on HUM. S.
Mar. 15  From committee chair, with author’s amendments: Amend, and re-refer to Com. on HUM. S. Read second time and amended.
Feb. 3  Referred to Com. on HUM. S.
Jan. 25  From printer. May be heard in committee February 24.
Jan. 24  Read first time. To print.
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AMENDED IN ASSEMBLY APRIL 28, 2011
AMENDED IN ASSEMBLY MARCH 21, 2011
AMENDED IN ASSEMBLY MARCH 15, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 181

Introduced by Assembly Members Portantino and Beall
(Principal coauthor: Senator Steinberg)
(Coauthors: Assembly Members Ammiano, Blumenfield, Brownley, Carter, Chesbro, Dickinson, Fong, Galgiani, Gordon, Huffman, Ma, Skinner, and Swanson)
(Coauthors: Senators Correa, Evans, Price, and Vargas)

January 24, 2011

An act to amend Section 16164 of, and to add Section 16001.10 to, the Welfare and Institutions Code, relating to foster youth.

LEGISLATIVE COUNSEL’S DIGEST

AB 181, as amended, Portantino. Foster youth: mental health bill of rights.

Existing law provides that, when a child is removed from his or her family by the juvenile court, placement of the child in foster care should secure, as nearly as possible, the custody, care, and discipline equivalent to that which should have been given the child by his or her parents. Existing law provides enumerated rights for children who are placed in foster care. Existing law establishes the Office of the State Foster Care Ombudsperson to disseminate specified information, including the stated rights of foster youth, and to investigate and attempt to resolve complaints made by or on behalf of children placed in foster care, related to their care, placement, or services.
This bill would enumerate rights for foster youth relating to mental health services. The bill would require the office, in consultation with various entities, to develop, no later than July 1, 2012, standardized information explaining the rights specified and to distribute this information to foster youth.


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

SECTION 1. Section 16001.10 is added to the Welfare and Institutions Code, to read:

16001.10. (a) It is the policy of the state that all children in foster care and transition-age foster youth shall have the following rights relating to mental health services:

1. To receive needed mental health services.
2. To interview a therapist prior to commencing treatment.
3. To discontinue psychotropic medication, as deemed appropriate by a physician, if the youth experiences potentially dangerous side-effects.
4. To be presented with mental health options, including, but not limited to, holistic or natural approaches, mentoring, peer counseling, therapy, and medication.
5. To continue services with their therapist or counselor for at least one year when their residential placement changes or as long as it is in the best interest of the youth, as determined by a court.
6. To be evaluated by a medical professional.
7. To have mental health services provided outside of the place of residence, if the child wishes.
8. To be provided with information on how to seek mental health services in their county of residence, or to have this information provided to the child’s caregiver, depending on the age of the child.
9. To gain access to personal mental health records.
10. Consistent with other state laws, to be guaranteed the protection of confidentiality when interacting with mental health professionals, unless the youth is deemed at risk of harming himself or herself or others, and when reporting suspected child abuse to the child protection agency.
(11) To be given age-appropriate information on drug
interactions if prescribed more than one medication.
(12) To receive timely mental health services in the county of
residence and not to be denied services based on the child’s county
of origin.
(13) To refuse mental health treatment at any time unless
deemed medically necessary by the court.
   (1) To receive developmentally appropriate, medically necessary
mental health screenings, assessments, and services.
   (2) For foster youth, including those six years of age and
younger, to receive a mental health screening to determine whether
mental health services are necessary if the placement is at risk
due to behavioral reasons.
   (3) To be evaluated and treated by a mental health professional
who is culturally sensitive and qualified to treat individuals of that
age and symptomology.
   (4) To interview a therapist prior to commencing treatment and,
for children 10 years of age or younger, to participate with
caregivers in interviewing therapists before commencing treatment.
Once treatment commences, the youth, or caregiver if the youth
is 10 years of age or younger, has the right to request a new
therapist at any time upon the availability of a new provider.
   (5) To continue services with the same licensed mental health
provider, if that provider is available, for at least one year after
a change in placement or following reunification, consistent with
the mental health treatment plan and best interests of the child or
nonminor.
   (6) To refuse mental health treatment at any time unless the
individual poses an immediate danger to himself or herself or
others.
   (7) If 12 years of age or older, to initiate and consent to
outpatient mental health treatment or counseling services.
   (8) To be presented with all available services and mental health
services, including, but not limited to, behavioral, holistic, or
natural approaches, mentoring, peer counseling, therapy, and
medication.
   (9) To access available mental health services in the
least-restrictive community environment, including services
provided outside of the place of residence, if the youth wishes.
(10) To be provided with information on how to seek mental health services in the county of residence. For children 10 years of age or younger, caregivers shall be provided with information on how to seek mental health services in the child’s county of residence.

(11) To receive timely mental health services in the county of residence and not to be denied services based on the individual’s county of origin, unless the youth is receiving services in the county of origin to preserve desired continuity.

(12) To be given developmentally appropriate information on drug interactions if prescribed more than one medication.

(13) To receive developmentally appropriate information on potential short- or long-term side effects of prescribed psychotropic medications and to receive available information related to the efficacy of the prescribed psychotropic medication for individuals of a similar age group. Youth and caregivers shall also be notified if the psychotropic medication has not been tested on youth of that age group.

(14) To refuse or discontinue the administration of psychotropic medications.

(15) Consistent with existing law, to be guaranteed the protection of privacy and confidentiality when interacting with mental health professionals, unless the youth is deemed a danger to himself or herself or others, and when reporting suspected child abuse to the child protection agency.

(16) To gain access to personal mental health records as permitted by law and to have the confidentiality of those mental health records protected as provided under existing law.

(17) To be provided with copies of mental health records at no cost if unable to pay.

(b) The Office of the State Foster Care Ombudsperson, in consultation with the State Department of Mental Health, the State Department of Social Services, the State Department of Health Care Services, foster youth advocacy and support groups, representatives of county child welfare agencies, and groups representing children, families, foster parents, and children’s facilities, and other interested parties, shall develop, no later than July 1, 2012, standardized information explaining the rights specified in this section. The information shall be presented in an
age-appropriate manner and shall reflect any relevant licensing
requirements and medical information laws.

SEC. 2. Section 16164 of the Welfare and Institutions Code is
amended to read:

16164. (a) The Office of the State Foster Care Ombudsperson
shall do all of the following:

(1) Disseminate information on the rights of children and youth
in foster care and the services provided by the office. The rights
of children and youths in foster care are listed in Sections 16001.9
and 16001.10. The information shall include notification that
conversations with the office may not be confidential.

(2) Investigate and attempt to resolve complaints made by or
on behalf of children placed in foster care, related to their care,
placement, or services.

(3) Decide, in its discretion, whether to investigate a complaint,
or refer complaints to another agency for investigation.

(4) Upon rendering a decision to investigate a complaint from
a complainant, notify the complainant of the intention to
investigate. If the office declines to investigate a complaint or
continue an investigation, the office shall notify the complainant
of the reason for the action of the office.

(5) Update the complainant on the progress of the investigation
and notify the complainant of the final outcome.

(6) Document the number, source, origin, location, and nature
of complaints.

(7) (A) Compile and make available to the Legislature all data
collected over the course of the year, including, but not limited to,
the number of contacts to the toll-free telephone number, the
number of complaints made, including the type and source of those
complaints, the number of investigations performed by the office,
the trends and issues that arose in the course of investigating
complaints, the number of referrals made, and the number of
pending complaints.

(B) Present this compiled data, on an annual basis, at appropriate
child welfare conferences, forums, and other events, as determined
by the department, that may include presentations to, but are not
limited to, representatives of the Legislature, the County Welfare
Directors Association, child welfare organizations, children’s
advocacy groups, consumer and service provider organizations,
and other interested parties.
(C) It is the intent of the Legislature that representatives of the organizations described in subparagraph (B) consider this data in the development of any recommendations offered toward improving the child welfare system.

(D) The compiled data shall be posted so that it is available to the public on the existing Internet Web site of the State Foster Care Ombudsperson.

(8) Have access to any record of a state or local agency that is necessary to carry out his or her responsibilities. Representatives of the office may meet or communicate with any foster child in his or her placement or elsewhere.

(b) The office may establish, in consultation with a committee of interested individuals, regional or local foster care ombudsperson offices for the purposes of expediting investigations and resolving complaints, subject to appropriations in the annual Budget Act.

(c) (1) The office, in consultation with the California Welfare Directors Association, Chief Probation Officers of California, foster youth advocate and support groups, groups representing children, families, foster parents, children’s facilities, and other interested parties, shall develop, no later than July 1, 2002, standardized information explaining the rights specified in Section 16001.9. The information shall be developed in an age-appropriate manner, and shall reflect any relevant licensing requirements with respect to foster care providers’ responsibilities to adequately supervise children in care.

(2) The office, counties, foster care providers, and others may use the information developed in paragraph (1) in carrying out their responsibilities to inform foster children and youth of their rights pursuant to Section 1530.91 of the Health and Safety Code, Sections 27 and 16501.1, and this section.
CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 367
VERSION: INTRODUCED FEBRUARY 14, 2011
AUTHOR: SMYTH
SPONSOR: CALIFORNIA ASSOCIATION OF MARRIAGE AND FAMILY THERAPISTS (CAMFT)

RECOMMENDED POSITION: SUPPORT

SUBJECT: ELDER ABUSE: REPORTING

Existing Law:

1. Defines “mandated reporter” for purposes of reporting child abuse and neglect. (Penal Code § 11165.7).

2. States that a report of child abuse and neglect must be accepted by specified agencies even if the agency to which the report is being made lacks the subject matter or geographical jurisdiction to investigate the reported case. (Penal Code § 11165.9)

3. Defines “mandated reporter” for purposes of reporting elder or dependent adult abuse and neglect. (Welfare and Institutions Code § 15630(a),(b))

4. Specifies the agencies a mandated reporter is required to report elder and dependent adult abuse and neglect, depending on where the abuse has occurred. (Welfare and Institutions Code §§ 15630, 15630.1, 16531)

This Bill:

1. Requires a county adult protective services agency or a local law enforcement agency to accept a report by a mandated reporter, or any other person, of suspected elder or dependent adult abuse even if the agency lacks jurisdiction to investigate the report, unless the call can be immediately transferred to an agency with proper jurisdiction. (Business and Professions (B&P) Code § 15631.5)

2. Requires a county adult protective services agency or local law enforcement agency that lacks jurisdiction to immediately refer the report of suspected abuse by telephone, facsimile, or electronic transmission to a county adult protective services agency or a local law enforcement agency with proper jurisdiction. (B&P Code § 15631.5)

Comment:

1) Author’s Intent. Under current law, when a case of child abuse and neglect is reported to an agency, that agency must take the abuse report whether or not it has jurisdiction. The agency must then refer the matter to an agency with proper jurisdiction. However, similar provisions do not exist for the reporting of a case of elder and dependent adult abuse. As a result, mandated reporters trying to make a report of elder and dependent adult abuse may
be sent from agency to agency, navigating local and county bureaucracies, until they find the proper department to take the report.

Examples of when this may happen are when the alleged perpetrator lives out of the area, or if the investigation will be conducted out of the area. The mandated reporter then must spend time tracking down the appropriate authority. The intent of this legislation is to eliminate the burden on the mandated reporter to find the authority that actually has jurisdiction of the case.

2) **Recommended Position.** At its meeting on April 7, 2011, the Policy and Advocacy Committee recommended the Board take a support position on this bill.

3) **Support and Opposition.**

*Support:*
- California Association of Marriage & Family Therapists - sponsors
- California Senior Legislature (CSL)

*Opposition:*
- California Advocates for Nursing Home Reform (CANHR)

4) **History**

**2011**

- Apr. 12 In committee: Set, first hearing. Hearing canceled at the request of author.
- Mar. 22 From committee: Do pass and re-refer to Com. on AGING & L.T.C. with recommendation: to consent calendar. (Ayes 7. Noes 0.) (March 22). Re-referred to Com. on AGING & L.T.C.
- Mar. 3 Referred to Coms. on PUB. S. and AGING & L.T.C.
- Feb. 15 From printer. May be heard in committee March 17.
- Feb. 14 Read first time. To print.
An act to add Section 15631.5 to the Welfare and Institutions Code, relating to elder abuse.

LEGISLATIVE COUNSEL’S DIGEST

AB 367, as introduced, Smyth. Elder abuse: reporting.

The Elder Abuse and Dependent Adult Civil Protection Act establishes various procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. The act requires certain persons, called mandated reporters, to report known or suspected instances of elder or dependent adult abuse, and the failure of a mandated reporter to report physical abuse and financial abuse of an elder or dependent adult under the act is a misdemeanor. The act requires the mandated reporter to report the abuse to the adult protective services agency or the local law enforcement agency if the abuse occurs anywhere other than a long-term facility.

The act permits a person who is not a mandated reporter who knows, or reasonably suspects, that an elder or dependent adult has been the victim of abuse in a place other than a long-term care facility to report that abuse to the county adult protective services agency or the local law enforcement agency.

This bill would require a county adult protective services agency or a local law enforcement agency to accept a report by a mandated reporter, or any other person, of suspected elder or dependent adult abuse even if the agency lacks jurisdiction to investigate the report, unless the call can be immediately transferred to an agency with proper
jurisdiction. This bill would also require a county adult protective services agency or a local law enforcement agency that lacks jurisdiction to immediately refer the report of suspected abuse by telephone, facsimile, or electronic transmission to an agency with proper jurisdiction. By requiring county adult protective services agencies and local law enforcement agencies to provide a higher level of service, this bill would impose a state-mandated local program.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.


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

SECTION 1. Section 15631.5 is added to the Welfare and Institutions Code, to read:

15631.5. Reports of suspected elder or dependent adult abuse pursuant to either subparagraph (C) of paragraph (1) of subdivision (b) of Section 15630 or subdivision (b) of Section 15631 may be made to any county adult protective services agency or local law enforcement agency. Any county adult protective services agency or local law enforcement agency shall accept the report of suspected elder or dependent adult abuse even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the county adult protective services agency or the local law enforcement agency can immediately transfer the call reporting suspected elder or dependent adult abuse to a county adult protective services agency or a local law enforcement agency with proper jurisdiction. If a county adult protective services agency or a local law enforcement agency accepts a report about a case of suspected elder or dependent adult abuse in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, facsimile, or electronic transmission to a county adult protective services agency or a local law enforcement agency with proper jurisdiction.
SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
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Existing Law:

1. States that it is the intent of the legislature that all children are entitled to be safe and free from abuse and neglect. (Welfare and Institutions Code §16500).

2. Provides for a statewide system of child welfare services that must be available in each county of the state. (W&I Code §16500).

3. Requires all counties to establish and maintain specialized entities within their county welfare department which are responsible for the child welfare services program. (W&I Code §16500).

4. Defines “child welfare services” as public social services which seek to accomplish the following: (W&I Code §16501(a)

   • Protecting and promoting the welfare of all children;
   • Preventing or remedying, or assisting in the solution of problems which may result in the neglect, abuse, exploitation, or delinquency of children;
   • Preventing the unnecessary separation of children from their families;
   • Restoring to their families children who have been removed;
   • Identifying children to be placed in suitable adoptive homes; and
   • Ensuring adequate care of children away from their homes.

The law also defines “child welfare services” to mean the continuum of services provided on the behalf of children alleged to be the victims of child abuse, neglect, or exploitation.

This Bill:

1. Requires a social work supervisor working for a county child welfare services agency to have one of the following (Welfare and Institutions Code (WIC) §16501.4(a)):

   a. A master’s degree from an accredited or state approved graduate school in one of the following areas:
i. Social work or social welfare
ii. Marriage, family and child counseling
iii. Child psychology
iv. Child development
v. Counseling psychology
vi. Social psychology
vii. Clinical psychology
viii. Educational psychology
ix. Education, with counseling emphasis; OR

b. Equivalent education and experience, as determined by the State Department of Social Services.

2. Requires that all newly hired social work supervisor working for a county child welfare services agency as of January 1, 2012 meet the following requirements, in addition to the degree requirements (WIC §16501.4(b)):
   a. Have at least four semester units of master’s level field practice or six months full-time equivalent experience in a county child welfare services agency setting;
   b. Have at least nine semester units of coursework related to human development or human behavior, or two years experience working with children and families under supervision of a supervising social worker;
   c. Have at least three semester units in working with minority populations or six months experience working with minority populations and training in cultural competency.
   d. Have at least three semester units in child welfare, or two years of experience in a county child welfare services setting.

3. Allows education and experience completed to fulfill the degree requirements be used to satisfy the additional education and experience requirements. (WIC §16501.4(b)(4))

4. Allows someone who does not meet the requirements to apply for an exception with the State Department of Social Services. The department must process the exception within 30 days. (WIC §1601.4(b)(2)(A), (d))

5. States that an employee hired before January 1, 2012 does not have to satisfy the new education and experience requirements in order to keep their job as a social work supervisor in a county child welfare services agency. ((WIC §1601.4(b)(3)(B))

Comment:

1) Author’s Intent. The author notes that “currently, there are no educational requirements for supervisors in child welfare services. While counties provide supervisor training, it is no
substitute for a master’s level education in social work or in a behavioral science.” The goal of this bill is to enhance consumer protection with respect to child welfare services by ensuring that supervisors have appropriate training, experience and education. The expected result is that outcomes in child welfare cases will improve and there will be fewer cases of children left in abusive situations.

2) Define “Equivalent Education and Experience.” The bill states that someone who has a master’s degree in specified areas, or “equivalent education and experience, as determined by the department,” is qualified to be a social work supervisor for a county child welfare services agency. This is a broad requirement that could result in the hiring of an individual without a master’s level education, when the intent of the bill is to require a master’s degree.

3) Placement Inappropriate. This bill proposes to add Section 16501.4 to the Welfare and Institutions Code. The language appears out of context in this placement. Section 16501.3 discusses the Department of Social Services establishing a program of public health nursing within the child welfare services program. Section 16501.5 directs the department to implement a statewide Child Welfare Services Case Management System. This may be confusing without appropriate context as to the exact settings in which a child welfare services social work supervisor is employed.

4) Recommended Position: At its meeting on April 7, 2011, the Policy and Advocacy Committee recommended the Board take a “support if amended” position on this bill. Substantial amendments have been made since that time. The following amendments had been recommended by the Committee:

- Clarification of work setting and place of employment (addressed in amendments).
- Clarification of acceptable employment before January 1, 2012 in order to be exempt from requirements (addressed in amendments).
- Narrow down acceptable degrees to those similar to what the Board would accept for licensure (addressed in amendments).
- Clarification of possible exemptions, in order to make exemptions less broad. (partially addressed in amendments).
- Placement within the Welfare and Institutions Code (not addressed)

5) Support and Opposition.
Support: None on file.
Opposition: California Association of Marriage and Family Therapists (CAMFT)

6) History

2011
Apr. 26 In committee: Set, second hearing. Hearing canceled at the request of author.
Apr. 25 From committee chair, with author’s amendments: Amend, and re-refer to Com. on HUM. S. Read second time and amended. Re-referred to Com. on HUM. S.
Mar. 31 Re-referred to Com. on HUM. S.
Mar. 30 From committee chair, with author’s amendments: Amend, and re-refer to Com. on HUM. S. Read second time and amended.
Mar. 22 In committee: Set, first hearing. Hearing canceled at the request of author.
Mar. 7 Referred to Com. on HUM. S.
Feb. 18  From printer. May be heard in committee March 20.
Feb. 17  Read first time. To print.
An act to add Section 16501.4 to the Welfare and Institutions Code, relating to child welfare services.

LEGISLATIVE COUNSEL’S DIGEST

AB 671, as amended, Portantino. Child welfare services: education and training requirements.

Existing law requires the establishment and support of a public system of statewide child welfare services, for the protection of children who are alleged to be abused or neglected. Existing law provides for a statewide multipurpose child welfare training program to develop and implement statewide coordinated training programs designed specifically to meet the needs of county child protective services social workers assigned emergency response, family maintenance, family reunification, permanent placement, and adoption responsibilities.

This bill would require a child welfare services social work supervisor to have a master’s degree in social work, or a master’s degree in behavioral science and meet other specified requirements, in addition to any other education, training, or certification required by law. It would specify education and training requirements for social work supervisors and other personnel performing social work activities in a county child welfare services agency. This bill would exempt a social worker...
employed before January 1, 2012, from these related field practice, course work, and experience requirements, as prescribed.


*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 improve outcomes and increase consumer protection in child welfare services by improving the educational standards of supervisors in child welfare services to ensure that each supervisor has the appropriate training, experience, and education.

SEC. 2. Section 16501.4 is added to the Welfare and Institutions Code, to read:

16501.4. (a) Unless exempt pursuant to subdivision (c), a child welfare services social work supervisor shall satisfy the education and training requirements provided for in this section, in addition to any education, training, or certification otherwise required by law:

(b) A child welfare services social work supervisor shall have either of the following:

(1) A master’s degree in social work (MSW) from a program accredited by the Council on Social Work Education (CSWE).

(2) All of the following:

(A) A master’s degree in behavioral science from an accredited academic institution.

(B) Twenty contact hours of population-specific education.

(C) One year and 1,500 hours of documented, paid, supervised, equivalent master’s post-graduate degree social work experience with children, youth, and families.

(D) An evaluation from a supervisor.

(E) A reference from an MSW or master’s degree in behavioral sciences colleague.

(F) An agreement to adhere to a professional code of ethics.

(c) A child welfare services social work supervisor employed before January 1, 2012, is exempt from the requirements of this section.

SEC. 2. Section 16501.4 is added to the Welfare and Institutions Code, to read:
16501.4. (a) (1) The educational requirements for social work supervisors for a county child welfare services agency shall be a master’s degree from an accredited or state approved graduate school in social work or social welfare, or equivalent education and experience, as determined by the department except as provided in paragraph (2).

(2) A person who possesses a master’s degree from an accredited or state-approved graduate school in any of the following areas, or equivalent education and experience, as determined by the department, shall be qualified to perform supervisory social work activities in a county child welfare services agency:

(A) Marriage, family, and child counseling.
(B) Child psychology.
(C) Child development.
(D) Counseling psychology.
(E) Social psychology.
(F) Clinical psychology.
(G) Educational psychology, consistent with the scope of practice as described in Section 4989.14 of the Business and Professions Code.
(H) Education, with emphasis on counseling.

(b) (1) In addition to the degree requirements specified in subdivision (a), all of the following course work and field practice or experience shall be required of all newly hired county social work personnel, effective January 1, 2012:

(A) At least four semester units of field practice at the master’s level or six months’ full-time equivalent experience in a county child welfare services agency setting.
(B) At least nine semester units of course work related to human development or human behavior, or two years of experience working with children and families as a major responsibility of the position under the supervision of a supervising social worker.
(C) At least three semester units in working with minority populations or six months of experience in working with minority populations and training in cultural competency and working with minority populations within the first six months of employment, as a condition of employment.
(D) At least three semester units in child welfare or at least two years of experience in a county child welfare services setting.
(2) (A) A person who does not satisfy the requirements specified in subdivision (a) or paragraph (1) may apply for an exception, as provided for in subdivisions (c) and (d).

(B) Exceptions granted by the department prior to January 1, 2012, shall remain in effect.

(3) (A) Persons hired on or after January 1, 2012, who do not satisfy the requirements specified in paragraph (1) shall be required to successfully complete those requirements in order to be employed as social work supervisors in a county child welfare services setting.

(B) An employee hired prior to January 1, 2012, shall not be required to satisfy the requirements of paragraph (1) in order to remain employed as a social work supervisor in a county child welfare services agency.

(4) Course work and field practice or experience completed to fulfill the degree requirements of subdivision (a) may be used to satisfy the requirements of this subdivision.

(c) A person seeking an exception to the requirements of subdivision (a) or (b) based on completion of equivalent education and experience shall apply to the department pursuant to the process established by the department.

(d) The State Department of Social Services shall complete the process for the exception to minimum education and experience requirements described in subdivision (a) or (b) within 30 days of receiving the exception application of a social work supervisor from the county child welfare services agency.
CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES
BILL ANALYSIS

BILL NUMBER: AB 675  VERSION: AMENDED APRIL 5, 2011
AUTHOR: HAGMAN  SPONSOR: AUTHOR
RECOMMENDED POSITION: OPPOSE UNLESS AMENDED
SUBJECT: CONTINUING EDUCATION; PROHIBITION OF SPECIFIED COURSES

Existing Law:

1. Requires the director of the Department of Consumer Affairs to establish guidelines, by regulation, to prescribe components for mandatory continuing education (CE) programs administered by and board within the department. (Business & Professions Code (BPC) §166)

2. States that the purpose of the guidelines are to ensure that mandatory CE is used to create a more competent licensing population, thereby enhancing public protection. (BPC §166(a)).

3. Requires mandatory CE programs to address the following (BPC §166(a)):
   - Course validity
   - Occupational relevancy
   - Effective presentation
   - Actual attendance
   - Material assimilation
   - Potential for application.

4. States that the Board may not renew the license of a Marriage and Family Therapist (MFT), licensed clinical social worker (LCSW), or a licensed professional clinical counselor (LPCC), unless the applicant certifies, on a form prescribed by the board, that he or she has completed not less than 36 hours of approved CE in or relevant to the field of marriage and family therapy, social work, or professional clinical counseling, in the preceding two years, as determined by the Board. (BPC §§4980.54(c), 4996.22(a)(1), 4999.76(a)(1))

5. Requires the CE to be obtained from one of the following sources: (BPC §§4980.54(f), 4996.22(d), 4999.76(d))
   - An accredited school or state-approved school; or
   - Another CE provider, including, but not limited to, a professional marriage and family therapist association, a professional social work association, a professional clinical counseling association, a licensed health facility, a government entity, a continuing education unit of an accredited four year institution of higher learning, or a mental health professional association, approved by the board.
6. Requires the board to establish, by regulation, a procedure for approving providers of CE courses. (BPC §§4980.54(g), 4996.22(e), 4999.76(e))

7. Allows the board to revoke or deny the right of a provider to offer CE coursework for failure to comply with the requirements of the law or any adopted regulation (BPC §§4980.54(g), 4996.22(e), 4999.76(e))

8. Requires that training, education, and coursework by approved providers must incorporate one or more of the following (BPC §§4980.54(h), 4996.22(f), 4999.76(f)):
   a. Aspects of the discipline that are fundamental to the understanding or practice of marriage and family therapy, social work, or professional clinical counseling.
   b. Aspects of the discipline of marriage and family therapy, social work, or professional clinical counseling in which significant recent developments have occurred.
   c. Aspects of other disciplines that enhance the understanding or the practice of marriage and family therapy, social work, or professional clinical counseling.

9. Requires the CE requirements to comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to BPC §166. (BPC §§4980.54(k), 4996.22(h), 4999.76(i))

10. Defines a CE “course” as a form of systematic learning at least one hour in length including, but not limited to, academic studies, extension studies, lectures, conferences, seminars, workshops, viewing of videotapes or film instruction, viewing or participating in other audiovisual activities including interactive video instruction and activities electronically transmitted from another location verified and approved by the CE provider, and self study courses. (Title 16, §1887(a) of the California Code of Regulations (CCR))

11. Defines a CE “provider” as an accredited or approved school, or an association, health facility, governmental entity, educational institution, individual, or other organization that offers CE courses and meets the requirements of the law. (16 CCR §1887(c))

12. Requires a provider to ensure the content of a course is relevant to the practice of marriage and family therapy or clinical social work and meets the requirements of the law. The content of a course must also be related to direct or indirect patient/client care: (16 CCR §1887.4(a))
   - Direct patient/client care courses cover specialty areas of therapy, such as theoretical frameworks for clinical practice or intervention techniques with individuals, couples, or groups.
   - Indirect patient/client care courses cover pragmatic aspects of clinical practice, such as legal or ethical issues, consultation, recordkeeping, office management, insurance risks and benefits, managed care issues, research obligations, or supervision training.

13. Requires a CE provider to meet the board’s course content and instructor qualifications criteria to become a board-approved provider. (16 CCR §1887.7(a))
14. Allows the board to revoke its approval of a provider or deny a provider application for good cause. The provider may appeal the revocation or denial in writing. (16 CCR §1887.8)

This Bill:

1. Requires a board requiring CE or competency courses to only allow CE credit for courses with content relevant to the particular practice regulated by that board pursuant to its laws and regulations. (BPC §110.6(a))

2. Prohibits the following courses from being considered as having content relevant to the practice regulated by the board, and prohibits them being accepted for meeting CE requirements: (BPC §110.6(a))
   a. Courses that advance or promote labor organizing on behalf of a union;
   b. Courses that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy.

3. Defines “courses” as including institutes, seminars, lectures, conferences, workshops, and any other public events. (BPC §110.6(a))

4. Prohibits an approved provider who offers a course that is described above as prohibited from being accepted as CE courses must not represent that the course is acceptable for meeting the CE requirements. (BPC §110.6(b)(1))

5. Requires that if a provider violates this requirement, then the board shall withdraw its approval of the provider. (BPC §110.6(b)(1))

6. States that if, after the board provides the provider notice and an opportunity to be heard, the board finds the provider in violation of this law, then the board must withdraw approval of the provider for at least five years. (BPC §110.6(b)(2))

Comment:

1) Author’s Intent. The author sponsored this bill after it came to his attention that the California Nurses Association (CNA) was offering CE credits to registered nurses (RNs) as an incentive to attend political events. The CNA also offers CE credits to RNs attending classes focused on lobbying and political organizing. The law does not specifically prohibit this. This bill seeks to revise existing law for professions requiring CE credit, stating that courses with this type of content are not acceptable for meeting CE requirements.

2) Previous Legislation. Last year, upon learning of this issue, the author introduced AB 378. This bill, which eventually died, contained the same prohibitions for CE course content but was applied only to the practice of registered nursing. The Board of Registered Nursing (BRN) is within the Department of Consumer Affairs.

The CNA opposed this legislation, saying that it unfairly singled out RNs, undermined their duty to advocate for patients, and would keep RNs in the dark about important legislative and regulatory developments in the health care field which affect their profession.
The United Nurses Association of California/Union of Health Care Professionals also opposed the bill, saying education on regulatory and statutory changes is an important tool in professional development.

The Board of Behavioral Sciences did not take a position on AB 378.

3) **Intent of the Law.** This bill appears to be consistent with the intent of the law to ensure that mandatory CE is used to create a more competent licensing population, thereby enhancing public protection, and not to promote labor organizing or political movements. In addition, classes promoting labor organizing or promote political agendas do not appear to meet Board regulations specifying that the content of a course must be related to direct or indirect patient/client care. Therefore, this bill would simply specify a component of law that is already implied in the Board’s statute.

4) **Concerns About Prohibiting Courses That Discuss Statutory and Regulatory Changes.** It is very important for the board’s licensees to know the law regarding their profession and be informed of recent statutory and regulatory changes that affect their profession. It is unclear whether CE courses that discuss the legislative process and any changes to statutes and regulations affecting the profession would constitute “courses that advance or promote statutory or regulatory changes.” To avoid any confusion, staff recommends that language be added to clarify that courses containing discussion of recent statutory and regulatory changes to the profession for which the CE is being offered is permitted.

5) **Possible Inclusion of Law and Ethics CE Course.** At the April 7th Policy and Advocacy Committee meeting, a committee member raised concern that the Board’s mandated continuing education course covering law and ethics may fall into one of the prohibited course categories. Staff recommends that the bill be amended to clarify that a course covering law and ethics is permitted.

6) **Misplacement in the Code.** This bill proposes to add Section 110.6 to the Business and Professions Code. This does not appear to be an appropriate placement within the law. The preceding code section, §110, discusses Department of Consumer Affairs (DCA) possession and control of records and property. The next code section, §111, discusses DCA board’s appointment of commissioners on examination.

A more appropriate location for adding this section appears to be after §166, which discusses DCA development of guidelines for CE.

7) **Recommended Position.** At its meeting on April 7, 2011, the Policy and Advocacy Committee recommended the Board take an oppose position unless the bill is amended to allow coursework that would inform licensees of recent statutory or regulatory changes, as well as clarify that law and ethics courses are acceptable CE courses.

8) **Support and Opposition.**
   - **Support:** None on file.
   - **Opposition:** None on file.

9) **History**

   2011
   Apr. 6 Re-referred to Com. on B., P. & C.P.
Apr. 5  From committee chair, with author’s amendments: Amend, and re-refer to Com. on B., P. & C.P. Read second time and amended.
Mar. 29  In committee: Hearing postponed by committee.
Mar. 14  Re-referred to Com. on B., P. & C.P. pursuant to Assembly Rule 96.
Mar. 3   Referred to Coms. on HIGHER ED. and B., P. & C.P.
Feb. 18  From printer. May be heard in committee March 20.
Feb. 17  Read first time. To print.
An act to add Section 110.6 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL’S DIGEST

AB 675, as amended, Hagman. Continuing education.

Existing law provides for the licensure and regulation of professions and vocations by boards within the Department of Consumer Affairs and these boards may require licensees to satisfy continuing education course requirements.

This bill would provide, if applicable, that continuing education or competency courses, as specified, that advance or promote labor organizing on behalf of a union, or that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy shall not be considered content relevant to the practice regulated by the board and shall not be acceptable for meeting requirements for licensure renewal. The bill would also prohibit, to the extent applicable, an approved provider from representing that such a continuing education or competency course is acceptable for meeting requirements for licensure renewal and would require a board, subject to specified procedural requirements, to withdraw its approval of a
provider that violates that requirement for no less than 5 years, as specified.


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

SECTION 1. Section 110.6 is added to the Business and Professions Code, to read:

110.6. Notwithstanding any other provision of law, if a board described in Section 101 requires its licensees to satisfy continuing education or competency requirements by pursuing a course of continuing education or competency, the following shall apply:

(a) Continuing education or competency courses shall contain only content relevant to the particular practice regulated by the board pursuant to its laws and regulations. Continuing education or competency courses that advance or promote labor organizing on behalf of a union, or that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy shall not be considered content relevant to the practice regulated by the board and shall not be acceptable for meeting continuing education or competency requirements. For the purposes of this section, “courses” includes institutes, seminars, lectures, conferences, workshops, and any other public events.

(b) (1) To the extent applicable, if an approved provider offers a course described in subdivision (a), the provider shall not represent that the course is acceptable for meeting the continuing education or competency requirements. If a provider violates this requirement, the board shall withdraw its approval of the provider, subject to paragraph (2).

(2) If, after the board provides the provider notice and an opportunity to be heard, the board finds that the provider violated the requirement in paragraph (1), the board shall withdraw approval of the provider for no less than five years.
CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES
BILL ANALYSIS

BILL NUMBER: AB 774 VERSION: AMENDED APRIL 12, 2011

AUTHOR: CAMPOS SPONSOR: AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME)

RECOMMENDED POSITION: NONE

SUBJECT: CLINICAL SOCIAL WORKERS; HEALTH FACILITIES; LICENSURE

Existing Law:

1) Requires that licensure requirements for professional personnel in state and other government health facilities licensed by the State Department of Public Health (DPH) not be less than those for professional personnel in health facilities under private ownership. (Health and Safety Code [HSC] Section 1277(b))

2) Allows the requirement for licensure in a government health facility licensed by DPH to be waived for individuals gaining experience to qualify for licensure as a marriage and family therapist (MFTs) and Licensed Clinical Social Workers (LCSW) for up to four years from the date employment commenced. (HSC §1277(b))

3) Allows DPH to extend the waiver from licensure requirements for those seeking licensure as an MFT and LCSW for an additional year based on the following extenuating circumstances: (HSC §277(b)&(e))
   a) The employee has experienced a recent catastrophic event which may impair the employee’s ability to qualify and pass the license examination;
   b) The employee has difficulty speaking or writing the English language, or other cultural and ethnic factors exist with substantially impair the employee’s ability to qualify for and pass the license examination; or,
   c) The employee has experienced other personal hardship which DPH, in its discretion, determines to warrant the extension.

4) Allows personnel recruited for employment in a facility licensed by DPH whose experience is sufficient to gain admission to a license examination to become licensed within one year from their date of employment. (HSC §277 (b))

5) Defines "health facility" as any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer. (HCS §1250)
6) Defines "Department" as the Licensing and Certification Division of the State Department of Public Health, or its successor. (HSC §1200(b)(4))

This Bill would require DPH and the State Department of Mental Health, as appropriate, to grant a waiver, and an extension of a waiver for extenuating circumstances, to a marriage and family therapist and a clinical social worker, if certain conditions are met. (HSC §1277(e))

Comments:

1) **Author's Intent.** According to the Author’s office clinical social workers are working in many different California agencies and departments, however, an extension for the licensure waiver is only applied to those working in DPH licensed facilities.

2) **Drafting Issues.** Staff presented a number of issues regarding the drafting of this bill at the April 7, 2011 Policy and Advocacy Committee meeting. The bill has since been amended to address most of the issues identified by staff at that meeting; however, the recent amendments have also produced a new concern.

Throughout the bill the entity required to issue waivers from licensure, and extensions of those waivers, is referred to as “the licensing department.” However, the bill does not define “licensing department.” Due to the ambiguity and use of the term there is a concern that a “licensing department” could be interpreted to mean the Board, which would require the Board to issue licensure waivers for individuals working in the specified settings.

3) **Suggested Amendments.** Clarifying the term “licensing department” as used on:
   - Page 3, line 16
   - Page 4, lines 14, 18 and 27.

4) **Support and Opposition.**
   **Support**
   American Federation of State, County and Municipal Employees, AFL-CIO (Sponsor)

   **Opposition**
   None on file

5) **History.**

   2011
   Apr. 13 Re-referred to Com. on APPR.
   Apr. 12 Read second time and amended.
   Apr. 11 From committee: Do pass as amended and re-refer to Com. on APPR.
   (Ayes 18. Noes 0.) (April 5).
   Mar. 29 In committee: Set, first hearing. Hearing canceled at the request of author.
   Mar. 10 Referred to Com. on HEALTH.
   Feb. 18 From printer. May be heard in committee March 20.
   Feb. 17 Read first time. To print.
Introduced by Assembly Member Campos

February 17, 2011

An act to amend Section 1277 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL’S DIGEST

AB 774, as amended, Campos. Health facilities: licensure. Existing law provides for the licensure of health facilities by the State Department of Public Health. Existing law requires that the licensure requirements for professional personnel, including psychologists, clinical social workers, and marriage and family therapists, among others, in state and other governmental health facilities, be not less than for those in privately owned health facilities. The department may grant a waiver from licensure requirements for persons in the professions of psychology, marriage and family therapy, or clinical social work who are employed in publicly operated health facilities who are gaining qualifying experience for licensure. The waiver cannot exceed 3 years from the commencement of employment in the state in the case of psychologists or 4 years for marriage and family therapists or clinical social workers, with one additional year to be granted to marriage and family therapists or clinical social workers under extenuating circumstances. Existing law requires the department to grant the extension of a waiver for extenuating circumstances if specified conditions are met.

Existing law provides for the licensure of psychiatric health facilities by the State Department of Mental Health.
This bill would require any other department that employs a marriage and family therapist or a clinical social worker, including a marriage and family therapist or clinical social worker recruited from outside this state, to grant the extension of a waiver for extenuating circumstances if the above-described conditions are met. It would authorize the State Department of Mental Health to grant the above-described waiver and an extension of the waiver for persons employed in facilities licensed by the State Department of Mental Health.


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

SECTION 1. Section 1277 of the Health and Safety Code is amended to read:

1277. (a) No license shall be issued by the state department unless it finds that the premises, the management, the bylaws, rules and regulations, the equipment, the staffing, both professional and nonprofessional, and the standards of care and services are adequate and appropriate, and that the health facility is operated in the manner required by this chapter and by the rules and regulations adopted hereunder.

(b) Notwithstanding any provision of Part 2 (commencing with Section 5600) of, or Division 7 (commencing with Section 7100) of, the Welfare and Institutions Code or any other law to the contrary, except Sections 2072 and 2073 of the Business and Professions Code, the licensure requirements for professional personnel, including, but not limited to, physicians and surgeons, dentists, podiatrists, psychologists, marriage and family therapists, pharmacists, registered nurses, and clinical social workers in the state and other governmental health facilities licensed by the state department or by the State Department of Mental Health, as appropriate, shall not be less than for those professional personnel in health facilities under private ownership. Persons employed as psychologists and clinical social workers, while continuing in their employment in the same class as of January 1, 1979, in the same state or other governmental health facility licensed by the state department or by the State Department of Mental Health, as appropriate, including those persons on authorized leave, but not including intermittent personnel, shall be exempt from the
requirements of this subdivision. Additionally, the requirements of this subdivision may be waived by the state department or by the State Department of Mental Health, as appropriate, solely for persons in the professions of psychology, marriage and family therapy, or clinical social work who are gaining qualifying experience for licensure in such profession in this state. A waiver granted pursuant to this subdivision shall not exceed three years from the date the employment commences in this state in the case of psychologists, or four years from commencement of the employment in this state in the case of marriage and family therapists and clinical social workers, at which time licensure shall have been obtained or the employment shall be terminated except that an extension of a waiver of licensure for marriage and family therapists and clinical social workers may be granted for one additional year, based on extenuating circumstances determined by the licensing department pursuant to subdivision (e). For persons employed as psychologists, clinical social workers, or marriage and family therapists less than full time, an extension of a waiver of licensure may be granted for additional years proportional to the extent of part-time employment, as long as the person is employed without interruption in service, but in no case shall the waiver of licensure exceed six years in the case of clinical social workers and marriage and family therapists or five years in the case of psychologists. However, this durational limitation upon waivers shall not apply to active candidates for a doctoral degree in social work, social welfare, or social science, who are enrolled at an accredited university, college, or professional school, but these limitations shall apply following completion of this training. Additionally, this durational limitation upon waivers shall not apply to active candidates for a doctoral degree in marriage and family therapy who are enrolled at a school, college, or university, specified in subdivision (b) of Section 4980.36 of, or subdivision (b) of Section 4980.37 of, the Business and Professions Code, but the limitations shall apply following completion of the training. A waiver pursuant to this subdivision shall be granted only to the extent necessary to qualify for licensure, except that personnel recruited for employment from outside this state and whose experience is sufficient to gain admission to a licensing examination shall nevertheless have one year from the date of their employment in California to become licensed, at which time
licensure shall have been obtained or the employment shall be
terminated, provided that the employee shall take the licensure
examination at the earliest possible date after the date of his or her
employment, and if the employee does not pass the examination
at that time, he or she shall have a second opportunity to pass the
next possible examination, subject to the one-year limit for
marriage and family therapists and clinical social workers, and
subject to a two-year limit for psychologists.

(c) A special permit shall be issued by the state department
when it finds that the staff, both professional and nonprofessional,
and the standards of care and services are adequate and appropriate,
and that the special services unit is operated in the manner required
in this chapter and by the rules and regulations adopted hereunder.

(d) The state licensing department shall apply the same standards
to state and other governmental health facilities that it licenses as
it applies to health facilities in private ownership, including
standards specifying the level of training and supervision of all
unlicensed practitioners. Except for psychologists, the licensing
department may grant an extension of a waiver of licensure for
personnel recruited from outside this state for one additional year,
based upon extenuating circumstances as determined by the
department pursuant to subdivision (e).

(e) The department, or any other state department that employs
a marriage and family therapist or a clinical social worker,
including a marriage and family therapist or clinical social worker
recruited from outside this state, shall grant a request for an
extension of a waiver based on extenuating circumstances, pursuant
to subdivisions (b) and (d), if any of the following circumstances
exist:

(1) The person requesting the extension has experienced a recent
catastrophic event which may impair the person’s ability to qualify
for and pass the license examination. Those events may include,
but are not limited to, significant hardship caused by a natural
disaster, serious and prolonged illness of the person, serious and
prolonged illness or death of a child, spouse, or parent, or other
stressful circumstances.

(2) The person requesting the extension has difficulty speaking
or writing the English language, or other cultural and ethnic factors
exist which substantially impair the person’s ability to qualify for
and pass the license examination.

(3) The person requesting the extension has experienced other
personal hardship which the department, in its discretion,
determines to warrant the extension.
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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 956
VERSION: INTRODUCED FEBRUARY 18, 2011

AUTHOR: HERNANDEZ, R.
SPONSOR: CALIFORNIA ASSOCIATION OF MARRIAGE AND FAMILY THERAPISTS (CAMFT)

RECOMMENDED POSITION: SUPPORT IF AMENDED

SUBJECT: MARRIAGE AND FAMILY THERAPY: INTERNS AND TRAINEES: ADVERTISEMENTS

Existing Law:

1. Allows the Board of Behavioral Sciences (Board) to adopt regulations that define services to be advertised by professions under its jurisdiction for the purpose of determining whether advertisements are false or misleading. Business and Professions Code (BPC §651).

2. Requires an unlicensed marriage and family therapist intern to inform each client or patient, prior to performing any professional services, that he or she is unlicensed and under the supervision of one of the following (Business and Professions Code (BPC §4980.44):
   a. A licensed marriage and family therapist;
   b. A licensed clinical social worker;
   c. A licensed psychologist; or
   d. A licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology.

3. Requires a marriage and family therapy trainee to inform each client or patient, prior to performing any professional services, that he or she is unlicensed and under the supervision of one of the following (BPC §4980.48(a)):
   a. A licensed marriage and family therapist;
   b. A licensed clinical social worker;
   c. A licensed psychologist; or
   d. A licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology.

4. Requires an advertisement of services performed by a trainee to include all of the following information (BPC §4980.48(b)):
   a. The trainee’s name;
   b. The supervisor’s license designation or abbreviation; and
   c. The supervisor’s license number.

5. Requires all persons or referral services regulated by the Board who advertise their services to include their license or registration number in the advertisement unless the
advertisement contains the following (Section 1811 of Title 16 of the California Code of Regulations (CCR)):

   a. The full name of the licensee or registered referral service as filed with the Board; and

   b. A designation of the type of license or registration held as follows:
      i. Licensed Marriage and Family Therapist
      ii. Licensed Educational Psychologist
      iii. Licensed Clinical Social Worker
      iv. Registered MFT Referral Service

6. An unlicensed Marriage and Family Therapist Registered Intern may advertise if the advertisement complies with law stating that the patient is informed, prior to performance of any professional services, that he or she is unlicensed and under the supervision of a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, or a licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology (16 CCR Section 1811) (NOTE: This section currently contains an errant reference. The law stated here reflects what is stated in the Board’s most recent regulation package, which is currently pending approval).

This Bill:

1. Requires an unlicensed marriage and family therapist intern to inform each client or patient, prior to performing any professional services, of the following (BPC §4980.44(c)):

   a. That he or she is an unlicensed marriage and family therapist registered intern (current law);
   b. The name of his or her employer (new provision); and
   c. Indicate whether he or she is under the supervision of a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, or a licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology (current law).

2. Requires any advertisement by or on behalf of a marriage and family therapist registered intern must include, at a minimum, all of the following (BPC §4980.44(d)):

   a. That he or she is an unlicensed marriage and family therapist registered intern;
   b. The name of his or her employer; and
   c. That he or she is supervised by a licensed person.

3. Prohibits the use of the abbreviation “MFTI” in an advertisement unless the title “marriage and family therapist registered intern” appears in the advertisement. (BPC §4980.44(d)(2)).

4. Requires a trainee to inform each client or patient, prior to performing any professional services, of the following (BPC §4980.48(a)):

   a. That he or she is an unlicensed marriage and family therapist trainee (current law);
   b. The name of his or her employer (new provision);
c. Indicate whether he or she is under the supervision of a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, or a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology (current law).

5. Requires any advertisement of services performed by a trainee must include, at a minimum, all of the following (BPC §4980.48(c)):

   a. That he or she is a marriage and family therapist trainee;
   b. The name of his or her employer; and
   c. That he or she is supervised by a licensed person.

Comment:

1) **Author’s Intent.** The intent of this bill is to clear up inconsistencies in current law about advertising requirements for MFT interns and trainees. This bill would require marriage and family therapist interns and trainees to be clear in their advertising that they are not yet licensed, and are under supervision. It would prohibit the acronym “MFTI” unless “marriage and family therapy intern” is spelled out in the advertisement.

2) **History.** The Board has been attempting to address the inconsistencies regarding advertising law for the past several years. At its meeting on November 18, 2008, the Board approved proposed language to CCR §1811 related to advertising, and directed staff to initiate a rulemaking package. However, the proposed rulemaking has been delayed by the LPCC rulemaking package that is currently in the approval process. This is because the LPCC rulemaking package also modifies Section 1811, and the board is unable to propose two rulemaking packages modifying the same section at the same time.

The proposed advertising regulations include the following provisions that are not addressed in this bill:

- Requires that an advertisement include the individual’s license or registration number;
- Requires that an advertisement for a registrant’s services include the name, complete title or acceptable abbreviation of the supervisor’s license, and the supervisor’s license number.
- Allows inclusion of academic credentials in an advertisement, as long as the degree is earned and statements regarding the degree are true and not misleading.

This bill would not affect the proposed regulations, and therefore changes to the Section 1811 would still need to be made. Staff is planning to initiate the regulations process once the LPCC regulations are approved.

3) **Disclosure of Registration Number:** The Board approved the advertising regulations at its November 2008 meeting. As drafted, those approved regulations require that advertisements include a license or registration number. The Board may wish to discuss whether this bill should contain the same requirement.

Additionally, the Board may want to discuss requiring an MFT intern to provide each patient, prior to performance of any professional services, his or her registration number. As an MFT intern is practicing without a license while under supervision, a requirement to provide a registration number may provide increased public protection.
4) **Recommended Position.** At its meeting on April 7, 2011, the Policy and Advocacy Committee recommended the Board take a support position if this bill is amended to do the following:

- Require that advertisements include a license or registration number
- Require that MFT Interns provide each patient his or her registration number prior to performance of professional services.

5) **Support and Opposition.**
   
   **Support:** CAMFT (sponsor)
   
   **Opposition:** None on file.

2011

Apr. 12  From committee: Do pass and re-refer to Com. on APPR. With recommendation: to consent calendar. (Ayes 9. Noes 0.) (April 12). Re-referred to Com. on APPR.
Mar. 31  Referred to Com. on B., P. & C.P.
Feb. 20  From printer.  May be heard in committee March 22.
Feb. 18  Read first time.  To print.

6) **Attachment:**  *Board of Behavioral Sciences Proposed Regulatory Changes – Advertising (As approved by the Board on November 18, 2008).*
Introducing AB 956

AB 956, as introduced, Roger Hernández. Marriage and family therapy: interns and trainees: advertisements.

Existing law, the Marriage and Family Therapist Act, provides for the licensure or registration and regulation of marriage and family therapists and interns by the Board of Behavioral Sciences and makes a violation of its provisions a crime. Existing law requires marriage and family therapist interns, trainees, and applicants for licensure or registration to be under supervision. Existing law requires interns and trainees to inform each client or patient prior to performing any professional services that they are unlicensed and under the supervision of a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, or a licensed physician and surgeon certified in psychiatry. Existing law requires any person that advertises services performed by a trainee to include the trainee’s name, the supervisor’s license designation or abbreviation, and the supervisor’s license number.

This bill would require an intern or trainee, prior to performing professional services, to provide each client or patient with the name of his or her employer and indicate whether he or she is under the supervision of a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, or a licensed physician and surgeon.
certified in psychiatry. The bill would require any advertisement by or on behalf of an intern or trainee to include specified information, including the name of the employer of the intern or trainee and that the intern or trainee is supervised by a licensed person. The bill would also require an advertisement for interns to include the title “marriage and family therapist registered intern” if the abbreviation MFTI is used in the advertisement.

Because a violation of the bill’s provisions would be a crime, this bill would impose a state-mandated local program.

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 4980.44 of the Business and Professions Code is amended to read:

4980.44. An unlicensed marriage and family therapist intern employed under this chapter shall comply with the following requirements:

(a) Possess, at a minimum, a master’s degree as specified in Section 4980.36 or 4980.37, as applicable.

(b) Register with the board prior to performing any duties, except as otherwise provided in subdivision (g) of Section 4980.43.

(c) Prior to performing any professional services, inform each client or patient that he or she is an unlicensed marriage and family therapist registered intern, provide the name of his or her employer, and indicate whether he or she is under the supervision of a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, or a licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology.

(d) (1) Any advertisement by or on behalf of a marriage and family therapist registered intern shall include, at a minimum, all of the following information:
(A) That he or she is a marriage and family therapist registered intern.

(B) The name of his or her employer.

(C) That he or she is supervised by a licensed person.

(2) The abbreviation “MFTI” shall not be used in an advertisement unless the title “marriage and family therapist registered intern” appears in the advertisement.

SEC. 2. Section 4980.48 of the Business and Professions Code is amended to read:

4980.48. (a) A trainee shall, prior to performing any professional services, inform each client or patient, prior to performing any professional services, that he or she is an unlicensed marriage and family therapist trainee, provide the name of his or her employer, and indicate whether he or she is under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology.

(b) Any person that advertises services performed by a trainee shall include the trainee’s name, the supervisor’s license designation or abbreviation, and the supervisor’s license number.

(c) Any advertisement by or on behalf of a marriage and family therapist trainee shall include, at a minimum, all of the following information:

(1) That he or she is a marriage and family therapist trainee.

(2) The name of his or her employer.

(3) That he or she is supervised by a licensed person.

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.
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MFT, LEP, LCSW

16CCR§1811. USE OF LICENSE NUMBER IN DIRECTORIES AND ADVERTISEMENTS

(a) All persons or referral services regulated by the board who advertise their services shall include their license or registration number in the advertisement unless such advertisement contains the following specific information: all of the following information in any advertisement:

(a) (1) The full name of the licensee, registrant, or registered referral service as filed with the board; and

(b) (2) A designation of the type of complete title of the license or registration held or an acceptable abbreviation, as follows:

(1) (A) Licensed Marriage and Family Therapist, MFT or LMFT.

(2) (B) Licensed Educational Psychologist or LEP.

(3) (C) Licensed Clinical Social Worker or LCSW.

(D) Registered Marriage and Family Therapist Intern or Registered MFT Intern.

(E) Registered Associate Clinical Social Worker or Registered Associate CSW.

(4) (F) Registered MFT Referral Service.

(3) The license or registration number.

(c) (b) An unlicensed, a registered Marriage and Family Therapist Registered Intern may advertise if such advertisement complies with Section 4980.44(c) of the Code making disclosures required by that section.

(d) (c) An unlicensed, a registered Associate Clinical Social Worker may advertise if such advertisement complies with Section 4996.18(h) of the Code making disclosures required by that section.

(d) Registrants must include the name, the complete title or acceptable abbreviation of the supervisor’s license and the supervisor’s license number.

(e) It is permissible for a person to include academic credentials in advertising as long as the degree is earned, and the representations and statements regarding that degree are true and not misleading and in compliance with Section 651 of the Code. For purposes of this subdivision, “earned” shall not mean an honorary or other degree conferred without actual study in the educational field.

(f) The board may issue citations and fines containing a fine and an order of abatement for any violation of Section 651 of the Code.
(g) For the purposes of this section, “acceptable abbreviation” means the abbreviation listed in subsection (a)(2) of this Section.

Note: Authority cited: Sections 137, 650.4, 651, and 4980.60 and 4990.14, Business and Professions Code. Reference: Sections 137, 651, 4980 and 4980.44 and 4990.18, Business and Professions Code.
For Board of Behavioral Sciences Licensees or Registrants:

1. Requires that any accusation filed against a Board of Behavioral Sciences licensee or registrant must be filed within whichever occurs first of the following timeframes (Business and Professions Code (BPC) §§4982.05(a), 4990.32(a)):
   a. Within three years from the date the board discovers the alleged act or omission;
   or
   b. Within seven years from the date the alleged act or omission occurred.

2. Allows the above statute of limitations period to be tolled during any period if material evidence necessary for prosecuting or determining if disciplinary action is appropriate is not available to the Board due to an ongoing criminal investigation. (BPC §§4982.05(f), 4990.32(f)).

3. States that an accusation alleging the procurement of a license by fraud or misrepresentation is not subject to the statute of limitations. (BPC §§4982.05(b), 4990.32(b)).

4. Allows the statute of limitations to be tolled for the length of time required to obtain compliance when a report required to be filed with the Board by the licensee or registrant is not filed in a timely fashion. (BPC §§4982.05(c), 4990.32(c)).

5. Requires that if the alleged act or omission involves a minor, the statute of limitation is tolled until the minor reaches the age of majority. (BPC §§4982.05(d), 4990.32(e)).

6. States that if the Board discovers an alleged act of sexual contact with a minor, under certain conditions described in the Penal Code, after the statute of limitations periods have expired, and if independent corroborating evidence exists, then an accusation shall be filed within three years from the date the Board discovers the alleged act. (BPC §4990.32(e)).

7. Requires, for a complaint received by the Board on or after January 1, 2002, an accusation filed against a licensee alleging sexual misconduct must be filed within three years after the Board discovers the act or omission, or within ten years after the act or omission occurs, whichever is first. (BPC §§4982.05(e), 4990.32(d)).
8. Defines the term “discovers” as the latest of the occurrence of any of the following with respect to each alleged act (BPC §§4982.05(g), 4990.32(g)):

   a. The date the board received the complaint;
   b. The date, subsequent to an original complaint or report, that the Board became aware of an additional act or omission alleged against the same person; or
   c. The date the Board receives a written release of information pertaining to the complainant’s diagnosis and treatment from the complainant.

This Bill:

1. Requires that an accusation filed against a licensee of a board under the Department of Consumer Affairs (DCA) must be filed within whichever occurs first of the following timeframes (BPC §110.5(a)):

   a. Within one year after the Board discovers the alleged act or omission; or
   b. Within four years after the alleged act or omission occurs.

2. States that if the alleged act or omission involves a minor, then the four year limitations period shall be tolled until the minor reaches the age of majority. (BPC §110.5(b)).

3. States that if a licensee intentionally conceals evidence of wrongdoing, then the four year limitations period shall be tolled during the period of concealment. (BPC §110.5(c)).

4. Repeals statute of limitations law for the following boards and bureaus under DCA:

   a. Dental Board (BPC §1670.2)
   b. Medical Board (BPC §2230.5)
   c. Board of Psychology (BPC §2960.05)
   d. Board of Optometry (BPC §3137)
   e. Board of Respiratory Therapy (BPC §3750.51)
   f. Board of Behavioral Sciences (BPC §§4982.05 and 4990.32)
   g. Architects Board (BPC §5561)
   h. Landscape Architects Committee (BPC §5661)
   i. Cemetery and Funeral Bureau (BPC §7686.5).
   j. Bureau of Automotive Repair (BPC §§9884.20 and 9889.8).

Comment:

1) Author’s Intent. This bill deletes the statute of limitations period for specified DCA boards and bureaus, and replaces them with a standard, shorter limitations period that applies to all boards within DCA.

The author’s office notes the statute of limitations for crimes like fraud or grand theft have a four year statute of limitations. For professions under DCA, the Business and Professions Code sets limitations for most boards at around three years from when a board is notified or seven years after the act or omission is alleged. The statute of limitations can be as high as ten years under certain circumstances. They argue that a shorter statute of limitations reinforces the right to a speedy trial, and lessens the likelihood of prosecution based on improper or arbitrary motives.
2) **Contrary to Board Mandate.** Business and Professions Code §4990.16 states that “Protection of the public shall be the highest priority of the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.” The intent of this bill to shorten the statute of limitations period is contrary to the Board’s mandate to protect the public.

3) **License Obtained by Fraud or Misrepresentation.** This bill repeals current law that states an accusation alleging the procurement of a license by fraud or misrepresentation is not subject to the statute of limitations. This bill does not contain a similar provision, potentially leaving the Board unable to investigate an instance of obtaining a license by fraudulent means if the statute of limitations has passed. If this were to happen, then an unqualified individual who is not competent to safely practice would be allowed to continue unlicensed practice, jeopardizing consumer safety.

4) **Absence of Exemptions.** The language proposed by this bill leaves out several features specified in current law. It does not allow tolling of the statute of limitations due to an ongoing criminal investigation, and contains no special extension of the statute of limitations for acts of sexual misconduct. In addition, it does not define specific terms as the Board’s current law does.

5) **Recent Statutory Change – Sexual Abuse of a Minor.** In 2008, SB 797 (Ridley-Thomas, Chapter 33) amended the unprofessional conduct codes of the Board’s licenses to add new grounds for refusal, suspension, or revocation of a license based upon engaging in specified sexual acts with a minor regardless of whether the act occurred prior to or after the time the registration or license was issued by the board.

The intent of this bill was to address an enforcement complaint received by the Board. This complaint alleged that a licensee had repeatedly sexually abused a minor prior to the person being licensed with the Board. However, the board had no authority to consider the case because the alleged conduct had taken place prior to the issuance of a license. Additionally, the statute of limitations had expired. Because the complaint was received regarding conduct prior to licensure after the person became licensed, the board could not take any action.

This case highlights the importance of having an extended statute of limitations, as well as the importance of exempting certain acts of misconduct from the statute of limitations, especially in cases of sexual abuse of a minor. In child abuse cases it may take the abused child until adulthood to be able to confront the abuser, tell someone about the abuse, or seek therapy for the abuse. Exceptions to the statute of limitations in these cases are especially crucial to consumer protection in therapy-related professions where the registrant or licensee’s clients are families and children and possibly adult survivors of child sexual abuse.

6) **Feasibility.** The Board’s enforcement division typically needs between six to twelve months to investigate an accusation upon discovery. After the Board’s investigation, a case may also need to be reviewed by an expert consultant, which can take approximately two additional months. If unprofessional conduct is found, the case would then proceed to the Attorney General’s office. A one year statute of limitations would inhibit the Board’s ability to conduct a complete investigation, and would therefore jeopardize consumer protection.

7) **Does not include all DCA Board and Bureaus.** As currently written, this bill only repeals statute of limitations code for certain boards and bureaus under DCA. It does not, for
example, repeal statute of limitations code for the Board of Registered Nursing, the Board of Veterinary Medicine, or the Board of Engineers, among others. Staff has brought this to the attention of the author’s office and they have indicated they will look into this issue.

8) **Recommended Position.** At its meeting on April 7, 2011, the Policy and Advocacy Committee recommended the Board take an oppose position on this bill.

9) **Support and Opposition.**  
   *Support:* None on file.  
   *Opposition:* None on file.

2011  
Mar. 10  Referred to Com. on B., P. & C.P.  
Feb. 20  From printer. May be heard in committee March 22.  
Feb. 18  Read first time. To print.
An act to add Section 110.5 to, and to repeal Sections 1670.2, 2230.5, 2960.05, 3137, 3750.51, 4982.05, 4990.32, 5561, 5661, 7686.5, 9884.20, and 9889.8 of, the Business and Professions Code, relating to regulatory boards.

LEGISLATIVE COUNSEL’S DIGEST

AB 958, as introduced, Bill Berryhill. Regulatory boards: limitations periods.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law requires these boards to file disciplinary action accusations against licensees for various violations within a specified limitations period particular to each board.

This bill would delete those specified limitations periods for each board and would instead impose a specified limitations period on all boards within the Department of Consumer Affairs.


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

SECTION 1. Section 110.5 is added to the Business and Professions Code, to read:

110.5. (a) Notwithstanding any other provision of law and except as provided in subdivisions (b) and (c), any accusation filed
against a licensee of a board described in Section 101, pursuant to
Section 11503 of the Government Code, shall be filed within one
year after the board discovers the act or omission alleged as the
ground for disciplinary action, or within four years after the act or
omission alleged as the ground for disciplinary action occurs,
whichever occurs first.

(b) If an alleged act or omission involves a minor, the four-year
limitations period provided for by subdivision (a) shall be tolled
until the minor reaches the age of majority.

(c) If a licensee intentionally conceals evidence of wrongdoing,
the four-year limitations period provided for by subdivision (a)
shall be tolled during that period of concealment.

SEC. 2. Section 1670.2 of the Business and Professions Code
is repealed.

1670.2. (a) Except as otherwise provided in this section, any
proceeding initiated by the board against a licensee for the violation
of any provision of this chapter shall be filed within three years
after the board discovers the act or omission alleged as the ground
for disciplinary action, or within seven years after the act or
omission alleged as the ground for disciplinary action occurs;
whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section
11503 of the Government Code alleging fraud or willful
misrepresentation is not subject to the limitation in subdivision
(a).

(c) An accusation filed against a licensee pursuant to Section
11503 of the Government Code alleging unprofessional conduct
based on incompetence, gross negligence, or repeated negligent
acts of the licensee is not subject to the limitation in subdivision
(a) upon proof that the licensee intentionally concealed from
discovery his or her incompetence, gross negligence, or repeated
negligent acts.

(d) If an alleged act or omission involves any conduct described
in subdivision (e) of Section 1680 committed on a minor, the
seven-year limitations period in subdivision (a) and the 10-year
limitations period in subdivision (e) shall be tolled until the minor
reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section
11503 of the Government Code alleging conduct described in
subdivision (e) of Section 1680 not committed on a minor shall
be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging conduct received by the board on and after January 1, 2005.

(f) In any allegation, accusation, or proceeding described in this section, the limitations period in subdivision (a) shall be tolled for the period during which material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

SEC. 3. Section 2230.5 of the Business and Professions Code is repealed.  
2230.5. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years after the board, or a division thereof, discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitation provided for by subdivision (a).

(c) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging unprofessional conduct based on incompetence, gross negligence, or repeated negligent acts of the licensee is not subject to the limitation provided for by subdivision (a) upon proof that the licensee intentionally concealed from discovery his or her incompetence, gross negligence, or repeated negligent acts.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board, or a division thereof, discovers the act or omission alleged as the ground for disciplinary action.
action, or within 10 years after the act or omission alleged as the
ground for disciplinary action occurs, whichever occurs first. This
subdivision shall apply to a complaint alleging sexual misconduct
received by the board on and after January 1, 2002:

(f) The limitations period provided by subdivision (a) shall be
tolled during any period if material evidence necessary for
prosecuting or determining whether a disciplinary action would
be appropriate is unavailable to the board due to an ongoing
criminal investigation.

SEC. 4. Section 2960.05 of the Business and Professions Code
is repealed.

2960.05. (a) Except as provided in subdivisions (b), (c), and
(e), any accusation filed against a licensee pursuant to Section
11503 of the Government Code shall be filed within three years
from the date the board discovers the alleged act or omission that
is the basis for disciplinary action, or within seven years from the
date the alleged act or omission that is the basis for disciplinary
action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section
11503 of the Government Code alleging the procurement of a
license by fraud or misrepresentation is not subject to the
limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled
for the length of time required to obtain compliance when a report
required to be filed by the licensee or registrant with the board
pursuant to Article 11 (commencing with Section 800) of Chapter
1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year
limitations period provided for by subdivision (a) and the 10-year
limitations period provided for by subdivision (e) shall be tolled
until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section
11503 of the Government Code alleging sexual misconduct shall
be filed within three years after the board discovers the act or
omission alleged as the ground for disciplinary action, or within
10 years after the act or omission alleged as the ground for
disciplinary action occurs, whichever occurs first. This subdivision
shall apply to a complaint alleging sexual misconduct received by
the board on and after January 1, 2002.
(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

SEC. 5. Section 3137 of the Business and Professions Code is repealed.

3137. (a) Except as otherwise provided in this section, any accusation filed against a licensee pursuant to Section 11503 of the Government Code for the violation of any provision of this chapter shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging fraud or willful misrepresentation is not subject to the limitation in subdivision (a).

(c) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging unprofessional conduct based on incompetence, gross negligence, or repeated negligent acts of the licensee is not subject to the limitation in subdivision (a) upon proof that the licensee intentionally concealed from discovery his or her incompetence, gross negligence, or repeated negligent acts.

(d) If an alleged act or omission involves any conduct described in Section 726 committed on a minor, the 10-year limitations period in subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging conduct described in Section 726 shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging conduct received by the board on and after January 1, 2006.

(f) In any allegation, accusation, or proceeding described in this section, the limitations period in subdivision (a) shall be tolled for the period during which material evidence necessary for
prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

SEC. 6. Section 3750.51 of the Business and Professions Code is repealed.

3750.51. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

SEC. 7. Section 4982.05 of the Business and Professions Code is repealed.

4982.05. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section
11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the grounds for disciplinary action, or within 10 years after the act or omission alleged as the grounds for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

(g) For purposes of this section, "discovers" means the later of the occurrence of any of the following with respect to each act or omission alleged as the basis for disciplinary action:

(1) The date the board received a complaint or report describing the act or omission;

(2) The date, subsequent to the original complaint or report, on which the board became aware of any additional acts or omissions alleged as the basis for disciplinary action against the same individual.
(3) The date the board receives from the complainant a written release of information pertaining to the complainant’s diagnosis and treatment.

SEC. 8. Section 4990.32 of the Business and Professions Code is repealed.

4990.32. (a) Except as otherwise provided in this section, an accusation filed pursuant to Section 11503 of the Government Code against a licensee or registrant under the chapters the board administers and enforces shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitations period provided by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) An accusation alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the grounds for disciplinary action or within 10 years after the act or omission alleged as the grounds for disciplinary action occurred, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(e) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (d) shall be tolled until the minor reaches the age of majority. However, if the board discovers an alleged act of sexual contact with a minor under Section 261, 286, 288, 288.5, 288a, or 289 of the Penal Code after the limitations periods described in this subdivision have otherwise expired, and there is independent evidence that corroborates the allegation, an accusation shall be filed within three years from the date the board discovers that alleged act.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for
prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

(g) For purposes of this section, “discovers” means the latest of the occurrence of any of the following with respect to each act or omission alleged as the basis for disciplinary action:
(1) The date the board received a complaint or report describing the act or omission.
(2) The date, subsequent to the original complaint or report, on which the board became aware of any additional acts or omissions alleged as the basis for disciplinary action against the same individual.
(3) The date the board receives from the complainant a written release of information pertaining to the complainant’s diagnosis and treatment.

SEC. 9. Section 5561 of the Business and Professions Code is repealed.

5561.—All accusations against licensees charging the holder of a license issued under this chapter with the commission of any act constituting a cause for disciplinary action shall be filed with the board within five years after the board discovers, or through the use of reasonable diligence should have discovered, the act or omission alleged as the ground for disciplinary action, whichever occurs first, but not more than 10 years after the act or omission alleged as the ground for disciplinary action. However, with respect to an accusation alleging a violation of Section 5579, the accusation may be filed within three years after the discovery by the board of the alleged facts constituting the fraud or misrepresentation prohibited by Section 5579.

SEC. 10. Section 5661 of the Business and Professions Code is repealed.

5661.—All accusations against a licensee shall be filed within three years after the board discovers, or through the use of reasonable diligence should have discovered, the act or omission alleged as the ground for disciplinary action or within six years after the act or omission alleged as the ground for disciplinary action, whichever occurs first. However, with respect to an accusation alleging a violation of Section 5667, the accusation may be filed within three years after the discovery by the board
of the alleged facts constituting the fraud or misrepresentation prohibited by Section 5667.

If any accusation is not filed within the time provided in this section, no action against a licensee shall be commenced under this article.

SEC. 11. Section 7686.5 of the Business and Professions Code is repealed.

7686.5. All accusations against licensees shall be filed with the bureau within two years after the performance of the act or omission alleged as the ground for disciplinary action; provided, however, that the foregoing provision shall not constitute a defense to an accusation alleging fraud or misrepresentation as a ground for disciplinary action. The cause for disciplinary action in such case shall not be deemed to have accrued until discovery, by the bureau, of the facts constituting the fraud or misrepresentation; and, in such case, the accusation shall be filed within three years after such discovery.

SEC. 12. Section 9884.20 of the Business and Professions Code is repealed.

9884.20. All accusations against automotive repair dealers shall be filed within three years after the performance of the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action, the accusation may be filed within two years after the discovery, by the bureau, of the alleged facts constituting the fraud or misrepresentation.

SEC. 13. Section 9889.8 of the Business and Professions Code is repealed.

9889.8. All accusations against licensees shall be filed within three years after the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging a violation of subdivision (d) of Section 9889.3, the accusation may be filed within two years after the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation prohibited by that section.
Existing Law:

1. Specifies that in the case of a court petition, application, or other pleading to obtain or modify child custody or visitation that is being contested, the court shall set the contested issues for mediation. (Family Code (FC) §3170(a))

2. States the purposes of a mediation proceeding are as follows: (FC § 3161)
   a. To reduce acrimony that may exist between the parties.
   b. To develop an agreement assuring the child close and continuing contact with both parents that is in the best interest of the child.
   c. To effect a settlement of the issue of visitation rights of all parties that is in the best interest of the child.

3. States that mediation of cases involving custody and visitation concerning children shall be governed by uniform standards of practice adopted by the judicial council. (FC §3162)

4. Allows a court to require parents or any other party involved in a custody or visitation dispute, and the minor child, to participate in outpatient counseling with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, for not more than one year if the court makes the following findings (FC §3190(a)):
   a. The dispute between the parents or other party seeking custody or visitation rights with the child poses as substantial danger to the best interest of the child.
   b. The counseling is in the best interest of the child.

5. Requires the outpatient counseling with a mental health professional to be specifically designed to do the following (FC §3191):
   a. Facilitate communication between the parties regarding the child’s best interest.
   b. Reduce conflict regarding custody or visitation.
   c. Improve the quality of parenting skills of each parent.
6. States that a court-connected or private child custody evaluator must be a licensed marriage and family therapist, clinical social worker, or other specified licensed professional or certified evaluator. (FC §3110.5(c))

7. States that a court-connected or private child custody evaluator licensed by the Board is subject to disciplinary action by the Board for unprofessional conduct. (FC §3110.5(e))

This Bill:

1. Specifies that a mediator and a licensed mental health professional are not liable for damages for an act or omission constituting ordinary negligence that occurs on or after January 1, 2012, if the act or omission is within the scope of his or her duties and occurs while providing mediation services in cases involving custody and visitation of children required by a court in a child custody or visitation dispute or while providing outpatient counseling required by a court to parties involved in a custody or visitation dispute. (FC §3195.1)

2. Defines a “licensed mental health professional” as a person providing counseling services in a child custody or visitation dispute. (FC §3195(a))

3. Defines a “mediator” as a person who is a mediator in cases involving child custody and visitation. (FC §3195(b))

4. Requires a complaint made by any person against a mediator or licensed mental health professional regarding an act or omission occurring on or after January 1, 2012, while the mediator or licensed mental health professional provided services as required by the court pursuant to FC Chapters 11 and 12, must be made to the court that set the matter for mediation or required the outpatient counseling services be provided. (FC §3195.2(a),(b))

5. Requires the court to consider the complaint and determine whether it establishes unprofessional conduct that would subject the mediator or licensed mental health professional to disciplinary action by the board that issued his or her license to practice. If the court makes such a finding, it must refer the matter to that board for disciplinary action. (FC §3195.2(c))

6. States that on or after January 1, 2012, a complaint may not be made to a board that issued a license to a mediator or licensed mental health professional for an act or omission of ordinary negligence during the performance of mediation and counseling services required by a court in a child custody or visitation dispute. (FC §3195.3)

Comment:

1) **Author's Intent.** According to the Author, California family courts regularly appoint lawyers, social workers, marriage and family therapists, and psychiatrists to perform mediation, custody evaluations, co-parenting counseling, or parenting coordinator duties. When appointed by the court, their role is for providing fact finding, not for providing psychological services. However, these professionals are licensed by different government entities, and are governed by different laws, approaches, and standards for discipline.

While acting as a court appointed neutral professional for these purposes, these professionals are often subject to attack in contentious family or custody disputes. Because they are working under a code of conduct as a court appointee that may be different from the code of conduct of their licensed profession, they risk facing duplicative but potentially
inconsistent disciplinary proceedings. Additionally, because these professionals are licensed by different agencies, one type of professional may not be held to the exact same code of conduct as another professional, even if they are performing identical duties for the court.

As a result of this situation, many qualified professionals are no longer willing to take appointments by family courts.

2) Licensed Mental Health Professional. As written, this bill states that either a mediator or a licensed mental health professional is not liable for damages for an act or omission constituting ordinary negligence if it is within the scope of duties and occurs while providing services required by the court in a custody or visitation dispute. However, a licensed mental health professional that is not acting in a mediator role, would be acting as a licensed mental health professional, which would fall under the jurisdiction of the Board. Therefore, staff recommends an amendment to include only mediators within the scope of this bill.

3) Court-Connected Child Custody Evaluator. The law currently specifies that a court-connected or private child custody evaluator that is licensed by the Board is subject to disciplinary action by the Board for unprofessional conduct. However, this bill does not address court-connected child custody evaluators.

4) Previous Deputy Attorney General Opinion. In 2003, the Board’s then-deputy attorney general issued an opinion that when acting in the capacity of a court appointed child custody mediator/evaluator, the Board does not have jurisdiction based upon the fact that neither the setting nor the services provided are clinical or psychotherapeutic services for which a Board license is required. Therefore, persons being seen by the licensee acting as a mediator or evaluator do not have a psychotherapist client or patient relationship with the mediator/evaluator, even if that person is a licenses psychotherapist.

5) Laws in Other States. The author’s office notes that other states currently have laws protecting court-appointed mental health professionals. Colorado, Florida, and Arizona have laws giving the appointing court primary jurisdiction over mental health professional who conduct court-appointed evaluations. The laws also limit collateral licensing complaints over these court appointees.

6) Definition of “Ordinary Negligence” This bill specifies absence of liability for “ordinary negligence,” but does not define what constitutes ordinary negligence.

7) Proposed Amendment. Family Code §3195.2(c) discusses the court consideration of any complaint made, and calls for the court to determine whether unprofessional conduct that would subject the licensee to disciplinary action has occurred. It states that if the court makes a finding that unprofessional conduct has occurred, then “the court shall refer the matter to that board for disciplinary action against the mediator or licensed mental health professional.”

This language removes the discretion of the licensing entity to judge, using its particular set of laws, whether their licensee should be subject to disciplinary action. It simply mandates that the Board make disciplinary action based on the findings of the court, which may not be familiar with that particular Board’s standards of conduct. Staff recommends that the language be revised to state that if the court makes a finding that unprofessional conduct has occurred, then “the court shall refer the matter to that board for review and possible disciplinary action against the mediator or licensed mental health professional.”
8) **Correction of Errant Reference.** Section 3195.3 contains an errant reference that staff recommends correcting. The correct reference should be Section 3195.1.

9) **Recommended Position.** At its meeting on April 7, 2011, the Policy and Advocacy Committee recommended the Board take an oppose position on this bill unless the following amendments are made:

- Include only mediators, not licensed mental health professionals;
- Address court connected child custody evaluators;
- Define “ordinary negligence”;
- Amend Family Code §3195.2(c) to require “review and possible” disciplinary action by the board; and
- Correction of errant reference.

10) **Support and Opposition.**
    - **Support:** None on file.
    - **Opposition:** None on file.

11) **History**

    **2011**
    - Mar. 10 Referred to Com. on JUD.
    - Feb. 20 From printer. May be heard in committee March 22.
    - Feb. 18 Read first time. To print.
ASSEMBLY BILL No. 993

Introduced by Assembly Member Wagner

February 18, 2011

An act to add Chapter 12.5 (commencing with Section 3195) to Part 2 of Division 8 of the Family Code, relating to mediation and counseling services.

LEGISLATIVE COUNSEL’S DIGEST

AB 993, as introduced, Wagner. Mediation and counseling services: discipline and immunity.

Existing law requires a court to set a case for mediation when child custody or visitation is at issue and authorizes a court to require parents, or other parties involved in a child custody or visitation dispute, to participate in outpatient counseling with a licensed mental health professional when it would be in the best interest of the child, as specified.

This bill would specify that a mediator and a licensed mental health professional are not liable for damages for an act or omission constituting ordinary negligence that occurs on or after January 1, 2012, during the performance of the above-described mediation and counseling services. The bill would prohibit a person from making a complaint to the board that issued a license to practice to the mediator or licensed mental health professional regarding the provision of those services and would, instead, require that the complaint be made to the court that set the matter for mediation or that required outpatient counseling. The bill would require the court to refer the matter to the licensing board for disciplinary action if it found unprofessional conduct on the part of the mediator or licensed mental health professional.
The people of the State of California do enact as follows:

SECTION 1. Chapter 12.5 (commencing with Section 3195) is added to Part 2 of Division 8 of the Family Code, to read:

Chapter 12.5. Discipline and Immunity

3195. The following definitions apply for purposes of this chapter:
(a) “Licensed mental health professional” means a person providing counseling services in a child custody or visitation dispute pursuant to the provisions of Chapter 12 (commencing with Section 3190).
(b) “Mediator” means a person who is a mediator in cases involving custody and visitation concerning children pursuant to the provisions of Chapter 11 (commencing with Section 3160).

3195.1. A mediator and a licensed mental health professional shall not be liable for damages for an act or an omission constituting ordinary negligence that occurs on or after January 1, 2012, if the act or omission is within the scope of his or her duties and occurs while providing services pursuant to Chapter 11 (commencing with Section 3160) or Chapter 12 (commencing with Section 3190).

3195.2. (a) A complaint by any person against a mediator regarding an act or omission occurring on or after January 1, 2012, while the mediator provided services pursuant to Chapter 11 (commencing with Section 3160) shall be made to the court that set the matter for mediation pursuant to Section 3170.
(b) A complaint by any person against a licensed mental health professional regarding an act or omission occurring on or after January 1, 2012, while the licensed mental health professional provided services pursuant to Chapter 12 (commencing with Section 3190) shall be made to the court that required that outpatient counseling services be provided pursuant to Section 3190.
(c) The court shall consider the complaint made pursuant to this section and determine whether it establishes unprofessional conduct
that would subject the mediator or the licensed mental health
professional to disciplinary action by the board that issued a license
to practice to the mediator or licensed mental health professional.
If the court makes such a finding, the court shall refer the matter
to that board for disciplinary action against the mediator or licensed
mental health professional.
3195.3. No person shall make a complaint to the board that
issued a license to practice to the mediator or the licensed mental
health professional for an act or omission described in Section
3195.2.
CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES
BILL ANALYSIS

BILL NUMBER: AB 1205 VERSION: AMENDED APRIL 4, 2011
AUTHOR: BILL BERRYHILL SPONSOR: CALIFORNIA ASSOCIATION FOR BEHAVIOR ANALYSIS

RECOMMENDED POSITION:  NONE

SUBJECT: LICENSED BEHAVIOR ANALYSTS

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:
a. 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
b. 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) Requires that no person may hold him or herself out to be a behavior analyst, or an assistant behavior analyst, unless the person is licensed by the Board of Behavioral Sciences. (BPC §§ 2529.7.2 and 2529.7.4)

2) States that a licensed behavior analyst may provide all of the following services (BPC §2529.7.6(a), (b)):

   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 operant and responding learning.

   c) Utilize contextual factors and establish operations, antecedent stimuli, position reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.

   d) Apply interventions based on scientific research and the direct observation and measurement of behavior and environment.

   e) Supervise unlicensed individuals who implement treatment plans and interventions designed and maintained by the licensee.

The practice of applied behavior analysis excludes the practice of psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling.

3) States that a licensed assistant behavior analyst may provide the services listed above if under the supervision of a licensed behavior analyst. (BPC §2529.7.6(c)).

4) Requires the Board to issue a behavior analyst license to an applicant who meets all of the following requirements (BCP §2529.7.3):

   a. Possess a bachelor's and master's degree relevant to the field of behavior analysis, as determined by the Board, from any of the following:

      (1) A US or Canadian institution of higher education fully or provisionally accredited by a regional, state, provincial, or nationally accrediting body.

      (2) An institution of higher education located outside the US or Canada that, at the time of the applicant’s enrollment and graduation, maintained a standard of training equivalent to the standards of training of those institutions accredited in the United States.

   b. Completes at least 225 classroom hours of graduate instruction.
c. Completes at least 1,500 hours of supervised independent fieldwork under supervision of a licensed behavior analyst. Of this amount, 75 hours must be direct supervisor contact.

d. Pass an exam administered by either the Board, Behavior Analyst Certification Board, or another similar entity approved by the Board.

e. Be certified by the Behavior Analyst Certification Board or another similar entity approved by the Board.

5) Requires that hours of supervised experience gained toward licensure must be accrued no more than six years prior to applying for a license. (BPC §2529.7.3(b))

6) Requires the Board to issue an assistant behavior analyst license to an applicant who meets all of the following requirements (BCP §2529.7.5):

   a. Possess at least a bachelor’s degree from any of the following:

      (1) A US or Canadian institution of higher education fully or provisionally accredited by a regional, state, provincial, or nationally accrediting body.

      (2) An institution of higher education located outside the US or Canada that, at the time of the applicant’s enrollment and graduation, maintained a standard of training equivalent to the standards of training of those institutions accredited in the United States.

   b. Complete at least 135 classroom hours of related instruction through any of the following:

      (1) College or university courses in behavior analysis taken from an institution that meets specified requirements.

      (2) Non-college courses offered by an educational institution and approved for this purpose.

      (3) A combination of college or university courses.

   c. Complete at least 1,000 of supervised independent fieldwork under supervision of a licensed behavior analyst. Of this amount, at least 50 hours must be direct supervisor contact.

   b) Pass an exam administered by the Board, the Behavior Analyst Certification Board, or another similar entity approved by the Board.

   c) Be certified by the Behavior Analyst Certification Board or another similar entity approved by the Board.

7) Allows the following types of supervised independent fieldwork activities for both behavior analysts and assistant behavioral analysts (BPC §§2529.7.3(a)(3)(B), 2529.7.5(c)(2)):

   a. Conducting assessment activities related to the need for behavioral interventions.

   b. Designing, implementing, and monitoring behavior analysis programs for clients.
c. Overseeing the implementation of behavior analysis programs by others.

d. Other activities normally performed by a behavior analyst directly related to behavior analysis.

8) Allows the Board to set license and application fees to cover the costs of running a licensing program. (BPC §2529.7.7)

9) Prohibits the Board from issuing a license to someone who has been convicted of a crime involving sexual abuse of children or who is required to register as a sex offender. (BPC §2529.7.8)

10) Sets forth criteria for the Board to deny a license or an application. (BPC §§2529.7.9, 2529.7.10)

11) Sets forth criteria for the renewal of a license. (BPC §§2529.7.12-2529.7.16)

12) Requires continuing education hours for the renewal of a license. (BPC §2529.7.17)

13) States that licensing of behavior analysts and assistant behavior analysts will begin on January 1, 2015. (BPC §4990.18(e))

Comments:

1) Intent of This Bill: This bill is an attempt to apply standards, criteria, and state recognition via licensure, to the profession of Applied Behavioral Analysis (ABA).

ABA is commonly used to treat autism spectrum disorders. During the past decade, there has been increasing evidence that ABA therapy is effective in the treatment of autism, and there has been an increase in the practice of this profession in California. However, the California Business and Professions Code does not apply any requirements to the practice of ABA.

Because there is no licensure of ABAs, it is difficult for consumers to make an informed decision when choosing an applied behavior analyst. In some cases, ABA programs may be designed, supervised, and/or implemented by someone who lacks training and experience in ABA.

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.

Individuals who wish to become a BCBA must meet the following requirements:

a. Possess a Master’s Degree;
b. Have 225 classroom hours of specific graduate-level coursework;
c. Have 1,500 hours of supervised independent fieldwork in behavior analysis. Of those hours, 75 must be hours of direct supervision; and
d. Pass the Behavior Analyst Certification Examination.
Persons wishing to become a BCaBA must meet the following requirements:

a. Possess a Bachelor’s Degree;
b. Have 135 classroom hours of specific coursework;
c. Have 1,000 hours of supervised independent fieldwork. Of those hours, 50 must be hours of direct supervision; and
d. Pass the Assistant Behavior Analyst Certification Examination.

All BACB certificants must accumulate continuing education credit to maintain their credentials.

3) **Identical Standards:** The BACB certification standards are the same as those required for licensure outlined by this bill. Therefore, the Board would be licensing individuals who meet the certification standards of the BACB.

4) **Description of Qualifying Degree Program:** This bill currently does not contain a definition of a qualifying degree program for licensure for assistant behavior analysts. Instead, it simply states that an applicant must possess a bachelor’s degree. Staff suggests an amendment which narrows acceptable degrees to those relevant to the field of behavior analysis.

5) **Law and Ethics Examination:** Under the Board’s proposed examination restructure, all current Board licensees will be required to pass a law and ethics examination. This bill does not currently require a law and ethics examination.

6) **Implementation Concerns:** Staff has major concerns about the implementation of an additional license. The Board has currently been unable to obtain the resources it needs to implement the LPCC licensing program. Additionally, due to budget constraints and the hiring freeze, the Board has been unable to fill vacancies that serve its current licensees.

7) **Title Act versus Practice Act:** This bill establishes a title act, which prohibits the use of certain professional titles if a license is not held. A practice act would prohibit engagement in the practice of behavior analysis unless a license is held. A practice act offers public protection, while a title act offers professionalization of the practitioners.

8) **Permits Unlicensed Individuals to Practice:** This bill does not require a license in order to practice behavior analysis. Additionally, this bill would still permit a licensed behavior analyst or assistant behavior analyst to oversee the implementation of behavior analysis programs by others. The board has received public comment indicating that this is a major concern, because potentially unlicensed, unqualified practitioners would still be able to perform behavior analysis while the licensee supervises.

9) **Definitions Needed:** As written, this bill states that the practice of applied behavior analysis excludes long-term counseling. Staff recommends that a definition of “long term counseling” and “short term counseling” be provided.

10) **Additional Topics:** Staff suggests that the following additional topics be addressed in this bill, as they are vital components of the Board’s other licensing laws:
1. Exam eligibility standards: including number of hours of particular types of supervised experience.
2. Specific coursework: outline specific courses needed in order to obtain a license.
3. Limit on number of years an examination score is valid.
4. Supervision standards: including maximum number supervised at once and qualifications for supervision.
5. Establishment of fees for licensure, exams, and other Board services.
6. Reciprocity and grandparenting requirements
7. Specification of continuing education requirements and approval of continuing education providers
8. Unprofessional conduct guidelines
9. Statute of limitations and penalties for unprofessional conduct
10. Guidelines for obtaining a retired license or an inactive license

- **Previous Legislation:** A similar bill, AB 1282 (Steinberg) was proposed in 2010. AB 1282, which failed passage, attempted to establish a certification process for practitioners of behavior analysis. It would have established the California Behavioral Certification Organization (CBCO), a nonprofit organization that would have provided for the certification and registration of applied behavioral analysis practitioners if they met certain conditions, one of which was being certified by the BACB or a similar entity. The Board took an oppose position on this legislation.

11) **Recommended Position:** At its meeting on April 7, 2011, 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.

12) **Support and Opposition:**
   - **Support**
     - California Association for Behavior Analysts (sponsor)
     - Numerous individuals
   
   - **Oppose**
     - California Association of Marriage and Family Therapists
     - California Psychological Association

13) **History:**

   **2011**
   Apr. 12 From committee: Do pass and re-refer to Com. on APPR. (Ayes 9. Noes 0.) (April 12). Re-referred to Com. on APPR.
   Apr. 5   Re-referred to Com. on B., P. & C.P.
   Apr. 4   From committee chair, with author's amendments: Amend, and re-refer to Com. on B., P. & C.P. Read second time and amended.
   Mar. 21  Referred to Com. on B., P. & C.P.
   Feb. 20  From printer. May be heard in committee March 22.
   Feb. 18  Read first time. To print.
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AMENDED IN ASSEMBLY APRIL 4, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 1205

Introduced by Assembly Member Bill Berryhill

February 18, 2011

An act to amend Sections 4990.02, 4990.12, 4990.18, 4990.30, and 4990.38. An act to amend Section 4990.18 of, and to add Chapter 5.2 (commencing with Section 2529.7.1) to Division 2 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL’S DIGEST

AB 1205, as amended, Bill Berryhill. Certified applied behavior analysts.
Existing law provides for the licensure and regulation of various healing arts professions and vocations, including, but not limited to, marriage and family therapists, licensed educational psychologists, social workers, and licensed professional clinical counselors by the Board of Behavioral Sciences.

This bill would, commencing January 1, 2015, prohibit a person from holding himself or herself out to be a certified applied behavior analyst or a certified assistant applied behavior analyst unless licensed by the Board of Behavioral Sciences. The bill would require the board to issue a license to a person who meets certain educational requirements and passes an examination administered by the board, the Behavior Analyst Certification Board, or another comparable accredited entity approved by the board, as specified, and is certified by; the Behavior Analyst Certification Board, a nonprofit corporation, or another comparable accredited entity approved by the board, as specified, and submits an application and pays fees established by the board. The bill...
would specify that a license shall expire no later than 24 months after its date of issue, as specified, and is subject to renewal upon the completion of various requirements, including the payment of a renewal fee and the completion of continuing education hours. The bill would describe the services that may be provided by a certified applied licensed behavior analyst and a certified licensed assistant applied behavior analyst, subject to specified supervision. The bill would authorize the board to regulate these licensees and to enforce these provisions.


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

SECTION 1. Chapter 5.2 (commencing with Section 2529.7.1) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 5.2. CERTIFIED APPLIED BEHAVIOR ANALYSTS


2529.7.1. (a) The Board of Behavioral Sciences shall administer and enforce the provisions of this chapter. For the purposes of this chapter, it shall be designated as the board. (b) Pursuant to Section 4990.20, the board may adopt regulations to carry out the provisions of this chapter.

Article 2. Licensure and Regulation

2529.7.2. No person shall hold himself or herself out to be a certified applied behavior analyst unless the person is licensed by the board pursuant to this chapter.

2529.7.3. (a) The board shall issue a certified applied behavior analyst license to an applicant who meets all of the following requirements:

(a) An applicant for examination shall, at a minimum, meet the following requirements:

(1) Possesses a baccalaureate and a master’s degree that is relevant to the field of behavior analysis, as determined by the board, from any of the following:
(A) A United States or Canadian institution of higher education fully or provisionally accredited by a regional, state, provincial, or national accrediting body.

(B) An institution of higher education located outside the United States or Canada that, at the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training equivalent to the standards of training of those institutions accredited in the United States.

(2) Complete 225 classroom hours of related graduate-level instruction.

(3) Complete 1,500 hours of supervised independent fieldwork under the supervision of a certified applied behavior analyst or initially, until January 1, 2013, under the supervision of a person who otherwise meets all of the requirements for certification.

(A) An applicant must be supervised at least 75 hours.

(2) Has completed no fewer than 225 classroom hours of related graduate level instruction.

(3) Has completed no fewer than 1,500 hours of supervised independent fieldwork under the supervision of a licensed behavior analyst.

(A) An applicant shall have a minimum of 75 hours of direct supervisor contact. For the purposes of this section, “direct supervisor contact” means in-person and on an individual basis.

(B) Appropriate supervised independent fieldwork activities include all of the following:

(i) Conducting assessment activities related to the need for behavioral interventions.

(ii) Designing, implementing, and monitoring behavior analysis programs for clients.

(iii) Overseeing the implementation of behavior analysis programs by others.

(iv) Other activities normally performed by a behavior analyst that are directly related to behavior analysis, such as, but not limited to, attending planning meetings regarding the behavior analysis program, researching the literature related to the program, and talking to individuals about the program.

(b) An applicant for examination may, subject to approval by the board, take the examination if the applicant can demonstrate the equivalent completion of the requirements in subdivision (a).
(c) Has successfully passed an examination administered by the Behavior Analyst Certification Board, a nonprofit corporation pursuant to Section 501(c)(3) of the Internal Revenue Code, or another similar entity approved by the board.

(d) Is certified by the Behavior Analyst Certification Board, a nonprofit corporation pursuant to Section 501(c)(3) of the Internal Revenue Code, or another similar entity approved by the board.

(4) Has successfully passed an examination administered by the board, the Behavior Analyst Certification Board, or another comparable entity approved by the board and accredited by the National Commission for Certifying Agencies.

(5) Is certified by the Behavior Analyst Certification Board or another comparable entity approved by the board and accredited by the National Commission for Certifying Agencies.

(6) Pays fees described in Section 2529.7.7.

(b) None of the hours of experience described in subdivision (a) may be accrued more than six years prior to the date the application for licensure is filed.

2529.7.4. No person shall hold himself or herself out to be a certified assistant applied an assistant behavior analyst unless the person is licensed by the board pursuant to this chapter.

2529.7.5. The board shall issue a certified assistant applied an assistant behavior analyst license to an applicant who meets all of the following requirements:

(a) An applicant for examination shall, at a minimum, meet the following requirements:

(A) Possesses at least a baccalaureate degree from any of the following:

(B) A United States or Canadian institution of higher education fully or provisionally accredited by a regional, state, provincial, or national accrediting body.

(2) An institution of higher education located outside the United States or Canada that, at the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training equivalent to the standards of training of those institutions accredited in the United States.
(2) Complete 135 classroom hours of related instruction through any of the following:

(b) Has completed no fewer than 135 classroom hours of related instruction as required by the board, the Behavior Analyst Certification Board, or another comparable entity approved by the board and accredited by the National Commission for Certifying Agencies through any of the following:

(A) College or university courses in behavior analysis, that are taken from an institution that meets either of the requirements described in paragraph (1) of subdivision (b) subdivision (a).

(B) Noncollege or university courses offered by an educational institution and approved for this purpose.

(C) A combination of college or university courses.

(3) Complete 1,000 hours of supervised independent fieldwork under the supervision of a certified applied behavior analyst or initially, until January 1, 2013, under the supervision of a person who otherwise meets all of the requirements for certification.

(A) An applicant must be supervised at least 50 hours.

(c) Has completed no fewer than 1,000 hours of supervised independent fieldwork under the supervision of a licensed behavior analyst.

(1) An applicant shall have a minimum of 50 hours direct supervisor contact.

(B) Appropriate supervised independent fieldwork activities include all of the following:

(i) (A) Conducting assessment activities related to the need for behavioral interventions.

(ii) (B) Designing, implementing, and monitoring behavior analysis programs for clients.

(iii) (C) Overseeing the implementation of behavior analysis programs by others individuals described in paragraph (6) of subdivision (a) of Section 2529.7.6.
(D) Other activities normally performed by a behavior analyst that are directly related to behavior analysis, such as, but not limited to, attending planning meetings regarding the behavior analysis program, researching the literature related to the program, and talking to individuals about the program.

(b) An applicant for examination may, subject to approval by the board, take the examination if the applicant can demonstrate the equivalent completion of the requirements in subdivision (a).

(e) Has successfully passed an examination administered by the Behavior Analyst Certification Board, a nonprofit corporation pursuant to Section 501(c)(3) of the Internal Revenue Code, or another similar entity approved by the board.

(d) Is certified by the Behavior Analyst Certification Board, a nonprofit corporation pursuant to Section 501(c)(3) of the Internal Revenue Code, or another similar entity approved by the board.

(d) Has successfully passed an examination administered by the board, the Behavior Analyst Certification Board, or another comparable entity approved by the board and accredited by the National Commission for Certifying Agencies.

(e) Is certified by the Behavior Analyst Certification Board or another comparable entity approved by the board and accredited by the National Commission for Certifying Agencies.

(f) Pays fees described in Section 2529.7.7.

2529.7.6. (a) A certified applied licensed behavior analyst may provide all of the following services:

1. Design, implement, and evaluate systematic instructional and environmental modifications to produce socially significant improvements in human behavior of individuals or groups.

2. Apply principles, methods, and procedures of operant and responding learning.

3. Utilize contextual factors, establishing operations, antecedent stimuli, position reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.

4. Assess functional relations between behavioral and environmental factors.

5. Apply interventions based on scientific research and the direct observation and measurement of behavior and environment.
(6) Supervise unlicensed individuals who implement treatment plans and interventions designed and maintained by the licensed behavior analyst. This includes, but is not limited to, delivering procedures and methods such as prompting, reinforcement, shaping, fading, and differential reinforcement. The supervised unlicensed individuals may also gather behavioral data that is used to evaluate the effectiveness of the treatment plan.

(b) The practice of applied behavior analysis excludes the practice of psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling.

(c) A licensed assistant behavior analyst may provide the services in subdivision (a) under the supervision of a certified behavior analyst.

2529.7.7. The board shall establish application and license fees in an amount sufficient to cover the reasonable regulatory costs of carrying out the provisions of this chapter.

2529.7.8. The board shall not issue a license to a person who has been convicted of a crime in this or any other state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory of the United States.

2529.7.9. The board may refuse to issue a license to an applicant if it appears he or she may be unable to practice safely due to mental illness or chemical dependency. The procedures set forth in Article 12.5 (commencing with Section 820) of Chapter 1 shall apply to a denial of a license pursuant to this section.

2529.7.10. The board may deny an application for licensure or may suspend the license of a licensee if the applicant or licensee is or has been guilty of unprofessional conduct, as described in Section 4982.

2529.7.11. The board may place a license on probation.

2529.7.12. A license issued under this chapter shall expire no later than 24 months after its date of issue. The expiration date of the original license shall be set by the board.
Article 3. License Renewal

2529.7.13. To renew an unexpired license, the licensee shall, on or before the expiration date of the license, take all of the following actions:
   (a) Apply for renewal on a form prescribed by the board.
   (b) Pay a renewal fee to be determined by the board by regulation. The renewal fee shall be in an amount sufficient to cover the reasonable regulatory costs of carrying out the renewal provisions of this chapter.
   (c) Inform the board of whether he or she has been convicted, as defined in Section 490, of any misdemeanor or felony and whether any disciplinary action has been taken by a regulatory or licensing board in this or any other state after the prior issuance or renewal of his or her license.
   (d) Maintain compliance with the requirements of Section 2529.7.3 if applying for renewal as a licensed behavior analyst and Section 2529.7.5 if applying for renewal as a licensed assistant behavior analyst.
   (e) Complete the continuing education requirements described in Section 2529.7.17.

2529.7.14. A suspended license is subject to expiration as provided in Section 2529.7.12 and may be renewed as provided in this article.

2529.7.15. A revoked license is subject to expiration as provided in Section 2529.7.12, but it shall not be renewed.

2529.7.16. A license that is not renewed within three years after its date of expiration may not be renewed, restored, reinstated, or reissued; however, the licensee may apply for and obtain a new license if the following criteria are satisfied:
   (a) No fact, circumstance, or condition exists that, if the license were issued, would constitute grounds for its revocation or suspension.
   (b) He or she submits an application for examination eligibility and the fee for that application.
   (c) He or she takes and passes the current licensing examination.
   (d) He or she submits the fee for initial license issuance.

2529.7.17. (a) Except as provided in subdivision (c), the board shall not renew any license pursuant to this chapter unless the
licensee certifies to the board, on a form prescribed by the board, that he or she has completed the following:

1) For a licensed behavior analyst, no fewer than 36 hours of continuing education.

2) For a licensed assistant behavior analyst, no fewer than 24 hours of continuing education.

(b) The board shall have the right to audit the records of any licensee to verify the completion of the applicable continuing education requirement. Licensees shall maintain records of completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request by the board.

(c) The board may establish exceptions from the continuing education requirements for good cause, as defined by the board by regulation.

(d) The continuing education shall be obtained from sources to be determined by the board by regulation.

Article 4. Miscellaneous

2529.7.18. The board shall report each month to the Controller the amount and source of all revenue received pursuant to this chapter and at the same time pay the entire amount thereof into the State Treasury for credit to the Behavioral Sciences Fund.

2529.7.19. Nothing in this chapter shall be construed to limit, impair, or otherwise apply to the practice of any person licensed and regulated under any other chapter of Division 2 (commencing with Section 500).

Article 5. Operation

2529.7.25. This chapter shall become operative on January 1, 2015.

SEC. 2. Section 4990.02 of the Business and Professions Code is amended to read:

4990.02. "Board," as used in this chapter, Chapter 5.2 (commencing with Section 2529.7.1), Chapter 13 (commencing with Section 4980), Chapter 13.5 (commencing with Section 4989.10), Chapter 14 (commencing with Section 4991), and
Chapter 16 (commencing with Section 4999.10) means the Board of Behavioral Sciences.

SEC. 3. Section 4990.12 of the Business and Professions Code is amended to read:

4990.12. The duty of administering and enforcing this chapter, Chapter 5.2 (commencing with Section 2529.7.1), Chapter 13 (commencing with Section 4980), Chapter 13.5 (commencing with Section 4989.10), Chapter 14 (commencing with Section 4991), and Chapter 16 (commencing with Section 4999.10) is vested in the board and the executive officer subject to, and under the direction of, the board. In the performance of this duty, the board and the executive officer have all the powers and are subject to all the responsibilities vested in, and imposed upon, the head of a department by Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 4.
SEC. 2. Section 4990.18 of the Business and Professions Code is amended to read:

4990.18. It is the intent of the Legislature that the board employ its resources for each and all of the following functions:
(a) The licensure of certified applied behavior analysts, certified assistant applied behavior analysts, marriage and family therapists, clinical social workers, professional clinical counselors, and educational psychologists.
(b) The development and administration of licensure examinations and examination procedures consistent with prevailing standards for the validation and use of licensing and certification tests. Examinations shall measure knowledge and abilities demonstrably important to the safe, effective practice of the profession.
(c) Enforcement of laws designed to protect the public from incompetent, unethical, or unprofessional practitioners.
(d) Consumer education.
(e) Commencing January 1, 2015, the licensure of behavior analysts and assistant behavior analysts.

SEC. 5. Section 4990.30 of the Business and Professions Code is amended to read:

4990.30. (a) A licensed marriage and family therapist, marriage and family therapist intern, licensed clinical social worker, associate clinical social worker, licensed professional clinical
counselor, professional clinical counselor intern, licensed educational psychologist, certified applied behavior analyst, or certified assistant applied behavior analyst whose license or registration has been revoked, suspended, or placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation. The petition shall be on a form provided by the board and shall state any facts and information as may be required by the board including, but not limited to, proof of compliance with the terms and conditions of the underlying disciplinary order. The petition shall be verified by the petitioner who shall file an original and sufficient copies of the petition, together with any supporting documents, for the members of the board, the administrative law judge, and the Attorney General.

(b) The licensee or registrant may file the petition on or after the expiration of the following timeframes, each of which commences on the effective date of the decision ordering the disciplinary action or, if the order of the board, or any portion of it, is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) Three years for reinstatement of a license or registration that was revoked for unprofessional conduct, except that the board may, in its sole discretion, specify in its revocation order that a petition for reinstatement may be filed after two years.

(2) Two years for early termination of any probation period of three years or more.

(3) One year for modification of a condition, reinstatement of a license or registration revoked for mental or physical illness, or termination of probation of less than three years.

(c) The petition may be heard by the board itself or the board may assign the petition to an administrative law judge pursuant to Section 11512 of the Government Code.

(d) The petitioner may request that the board schedule the hearing on the petition for a board meeting at a specific city where the board regularly meets.

(e) The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition and an opportunity to present both oral and documentary evidence and argument to the board or the administrative law judge.
(f) The petitioner shall at all times have the burden of production and proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(g) The board, when it is hearing the petition itself, or an administrative law judge sitting for the board, may consider all activities of the petitioner since the disciplinary action was taken; the offense for which the petitioner was disciplined, the petitioner’s activities during the time his or her license or registration was in good standing; and the petitioner’s rehabilitative efforts, general reputation for truth, and professional ability.

(h) The hearing may be continued from time to time as the board or the administrative law judge deems appropriate but in no case may the hearing on the petition be delayed more than 180 days from its filing without the consent of the petitioner.

(i) The board itself, or the administrative law judge if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision. In a decision granting a petition reinstating a license or modifying a penalty, the board itself, or the administrative law judge, may impose any terms and conditions that the agency deems reasonably appropriate, including those set forth in Sections 823 and 4990.40.

(j) If a petition is heard by an administrative law judge sitting alone, the administrative law judge shall prepare a proposed decision and submit it to the board. The board may take action with respect to the proposed decision and petition as it deems appropriate.

(k) The petitioner shall pay a fingerprinting fee and provide a current set of his or her fingerprints to the board. The petitioner shall execute a form authorizing release to the board or its designee, of all information concerning the petitioner’s current physical and mental condition. Information provided to the board pursuant to the release shall be confidential and shall not be subject to discovery or subpoena in any other proceeding, and shall not be admissible in any action, other than before the board, to determine the petitioner’s fitness to practice as required by Section 822.

(l) The board may delegate to its executive officer authority to order investigation of the contents of the petition.

(f) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole or the petitioner is required to register pursuant to Section 290 of the
Penal Code. No petition shall be considered while there is an
accusation or petition to revoke probation pending against the
petitioner.

(m) Except in those cases where the petitioner has been
disciplined for violation of Section 822, the board may in its
discretion deny without hearing or argument any petition that is
filed pursuant to this section within a period of two years from the
effective date of a prior decision following a hearing under this
section:

SEC. 6.—Section 4990.38 of the Business and Professions Code
is amended to read:

4990.38. The board may deny an application or may suspend
or revoke a license or registration issued under the chapters it
administers and enforces for any disciplinary action imposed by
another state or territory or possession of the United States, or by
a governmental agency on a license, certificate or registration to
practice marriage and family therapy, clinical social work,
educational psychology, professional clinical counseling, applied
behavior analysis, or any other healing art. The disciplinary action,
which may include denial of licensure or revocation or suspension
of the license or imposition of restrictions on it, constitutes
unprofessional conduct. A certified copy of the disciplinary action
decision or judgment shall be conclusive evidence of that action.
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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: SB 146
VERSION: AMENDED APRIL 12, 2011

AUTHOR: WYLAND
SPONSOR: CALIFORNIA ASSOCIATION FOR LICENSED PROFESSIONAL CLINICAL COUNSELORS

RECOMMENDED POSITION: SUPPORT

SUBJECT: HEALING ARTS: PROFESSIONAL CLINICAL COUNSELORS

Existing Law: Provides for the licensure of professional clinical counselors (LPCCs) by the Board of Behavioral Sciences. (Business and Professions Code (BPC) Chapter 16).

This Bill:

1) Includes LPCCs in existing law requiring certain licensees to complete training in human sexuality. Authorizes the Board to adopt education and training for LPCCs related to chemical dependency and the assessment and treatment of AIDS. (BPC §§ 25, 29, 32).

2) Includes LPCCs in the licensees for which Board must provide license status information on the internet. (BPC §27).

3) Includes LPCCs in the laws requiring insurers providing liability insurance and state or local government agencies that self insure to report certain settlement or arbitration awards, and requiring a licensee to report to the board certain settlements, judgments, or arbitration awards. (BPC §§ 801, 801.1, 802).

4) Includes LPCCs in the law that establishes a peer review process, requires peer review under certain circumstances, and requires a peer review body to make specified reports. (BPC §805).

5) Includes the Board’s amendment adding fees for rescoring an examination, issuance of a replacement license or registration, and letter or certificate of good standing to the list of LPCC fees. (BPC §4999.120)

6) Adds a section setting guidelines for professional clinical counselor corporations. (BCP §4990.20 and Article 7 commencing with §4999.123).

7) Includes LPCCs in laws prohibiting monetary liability or cause of action for damages against certain professional societies or its members acting within the scope of functions for that society. (Civil Code (CC) §§43.7, 43.8, 43.95).

8) Includes LPCCs, as well as registered clinical counselor interns and trainees, in the law providing a cause of action against a psychotherapist for injury caused by sexual contact with the psychotherapist. (CC §43.93).
9) Amends the Moscone-Knox Professional Corporation Act to allow LPCCs to be shareholders, officers, directors, or professional employees of other professional corporations. (Corporations Code §13401.5).

10) Includes professional clinical counseling in the law requesting that the California State University, University of California, and California Community Colleges develop standards and guidelines for specified curriculum. (Education Code §66085).

11) Adds testimony from a witness who has undergone hypnosis by an LPCC to admissible testimony in a criminal proceeding if specified conditions are met. (Evidence Code §795).

12) Includes LPCCs and clinical counselor interns and trainees in the list of practitioners that are defined as a psychotherapist. (Evidence Code §1010).

13) Extends the patient-psychotherapist privilege to confidential communications made between a patient and his or her LPCC, registered clinical counselor intern or trainee, or LPCC corporation. (Evidence Code §1014).

14) Provides that the proceedings and records of committees or peer review bodies of professional clinical counselors are not subject to discovery. (Evidence Code §1157).

15) Adds LPCCs to the list of eligible providers which the family law division of the superior court may contract with for supervised visitation and exchange services, education, and group counseling. (Family Code §3202).

16) Extends the law governing provision of mental health treatment or counseling services and residential shelter services to minors by professional persons to LPCCs and LPCC interns. (Family Code §§6924, 6929).

17) Extends to LPCCs the law prohibiting the licensure requirements of healing arts personnel in the state and other government health facilities license by the state from being any less than those of professional personnel in health facilities under private ownership, subject to specified waivers. (Health and Safety Code (HSC) §1277).

18) Requires a health care service plan that provides telephone medical advice services to ensure that any LPCCs providing those services are licensed. (HSC §1348.8).

19) Amends the law requiring a health care service plan to provide an enrollee or prospective enrollee, upon request, a list of contracting providers within that person’s geographic area, to include LPCCS on the list of contracting providers. (HSC §1367.26).

20) Adds LPCCs to the list of healing arts professionals that a health care service plan may not prohibit an enrollee from selecting. (HSC §1373).

21) Includes LPCCs in the provisions that apply to health insurance policies that are written or issued for delivery outside of California and where benefits are provided within the scope of practice of certain healing arts licensees. (HSC §§1373.8, 1373.95).

22) Includes LPCCs in the definition of a health care provider and includes LPCCs in the law allowing health care providers to prohibit inspection of a minor’s patient records under certain conditions. (HSC §§123105, 123115).
23) Includes LPCCs and LPCC interns in the list of professional persons who may provide mental health treatment or counseling services. (HSC §124260)

24) Makes various technical amendments to add LPCCs the Insurance Code relating to disability insurance and self-insured employee welfare benefit plan (Insurance Code §§10133.55, 10176, 10176.7, 10177, 10177.8)

25) Includes LPCCs, clinical counselor interns, and clinical counselor trainees in the list of mandated reporters. (Penal Code §11165.7).

26) Includes LPCCs in provisions governing confidentiality of patient records when practicing at institutions for the developmentally disabled or mental hospitals. (Welfare & Institutions Code (W&IC) § 4514, 5256.1, 5328, 5328.04)

27) Makes an amendment to law regulating the provision of community mental health services for the mentally disordered in every county. The law sets forth establishment of secure facilities and staffing requirements. The amendment would add LPCCs to certain provisions of staffing requirements. (W&IC 5696.5, 5751, 5751.2, 15610.37).

Comments:

1) Author’s Intent. The purpose of this bill is to add LPCCs to statutory code sections where Marriage and Family Therapists (MFTs) are already included. Adding LPCCs to other codes where other Board licensees are already included will allow LPCCs to be more effectively utilized in California.

2) Codes Amended. This bill makes clean up amendments to add LPCCs to several codes of law. Other minor, technical clean up was also made as needed. Affected codes are as follows:

- Business and Professions Code
- Civil Code
- Corporations Code
- Education Code
- Evidence Code
- Family Code
- Health & Safety Code
- Insurance Code
- Penal Code
- Welfare & Institutions Code

3) Related Legislation. This is a clean-up bill to follow SB 788 (Wyland) (Chapter 619, Statutes of 2009), which went into effect on January 1, 2010. This law requires the licensing
and regulation of Licensed Professional Clinical Counselors (LPCCs) and professional counselor interns by the Board of Behavioral Sciences. However, this bill only added and amended certain sections of the Business and Professions Code. It did not amend all sections of California Code where the addition of LPCCs is necessary.

4) **Recommended Position.** At its meeting on April 7, 2011, the Policy and Advocacy Committee recommended the Board take a support position on this bill.

5) **Support and Opposition.**

Support:
- California Association for Licensed Professional Clinical Counselors (Sponsor)
- California Alliance of Child and Family Services

Oppose: None known at this time.

6) **History**

**2011**

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<tr>
<td>Apr. 29</td>
<td>Set for hearing May 9.</td>
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<tr>
<td>Apr. 27</td>
<td>From committee: Do pass and re-refer to Com. on APPR. With recommendation: To consent calendar.</td>
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<td>Apr. 14</td>
<td>Set for hearing April 26.</td>
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<td>Apr. 12</td>
<td>From committee: Do pass and re-refer to Com. on JUD. (Ayes 9. Noes 0. Page 616.) (April 11).</td>
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<td>Mar. 30</td>
<td>From committee with author's amendments. Read second time and amended. Referred to Com. on JUD.</td>
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<td>Mar. 25</td>
<td>Set for hearing April 11.</td>
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<td>Mar. 15</td>
<td>From committee with author's amendments. Read second time and amended. Referred to Com. on B., P. &amp; E.D.</td>
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<td>Feb. 10</td>
<td>Referred to Coms. on B., P. &amp; E.D. and JUD.</td>
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<td>Feb. 1</td>
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SENATE BILL No. 146

Introduced by Senator Wyland

February 1, 2011

An act to amend Sections 25, 27, 29, 32, 801, 801.1, 802, 805, 809, 4990.20, 4990.20, and 4999.120 of, and to add Article 7 (commencing with Section 4999.123) to Chapter 16 of Division 2 of, the Business and Professions Code, to amend Sections 43.7, 43.8, 43.93, and 43.95 of the Civil Code, to amend Section 13401.5 of the Corporations Code, to amend Section 66085 of the Education Code, to amend Sections 795, 1010, 1014, and 1157 of the Evidence Code, to amend Sections 3202, 6924, and 6929 of the Family Code, to amend Sections 1277, 1348.8, 1367.26, 1373, 1373.8, 1373.95, 123105, 123115, and 124260 of the Health and Safety Code, to amend Sections 10133.55, 10176, 10176.7, 10177, and 10177.8 of the Insurance Code, to amend Section 11165.7 of the Penal Code, and to amend Sections 4514, 5256.1, 5328, 5328.04, 5696.5, 5751, 5751.2, and 15610.37 of the Welfare and Institutions Code, relating to healing arts.

LEGISLATIVE COUNSEL’S DIGEST

Existing law, the Licensed Professional Clinical Counselor Act, provides for the licensure and regulation of professional clinical counselors by the Board of Behavioral Sciences. Existing law also
governs the regulation of clinical counselor trainees and clinical counselor interns. A violation of the act is punishable as a crime.

This bill would make changes to various provisions concerning the practice of professional clinical counselors, clinical counselor trainees, and clinical counselor interns, including, but not limited to, provisions relating to education and training and licensure fees. The bill would authorize the formation of professional clinical counselor corporations for purposes of rendering professional services, subject to specified requirements. The bill would make conforming changes to the Moscone-Knox Professional Corporation Act and would authorize professional clinical counselors to be shareholders, officers, directors, or professional employees of other professional corporations, as specified. The bill would provide that a violation of these provisions constitutes a violation of the Licensed Professional Clinical Counselor Act, the violation of which is punishable as a crime, thereby imposing a state-mandated local program.

Existing law imposes specified fees on applicants for licensure as professional clinical counselors and registration as clinical counselor interns, including examination fees.

This bill would impose additional fees on these applicants, licensees, and registrants for the rescoring of examinations of a license or for replacement or issuance of a certificate or letter of good standing.

Existing law requires certain licensees to complete training in human sexuality and authorizes the board to adopt education and training for licensees related to chemical dependency and the assessment and treatment of AIDS.

This bill would extend the application of these provisions to professional clinical counselors.

Existing law requires the board to provide on the Internet information regarding the status of every license issued by the board.

This bill would require the board to disclose information on licensed professional clinical counselors.

Existing law requires insurers that provide liability insurance to certain licensees, and state or local governmental agencies that self insure those licensees, to report to the board certain settlement or arbitration awards. Existing law requires certain licensees to report to the board certain settlements, judgments, or arbitration awards. The failure of a licensee to report this information constitutes a crime subject to specified fines.
This bill would extend the application of these provisions to professional clinical counselors. By expanding a crime, the bill would impose a state-mandated local program.

Existing law establishes a peer review process for certain healing arts licensees and requires peer review bodies to review licensee conduct under specified circumstances. The willful failure of a peer review body to make specified reports is punishable as a crime.

This bill would apply these provisions to professional clinical counselors and set forth the criteria for the establishment of a peer review body, as specified. Because the willful failure of such a peer review body to make specified reports would be punishable as a crime, the bill would impose a state-mandated local program.

Existing law provides that there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, certain professional societies or its members for any act performed within the scope of the functions of that professional society or peer review or for the operation of a referral service, as specified.

This bill would extend the application of these provisions to a professional society consisting of professional clinical counselors and members of that society.

Existing law provides a cause of action against a psychotherapist, as defined, for injury caused by sexual contact with the psychotherapist.

This bill would extend the application of that cause of action to professional clinical counselors and registered clinical counselor interns or trainees, and their patients.

Existing law requests that the California State University, the University of California, and the California Community Colleges develop standards and guidelines for curriculum in gerontology, nursing, social work, psychology, marriage and family therapy, and rehabilitation therapies.

This bill would add to that requested curriculum professional clinical counseling.

Existing law makes admissible in a criminal proceeding the testimony of a witness who has previously undergone hypnosis for the purpose of recalling events that are the subject of the witness’s testimony, if specified conditions are met, including that the hypnosis was performed by a licensed physician and surgeon, psychologist, licensed clinical social worker, or a licensed marriage and family therapist experienced in the use of hypnosis.
This bill would make admissible the testimony from a witness who has undergone hypnosis by a professional clinical counselor.

Existing law provides that a patient has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between a patient and his or her psychotherapist, as defined.

This bill would extend the patient-psychotherapist privilege to confidential communications made between a patient and his or her professional clinical counselor, a registered clinical counselor intern or trainee, or a professional clinical counselor corporation. The bill would make a technical change to provisions that apply to associate clinical social workers.

Existing law provides that the proceedings and records of organized committees of healing arts professions or of a peer review body are not subject to discovery, except as specified.

This bill would provide that the proceedings and records of committees or peer review bodies of professional clinical counselors are not subject to discovery, except as specified.

Existing law authorizes the family law division of the superior court to contract with eligible providers of supervised visitation and exchange services, education, and group counseling to provide services.

This bill would authorize the family law division to contract with professional clinical counselors for those services.

Existing law sets forth the provisions that govern the provision of mental health treatment or counseling services and residential shelter services by professional persons, as defined.

This bill would extend the application of those provisions to professional clinical counselors and clinical counselor interns.

Existing law prohibits the licensure requirements of healing arts personnel in the state and other governmental health facilities licensed by the state from being any less than those of professional personnel in health facilities under private ownership, subject to specified waiver provisions.

This bill would extend the application of those provisions to professional clinical counselors who work in those facilities.

Existing law, the Knox-Keene Health Care Service Act of 1975 (Knox-Keene Act), provides for the licensure and regulation of health care service plans by the Department of Managed Health Care, and makes a willful violation of its provisions a crime. Existing law requires a health care service plan that provides, operates, or contracts for
telephone medical advice services to ensure that the staff providing those services are properly licensed, as specified.

This bill would require a health care service plan that provides telephone medical advice services to ensure that any professional clinical counselors providing those services are licensed. Because a willful violation of these provisions would be punishable as a crime, the bill would impose a state-mandated local program.

Existing law requires a health care service plan to provide to an enrollee or prospective enrollee, upon request, a list of contracting providers within the enrollee’s or prospective enrollee’s general geographic area.

This bill would require a health care service plan to make that information available with regard to contracting providers who are professional clinical counselors. Because a willful violation of these provisions would be punishable as a crime, the bill would impose a state-mandated local program.

Under existing law, a health care service plan may not prohibit an enrollee from selecting certain healing art licensees for mental health services. Existing law also sets forth provisions that apply to health care service plan contracts or health insurance policies that are written or issued for delivery outside of California and where benefits are provided within the scope of practice of certain healing arts licensees.

This bill would add professional clinical counselors to the list of healing arts licensees in those provisions and would make similar changes to provisions that apply to insurance carriers. Because a willful violation of these provisions under the Knox-Keene Act would be punishable as a crime, the bill would impose a state-mandated local program.

Existing law sets forth provisions governing patient records and the responsibilities and duties of health care providers, as defined, with regard to those records, and as applied to other healing arts licensees when practicing at institutions for the developmentally disabled or mental hospitals.

This bill would apply the provisions that govern patient records to professional clinical counselors and clinical counselor interns.

Existing law requires a person who provides mental health services in local mental health facilities to be licensed. Existing law allows that licensure requirement to be waived in local facilities for psychologists, clinical social workers, and marriage and family therapists who are gaining the experience required for licensure.
This bill would apply those waiver provisions to the profession of clinical counseling.

Under the Child Abuse Neglect and Reporting Act, certain persons are mandated reporters, as defined. Failure of a mandated reporter to report an incident of known or reasonably suspected child abuse or neglect is a misdemeanor.

This bill would make professional clinical counselors, clinical counselor interns, and clinical counselor trainees mandated reporters. By expanding a crime, the bill would impose a state-mandated local program.

Existing law generally regulates the provision of community mental health services for the mentally disordered in every county. Existing law authorizes the establishment of regional, secure facilities, which are designed for the commitment and ongoing treatment of seriously emotionally disturbed minors who have been adjudged wards of the juvenile court. Among other things, existing law sets forth staffing requirements for the opening of one of these regional facilities, including requiring that the staff include a pediatrician, dentist, and marriage and family therapist, on an as-needed basis.

This bill would revise the staffing requirements for a regional facility to include a marriage and family therapist or professional clinical counselor, or both, on an as-needed basis. The bill would also authorize the position of director of local mental health services to be a professional clinical counselor and would make other conforming changes to the certification review provisions.

This bill would make other conforming changes and enact related provisions.

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:

1 SECTION 1. Section 25 of the Business and Professions Code is amended to read:
25. Any person applying for a license, registration, or the first renewal of a license, after the effective date of this section, as a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed professional clinical counselor shall, in addition to any other requirements, show by evidence satisfactory to the agency regulating the business or profession, that he or she has completed training in human sexuality as a condition of licensure. The training shall be creditable toward continuing education requirements as deemed appropriate by the agency regulating the business or profession, and the course shall not exceed more than 50 contact hours.

The Board of Psychology shall exempt from the requirements of this section any persons whose field of practice is such that they are not likely to have use for this training.

“Human sexuality” as used in this section means the study of a human being as a sexual being and how he or she functions with respect thereto.

The content and length of the training shall be determined by the administrative agency regulating the business or profession and the agency shall proceed immediately upon the effective date of this section to determine what training, and the quality of staff to provide the training, is available and shall report its determination to the Legislature on or before July 1, 1977.

If a licensing board or agency proposes to establish a training program in human sexuality, the board or agency shall first consult with other licensing boards or agencies that have established or propose to establish a training program in human sexuality to ensure that the programs are compatible in scope and content.

SEC. 2. Section 27 of the Business and Professions Code is amended to read:

27. (a) Each entity specified in subdivision (b) shall provide on the Internet information regarding the status of every license issued by that entity 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. 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, licensed educational psychologists, and licensed professional clinical counselors.
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.

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

SEC. 3. Section 29 of the Business and Professions Code is amended to read:

29. (a) The Board of Psychology and the Board of Behavioral Sciences shall consider adoption of continuing education requirements including training in the area of recognizing chemical dependency and early intervention for all persons applying for renewal of a license as a psychologist, clinical social worker, marriage and family therapist, or professional clinical counselor.

(b) Prior to the adoption of any regulations imposing continuing education relating to alcohol and other chemical dependency, the
boards are urged to consider coursework to include, but not necessarily be limited to, the following topics:

(1) Historical and contemporary perspectives on alcohol and other drug abuse.

(2) Extent of the alcohol and drug abuse epidemic and its effects on the individual, family, and community.

(3) Recognizing the symptoms of alcoholism and drug addiction.

(4) Making appropriate interpretations, interventions, and referrals.

(5) Recognizing and intervening with affected family members.

(6) Learning about current programs of recovery, such as 12 step programs, and how therapists can effectively utilize these programs.

SEC. 4. Section 32 of the Business and Professions Code is amended to read:

32. (a) The Legislature finds that there is a need to ensure that professionals of the healing arts who have or intend to have significant contact with patients who have, or are at risk to be exposed to, acquired immune deficiency syndrome (AIDS) are provided with training in the form of continuing education regarding the characteristics and methods of assessment and treatment of the condition.

(b) A board vested with the responsibility of regulating the following licensees shall consider including training regarding the characteristics and method of assessment and treatment of acquired immune deficiency syndrome (AIDS) in any continuing education or training requirements for those licensees: chiropractors, medical laboratory technicians, dentists, dental hygienists, dental assistants, physicians and surgeons, podiatrists, registered nurses, licensed vocational nurses, licensed psychologists, physician assistants, respiratory therapists, acupuncturists, marriage and family therapists, licensed educational psychologists, clinical social workers, and professional clinical counselors.

SEC. 5. Section 801 of the Business and Professions Code is amended to read:

801. (a) Except as provided in Section 801.01 and subdivisions (b), (c), and (d) of this section, every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency specified in subdivision (a) of Section 800 shall send a complete report to that agency as
to any settlement or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by that person’s negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4990), or Chapter 16 (commencing with Section 4999.10) shall send a complete report to the Board of Behavioral Sciences as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person’s negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(c) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Dental Board of California as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person’s negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing liability insurance to a veterinarian licensed pursuant to Chapter 11 (commencing with Section 4800) shall send a complete report to the Veterinary Medical Board of any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or injury caused by that person’s negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has
been reduced to writing and signed by all parties thereto or within
30 days after service of the arbitration award on the parties.

(e) The insurer shall notify the claimant, or if the claimant is
represented by counsel, the insurer shall notify the claimant’s
attorney, that the report required by subdivision (a), (b), or (c) has
been sent to the agency. If the attorney has not received this notice
within 45 days after the settlement was reduced to writing and
signed by all of the parties, the arbitration award was served on
the parties, or the date of entry of the civil judgment, the attorney
shall make the report to the agency.

(f) Notwithstanding any other provision of law, no insurer shall
enter into a settlement without the written consent of the insured,
except that this prohibition shall not void any settlement entered
into without that written consent. The requirement of written
consent shall only be waived by both the insured and the insurer.
This section shall only apply to a settlement on a policy of
insurance executed or renewed on or after January 1, 1971.

SEC. 6. Section 801.1 of the Business and Professions Code
is amended to read:

801.1. (a) Every state or local governmental agency that
self-insures a person who holds a license, certificate, or similar
authority from or under any agency specified in subdivision (a) of
Section 800 (except a person licensed pursuant to Chapter 3
(commencing with Section 1200) or Chapter 5 (commencing with
Section 2000) or the Osteopathic Initiative Act) shall send a
complete report to that agency as to any settlement or arbitration
award over three thousand dollars ($3,000) of a claim or action
for damages for death or personal injury caused by that person’s
negligence, error, or omission in practice, or rendering of
unauthorized professional services. The report shall be sent within
30 days after the written settlement agreement has been reduced
to writing and signed by all parties thereto or within 30 days after
service of the arbitration award on the parties.

(b) Every state or local governmental agency that self-insures
a person licensed pursuant to Chapter 13 (commencing with
Section 4980), Chapter 14 (commencing with Section 4990), or
Chapter 16 (commencing with Section 4999.10) shall send a
complete report to the Board of Behavioral Science Examiners as
to any settlement or arbitration award over ten thousand dollars
($10,000) of a claim or action for damages for death or personal
injury caused by that person’s negligence, error, or omission in
practice, or rendering of unauthorized professional services. The
report shall be sent within 30 days after the written settlement
agreement has been reduced to writing and signed by all parties
thereo or within 30 days after service of the arbitration award on
the parties.

SEC. 7. Section 802 of the Business and Professions Code is
amended to read:

802. (a) Every settlement, judgment, or arbitration award over
three thousand dollars ($3,000) of a claim or action for damages
for death or personal injury caused by negligence, error or omission
in practice, or by the unauthorized rendering of professional
services, by a person who holds a license, certificate, or other
similar authority from an agency specified in subdivision (a) of
Section 800 (except a person licensed pursuant to Chapter 3
(commencing with Section 1200) or Chapter 5 (commencing with
Section 2000) or the Osteopathic Initiative Act) who does not
possess professional liability insurance as to that claim shall, within
30 days after the written settlement agreement has been reduced
to writing and signed by all the parties thereto or 30 days after
service of the judgment or arbitration award on the parties, be
reported to the agency that issued the license, certificate, or similar
authority. A complete report shall be made by appropriate means
by the person or his or her counsel, with a copy of the
communication to be sent to the claimant through his or her counsel
if the person is so represented, or directly if he or she is not. If,
within 45 days of the conclusion of the written settlement
agreement or service of the judgment or arbitration award on the
parties, counsel for the claimant (or if the claimant is not
represented by counsel, the claimant himself or herself) has not
received a copy of the report, he or she shall himself or herself
make the complete report. Failure of the licensee or claimant (or,
if represented by counsel, their counsel) to comply with this section
is a public offense punishable by a fine of not less than fifty dollars
($50) or more than five hundred dollars ($500). Knowing and
intentional failure to comply with this section or conspiracy or
collusion not to comply with this section, or to hinder or impede
any other person in the compliance, is a public offense punishable
by a fine of not less than five thousand dollars ($5,000) nor more
than fifty thousand dollars ($50,000).
(b) Every settlement, judgment, or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a marriage and family therapist, a clinical social worker, or a professional clinical counselor licensed pursuant to Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4990), or Chapter 16 (commencing with Section 4999.10), respectively, who does not possess professional liability insurance as to that claim shall within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if he or she is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make a complete report. Failure of the marriage and family therapist, clinical social worker, or professional clinical counselor or claimant (or, if represented by counsel, his or her counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars ($50) nor more than five hundred dollars ($500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section or to hinder or impede any other person in that compliance, is a public offense punishable by a fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

SEC. 8. Section 805 of the Business and Professions Code is amended to read:

805. (a) As used in this section, the following terms have the following definitions:

(1) (A) “Peer review” means both of the following:

(i) A process in which a peer review body reviews the basic qualifications, staff privileges, employment, medical outcomes,
or professional conduct of licentiates to make recommendations for quality improvement and education, if necessary, in order to do either or both of the following:

(I) Determine whether a licentiate may practice or continue to practice in a health care facility, clinic, or other setting providing medical services, and, if so, to determine the parameters of that practice.

(II) Assess and improve the quality of care rendered in a health care facility, clinic, or other setting providing medical services.

(ii) Any other activities of a peer review body as specified in subparagraph (B).

(B) “Peer review body” includes:

(i) A medical or professional staff of any health care facility or clinic licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code or of a facility certified to participate in the federal Medicare Program as an ambulatory surgical center.

(ii) A health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that contracts with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code.

(iii) Any medical, psychological, marriage and family therapy, social work, professional clinical counselor, dental, or podiatric professional society having as members at least 25 percent of the eligible licentiates in the area in which it functions (which must include at least one county), which is not organized for profit and which has been determined to be exempt from taxes pursuant to Section 23701 of the Revenue and Taxation Code.

(iv) A committee organized by any entity consisting of or employing more than 25 licentiates of the same class that functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.

(2) “Licentiate” means a physician and surgeon, doctor of podiatric medicine, clinical psychologist, marriage and family therapist, clinical social worker, professional clinical counselor, or dentist. “Licentiate” also includes a person authorized to practice medicine pursuant to Section 2113 or 2168.

(3) “Agency” means the relevant state licensing agency having regulatory jurisdiction over the licentiates listed in paragraph (2).
(4) “Staff privileges” means any arrangement under which a licentiate is allowed to practice in or provide care for patients in a health facility. Those arrangements shall include, but are not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(5) “Denial or termination of staff privileges, membership, or employment” includes failure or refusal to renew a contract or to renew, extend, or reestablish any staff privileges, if the action is based on medical disciplinary cause or reason.

(6) “Medical disciplinary cause or reason” means that aspect of a licentiate’s competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) “805 report” means the written report required under subdivision (b).

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after the effective date on which any of the following occur as a result of an action of a peer review body:

(1) A licentiate’s application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.

(2) A licentiate’s membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.

(3) Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason.

(c) If a licentiate takes any action listed in paragraph (1), (2), or (3) after receiving notice of a pending investigation initiated for a medical disciplinary cause or reason or after receiving notice that his or her application for membership or staff privileges is denied or will be denied for a medical disciplinary cause or reason, the chief of staff of a medical or professional staff or other chief
executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic where the licentiate is employed or has staff privileges or membership or where the licentiate applied for staff privileges or membership, or sought the renewal thereof, shall file an 805 report with the relevant agency within 15 days after the licentiate takes the action.

1. Resigns or takes a leave of absence from membership, staff privileges, or employment.
2. Withdraws or abandons his or her application for staff privileges or membership.
3. Withdraws or abandons his or her request for renewal of staff privileges or membership.

(d) For purposes of filing an 805 report, the signature of at least one of the individuals indicated in subdivision (b) or (c) on the completed form shall constitute compliance with the requirement to file the report.

(e) An 805 report shall also be filed within 15 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days.

(f) A copy of the 805 report, and a notice advising the licentiate of his or her right to submit additional statements or other information, electronically or otherwise, pursuant to Section 800, shall be sent by the peer review body to the licentiate named in the report. The notice shall also advise the licentiate that information submitted electronically will be publicly disclosed to those who request the information.

The information to be reported in an 805 report shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

A supplemental report shall also be made within 30 days following the date the licentiate is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by the reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.
If another peer review body is required to file an 805 report, a health care service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason. If the Medical Board of California or a licensing agency of another state revokes or suspends, without a stay, the license of a physician and surgeon, a peer review body is not required to file an 805 report when it takes an action as a result of the revocation or suspension.

(g) The reporting required by this section shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and Sections 803.1 and 2027, provided that a copy of the report containing the information required by this section may be disclosed as required by Section 805.5 with respect to reports received on or after January 1, 1976.

(h) The Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California shall disclose reports as required by Section 805.5.

(i) An 805 report shall be maintained electronically by an agency for dissemination purposes for a period of three years after receipt.

(j) No person shall incur any civil or criminal liability as the result of making any report required by this section.

(k) A willful failure to file an 805 report by any person who is designated or otherwise required by law to file an 805 report is punishable by a fine not to exceed one hundred thousand dollars ($100,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. A violation of this subdivision may constitute unprofessional conduct by the licentiate. A person who is alleged to have violated this subdivision may assert any defense available at law. As used in this subdivision, “willful” means a voluntary and intentional violation of a known legal duty.
(l) Except as otherwise provided in subdivision (k), any failure by the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report, shall be punishable by a fine that under no circumstances shall exceed fifty thousand dollars ($50,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. The amount of the fine imposed, not exceeding fifty thousand dollars ($50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report exercised due diligence despite the failure to file or whether they knew or should have known that an 805 report would not be filed; and whether there has been a prior failure to file an 805 report. The amount of the fine imposed may also differ based on whether a health care facility is a small or rural hospital as defined in Section 124840 of the Health and Safety Code.

(m) A health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that negotiates and enters into a contract with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code, when determining participation with the plan or insurer, shall evaluate, on a case-by-case basis, licentiates who are the subject of an 805 report, and not automatically exclude or deselect these licentiates.

SEC. 9. Section 809 of the Business and Professions Code is amended to read:

(a) The Legislature hereby finds and declares the following:
(1) In 1986, Congress enacted the federal Health Care Quality Improvement Act of 1986 (42 U.S.C. Sec. 11101 et seq.), to encourage physicians and surgeons to engage in effective professional peer review, but giving each state the opportunity to “opt-out” of some of the provisions of the federal act.

(2) Because of deficiencies in the federal act and the possible adverse interpretations by the courts of the federal act, it is preferable for California to “opt-out” of the federal act and design its own peer review system.

(3) Peer review, fairly conducted, is essential to preserving the highest standards of medical practice.

(4) Peer review that is not conducted fairly results in harm to both patients and healing arts practitioners by limiting access to care.

(5) Peer review, fairly conducted, will aid the appropriate state licensing boards in their responsibility to regulate and discipline errant healing arts practitioners.

(6) To protect the health and welfare of the people of California, it is the policy of the State of California to exclude, through the peer review mechanism as provided for by California law, those healing arts practitioners who provide substandard care or who engage in professional misconduct, regardless of the effect of that exclusion on competition.

(7) It is the intent of the Legislature that peer review of professional health care services be done efficiently, on an ongoing basis, and with an emphasis on early detection of potential quality problems and resolutions through informal educational interventions.

(8) Sections 809 to 809.8, inclusive, shall not affect the respective responsibilities of the organized medical staff or the governing body of an acute care hospital with respect to peer review in the acute care hospital setting. It is the intent of the Legislature that written provisions implementing Sections 809 to 809.8, inclusive, in the acute care hospital setting shall be included in medical staff bylaws that shall be adopted by a vote of the members of the organized medical staff and shall be subject to governing body approval, which approval shall not be withheld unreasonably.

(9) (A) The Legislature thus finds and declares that the laws of this state pertaining to the peer review of healing arts
practitioners shall apply in lieu of Section 11101 and following of Title 42 of the United States Code, because the laws of this state provide a more careful articulation of the protections for both those undertaking peer review activity and those subject to review, and better integrate public and private systems of peer review. Therefore, California exercises its right to opt out of specified provisions of the federal Health Care Quality Improvement Act relating to professional review actions, pursuant to Section 11111(c)(2)(B) of Title 42 of the United States Code. This election shall not affect the availability of any immunity under California law.

(B) The Legislature further declares that it is not the intent or purpose of Sections 809 to 809.8, inclusive, to opt out of any mandatory national data bank established pursuant to Section 11131 and following of Title 42 of the United States Code.

(b) For the purpose of this section and Sections 809.1 to 809.8, inclusive, “healing arts practitioner” or “licentiate” means a physician and surgeon, podiatrist, clinical psychologist, marriage and family therapist, clinical social worker, professional clinical counselor, or dentist; and “peer review body” means a peer review body as specified in paragraph (1) of subdivision (a) of Section 805, and includes any designee of the peer review body.

SEC. 10. Section 4990.20 of the Business and Professions Code is amended to read:

4990.20. (a) The board may adopt rules and regulations as necessary to administer and enforce the provisions of this chapter and the other chapters it administers and enforces. The adoption, amendment, or repeal of those rules and regulations shall be made in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The board may formulate and enforce rules and regulations requiring the following:

(1) That the articles of incorporation or bylaws of a marriage and family therapist corporation, a licensed clinical social worker corporation, or a professional clinical counselor corporation include a provision whereby the capital stock of that corporation owned by a disqualified person, as defined in the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), or a deceased person shall be sold to the corporation or to the remaining
shareholders of that corporation within the time that the rules and
regulations may provide.
(2) That a marriage and family therapist corporation, a licensed
clinical social worker corporation, or a professional clinical
counselor corporation shall provide adequate security by insurance
or otherwise for claims against it by its patients arising out of the
rendering of professional services.
SEC. 11. 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).
(l) The fee for rescoring an examination shall be twenty dollars
($20).
m) The fee for issuance of a replacement license or registration
shall be twenty dollars ($20).
(n) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

SEC. 12. Article 7 (commencing with Section 4999.123) is added to Chapter 16 of Division 2 of the Business and Professions Code, to read:

Article 7. Professional Clinical Counselor Corporations

4999.123. A professional clinical counselor corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees who are rendering professional services and who are licensed professional clinical counselors, marriage and family therapists, physicians and surgeons, psychologists, licensed clinical social workers, registered nurses, chiropractors, or acupuncturists, are in compliance with the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this article, and any other statute or regulation pertaining to that corporation and the conduct of its affairs. With respect to a professional clinical counselor corporation, the term “governmental agency” in the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code) shall be construed to mean the Board of Behavioral Sciences.

4999.124. It shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter to violate, attempt to violate, directly or indirectly, or assist in, or abet the violation of, or conspire to violate, any provision or term of this article, the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), or any regulation adopted under those laws.

4999.125. The name of a professional clinical counselor corporation and any name or names under which it may be rendering professional services shall contain the words “licensed professional clinical counselor” or “professional clinical counselor” and wording or abbreviations denoting a corporate existence. A professional clinical counselor corporation that conducts business
under a fictitious business name shall not use any name that is
false, misleading, or deceptive, and shall inform each patient, prior
to commencement of treatment, that the business is conducted by
a professional clinical counselor corporation.

4999.126. Except as provided in Section 13403 of the
Corporations Code, each director, shareholder, and officer of a
professional clinical counselor corporation shall be a licensed
person, as defined in Section 13401 of the Corporations Code.

4999.127. The income of a professional clinical counselor
corporation attributable to professional services rendered while a
shareholder is a disqualified person, as defined in Section 13401
of the Corporations Code, shall not in any manner accrue to the
benefit of that shareholder or his or her shares in the professional
clinical counselor corporation.

4999.128. A professional clinical counselor corporation shall
not perform or fail to perform any act the performance of which,
or for which the failure to perform, would constitute unprofessional
conduct under any statute, rule, or regulation. In the conduct of its
practice, a professional clinical counselor corporation shall observe
and be bound by any statute, rule, or regulation that applies to a
licensed professional clinical counselor.

4999.129. The board may formulate and enforce any rule or
regulation to carry out the purposes and objectives of this article,
including as follows:

(a) Any rule or regulation that requires that the articles of
incorporation or bylaws of a professional clinical counselor
corporation shall include a provision that requires the capital stock
of the corporation owned by a disqualified person, as defined in
Section 13401 of the Corporations Code, or a deceased person to
be sold to the corporation or to the remaining shareholders of the
corporation within the timeframe that the rule or regulation
requires.

(b) Any rule or regulation that requires that a professional
clinical counselor corporation shall provide adequate security by
insurance or otherwise for claims against the corporation by its
patients arising out of the rendering of professional services.

SEC. 12.

SEC. 13. Section 43.7 of the Civil Code is amended to read:

43.7. (a) There shall be no monetary liability on the part of,
and no cause of action for damages shall arise against, any member
of a duly appointed mental health professional quality assurance committee that is established in compliance with Section 4070 of the Welfare and Institutions Code, for any act or proceeding undertaken or performed within the scope of the functions of the committee which is formed to review and evaluate the adequacy, appropriateness, or effectiveness of the care and treatment planned for, or provided to, mental health patients in order to improve quality of care by mental health professionals if the committee member acts without malice, has made a reasonable effort to obtain the facts of the matter as to which he or she acts, and acts in reasonable belief that the action taken by him or her is warranted by the facts known to him or her after the reasonable effort to obtain facts.

(b) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society, any member of a duly appointed committee of a medical specialty society, or any member of a duly appointed committee of a state or local professional society, or duly appointed member of a committee of a professional staff of a licensed hospital (provided the professional staff operates pursuant to written bylaws that have been approved by the governing board of the hospital), for any act or proceeding undertaken or performed within the scope of the functions of the committee which is formed to maintain the professional standards of the society established by its bylaws, or any member of any peer review committee whose purpose is to review the quality of medical, dental, dietetic, chiropractic, optometric, acupuncture, psychotherapy, or veterinary services rendered by physicians and surgeons, dentists, dental hygienists, podiatrists, registered dietitians, chiropractors, optometrists, acupuncturists, veterinarians, marriage and family therapists, professional clinical counselors, or psychologists, which committee is composed chiefly of physicians and surgeons, dentists, dental hygienists, podiatrists, registered dietitians, chiropractors, optometrists, acupuncturists, veterinarians, marriage and family therapists, professional clinical counselors, or psychologists for any act or proceeding undertaken or performed in reviewing the quality of medical, dental, dietetic, chiropractic, optometric, acupuncture, psychotherapy, or veterinary services rendered by physicians and surgeons, dentists, dental hygienists, podiatrists, registered dietitians, chiropractors, optometrists, acupuncturists,
veterinarians, marriage and family therapists, professional clinical
counselors, or psychologists or any member of the governing board
of a hospital in reviewing the quality of medical services rendered
by members of the staff if the professional society, committee, or
board member acts without malice, has made a reasonable effort
to obtain the facts of the matter as to which he, she, or it acts, and
acts in reasonable belief that the action taken by him, her, or it is
warranted by the facts known to him, her, or it after the reasonable
effort to obtain facts. “Professional society” includes legal, medical,
psychological, dental, dental hygiene, dietetic, accounting,
optometric, acupuncture, podiatric, pharmaceutic, chiropractic,
physical therapist, veterinary, licensed marriage and family therapy,
licensed clinical social work, licensed professional clinical
counselor, and engineering organizations having as members at
least 25 percent of the eligible persons or licentiates in the
geographic area served by the particular society. However, if the
society has fewer than 100 members, it shall have as members at
least a majority of the eligible persons or licentiates in the
geographic area served by the particular society.

“Medical specialty society” means an organization having as
members at least 25 percent of the eligible physicians and surgeons
within a given professionally recognized medical specialty in the
geographic area served by the particular society.

(c) This section does not affect the official immunity of an
officer or employee of a public corporation.

(d) There shall be no monetary liability on the part of, and no
cause of action for damages shall arise against, any physician and
surgeon, podiatrist, or chiropractor who is a member of an
underwriting committee of an interindemnity or reciprocal or
interinsurance exchange or mutual company for any act or
proceeding undertaken or performed in evaluating physicians and
surgeons, podiatrists, or chiropractors for the writing of
professional liability insurance, or any act or proceeding undertaken
or performed in evaluating physicians and surgeons for the writing
of an interindemnity, reciprocal, or interinsurance contract as
specified in Section 1280.7 of the Insurance Code, if the evaluating
physician and surgeon, podiatrist, or chiropractor acts without
malice, has made a reasonable effort to obtain the facts of the
matter as to which he or she acts, and acts in reasonable belief that
the action taken by him or her is warranted by the facts known to
him or her after the reasonable effort to obtain the facts.
(e) This section shall not be construed to confer immunity from
liability on any quality assurance committee established in
compliance with Section 4070 of the Welfare and Institutions Code
or hospital. In any case in which, but for the enactment of the
preceding provisions of this section, a cause of action would arise
against a quality assurance committee established in compliance
with Section 4070 of the Welfare and Institutions Code or hospital,
the cause of action shall exist as if the preceding provisions of this
section had not been enacted.

SEC. 13.
SEC. 14.
Section 43.8 of the Civil Code is amended to read:
43.8. (a) In addition to the privilege afforded by Section 47,
there shall be no monetary liability on the part of, and no cause of
action for damages shall arise against, any person on account of
the communication of information in the possession of that person
to any hospital, hospital medical staff, veterinary hospital staff,
professional society, medical, dental, podiatric, psychology,
marriage and family therapy, professional clinical counselor, or
veterinary school, professional licensing board or division,
committee or panel of a licensing board, the Senior Assistant
Attorney General of the Health Quality Enforcement Section
appointed under Section 12529 of the Government Code, peer
review committee, quality assurance committees established in
compliance with Sections 4070 and 5624 of the Welfare and
Institutions Code, or underwriting committee described in Section
43.7 when the communication is intended to aid in the evaluation
of the qualifications, fitness, character, or insurability of a
practitioner of the healing or veterinary arts.
(b) The immunities afforded by this section and by Section 43.7
shall not affect the availability of any absolute privilege that may
be afforded by Section 47.
(c) Nothing in this section is intended in any way to affect the
California Supreme Court’s decision in Hassan v. Mercy American
River Hospital (2003) 31 Cal.4th 709, holding that subdivision (a)
provides a qualified privilege.
SEC. 14.
SEC. 15. Section 43.93 of the Civil Code is amended to read:
43.93. (a) For the purposes of this section the following definitions are applicable:

(1) “Psychotherapy” means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

(2) “Psychotherapist” means a physician and surgeon specializing in the practice of psychiatry, a psychologist, a psychological assistant, a marriage and family therapist, a registered marriage and family therapist intern or trainee, an educational psychologist, an associate clinical social worker, a licensed clinical social worker, a professional clinical counselor, or a registered clinical counselor intern or trainee.

(3) “Sexual contact” means the touching of an intimate part of another person. “Intimate part” and “touching” have the same meanings as defined in subdivisions (f) and (d), respectively, of Section 243.4 of the Penal Code. For the purposes of this section, sexual contact includes sexual intercourse, sodomy, and oral copulation.

(4) “Therapeutic relationship” exists during the time the patient or client is rendered professional service by the psychotherapist.

(5) “Therapeutic deception” means a representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the patient’s or former patient’s treatment.

(b) A cause of action against a psychotherapist for sexual contact exists for a patient or former patient for injury caused by sexual contact with the psychotherapist, if the sexual contact occurred under any of the following conditions:

(1) During the period the patient was receiving psychotherapy from the psychotherapist.

(2) Within two years following termination of therapy.

(3) By means of therapeutic deception.

(c) The patient or former patient may recover damages from a psychotherapist who is found liable for sexual contact. It is not a defense to the action that sexual contact with a patient occurred outside a therapy or treatment session or that it occurred off the premises regularly used by the psychotherapist for therapy or treatment sessions. No cause of action shall exist between spouses within a marriage.
(d) In an action for sexual contact, evidence of the plaintiff’s sexual history is not subject to discovery and is not admissible as evidence except in either of the following situations:

1. The plaintiff claims damage to sexual functioning.
2. The defendant requests a hearing prior to conducting discovery and makes an offer of proof of the relevancy of the history, and the court finds that the history is relevant and the probative value of the history outweighs its prejudicial effect. The court shall allow the discovery or introduction as evidence only of specific information or examples of the plaintiff’s conduct that are determined by the court to be relevant. The court’s order shall detail the information or conduct that is subject to discovery.

SEC. 15.

SEC. 16. Section 43.95 of the Civil Code is amended to read:

43.95. (a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society or any nonprofit corporation authorized by a professional society to operate a referral service, or their agents, employees, or members, for referring any member of the public to any professional member of the society or service, or for acts of negligence or conduct constituting unprofessional conduct committed by a professional to whom a member of the public was referred, so long as any of the foregoing persons or entities has acted without malice, and the referral was made at no cost added to the initial referral fee as part of a public service referral system organized under the auspices of the professional society. Further, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society for providing a telephone information library available for use by the general public without charge, nor against any nonprofit corporation authorized by a professional society for providing a telephone information library available for use by the general public without charge. "Professional society" includes legal, psychological, architectural, medical, dental, dietetic, accounting, optometric, podiatric, pharmacuetic, chiropractic, veterinary, licensed marriage and family therapy, licensed clinical social work, professional clinical counselor, and engineering organizations having as members at least 25 percent of the eligible persons or licentiates in the geographic area served by the particular society. However, if the society has less than 100 members, it shall have
as members at least a majority of the eligible persons or licentiates
in the geographic area served by the particular society.
“Professional society” also includes organizations with referral
services that have been authorized by the State Bar of California
and operated in accordance with its Minimum Standards for a
Lawyer Referral Service in California, and organizations that have
been established to provide free assistance or representation to
needy patients or clients.
(b) This section shall not apply whenever the professional
society, while making a referral to a professional member of the
society, fails to disclose the nature of any disciplinary action of
which it has actual knowledge taken by a state licensing agency
against that professional member. However, there shall be no duty
to disclose a disciplinary action in either of the following cases:
(1) Where a disciplinary proceeding results in no disciplinary
action being taken against the professional to whom a member of
the public was referred.
(2) Where a period of three years has elapsed since the
professional to whom a member of the public was referred has
satisfied any terms, conditions, or sanctions imposed upon the
professional as disciplinary action; except that if the professional
is an attorney, there shall be no time limit on the duty to disclose.

SEC. 16.
SEC. 17. Section 13401.5 of the Corporations Code is amended
to read:
13401.5. Notwithstanding subdivision (d) of Section 13401
and any other provision of law, the following licensed persons
may be shareholders, officers, directors, or professional employees
of the professional corporations designated in this section so long
as the sum of all shares owned by those licensed persons does not
exceed 49 percent of the total number of shares of the professional
corporation so designated herein, and so long as the number of
those licensed persons owning shares in the professional
corporation so designated herein does not exceed the number of
persons licensed by the governmental agency regulating the
designated professional corporation:
(a) Medical corporation.
(1) Licensed doctors of podiatric medicine.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.

(5) Licensed marriage and family therapists.

(6) Licensed clinical social workers.

(7) Licensed physician assistants.

(8) Licensed chiropractors.

(9) Licensed acupuncturists.

(10) Naturopathic doctors.

(11) Licensed professional clinical counselors.

(b) Podiatric medical corporation.

(1) Licensed physicians and surgeons.

(2) Licensed psychologists.

(3) Registered nurses.

(4) Licensed optometrists.

(5) Licensed chiropractors.

(6) Licensed acupuncturists.

(7) Naturopathic doctors.

(c) Psychological corporation.

(1) Licensed physicians and surgeons.

(2) Licensed doctors of podiatric medicine.

(3) Registered nurses.

(4) Licensed optometrists.

(5) Licensed marriage and family therapists.

(6) Licensed clinical social workers.

(7) Licensed chiropractors.

(8) Licensed acupuncturists.

(9) Naturopathic doctors.

(10) Licensed professional clinical counselors.

(d) Speech-language pathology corporation.

(1) Licensed audiologists.

(e) Audiology corporation.

(1) Licensed speech-language pathologists.

(f) Nursing corporation.

(1) Licensed physicians and surgeons.

(2) Licensed doctors of podiatric medicine.

(3) Licensed psychologists.

(4) Licensed optometrists.

(5) Licensed marriage and family therapists.

(6) Licensed clinical social workers.

(7) Licensed physician assistants.

(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(10) Naturopathic doctors.
(11) Licensed professional clinical counselors.
(g) Marriage and family therapist corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(8) Licensed professional clinical counselors.
(h) Licensed clinical social worker corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed marriage and family therapists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(8) Licensed professional clinical counselors.
(i) Physician assistants corporation.
(1) Licensed physicians and surgeons.
(2) Registered nurses.
(3) Licensed acupuncturists.
(4) Naturopathic doctors.
(j) Optometric corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(k) Chiropractic corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
1. (6) Licensed marriage and family therapists.
2. (7) Licensed clinical social workers.
3. (8) Licensed acupuncturists.
4. (9) Naturopathic doctors.
5. (10) Licensed professional clinical counselors.
7. (1) Licensed physicians and surgeons.
8. (2) Licensed doctors of podiatric medicine.
9. (3) Licensed psychologists.
10. (4) Registered nurses.
11. (5) Licensed optometrists.
12. (6) Licensed marriage and family therapists.
13. (7) Licensed clinical social workers.
15. (9) Licensed chiropractors.
16. (10) Naturopathic doctors.
17. (11) Licensed professional clinical counselors.
18. (m) Naturopathic doctor corporation.
19. (1) Licensed physicians and surgeons.
20. (2) Licensed psychologists.
21. (3) Registered nurses.
22. (4) Licensed physician assistants.
23. (5) Licensed chiropractors.
24. (6) Licensed acupuncturists.
25. (7) Licensed physical therapists.
26. (8) Licensed doctors of podiatric medicine.
27. (9) Licensed marriage and family therapists.
28. (10) Licensed clinical social workers.
29. (11) Licensed optometrists.
30. (12) Licensed professional clinical counselors.
31. (n) Dental corporation.
32. (1) Licensed physicians and surgeons.
33. (2) Dental assistants.
34. (3) Registered dental assistants.
35. (4) Registered dental assistants in extended functions.
36. (5) Registered dental hygienists.
37. (6) Registered dental hygienists in extended functions.
38. (7) Registered dental hygienists in alternative practice.
39. (o) Professional clinical counselor corporation.
40. (1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.
(4) Licensed marriage and family therapists.
(5) Registered nurses.
(6) Licensed chiropractors.
(7) Licensed acupuncturists.
(8) Naturopathic doctors.

SEC. 17.
SEC. 18. Section 66085 of the Education Code is amended to read:
66085. The Legislature requests that the Trustees of the California State University, the Regents of the University of California, and the Board of Governors of the California Community Colleges, in consultation with the California Council on Gerontology and Geriatrics and other qualified groups or individuals, develop standards and guidelines, based on standards developed by the Association for Gerontology in Higher Education, for the biological, social, and psychological aspects of aging for professional degree programs at the associate, bachelor, and graduate levels, including those programs in gerontology, nursing, social work, psychology, marriage and family therapy, professional clinical counseling, and the rehabilitation therapies. Nothing in this article shall be construed to require any additional coursework requirements for professional degree programs.

SEC. 19. Section 795 of the Evidence Code is amended to read:
795. (a) The testimony of a witness is not inadmissible in a criminal proceeding by reason of the fact that the witness has previously undergone hypnosis for the purpose of recalling events that are the subject of the witness’s testimony, if all of the following conditions are met:
(1) The testimony is limited to those matters that the witness recalled and related prior to the hypnosis.
(2) The substance of the prehypnotic memory was preserved in a writing, audio recording, or video recording prior to the hypnosis.
(3) The hypnosis was conducted in accordance with all of the following procedures:
(A) A written record was made prior to hypnosis documenting the subject’s description of the event, and information that was
provided to the hypnotist concerning the subject matter of the
hypnosis.

(B) The subject gave informed consent to the hypnosis.

(C) The hypnosis session, including the pre- and post-hypnosis
interviews, was video recorded for subsequent review.

(D) The hypnosis was performed by a licensed physician and
surgeon, psychologist, licensed clinical social worker, licensed
marriage and family therapist, or licensed professional clinical
counselor experienced in the use of hypnosis and independent of
and not in the presence of law enforcement, the prosecution, or
the defense.

(4) Prior to admission of the testimony, the court holds a hearing
pursuant to Section 402 at which the proponent of the evidence
proves by clear and convincing evidence that the hypnosis did not
so affect the witness as to render the witness’s prehypnosis
recollection unreliable or to substantially impair the ability to
cross-examine the witness concerning the witness’s prehypnosis
recollection. At the hearing, each side shall have the right to present
expert testimony and to cross-examine witnesses.

(b) Nothing in this section shall be construed to limit the ability
of a party to attack the credibility of a witness who has undergone
hypnosis, or to limit other legal grounds to admit or exclude the
testimony of that witness.

SEC. 19.

SEC. 20. Section 1010 of the Evidence Code is amended to
read:

1010. As used in this article, “psychotherapist” means a person
who is, or is reasonably believed by the patient to be:

(a) A person authorized to practice medicine in any state or
nation who devotes, or is reasonably believed by the patient to
devote, a substantial portion of his or her time to the practice of
psychiatry.

(b) A person licensed as a psychologist under Chapter 6.6
(commencing with Section 2900) of Division 2 of the Business
and Professions Code.

(c) A person licensed as a clinical social worker under Article
4 (commencing with Section 4996) of Chapter 14 of Division 2
of the Business and Professions Code, when he or she is engaged
in applied psychotherapy of a nonmedical nature.
(d) A person who is serving as a school psychologist and holds a credential authorizing that service issued by the state.

(e) A person licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(f) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code, or a person registered as a marriage and family therapist intern who is under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician and surgeon certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(g) A person registered as an associate clinical social worker who is under supervision as specified in Section 4996.23 of the Business and Professions Code.

(h) A person exempt from the Psychology Licensing Law pursuant to subdivision (d) of Section 2909 of the Business and Professions Code who is under the supervision of a licensed psychologist or board certified psychiatrist.

(i) A psychological intern as defined in Section 2911 of the Business and Professions Code who is under the supervision of a licensed psychologist or board certified psychiatrist.

(j) A trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, who is fulfilling his or her supervised practicum required by subparagraph (B) of paragraph (1) of subdivision (d) of Section 4980.36 of, or subdivision (c) of Section 4980.37 of, the Business and Professions Code and is supervised by a licensed psychologist, a board certified psychiatrist, a licensed clinical social worker, a licensed marriage and family therapist, or a licensed professional clinical counselor.

(k) A person licensed as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master’s degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing.

(l) An advanced practice registered nurse who is certified as a clinical nurse specialist pursuant to Article 9 (commencing with
Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code and who participates in expert clinical practice in the specialty of psychiatric-mental health nursing.

(m) A person rendering mental health treatment or counseling services as authorized pursuant to Section 6924 of the Family Code.

(n) A person licensed as a professional clinical counselor under Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code.

(o) A person registered as a clinical counselor intern who is under the supervision of a licensed professional clinical counselor, a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician and surgeon certified in psychiatry, as specified in Sections 4999.42 to 4999.46, inclusive, of the Business and Professions Code.

(p) A clinical counselor trainee, as defined in subdivision (g) of Section 4999.12 of the Business and Professions Code, who is fulfilling his or her supervised practicum required by paragraph (3) of subdivision (c) of Section 4999.32 of, or paragraph (3) of subdivision (c) of Section 4999.33 of, the Business and Professions Code, and is supervised by a licensed psychologist, a board-certified psychiatrist, a licensed clinical social worker, a licensed marriage and family therapist, or a licensed professional clinical counselor.

SEC. 20. Subject to Section 912 and except as otherwise provided in this article, the patient, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between patient and psychotherapist if the privilege is claimed by:

(a) The holder of the privilege.

(b) A person who is authorized to claim the privilege by the holder of the privilege.

(c) The person who was the psychotherapist at the time of the confidential communication, but the person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.
The relationship of a psychotherapist and patient shall exist between a psychological corporation as defined in Article 9 (commencing with Section 2995) of Chapter 6.6 of Division 2 of the Business and Professions Code, a marriage and family therapist corporation as defined in Article 6 (commencing with Section 4987.5) of Chapter 13 of Division 2 of the Business and Professions Code, a licensed clinical social workers corporation as defined in Article 5 (commencing with Section 4998) of Chapter 14 of Division 2 of the Business and Professions Code, or a professional clinical counselor corporation as defined in Article 7 (commencing with Section 4999.123) of Chapter 16 of Division 2 of the Business and Professions Code, and the patient to whom it renders professional services, as well as between those patients and psychotherapists employed by those corporations to render services to those patients. The word “persons” as used in this subdivision includes partnerships, corporations, limited liability companies, associations, and other groups and entities.

SEC. 22. Section 1157 of the Evidence Code is amended to read:

1157. (a) Neither the proceedings nor the records of organized committees of medical, medical-dental, podiatric, registered dietitian, psychological, marriage and family therapist, licensed clinical social worker, professional clinical counselor, or veterinary staffs in hospitals, or of a peer review body, as defined in Section 805 of the Business and Professions Code, having the responsibility of evaluation and improvement of the quality of care rendered in the hospital, or for that peer review body, or medical or dental review or dental hygienist review or chiropractic review or podiatric review or registered dietitian review or veterinary review or acupuncturist review committees of local medical, dental, dental hygienist, podiatric, dietetic, veterinary, acupuncture, or chiropractic societies, marriage and family therapist, licensed clinical social worker, professional clinical counselor, or psychological review committees of state or local marriage and family therapist, state or local licensed clinical social worker, state or local licensed professional clinical counselor, or state or local psychological associations or societies having the responsibility of evaluation and improvement of the quality of care, shall be subject to discovery.
(b) Except as hereinafter provided, no person in attendance at a meeting of any of those committees shall be required to testify as to what transpired at that meeting.

c) The prohibition relating to discovery or testimony does not apply to the statements made by any person in attendance at a meeting of any of those committees who is a party to an action or proceeding the subject matter of which was reviewed at that meeting, or to any person requesting hospital staff privileges, or in any action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits.

d) The prohibitions in this section do not apply to medical, dental, dental hygienist, podiatric, dietetic, psychological, marriage and family therapist, licensed clinical social worker, professional clinical counselor, veterinary, acupuncture, or chiropractic society committees that exceed 10 percent of the membership of the society, nor to any of those committees if any person serves upon the committee when his or her own conduct or practice is being reviewed.


SEC. 22.

SEC. 23. Section 3202 of the Family Code is amended to read:

3202. (a) All supervised visitation and exchange programs funded pursuant to this chapter shall comply with all requirements of the Uniform Standards of Practice for Providers of Supervised Visitation set forth in Section 26.2 of the Standards of Judicial Administration as amended. The family law division of the superior court may contract with eligible providers of supervised visitation and exchange services, education, and group counseling to provide services under this chapter.

(b) As used in this section, “eligible provider” means:
(1) For providers of supervised visitation and exchange services, a local public agency or nonprofit entity that satisfies the Uniform Standards of Practice for Providers of Supervised Visitation.

(2) For providers of group counseling, a professional licensed to practice psychotherapy in this state, including, but not limited to, a licensed psychiatrist, licensed psychologist, licensed clinical social worker, licensed marriage and family therapist, or licensed professional clinical counselor; or a mental health intern working under the direct supervision of a professional licensed to practice psychotherapy.

(3) For providers of education, a professional with a bachelor’s or master’s degree in human behavior, child development, psychology, counseling, family-life education, or a related field, having specific training in issues relating to child and family development, substance abuse, child abuse, domestic violence, effective parenting, and the impact of divorce and interparental conflict on children; or an intern working under the supervision of that professional.

SEC. 23.

SEC. 24. Section 6924 of the Family Code is amended to read:

6924. (a) As used in this section:

(1) “Mental health treatment or counseling services” means the provision of mental health treatment or counseling on an outpatient basis by any of the following:

(A) A governmental agency.

(B) A person or agency having a contract with a governmental agency to provide the services.

(C) An agency that receives funding from community united funds.

(D) A runaway house or crisis resolution center.

(E) 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 Article 8 of Subchapter 3 of Chapter 1 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 Article 5 (commencing with Section 4986) of Chapter 13 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) The chief administrator of an agency referred to in paragraph (1) or (3).

(G) A person registered as a marriage and family therapist 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 (g) of Section 4980.03 of the Business and Professions Code.

(H) A licensed professional clinical counselor, as defined in Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code.

(I) A person registered as a clinical counselor intern, as defined in Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code, while working under the supervision of a licensed professional specified in subdivision (h) of Section 4999.12 of the Business and Professions Code.

(3) “Residential shelter services” means any of the following:

(A) The provision of residential and other support services to minors on a temporary or 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 in paragraph (2).

(b) A minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services, if both of the following requirements are satisfied:

(1) The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services.
(2) The minor (A) would present a danger of serious physical or mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or (B) is the alleged victim of incest or child abuse.

(c) A professional person offering residential shelter services, whether as an individual or as a representative of an entity specified in paragraph (3) of subdivision (a), shall make his or her best efforts to notify the parent or guardian of the provision of services.

(d) The mental health treatment or counseling of a minor authorized by this section shall include 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. 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.

(e) The minor’s parents or guardian 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. The minor’s parents or guardian are not liable for payment for any residential shelter services provided pursuant to this section unless the parent or guardian consented to the provision of those services.

(f) 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.

SEC. 25. Section 6929 of the Family Code is amended to read:

6929. (a) As used in this section:

(1) “Counseling” means the provision of counseling services by a provider under a contract with the state or a county to provide alcohol or drug abuse counseling services pursuant to Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code or pursuant to Division 10.5 (commencing with Section 11750) of the Health and Safety Code.
(2) “Drug or alcohol” includes, but is not limited to, any substance listed in any of the following:
(A) Section 380 or 381 of the Penal Code.
(B) Division 10 (commencing with Section 11000) of the Health and Safety Code.
(C) Subdivision (f) of Section 647 of the Penal Code.
(3) “LAAM” means levoalphaetomethadol as specified in paragraph (10) of subdivision (c) of Section 11055 of the Health and Safety Code.
(4) “Professional person” means a physician and surgeon, registered nurse, psychologist, clinical social worker, professional clinical counselor, marriage and family therapist, registered marriage and family therapist intern when appropriately employed and supervised pursuant to Section 4980.43 of the Business and Professions Code, psychological assistant when appropriately employed and supervised pursuant to Section 2913 of the Business and Professions Code, associate clinical social worker when appropriately employed and supervised pursuant to Section 4996.18 of the Business and Professions Code, or registered clinical counselor intern when appropriately employed and supervised pursuant to Section 4999.42 of the Business and Professions Code.
(b) A minor who is 12 years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a drug- or alcohol-related problem.
(c) The treatment plan of a minor authorized by this section shall include the involvement of the minor’s parent or guardian, if appropriate, as determined by the professional person or treatment facility treating the minor. The professional person providing medical care or counseling to a minor shall state in the minor’s treatment record whether and when the professional person attempted to contact the minor’s parent or guardian, and whether the attempt to contact the parent or guardian was successful or unsuccessful, or the reason why, in the opinion of the professional person, it would not be appropriate to contact the minor’s parent or guardian.
(d) The minor’s parent or guardian is not liable for payment for any care provided to a minor pursuant to this section, except that if the minor’s parent or guardian participates in a counseling program pursuant to this section, the parent or guardian is liable
for the cost of the services provided to the minor and the parent or guardian.

(e) This section does not authorize a minor to receive replacement narcotic abuse treatment, in a program licensed pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code, without the consent of the minor’s parent or guardian.

(f) It is the intent of the Legislature that the state shall respect the right of a parent or legal guardian to seek medical care and counseling for a drug- or alcohol-related problem of a minor child when the child does not consent to the medical care and counseling, and nothing in this section shall be construed to restrict or eliminate this right.

(g) Notwithstanding any other provision of law, in cases where a parent or legal guardian has sought the medical care and counseling for a drug- or alcohol-related problem of a minor child, the physician and surgeon shall disclose medical information concerning the care to the minor’s parent or legal guardian upon his or her request, even if the minor child does not consent to disclosure, without liability for the disclosure.

SEC. 25.

SEC. 26. Section 1277 of the Health and Safety Code is amended to read:

1277. (a) No license shall be issued by the state department unless it finds that the premises, the management, the bylaws, rules and regulations, the equipment, the staffing, both professional and nonprofessional, and the standards of care and services are adequate and appropriate, and that the health facility is operated in the manner required by this chapter and by the rules and regulations adopted hereunder.

(b) (1) Notwithstanding any provision of Part 2 (commencing with Section 5600) of Division 5 of, or Division 7 (commencing with Section 7100) of, the Welfare and Institutions Code or any other law to the contrary, except Sections 2072 and 2073 of the Business and Professions Code, the licensure requirements for professional personnel, including, but not limited to, physicians and surgeons, dentists, podiatrists, psychologists, marriage and family therapists, pharmacists, registered nurses, clinical social workers, and professional clinical counselors in the state and other governmental health facilities licensed by the state department
shall not be less than for those professional personnel in health facilities under private ownership.

(2) Persons employed as psychologists and clinical social workers, while continuing in their employment in the same class as of January 1, 1979, in the same state or other governmental health facility licensed by the state department, including those persons on authorized leave, but not including intermittent personnel, shall be exempt from the requirements of paragraph (1).

(3) The requirements of paragraph (1) may be waived by the state department solely for persons in the professions of psychology, marriage and family therapy, clinical social work, or professional clinical counseling who are gaining qualifying experience for licensure in such profession in this state. A waiver granted pursuant to this paragraph shall not exceed three years from the date the employment commences in this state in the case of psychologists, or four years from commencement of the employment in this state in the case of marriage and family therapists, clinical social workers, and professional clinical counselors, at which time licensure shall have been obtained or the employment shall be terminated, except that an extension of a waiver of licensure for marriage and family therapists, clinical social workers, and professional clinical counselors may be granted for one additional year, based on extenuating circumstances determined by the state department pursuant to subdivision (e). For persons employed as psychologists, clinical social workers, marriage and family therapists, or professional clinical counselors less than full time, an extension of a waiver of licensure may be granted for additional years proportional to the extent of part-time employment, as long as the person is employed without interruption in service, but in no case shall the waiver of licensure exceed six years in the case of clinical social workers, marriage and family therapists, or professional clinical counselors, or five years in the case of psychologists.

(4) The durational limitation upon waivers pursuant to paragraph (3) shall not apply to any of the following:

(A) Active candidates for a doctoral degree in social work, social welfare, or social science, who are enrolled at an accredited university, college, or professional school, but these limitations shall apply following completion of this training.
(B) Active candidates for a doctoral degree in marriage and family therapy who are enrolled at a school, college, or university, specified in subdivision (b) of Section 4980.36 of, or subdivision (b) of Section 4980.37 of, the Business and Professions Code, but the limitations shall apply following completion of the training.

(C) Active candidates for a doctoral degree in professional clinical counseling who are enrolled at a school, college, or university, specified in subdivision (b) of Section 4999.32 of, or subdivision (b) of Section 4999.33 of, the Business and Professions Code, but the limitations shall apply following the completion of the training.

(5) A waiver pursuant to paragraph (3) shall be granted only to the extent necessary to qualify for licensure, except that personnel recruited for employment from outside this state and whose experience is sufficient to gain admission to a licensing examination shall nevertheless have one year from the date of their employment in California to become licensed, at which time licensure shall have been obtained or the employment shall be terminated, provided that the employee shall take the licensure examination at the earliest possible date after the date of his or her employment, and if the employee does not pass the examination at that time, he or she shall have a second opportunity to pass the next possible examination, subject to the one-year limit for marriage and family therapists, clinical social workers, and professional clinical counselors, and subject to a two-year limit for psychologists.

(c) A special permit shall be issued by the state department when it finds that the staff, both professional and nonprofessional, and the standards of care and services are adequate and appropriate, and that the special services unit is operated in the manner required in this chapter and by the rules and regulations adopted hereunder.

(d) The state department shall apply the same standards to state and other governmental health facilities that it licenses as it applies to health facilities in private ownership, including standards specifying the level of training and supervision of all unlicensed practitioners. Except for psychologists, the department may grant an extension of a waiver of licensure for personnel recruited from outside this state for one additional year, based upon extenuating circumstances as determined by the department pursuant to subdivision (e).
(e) The department shall grant a request for an extension of a waiver based on extenuating circumstances, pursuant to subdivision (b) or (d), if any of the following circumstances exist:

(1) The person requesting the extension has experienced a recent catastrophic event which may impair the person’s ability to qualify for and pass the license examination. Those events may include, but are not limited to, significant hardship caused by a natural disaster, serious and prolonged illness of the person, serious and prolonged illness or death of a child, spouse, or parent, or other stressful circumstances.

(2) The person requesting the extension has difficulty speaking or writing the English language, or other cultural and ethnic factors exist which substantially impair the person’s ability to qualify for and pass the license examination.

(3) The person requesting the extension has experienced other personal hardship which the department, in its discretion, determines to warrant the extension.

SEC. 26.  
SEC. 27. Section 1348.8 of the Health and Safety Code is amended to read:

1348.8. (a) A health care service plan that provides, operates, or contracts for telephone medical advice services to its enrollees and subscribers shall do all of the following:

(1) Ensure that the in-state or out-of-state telephone medical advice service is registered pursuant to Chapter 15 (commencing with Section 4999) of Division 2 of the Business and Professions Code.

(2) Ensure that the staff providing telephone medical advice services for the in-state or out-of-state telephone medical advice service are licensed as follows:

(A) For full service health care service plans, the staff hold a valid California license as a registered nurse or a valid license in the state within which they provide telephone medical advice services as a physician and surgeon or physician assistant, and are operating in compliance with the laws governing their respective scopes of practice.

(B) (i) For specialized health care service plans providing, operating, or contracting with a telephone medical advice service in California, the staff shall be appropriately licensed, registered, or certified as a dentist pursuant to Chapter 4 (commencing with
Section 1600) of Division 2 of the Business and Professions Code, as a dental hygienist pursuant to Article 7 (commencing with Section 1740) of Chapter 4 of Division 2 of the Business and Professions Code, as a physician and surgeon pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or the Osteopathic Initiative Act, as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, as a psychologist pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code, as an optometrist pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code, as a marriage and family therapist pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, as a licensed clinical social worker pursuant to Chapter 14 (commencing with Section 4991) of Division 2 of the Business and Professions Code, as a professional clinical counselor pursuant to Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code, or as a chiropractor pursuant to the Chiropractic Initiative Act, and operating in compliance with the laws governing their respective scopes of practice.

(ii) For specialized health care service plans providing, operating, or contracting with an out-of-state telephone medical advice service, the staff shall be health care professionals, as identified in clause (i), who are licensed, registered, or certified in the state within which they are providing the telephone medical advice services and are operating in compliance with the laws governing their respective scopes of practice. All registered nurses providing telephone medical advice services to both in-state and out-of-state business entities registered pursuant to this chapter shall be licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code.

(3) Ensure that every full service health care service plan provides for a physician and surgeon who is available on an on-call basis at all times the service is advertised to be available to enrollees and subscribers.

(4) Ensure that staff members handling enrollee or subscriber calls, who are not licensed, certified, or registered as required by paragraph (2), do not provide telephone medical advice. Those staff members may ask questions on behalf of a staff member who
is licensed, certified, or registered as required by paragraph (2),
in order to help ascertain the condition of an enrollee or subscriber
so that the enrollee or subscriber can be referred to licensed staff.
However, under no circumstances shall those staff members use
the answers to those questions in an attempt to assess, evaluate,
advise, or make any decision regarding the condition of an enrollee
or subscriber or determine when an enrollee or subscriber needs
to be seen by a licensed medical professional.

(5) Ensure that no staff member uses a title or designation when
speaking to an enrollee or subscriber that may cause a reasonable
person to believe that the staff member is a licensed, certified, or
registered professional described in Section 4999.2 of the Business
and Professions Code unless the staff member is a licensed,
certified, or registered professional.

(6) Ensure that the in-state or out-of-state telephone medical
advice service designates an agent for service of process in
California and files this designation with the director.

(7) Requires that the in-state or out-of-state telephone medical
advice service makes and maintains records for a period of five
years after the telephone medical advice services are provided,
including, but not limited to, oral or written transcripts of all
medical advice conversations with the health care service plan’s
enrollees or subscribers in California and copies of all complaints.
If the records of telephone medical advice services are kept out of
state, the health care service plan shall, upon the request of the
director, provide the records to the director within 10 days of the
request.

(8) Ensure that the telephone medical advice services are
provided consistent with good professional practice.

(b) The director shall forward to the Department of Consumer
Affairs, within 30 days of the end of each calendar quarter, data
regarding complaints filed with the department concerning
telephone medical advice services.

(c) For purposes of this section, “telephone medical advice”
means a telephonic communication between a patient and a health
care professional in which the health care professional’s primary
function is to provide to the patient a telephonic response to the
patient’s questions regarding his or her or a family member’s
medical care or treatment. “Telephone medical advice” includes
assessment, evaluation, or advice provided to patients or their
family members.

SEC. 27.
SEC. 28. Section 1367.26 of the Health and Safety Code is
amended to read:
1367.26. (a) A health care service plan shall provide, upon
request, a list of the following contracting providers, within the
enrollee’s or prospective enrollee’s general geographic area:
(1) Primary care providers.
(2) Medical groups.
(3) Independent practice associations.
(4) Hospitals.
(5) All other available contracting physicians and surgeons,
psychologists, acupuncturists, optometrists, podiatrists,
chiropractors, licensed clinical social workers, marriage and family
therapists, professional clinical counselors, and nurse midwives
to the extent their services may be accessed and are covered
through the contract with the plan.
(b) This list shall indicate which providers have notified the
plan that they have closed practices or are otherwise not accepting
new patients at that time.
(c) The list shall indicate that it is subject to change without
notice and shall provide a telephone number that enrollees can
contact to obtain information regarding a particular provider. This
information shall include whether or not that provider has indicated
that he or she is accepting new patients.
(d) A health care service plan shall provide this information in
written form to its enrollees or prospective enrollees upon request.
A plan may, with the permission of the enrollee, satisfy the
requirements of this section by directing the enrollee or prospective
enrollee to the plan’s provider listings on its Internet Web site.
Plans shall ensure that the information provided is updated at least
quarterly. A plan may satisfy this update requirement by providing
an insert or addendum to any existing provider listing. This
requirement shall not mandate a complete republishing of a plan’s
provider directory.
(e) Each plan shall make information available, upon request,
concerning a contracting provider’s professional degree, board
certifications, and any recognized subspecialty qualifications a
specialist may have.
(f) Nothing in this section shall prohibit a plan from requiring its contracting providers, contracting provider groups, or contracting specialized health care plans to satisfy these requirements. If a plan delegates the responsibility of complying with this section to its contracting providers, contracting provider groups, or contracting specialized health care plans, the plan shall ensure that the requirements of this section are met.

(g) Every health care service plan shall allow enrollees to request the information required by this section through their toll-free telephone number or in writing.

SEC. 28.
SEC. 29. Section 1373 of the Health and Safety Code is amended to read:

1373. (a) A plan contract may not provide an exception for other coverage if the other coverage is entitlement to Medi-Cal benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or Medicaid benefits under Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

Each plan contract shall be interpreted not to provide an exception for the Medi-Cal or Medicaid benefits.

A plan contract shall not provide an exemption for enrollment because of an applicant’s entitlement to Medi-Cal benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or Medicaid benefits under Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

A plan contract may not provide that the benefits payable thereunder are subject to reduction if the individual insured has entitlement to the Medi-Cal or Medicaid benefits.

(b) A plan contract that provides coverage, whether by specific benefit or by the effect of general wording, for sterilization operations or procedures shall not impose any disclaimer, restriction on, or limitation of, coverage relative to the covered individual’s reason for sterilization.

As used in this section, “sterilization operations or procedures” shall have the same meaning as that specified in Section 10120 of the Insurance Code.
(c) Every plan contract that provides coverage to the spouse or
dependents of the subscriber or spouse shall grant immediate
accident and sickness coverage, from and after the moment of
birth, to each newborn infant of any subscriber or spouse covered
and to each minor child placed for adoption from and after the date
on which the adoptive child’s birth parent or other appropriate
legal authority signs a written document, including, but not limited
to, a health facility minor release report, a medical authorization
form, or a relinquishment form, granting the subscriber or spouse
the right to control health care for the adoptive child or, absent
this written document, on the date there exists evidence of the
subscriber’s or spouse’s right to control the health care of the child
placed for adoption. No plan may be entered into or amended if it
contains any disclaimer, waiver, or other limitation of coverage
relative to the coverage or insurability of newborn infants of, or
children placed for adoption with, a subscriber or spouse covered
as required by this subdivision.

(d) (1) Every plan contract that provides that coverage of a
dependent child of a subscriber shall terminate upon attainment
of the limiting age for dependent children specified in the plan,
shall also provide that attainment of the limiting age shall not
operate to terminate the coverage of the child while the child is
and continues to meet both of the following criteria:
(A) Incapable of self-sustaining employment by reason of a
physically or mentally disabling injury, illness, or condition.
(B) Chiefly dependent upon the subscriber for support and
maintenance.
(2) The plan shall notify the subscriber that the dependent child’s
coverage will terminate upon attainment of the limiting age unless
the subscriber submits proof of the criteria described in
subparagraphs (A) and (B) of paragraph (1) to the plan within 60
days of the date of receipt of the notification. The plan shall send
this notification to the subscriber at least 90 days prior to the date
the child attains the limiting age. Upon receipt of a request by the
subscriber for continued coverage of the child and proof of the
criteria described in subparagraphs (A) and (B) of paragraph (1),
the plan shall determine whether the child meets that criteria before
the child attains the limiting age. If the plan fails to make the
determination by that date, it shall continue coverage of the child
pending its determination.
(3) The plan may subsequently request information about a dependent child whose coverage is continued beyond the limiting age under this subdivision but not more frequently than annually after the two-year period following the child’s attainment of the limiting age.

(4) If the subscriber changes carriers to another plan or to a health insurer, the new plan or insurer shall continue to provide coverage for the dependent child. The new plan or insurer may request information about the dependent child initially and not more frequently than annually thereafter to determine if the child continues to satisfy the criteria in subparagraphs (A) and (B) of paragraph (1). The subscriber shall submit the information requested by the new plan or insurer within 60 days of receiving the request.

(5) (A) Except as set forth in subparagraph (B), under no circumstances shall the limiting age be less than 26 years of age with respect to plan years beginning on or after September 23, 2010.

(B) For plan years beginning before January 1, 2014, a group health care service plan contract that qualifies as a grandfathered health plan under Section 1251 of the federal Patient Protection and Affordable Care Act (Public Law 111-148) and that makes available dependent coverage of children may exclude from coverage an adult child who has not attained 26 years of age only if the adult child is eligible to enroll in an eligible employer-sponsored health plan, as defined in Section 5000A(f)(2) of the Internal Revenue Code, other than a group health plan of a parent.

(C) (i) With respect to a child (I) whose coverage under a group or individual plan contract ended, or who was denied or not eligible for coverage under a group or individual plan contract, because under the terms of the contract the availability of dependent coverage of children ended before the attainment of 26 years of age, and (II) who becomes eligible for that coverage by reason of the application of this paragraph, the health care service plan shall give the child an opportunity to enroll that shall continue for at least 30 days. This opportunity and the notice described in clause (ii) shall be provided not later than the first day of the first plan year beginning on or after September 23, 2010, consistent with the federal Patient Protection and Affordable Care Act (Public
Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any additional federal guidance or regulations issued by the United States Secretary of Health and Human Services.

(ii) The health care service plan shall provide written notice stating that a dependent described in clause (i) who has not attained 26 years of age is eligible to enroll in the plan for coverage. This notice may be provided to the dependent’s parent on behalf of the dependent. If the notice is included with other enrollment materials for a group plan, the notice shall be prominent.

(iii) In the case of an individual who enrolls under this subparagraph, coverage shall take effect no later than the first day of the first plan year beginning on or after September 23, 2010.

(iv) A dependent enrolling in a group health plan for coverage pursuant to this subparagraph shall be treated as a special enrollee as provided under the rules of Section 146.117(d) of Title 45 of the Code of Federal Regulations. The health care service plan shall offer the recipient of the notice all of the benefit packages available to similarly situated individuals who did not lose coverage by reason of cessation of dependent status. Any difference in benefits or cost-sharing requirements shall constitute a different benefit package. A dependent enrolling in a group health plan for coverage pursuant to this subparagraph shall not be required to pay more for coverage than similarly situated individuals who did not lose coverage by reason of cessation of dependent status.

(D) Nothing in this section shall require a health care service plan to make coverage available for a child of a child receiving dependent coverage. Nothing in this section shall be construed to modify the definition of “dependent” as used in the Revenue and Taxation Code with respect to the tax treatment of the cost of coverage.

(e) A plan contract that provides coverage, whether by specific benefit or by the effect of general wording, for both an employee and one or more covered persons dependent upon the employee and provides for an extension of the coverage for any period following a termination of employment of the employee shall also provide that this extension of coverage shall apply to dependents upon the same terms and conditions precedent as applied to the covered employee, for the same period of time, subject to payment
of premiums, if any, as required by the terms of the policy and
subject to any applicable collective bargaining agreement.

(f) A group contract shall not discriminate against handicapped
persons or against groups containing handicapped persons. Nothing
in this subdivision shall preclude reasonable provisions in a plan
contract against liability for services or reimbursement of the
handicap condition or conditions relating thereto, as may be
allowed by rules of the director.

(g) Every group contract shall set forth the terms and conditions
under which subscribers and enrollees may remain in the plan in
the event the group ceases to exist, the group contract is terminated,
or an individual subscriber leaves the group, or the enrollees’
eligibility status changes.

(h) (1) A health care service plan or specialized health care
service plan may provide for coverage of, or for payment for,
professional mental health services, or vision care services, or for
the exclusion of these services. If the terms and conditions include
coverage for services provided in a general acute care hospital or
an acute psychiatric hospital as defined in Section 1250 and do
not restrict or modify the choice of providers, the coverage shall
extend to care provided by a psychiatric health facility as defined
in Section 1250.2 operating pursuant to licensure by the State
Department of Mental Health. A health care service plan that offers
outpatient mental health services but does not cover these services
in all of its group contracts shall communicate to prospective group
contractholders as to the availability of outpatient coverage for the
treatment of mental or nervous disorders.

(2) No plan shall prohibit the member from selecting any
psychologist who is licensed pursuant to the Psychology Licensing
Law (Chapter 6.6 (commencing with Section 2900) of Division 2
of the Business and Professions Code), any optometrist who is the
holder of a certificate issued pursuant to Chapter 7 (commencing
with Section 3000) of Division 2 of the Business and Professions
Code or, upon referral by a physician and surgeon licensed pursuant
to the Medical Practice Act (Chapter 5 (commencing with Section
2000) of Division 2 of the Business and Professions Code), (A)
any marriage and family therapist who is the holder of a license
under Section 4980.50 of the Business and Professions Code, (B)
any licensed clinical social worker who is the holder of a license
under Section 4996 of the Business and Professions Code, (C) any
registered nurse licensed pursuant to Chapter 6 (commencing with
Section 2700) of Division 2 of the Business and Professions Code,
who possesses a master’s degree in psychiatric-mental health
nursing and is listed as a psychiatric-mental health nurse by the
Board of Registered Nursing, (D) any advanced practice registered
nurse certified as a clinical nurse specialist pursuant to Article 9
(commencing with Section 2838) of Chapter 6 of Division 2 of
the Business and Professions Code who participates in expert
clinical practice in the specialty of psychiatric-mental health
nursing, to perform the particular services covered under the terms
of the plan, and the certificate holder is expressly authorized by
law to perform these services, or (E) any professional clinical
counselor who is the holder of a license under Chapter 16
(commencing with Section 4999.10) of Division 2 of the Business
and Professions Code.

(3) Nothing in this section shall be construed to allow any
certificate holder or licensee enumerated in this section to perform
professional mental health services beyond his or her field or fields
of competence as established by his or her education, training, and
experience.

(4) For the purposes of this section:
(A) “Marriage and family therapist” means a licensed marriage
and family therapist who has received specific instruction in
assessment, diagnosis, prognosis, and counseling, and
psychotherapeutic treatment of premarital, marriage, family, and
child relationship dysfunctions, which is equivalent to the
instruction required for licensure on January 1, 1981.
(B) “Professional clinical counselor” means a licensed
professional clinical counselor who has received specific
instruction in assessment, diagnosis, prognosis, counseling, and
psychotherapeutic treatment of mental and emotional disorders,
which is equivalent to the instruction required for licensure on
January 1, 2012.

(5) Nothing in this section shall be construed to allow a member
to select and obtain mental health or psychological or vision care
services from a certificate holder or licenseholder who is not
directly affiliated with or under contract to the health care service
plan or specialized health care service plan to which the member
belongs. All health care service plans and individual practice
associations that offer mental health benefits shall make reasonable
efforts to make available to their members the services of licensed psychologists. However, a failure of a plan or association to comply with the requirements of the preceding sentence shall not constitute a misdemeanor.

(6) As used in this subdivision, “individual practice association” means an entity as defined in subsection (5) of Section 1307 of the federal Public Health Service Act (42 U.S.C. Sec. 300e-1(5)).

(7) Health care service plan coverage for professional mental health services may include community residential treatment services that are alternatives to inpatient care and that are directly affiliated with the plan or to which enrollees are referred by providers affiliated with the plan.

(i) If the plan utilizes arbitration to settle disputes, the plan contracts shall set forth the type of disputes subject to arbitration, the process to be utilized, and how it is to be initiated.

(j) A plan contract that provides benefits that accrue after a certain time of confinement in a health care facility shall specify what constitutes a day of confinement or the number of consecutive hours of confinement that are requisite to the commencement of benefits.

(k) If a plan provides coverage for a dependent child who is over 26 years of age and enrolled as a full-time student at a secondary or postsecondary educational institution, the following shall apply:

(1) Any break in the school calendar shall not disqualify the dependent child from coverage.

(2) If the dependent child takes a medical leave of absence, and the nature of the dependent child’s injury, illness, or condition would render the dependent child incapable of self-sustaining employment, the provisions of subdivision (d) shall apply if the dependent child is chiefly dependent on the subscriber for support and maintenance.

(3) (A) If the dependent child takes a medical leave of absence from school, but the nature of the dependent child’s injury, illness, or condition does not meet the requirements of paragraph (2), the dependent child’s coverage shall not terminate for a period not to exceed 12 months or until the date on which the coverage is scheduled to terminate pursuant to the terms and conditions of the plan, whichever comes first. The period of coverage under this paragraph shall commence on the first day of the medical leave of
absence from the school or on the date the physician and surgeon
determines the illness prevented the dependent child from attending
school, whichever comes first. Any break in the school calendar
shall not disqualify the dependent child from coverage under this
paragraph.
(B) Documentation or certification of the medical necessity for
a leave of absence from school shall be submitted to the plan at
least 30 days prior to the medical leave of absence from the school,
if the medical reason for the absence and the absence are
foreseeable, or 30 days after the start date of the medical leave of
absence from school and shall be considered prima facie evidence
of entitlement to coverage under this paragraph.
(4) This subdivision shall not apply to a specialized health care
service plan or to a Medicare supplement plan.

SEC. 29.
SEC. 30. Section 1373.8 of the Health and Safety Code is
amended to read:

1373.8. A health care service plan contract where the plan is
licensed to do business in this state and the plan provides coverage
that includes California residents, but that may be written or issued
for delivery outside of California, and where benefits are provided
within the scope of practice of a licensed clinical social worker, a
registered nurse licensed pursuant to Chapter 6 (commencing with
Section 2700) of Division 2 of the Business and Professions Code
who possesses a master’s degree in psychiatric-mental health
nursing and is listed as a psychiatric-mental health nurse by the
Board of Registered Nursing, an advanced practice registered nurse
who is certified as a clinical nurse specialist pursuant to Article 9
(commencing with Section 2838) of Chapter 6 of Division 2 of
the Business and Professions Code who participates in expert
clinical practice in the specialty of psychiatric-mental health
nursing, a marriage and family therapist who is the holder of a
license under Section 4980.50 of the Business and Professions
Code, or a professional clinical counselor who is the holder of a
license under Chapter 16 (commencing with Section 4999.10) of
Division 2 of the Business and Professions Code shall not be
deemed to prohibit persons covered under the contract from
selecting those licensed persons in California to perform the
services in California that are within the terms of the contract even
though the licensees are not licensed in the state where the contract
is written or issued for delivery.

It is the intent of the Legislature in amending this section in the
1984 portion of the 1983–84 Legislative Session that persons
covered by the contract and those providers of health care specified
in this section who are licensed in California should be entitled to
the benefits provided by the plan for services of those providers
rendered to those persons.

SEC. 30.

SEC. 31. Section 1373.95 of the Health and Safety Code is
amended to read:

1373.95. (a) (1) A health care service plan, other than a
specialized health care service plan that offers professional mental
health services on an employer-sponsored group basis, shall file
a written continuity of care policy as a material modification with
the department before March 31, 2004.

(2) A health care service plan shall include all of the following
in its written continuity of care policy:

(A) A description of the plan’s process for the block transfer of
enrollees from a terminated provider group or hospital to a new
provider group or hospital.

(B) A description of the manner in which the plan facilitates
the completion of covered services pursuant to Section 1373.96.

(C) A template of the notice the plan proposes to send to
enrollees describing its policy and informing enrollees of their
right to completion of covered services.

(D) A description of the plan’s process to review an enrollee’s
request for the completion of covered services.

(E) A provision ensuring that reasonable consideration is given
to the potential clinical effect on an enrollee’s treatment caused
by a change of provider.

(3) If approved by the department, the provisions of the written
continuity of care policy shall replace all prior continuity of care
policies. The plan shall file a revision of the policy with the
department if it makes a material change to it.

(b) (1) The provisions of this subdivision apply to a specialized
health care service plan that offers professional mental health
services on an employer-sponsored group basis.

(2) The plan shall file with the department a written policy
describing the manner in which it facilitates the continuity of care
for a new enrollee who has been receiving services from a
nonparticipating mental health provider for an acute, serious, or
chronic mental health condition when his or her employer changed
health plans. The written policy shall allow the new enrollee a
reasonable transition period to continue his or her course of
treatment with the nonparticipating mental health provider prior
to transferring to a participating provider and shall include the
provision of mental health services on a timely, appropriate, and
medically necessary basis from the nonparticipating provider. The
policy may provide that the length of the transition period take
into account on a case-by-case basis, the severity of the enrollee’s
condition and the amount of time reasonably necessary to effect
a safe transfer. The policy shall ensure that reasonable
consideration is given to the potential clinical effect of a change
of provider on the enrollee’s treatment for the condition. The policy
shall describe the plan’s process to review an enrollee’s request
to continue his or her course of treatment with a nonparticipating
mental health provider. Nothing in this paragraph shall be construed
to require the plan to accept a nonparticipating mental health
provider onto its panel for treatment of other enrollees. For
purposes of the continuing treatment of the transferring enrollee,
the plan may require the nonparticipating mental health provider,
as a condition of the right conferred under this section, to enter
into its standard mental health provider contract.

(3) A plan may require a nonparticipating mental health provider
whose services are continued pursuant to the written policy, to
agree in writing to the same contractual terms and conditions that
are imposed upon the plan’s participating providers, including
location within the plan’s service area, reimbursement
methodologies, and rates of payment. If the plan determines that
an enrollee’s health care treatment should temporarily continue
with his or her existing provider or nonparticipating mental health
provider, the plan shall not be liable for actions resulting solely
from the negligence, malpractice, or other tortious or wrongful
acts arising out of the provisions of services by the existing
provider or a nonparticipating mental health provider.

(4) The written policy shall not apply to an enrollee who is
offered an out-of-network option or to an enrollee who had the
option to continue with his or her previous specialized health care
service plan that offers professional mental health services on an
employer-sponsored group basis or mental health provider and instead voluntarily chose to change health plans.

(5) This subdivision shall not apply to a specialized health care service plan that offers professional mental health services on an employer-sponsored group basis if it includes out-of-network coverage that allows the enrollee to obtain services from his or her existing mental health provider or nonparticipating mental health provider.

(c) The health care service plan, including a specialized health care service plan that offers professional mental health services on an employer-sponsored group basis, shall provide to all new enrollees notice of its written continuity of care policy and information regarding the process for an enrollee to request a review under the policy and shall provide, upon request, a copy of the written policy to an enrollee.

(d) Nothing in this section shall require a health care service plan or a specialized health care service plan that offers professional mental health services on an employer-sponsored group basis to cover services or provide benefits that are not otherwise covered under the terms and conditions of the plan contract.

(e) The following definitions apply for the purposes of this section:

(1) “Hospital” means a general acute care hospital.

(2) “Nonparticipating mental health provider” means a psychiatrist, licensed psychologist, licensed marriage and family therapist, licensed social worker, or licensed professional clinical counselor who does not contract with the specialized health care service plan that offers professional mental health services on an employer-sponsored group basis.

(3) “Provider group” means a medical group, independent practice association, or any other similar organization.

SEC. 32.

Section 123105 of the Health and Safety Code is amended to read:

123105. As used in this chapter:

(a) “Health care provider” means any of the following:

(1) A health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.
(2) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

(3) A home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2.

(4) A physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or pursuant to the Osteopathic Act.

(5) A podiatrist licensed pursuant to Article 22 (commencing with Section 2460) of Chapter 5 of Division 2 of the Business and Professions Code.

(6) A dentist licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code.

(7) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(8) An optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code.

(9) A chiropractor licensed pursuant to the Chiropractic Initiative Act.

(10) A marriage and family therapist licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(11) A clinical social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code.

(12) A physical therapist licensed pursuant to Chapter 5.7 (commencing with Section 2600) of Division 2 of the Business and Professions Code.

(13) An occupational therapist licensed pursuant to Chapter 5.6 (commencing with Section 2570).

(14) A professional clinical counselor licensed pursuant to Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code.

(b) “Mental health records” means patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. “Mental health records” includes, but is not limited to, all alcohol and drug abuse records.

(c) “Patient” means a patient or former patient of a health care provider.
(d) “Patient records” means records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. “Patient records” includes only records pertaining to the patient requesting the records or whose representative requests the records. “Patient records” does not include information given in confidence to a health care provider by a person other than another health care provider or the patient, and that material may be removed from any records prior to inspection or copying under Section 123110 or 123115. “Patient records” does not include information contained in aggregate form, such as indices, registers, or logs.

(e) “Patient’s representative” or “representative” means any of the following:

1. A parent or guardian of a minor who is a patient.
2. The guardian or conservator of the person of an adult patient.
3. An agent as defined in Section 4607 of the Probate Code, to the extent necessary for the agent to fulfill his or her duties as set forth in Division 4.7 (commencing with Section 4600) of the Probate Code.
4. The beneficiary as defined in Section 24 of the Probate Code or personal representative as defined in Section 58 of the Probate Code, of a deceased patient.

(f) “Alcohol and drug abuse records” means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

SEC. 32.

SEC. 33. Section 123115 of the Health and Safety Code is amended to read:

123115. (a) The representative of a minor shall not be entitled to inspect or obtain copies of the minor’s patient records in either of the following circumstances:

1. With respect to which the minor has a right of inspection under Section 123110.
2. Where the health care provider determines that access to the patient records requested by the representative would have a detrimental effect on the provider’s professional relationship with the minor patient or the minor’s physical safety or psychological well-being. The decision of the health care provider as to whether
(b) When a health care provider determines there is a substantial risk of significant adverse or detrimental consequences to a patient in seeing or receiving a copy of mental health records requested by the patient, the provider may decline to permit inspection or provide copies of the records to the patient, subject to the following conditions:

(1) The health care provider shall make a written record, to be included with the mental health records requested, noting the date of the request and explaining the health care provider’s reason for refusing to permit inspection or provide copies of the records, including a description of the specific adverse or detrimental consequences to the patient that the provider anticipates would occur if inspection or copying were permitted.

(2) (A) The health care provider shall permit inspection by, or provide copies of the mental health records to, a licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, licensed clinical social worker, or licensed professional clinical counselor, designated by request of the patient.

(B) Any person registered as a marriage and family therapist intern, as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, may not inspect the patient’s mental health records or obtain copies thereof, except pursuant to the direction or supervision of a licensed professional specified in subdivision (g) of Section 4980.03 of the Business and Professions Code. Prior to providing copies of mental health records to a registered marriage and family therapist intern, a receipt for those records shall be signed by the supervising licensed professional.

(C) Any person registered as a clinical counselor intern, as defined in Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code, may not inspect the patient’s mental health records or obtain copies thereof, except pursuant to the direction or supervision of a licensed professional specified in subdivision (h) of Section 4999.12 of the Business and Professions Code. Prior to providing copies of mental health records to a person registered as a clinical counselor intern, a
receipt for those records shall be signed by the supervising licensed professional.

(D) A licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, licensed clinical social worker, licensed professional clinical counselor, registered marriage and family therapist intern, or person registered as a clinical counselor intern to whom the records are provided for inspection or copying shall not permit inspection or copying by the patient.

(3) The health care provider shall inform the patient of the provider’s refusal to permit him or her to inspect or obtain copies of the requested records, and inform the patient of the right to require the provider to permit inspection by, or provide copies to, a licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, licensed clinical social worker, or licensed professional clinical counselor designated by written authorization of the patient.

(4) The health care provider shall indicate in the mental health records of the patient whether the request was made under paragraph (2).

SEC. 34. Section 124260 of the Health and Safety Code is amended to read:

124260. (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 person registered as a marriage and family therapist 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 (g) of Section 4980.03 of the Business and Professions Code.

(H) A board certified, or board eligible, psychiatrist.

(I) A licensed professional clinical counselor, as defined in Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code.

(J) A person registered as a clinical counselor intern, as defined in Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code, while working under the supervision of a licensed professional specified in subdivision (h) of Section 4999.12 of the Business and Professions Code.

(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) Notwithstanding any provision of law to the contrary, 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 parent or guardian is 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.

SEC. 34. Section 10133.55 of the Insurance Code is amended to read:

10133.55. (a) (1) Except as provided in paragraph (2), every disability insurer covering hospital, medical, and surgical expenses on a group basis that contracts with providers for alternative rates pursuant to Section 10133 and limits payments under those policies to services secured by insureds and subscribers from providers charging alternative rates pursuant to these contracts, shall file with the Department of Insurance, a written policy describing how the insurer shall facilitate the continuity of care for new insureds or enrollees receiving services during a current episode of care for an acute condition from a noncontracting provider. This written policy shall describe the process used to facilitate continuity of care, including the assumption of care by a contracting provider.

(2) On or before July 1, 2002, every disability insurer covering hospital, medical, and surgical expenses on a group basis that contracts with providers for alternative rates pursuant to Section 10133 and limits payments under those policies to services secured by insureds and subscribers from providers charging alternative rates pursuant to these contracts, shall file with the department a written policy describing how the insurer shall facilitate the continuity of care for new enrollees who have been receiving services for an acute, serious, or chronic mental health condition from a nonparticipating mental health provider when the enrollee’s employer has changed policies. Every written policy shall allow the new enrollee a reasonable transition period to continue his or her course of treatment with the nonparticipating mental health provider prior to transferring to another participating provider and shall include the provision of mental health services on a timely, appropriate, and medically necessary basis from the nonparticipating provider. The policy may provide that the length of the transition period take into account the severity of the enrollee’s condition and the amount of time reasonably necessary
to effect a safe transfer on a case-by-case basis. Nothing in this paragraph shall be construed to require the insurer to accept a nonparticipating mental health provider onto its panel for treatment of other enrollees. For purposes of the continuing treatment of the transferring enrollee, the insurer may require the nonparticipating mental health provider, as a condition of the right conferred under this section, to enter into the standard mental health provider contract.

(b) Notice of the policy and information regarding how enrollees may request a review under the policy shall be provided to all new enrollees, except those enrollees who are not eligible as described in subdivision (e). A copy of the written policy shall be provided to eligible enrollees upon request. The written policy required to be filed under subdivision (a) shall describe how requests to continue services with an existing noncontracting provider are reviewed by the insurer. The policy shall ensure that reasonable consideration is given to the potential clinical effect that a change of provider would have on the insured’s or subscriber’s treatment for the acute condition.

(c) An insurer may require any nonparticipating provider whose services are continued pursuant to the written policy to agree in writing to meet the same contractual terms and conditions that are imposed upon the insurer’s participating providers, including location within the service area, reimbursement methodologies, and rates of payment. If the insurer determines that a patient’s health care treatment should temporarily continue with the patient’s existing provider or nonparticipating mental health provider, the insurer shall not be liable for actions resulting solely from the negligence, malpractice, or other tortious or wrongful acts arising out of the provision of services by the existing provider or nonparticipating mental health provider.

(d) Nothing in this section shall require an insurer to cover services or provide benefits that are not otherwise covered under the terms and conditions of the policy contract.

(e) The written policy shall not apply to any insured or subscriber who is offered an out-of-network option, or who had the option to continue with his or her previous health benefits carrier or provider and instead voluntarily chose to change.

(f) This section shall not apply to insurer contracts that include out-of-network coverage under which the insured or subscriber is
able to obtain services from the insured’s or subscriber’s existing provider or nonparticipating mental health provider.

(g) (1) For purposes of this section, “provider” refers to a person who is described in subdivision (f) of Section 900 of the Business and Professions Code.

(2) For purposes of this section, “nonparticipating mental health provider” refers to a psychiatrist, licensed psychologist, licensed marriage and family therapist, licensed clinical social worker, or licensed professional clinical counselor who is not part of the insurer’s contracted provider network.

(h) This section shall only apply to a group disability insurance policy if it provides coverage for hospital, medical, or surgical benefits.

SEC. 35.

SEC. 36. Section 10176 of the Insurance Code is amended to read:

10176. (a) In disability insurance, the policy may provide for payment of medical, surgical, chiropractic, physical therapy, speech pathology, audiology, acupuncture, professional mental health, dental, hospital, or optometric expenses upon a reimbursement basis, or for the exclusion of any of those services, and provision may be made therein for payment of all or a portion of the amount of charge for these services without requiring that the insured first pay the expenses. The policy shall not prohibit the insured from selecting any psychologist or other person who is the holder of a certificate or license under Section 1000, 1634, 2050, 2472, 2553, 2630, 2948, 3055, or 4938 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, the certificate holder or licensee being expressly authorized by law to perform those services.

(b) If the insured selects any person who is a holder of a certificate under Section 4938 of the Business and Professions Code, a disability insurer or nonprofit hospital service plan shall pay the bona fide claim of an acupuncturist holding a certificate pursuant to Section 4938 of the Business and Professions Code for the treatment of an insured person only if the insured’s policy or contract expressly includes acupuncture as a benefit and includes coverage for the injury or illness treated. Unless the policy or contract expressly includes acupuncture as a benefit, no person who is the holder of any license or certificate set forth in this
section shall be paid or reimbursed under the policy for acupuncture.

(c) The policy shall not prohibit the insured, upon referral by a physician and surgeon licensed under Section 2050 of the Business and Professions Code, from selecting any licensed clinical social worker who is the holder of a license issued under Section 4996 of the Business and Professions Code, any occupational therapist as specified in Section 2570.2 of the Business and Professions Code, any marriage and family therapist who is the holder of a license under Section 4980.50 of the Business and Professions Code, or any professional clinical counselor who is the holder of a license under Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, or from selecting any speech-language pathologist or audiologist licensed under Section 2532 of the Business and Professions Code or any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master’s degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing, or any advanced practice registered nurse certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code who participates in expert clinical practice in the specialty of psychiatric-mental health nursing, or any respiratory care practitioner certified pursuant to Chapter 8.3 (commencing with Section 3700) of Division 2 of the Business and Professions Code to perform services deemed necessary by the referring physician and surgeon, that certificate holder, licensee or otherwise regulated person, being expressly authorized by law to perform the services.

(d) Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training, and experience.

(e) For the purposes of this section:

(1) “Marriage and family therapist” means a licensed marriage and family therapist who has received specific instruction in
assessment, diagnosis, prognosis, and counseling, and
psychotherapeutic treatment of premarital, marriage, family, and
child relationship dysfunctions, which is equivalent to the
instruction required for licensure on January 1, 1981.
(2) “Professional clinical counselor” means a licensed
professional clinical counselor who has received specific
instruction in assessment, diagnosis, prognosis, counseling, and
psychotherapeutic treatment of mental and emotional disorders,
which is equivalent to the instruction required for licensure on
January 1, 2012.
(f) An individual disability insurance policy, which is issued,
renewed, or amended on or after January 1, 1988, which includes
mental health services coverage may not include a lifetime waiver
for that coverage with respect to any applicant. The lifetime waiver
of coverage provision shall be deemed unenforceable.
SEC. 37. Section 10176.7 of the Insurance Code is amended
to read:
10176.7. (a) Disability insurance where the insurer is licensed
to do business in this state and which provides coverage under a
contract of insurance which includes California residents but which
may be written or issued for delivery outside of California where
benefits are provided within the scope of practice of a licensed
clinical social worker, a registered nurse licensed pursuant to
Chapter 6 (commencing with Section 2700) of Division 2 of the
Business and Professions Code who possesses a master’s degree
in psychiatric-mental health nursing and two years of supervised
experience in psychiatric-mental health nursing, a marriage and
family therapist who is the holder of a license under Chapter 13
(commencing with Section 4980) of Division 2 of the Business
and Professions Code, a professional clinical counselor who is the
holder of a license under Chapter 16 (commencing with Section
4999.10) of Division 2 of the Business and Professions Code, or
a respiratory care practitioner certified pursuant to Chapter 8.3
(commencing with Section 3700) of Division 2 of the Business
and Professions Code shall not be deemed to prohibit persons
covered under the contract from selecting those licensees in
California to perform the services in California that are within the
terms of the contract even though the licensees are not licensed in
the state where the contract is written or issued for delivery.
(b) It is the intent of the Legislature in amending this section in the 1984 portion of the 1983–84 Legislative Session that persons covered by the insurance and those providers of health care specified in this section who are licensed in California should be entitled to the benefits provided by the insurance for services of those providers rendered to those persons.

SEC. 37.
SEC. 38. Section 10177 of the Insurance Code is amended to read:

10177. (a) A self-insured employee welfare benefit plan may provide for payment of professional mental health expenses upon a reimbursement basis, or for the exclusion of those services, and provision may be made therein for payment of all or a portion of the amount of charge for those services without requiring that the employee first pay those expenses. The plan shall not prohibit the employee from selecting any psychologist who is the holder of a certificate issued under Section 2948 of the Business and Professions Code or, upon referral by a physician and surgeon licensed under Section 2135 of the Business and Professions Code, any licensed clinical social worker who is the holder of a license issued under Section 4996 of the Business and Professions Code or any marriage and family therapist who is the holder of a certificate or license under Section 4980.50 of the Business and Professions Code, any professional clinical counselor who is the holder of a license under Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code, or any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master’s degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing or any advanced practice registered nurse certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code who participates in expert clinical practice in the specialty of psychiatric-mental health nursing, to perform the particular services covered under the terms of the plan, the certificate or license holder being expressly authorized by law to perform these services.

(b) Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform
professional services beyond his or her field or fields of competence as established by his or her education, training, and experience.

(c) For the purposes of this section:

(1) “Marriage and family therapist” shall mean a licensed marriage and family therapist who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions, which is equivalent to the instruction required for licensure on January 1, 1981.

(2) “Professional clinical counselor” means a licensed professional clinical counselor who has received specific instruction in assessment, diagnosis, prognosis, counseling, and psychotherapeutic treatment of mental and emotional disorders, which is equivalent to the instruction required for licensure on January 1, 2012.

(d) A self-insured employee welfare benefit plan, which is issued, renewed, or amended on or after January 1, 1988, that includes mental health services coverage in nongroup contracts may not include a lifetime waiver for that coverage with respect to any employee. The lifetime waiver of coverage provision shall be deemed unenforceable.

SEC. 38.

SEC. 39. Section 10177.8 of the Insurance Code is amended to read:

10177.8. (a) A self-insured employee welfare benefit plan doing business in this state and providing coverage that includes California residents but that may be written or issued for delivery outside of California where benefits are provided within the scope of practice of a licensed clinical social worker, a registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master’s degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, a marriage and family therapist who is the holder of a license under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, or a professional clinical counselor who is the holder of a license under Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code, shall not be deemed to prohibit persons covered under the
plan from selecting those licensees in California to perform the
services in California that are within the terms of the contract even
though the licensees are not licensed in the state where the contract
is written or issued.

(b) It is the intent of the Legislature in amending this section in
the 1984 portion of the 1983–84 Legislative Session that persons
covered by the plan and those providers of health care specified
in this section who are licensed in California should be entitled to
the benefits provided by the plan for services of those providers
rendered to those persons.

SEC. 39.
SEC. 40. Section 11165.7 of the Penal Code is amended to
read:

11165.7. (a) As used in this article, “mandated reporter” is
defined as any of the following:
(1) A teacher.
(2) An instructional aide.
(3) A teacher’s aide or teacher’s assistant employed by any
public or private school.
(4) A classified employee of any public school.
(5) An administrative officer or supervisor of child welfare and
attendance, or a certificated pupil personnel employee of any public
or private school.
(6) An administrator of a public or private day camp.
(7) An administrator or employee of a public or private youth
center, youth recreation program, or youth organization.
(8) An administrator or employee of a public or private
organization whose duties require direct contact and supervision
of children.
(9) Any employee of a county office of education or the State
Department of Education, whose duties bring the employee into
contact with children on a regular basis.
(10) A licensee, an administrator, or an employee of a licensed
community care or child day care facility.
(11) A Head Start program teacher.
(12) A licensing worker or licensing evaluator employed by a
licensing agency as defined in Section 11165.11.
(13) A public assistance worker.
(14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.

(15) A social worker, probation officer, or parole officer.

(16) An employee of a school district police or security department.

(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(18) A district attorney investigator, inspector, or local child support agency caseworker unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.

(20) A firefighter, except for volunteer firefighters.

(21) A physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, professional clinical counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage and family therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed marriage and family therapist intern registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner, or any other person who performs autopsies.
(29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, “commercial film and photographic print processor” means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, “child visitation monitor” means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:

(A) “Animal control officer” means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) “Humane society officer” means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (d) of Section 11166. As used in this article, “clergy member” means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any custodian of records of a clergy member, as specified in this section and subdivision (d) of Section 11166.

(34) Any employee of any police department, county sheriff’s department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the California Rules of Court.

(36) A custodial officer as defined in Section 831.5.

(37) Any person providing services to a minor child under Section 12300 or 12300.1 of the Welfare and Institutions Code.

(38) An alcohol and drug counselor. As used in this article, an “alcohol and drug counselor” is a person providing counseling,
therapy, or other clinical services for a state licensed or certified
drug, alcohol, or drug and alcohol treatment program. However,
alcohol or drug abuse, or both alcohol and drug abuse, is not in
and of itself a sufficient basis for reporting child abuse or neglect.

(39) A clinical counselor trainee, as defined in subdivision (g)
of Section 4999.12 of the Business and Professions Code.

(40) A clinical counselor intern registered under Section 4999.42
of the Business and Professions Code.

(b) Except as provided in paragraph (35) of subdivision (a),
volunteers of public or private organizations whose duties require
direct contact with and supervision of children are not mandated
reporters but are encouraged to obtain training in the identification
and reporting of child abuse and neglect and are further encouraged
to report known or suspected instances of child abuse or neglect
to an agency specified in Section 11165.9.

(c) Employers are strongly encouraged to provide their
employees who are mandated reporters with training in the duties
imposed by this article. This training shall include training in child
abuse and neglect identification and training in child abuse and
neglect reporting. Whether or not employers provide their
employees with training in child abuse and neglect identification
and reporting, the employers shall provide their employees who
are mandated reporters with the statement required pursuant to
subdivision (a) of Section 11166.5.

(d) School districts that do not train their employees specified
in subdivision (a) in the duties of mandated reporters under the
child abuse reporting laws shall report to the State Department of
Education the reasons why this training is not provided.

(e) Unless otherwise specifically provided, the absence of
training shall not excuse a mandated reporter from the duties
imposed by this article.

(f) Public and private organizations are encouraged to provide
their volunteers whose duties require direct contact with and
supervision of children with training in the identification and
reporting of child abuse and neglect.

SEC. 41. Section 4514 of the Welfare and Institutions Code,
as amended by Section 100 of Chapter 178 of the Statutes of 2010,
is amended to read:
4514. All information and records obtained in the course of providing intake, assessment, and services under Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) to persons with developmental disabilities shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons, whether employed by a regional center or state developmental center, or not, in the provision of intake, assessment, and services or appropriate referrals. The consent of the person with a developmental disability, or his or her guardian or conservator, shall be obtained before information or records may be disclosed by regional center or state developmental center personnel to a professional not employed by the regional center or state developmental center, or a program not vendored by a regional center or state developmental center.

(b) When the person with a developmental disability, who has the capacity to give informed consent, designates individuals to whom information or records may be released, except that nothing in this chapter shall be construed to compel a physician and surgeon, psychologist, social worker, marriage and family therapist, professional clinical counselor, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(c) To the extent necessary for a claim, or for a claim or application to be made on behalf of a person with a developmental disability for aid, insurance, government benefit, or medical assistance to which he or she may be entitled.

(d) If the person with a developmental disability is a minor, ward, or conservatee, and his or her parent, guardian, conservator, or limited conservator with access to confidential records, designates, in writing, persons to whom records or information may be disclosed, except that nothing in this chapter shall be construed to compel a physician and surgeon, psychologist, social worker, marriage and family therapist, professional clinical
counselor, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(e) For research, provided that the Director of Developmental Services designates by regulation rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. These rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

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___________________________________  Date
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As a condition of doing research concerning persons with developmental disabilities who have received services from____ (fill in the facility, agency or person), I, ____ , agree to obtain the prior informed consent of persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, or the person’s parent, guardian, or conservator, and I further agree not to divulge any information obtained in the course of the research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services so those persons who received services are identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

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___________________________________  Signed
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(f) To the courts, as necessary to the administration of justice.
(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.
(h) To the Senate Committee on Rules or the Assembly Committee on Rules for the purposes of legislative investigation authorized by the committee.
(i) To the courts and designated parties as part of a regional center report or assessment in compliance with a statutory or regulatory requirement, including, but not limited to, Section 1827.5 of the Probate Code, Sections 1001.22 and 1370.1 of the Penal Code, Section 6502 of the Welfare and Institutions Code, and Section 56557 of Title 17 of the California Code of Regulations.

(j) To the attorney for the person with a developmental disability in any and all proceedings upon presentation of a release of information signed by the person, except that when the person lacks the capacity to give informed consent, the regional center or state developmental center director or designee, upon satisfying himself or herself of the identity of the attorney, and of the fact that the attorney represents the person, shall release all information and records relating to the person except that nothing in this article shall be construed to compel a physician and surgeon, psychologist, social worker, marriage and family therapist, professional clinical counselor, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(k) Upon written consent by a person with a developmental disability previously or presently receiving services from a regional center or state developmental center, the director of the regional center or state developmental center, or his or her designee, may release any information, except information that has been given in confidence by members of the family of the person with developmental disabilities, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the regional center or state developmental center director or designee determines that the information is relevant to the evaluation. The consent shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.
(l) Between persons who are trained and qualified to serve on “multidisciplinary personnel” teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) When a person with a developmental disability dies from any cause, natural or otherwise, while hospitalized in a state developmental center, the State Department of Developmental Services, the physician and surgeon in charge of the client, or the professional in charge of the facility or his or her designee, shall release information and records to the coroner. The State Department of Developmental Services, the physician and surgeon in charge of the client, or the professional in charge of the facility or his or her designee, shall not release any notes, summaries, transcripts, tapes, or records of conversations between the resident and health professional personnel of the hospital relating to the personal life of the resident that is not related to the diagnosis and treatment of the resident’s physical condition. Any information released to the coroner pursuant to this section shall remain confidential and shall be sealed and shall not be made part of the public record.

(n) To authorized licensing personnel who are employed by, or who are authorized representatives of, the State Department of Health Services, and who are licensed or registered health professionals, and to authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate health facilities and community care facilities, and to ensure that the standards of care and services provided in these facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facility is subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 2 (commencing with Section 1250) and Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the
State Department of Health Services or the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names which are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Health Services or the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Health Services or the State Department of Social Services shall not contain the name of the person with a developmental disability.

(o) To any board which licenses and certifies professionals in the fields of mental health and developmental disabilities pursuant to state law, when the Director of Developmental Services has reasonable cause to believe that there has occurred a violation of any provision of law subject to the jurisdiction of a board and the records are relevant to the violation. The information shall be sealed after a decision is reached in the matter of the suspected violation, and shall not subsequently be released except in accordance with this subdivision. Confidential information in the possession of the board shall not contain the name of the person with a developmental disability.

(p) To governmental law enforcement agencies by the director of a regional center or state developmental center, or his or her designee, when (1) the person with a developmental disability has been reported lost or missing or (2) there is probable cause to believe that a person with a developmental disability has committed, or has been the victim of, murder, manslaughter, mayhem, aggravated mayhem, kidnapping, robbery, carjacking, assault with the intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, assault or battery, or unlawful possession of a weapon, as provided in any provision listed in Section 16590 of the Penal Code.
This subdivision shall be limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include any information relating to the mental state of the patient or the circumstances of his or her treatment unless relevant to the crime involved.

This subdivision shall not be construed as an exception to, or in any other way affecting, the provisions of Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code, or Chapter 11 (commencing with Section 15600) and Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

(q) To the Division of Juvenile Facilities and Department of Corrections and Rehabilitation or any component thereof, as necessary to the administration of justice.

(r) To an agency mandated to investigate a report of abuse filed pursuant to either Section 11164 of the Penal Code or Section 15630 of the Welfare and Institutions Code for the purposes of either a mandated or voluntary report or when those agencies request information in the course of conducting their investigation.

(s) When a person with developmental disabilities, or the parent, guardian, or conservator of a person with developmental disabilities who lacks capacity to consent, fails to grant or deny a request by a regional center or state developmental center to release information or records relating to the person with developmental disabilities within a reasonable period of time, the director of the regional or developmental center, or his or her designee, may release information or records on behalf of that person provided both of the following conditions are met:

(1) Release of the information or records is deemed necessary to protect the person’s health, safety, or welfare.

(2) The person, or the person’s parent, guardian, or conservator, has been advised annually in writing of the policy of the regional center or state developmental center for release of confidential client information or records when the person with developmental disabilities, or the person’s parent, guardian, or conservator, fails to respond to a request for release of the information or records within a reasonable period of time. A statement of policy contained in the client’s individual program plan shall be deemed to comply with the notice requirement of this paragraph.
(t) (1) When an employee is served with a notice of adverse action, as defined in Section 19570 of the Government Code, the following information and records may be released:

(A) All information and records that the appointing authority relied upon in issuing the notice of adverse action.

(B) All other information and records that are relevant to the adverse action, or that would constitute relevant evidence as defined in Section 210 of the Evidence Code.

(C) The information described in subparagraphs (A) and (B) may be released only if both of the following conditions are met:

(i) The appointing authority has provided written notice to the consumer and the consumer’s legal representative or, if the consumer has no legal representative or if the legal representative is a state agency, to the client’s rights advocate, and the consumer, the consumer’s legal representative, or the client’s rights advocate has not objected in writing to the appointing authority within five business days of receipt of the notice, or the appointing authority, upon review of the objection has determined that the circumstances on which the adverse action is based are egregious or threaten the health, safety, or life of the consumer or other consumers and without the information the adverse action could not be taken.

(ii) The appointing authority, the person against whom the adverse action has been taken, and the person’s representative, if any, have entered into a stipulation that does all of the following:

(I) Prohibits the parties from disclosing or using the information or records for any purpose other than the proceedings for which the information or records were requested or provided.

(II) Requires the employee and the employee’s legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents or copies thereof that are no longer in the possession of the employee or the employee’s legal representative because they were from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final except for the actual records and documents submitted to the administrative tribunal as a component of an appeal from the adverse action.
(III) Requires the parties to submit the stipulation to the administrative tribunal with jurisdiction over the adverse action at the earliest possible opportunity.

(2) For the purposes of this subdivision, the State Personnel Board may, prior to any appeal from adverse action being filed with it, issue a protective order, upon application by the appointing authority, for the limited purpose of prohibiting the parties from disclosing or using information or records for any purpose other than the proceeding for which the information or records were requested or provided, and to require the employee or the employee’s legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final, except for the actual records and documents that are no longer in the possession of the employee or the employee’s legal representatives because they were submitted to the administrative tribunal as a component of an appeal from the adverse action.

(3) Individual identifiers, including, but not limited to, names, social security numbers, and hospital numbers, that are not necessary for the prosecution or defense of the adverse action, shall not be disclosed.

(4) All records, documents, or other materials containing confidential information protected by this section that have been submitted or otherwise disclosed to the administrative agency or other person as a component of an appeal from an adverse action shall, upon proper motion by the appointing authority to the administrative tribunal, be placed under administrative seal and shall not, thereafter, be subject to disclosure to any person or entity except upon the issuance of an order of a court of competent jurisdiction.

(5) For purposes of this subdivision, an adverse action becomes final when the employee fails to answer within the time specified in Section 19575 of the Government Code, or, after filing an answer, withdraws the appeal, or, upon exhaustion of the administrative appeal or of the judicial review remedies as otherwise provided by law.
SEC. 41.  
SEC. 42. Section 5256.1 of the Welfare and Institutions Code is amended to read:

5256.1. The certification review hearing shall be conducted by either a court-appointed commissioner or a referee, or a certification review hearing officer. The certification review hearing officer shall be either a state qualified administrative law hearing officer, a physician and surgeon, a licensed psychologist, a registered nurse, a lawyer, a certified law student, a licensed clinical social worker, a licensed marriage and family therapist, or a licensed professional clinical counselor. Licensed psychologists, licensed clinical social workers, licensed marriage and family therapists, licensed professional clinical counselors, and registered nurses who serve as certification review hearing officers shall have had a minimum of five years’ experience in mental health. Certification review hearing officers shall be selected from a list of eligible persons unanimously approved by a panel composed of the local mental health director, the county public defender, and the county counsel or district attorney designated by the county board of supervisors. No employee of the county mental health program or of any facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation may serve as a certification review hearing officer.

The location of the certification review hearing shall be compatible with, and least disruptive of, the treatment being provided to the person certified. In addition, hearings conducted by certification review hearing officers shall be conducted at an appropriate place at the facility where the person certified is receiving treatment.

SEC. 43.  
SEC. 44. Section 5328 of the Welfare and Institutions Code is amended to read:

5328. All information and records obtained in the course of providing services under Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential.
Information and records obtained in the course of providing similar 

services to either voluntary or involuntary recipients prior to 1969 

shall also be confidential. Information and records shall be 
disclosed only in any of the following cases: 

(a) In communications between qualified professional persons 
in the provision of services or appropriate referrals, or in the course 
of conservatorship proceedings. The consent of the patient, or his 
or her guardian or conservator, shall be obtained before information 
or records may be disclosed by a professional person employed 
by a facility to a professional person not employed by the facility 
who does not have the medical or psychological responsibility for 
the patient’s care. 

(b) When the patient, with the approval of the physician and 
surgeon, licensed psychologist, social worker with a master’s 
degree in social work, licensed marriage and family therapist, or 
licensed professional clinical counselor who is in charge of the 
patient, designates persons to whom information or records may 
be released, except that nothing in this article shall be construed 
to compel a physician and surgeon, licensed psychologist, social 
worker with a master’s degree in social work, licensed marriage 
and family therapist, licensed professional clinical counselor, nurse, 
attorney, or other professional person to reveal information that 
has been given to him or her in confidence by members of a 
patient’s family. Nothing in this subdivision shall be construed to 
authorize a licensed marriage and family therapist or a licensed 
professional clinical counselor to provide services or to be in charge 
of a patient’s care beyond his or her lawful scope of practice. 

(c) To the extent necessary for a recipient to make a claim, or 
for a claim to be made on behalf of a recipient for aid, insurance, 
or medical assistance to which he or she may be entitled. 

(d) If the recipient of services is a minor, ward, or conservatee, 
and his or her parent, guardian, guardian ad litem, or conservator 
designates, in writing, persons to whom records or information 
may be disclosed, except that nothing in this article shall be 
construed to compel a physician and surgeon, licensed 
psychologist, social worker with a master’s degree in social work, 
licensed marriage and family therapist, licensed professional 
clinical counselor, nurse, attorney, or other professional person to 
reveal information that has been given to him or her in confidence 
by members of a patient’s family.
(e) For research, provided that the Director of Mental Health
or the Director of Developmental Services designates by regulation,
rules for the conduct of research and requires the research to be
first reviewed by the appropriate institutional review board or
boards. The rules shall include, but need not be limited to, the
requirement that all researchers shall sign an oath of confidentiality
as follows:

_________________________________________

Date

As a condition of doing research concerning persons who have
received services from ____ (fill in the facility, agency or person),
I, ____, agree to obtain the prior informed consent of such persons
who have received services to the maximum degree possible as
determined by the appropriate institutional review board or boards
for protection of human subjects reviewing my research, and I
further agree not to divulge any information obtained in the course
of such research to unauthorized persons, and not to publish or
otherwise make public any information regarding persons who
have received services such that the person who received services
is identifiable.

I recognize that the unauthorized release of confidential
information may make me subject to a civil action under provisions
of the Welfare and Institutions Code.

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for
the protection of federal and state elective constitutional officers
and their families.

(h) To the Senate Committee on Rules or the Assembly
Committee on Rules for the purposes of legislative investigation
authorized by the committee.

(i) If the recipient of services who applies for life or disability
insurance designates in writing the insurer to which records or
information may be disclosed.

(j) To the attorney for the patient in any and all proceedings
upon presentation of a release of information signed by the patient,
except that when the patient is unable to sign the release, the staff
of the facility, upon satisfying itself of the identity of the attorney,
and of the fact that the attorney does represent the interests of the
patient, may release all information and records relating to the patient except that nothing in this article shall be construed to compel a physician and surgeon, licensed psychologist, social worker with a master’s degree in social work, licensed marriage and family therapist, licensed professional clinical counselor, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient’s family.

(k) Upon written agreement by a person previously confined in or otherwise treated by a facility, the professional person in charge of the facility or his or her designee may release any information, except information that has been given in confidence by members of the person’s family, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the professional person in charge of the facility determines that the information is relevant to the evaluation. The agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(l) (1) Between persons who are trained and qualified to serve on multidisciplinary personnel teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the provision of child welfare services or the investigation, prevention, identification, management, or treatment of child abuse or neglect pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9. Information obtained pursuant to this subdivision shall not be used in any criminal or delinquency proceeding. Nothing in this subdivision shall prohibit evidence identical to that contained within the records from being admissible in a criminal or delinquency proceeding, if the evidence is derived solely from means other than this subdivision, as permitted by law.

(2) As used in this subdivision, “child welfare services” means those services that are directed at preventing child abuse or neglect.

(m) To county patients’ rights advocates who have been given knowing voluntary authorization by a client or a guardian ad litem.
The client or guardian ad litem, whoever entered into the agreement, may revoke the authorization at any time, either in writing or by oral declaration to an approved advocate.

(n) To a committee established in compliance with Section 4070.
(o) In providing information as described in Section 7325.5. Nothing in this subdivision shall permit the release of any information other than that described in Section 7325.5.
(p) To the county mental health director or the director’s designee, or to a law enforcement officer, or to the person designated by a law enforcement agency, pursuant to Sections 5152.1 and 5250.1.
(q) If the patient gives his or her consent, information specifically pertaining to the existence of genetically handicapping conditions, as defined in Section 125135 of the Health and Safety Code, may be released to qualified professional persons for purposes of genetic counseling for blood relatives upon request of the blood relative. For purposes of this subdivision, “qualified professional persons” means those persons with the qualifications necessary to carry out the genetic counseling duties under this subdivision as determined by the genetic disease unit established in the State Department of Health Care Services under Section 125000 of the Health and Safety Code. If the patient does not respond or cannot respond to a request for permission to release information pursuant to this subdivision after reasonable attempts have been made over a two-week period to get a response, the information may be released upon request of the blood relative.
(r) When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies and county child welfare agencies as the psychotherapist determines is needed for the protection of that person or persons. For purposes of this subdivision, “psychotherapist” means anyone so defined within Section 1010 of the Evidence Code.
(s) (1) To the designated officer of an emergency response employee, and from that designated officer to an emergency response employee regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with provisions of the
(2) For purposes of this subdivision, “designated officer” and “emergency response employee” have the same meaning as these terms are used in the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (Public Law 101-381; 42 U.S.C. Sec. 201).

(3) The designated officer shall be subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV results. Further, the designated officer shall inform the exposed emergency response employee that the employee is also subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV test results.

(t) (1) To a law enforcement officer who personally lodges with a facility, as defined in paragraph (2), a warrant of arrest or an abstract of such a warrant showing that the person sought is wanted for a serious felony, as defined in Section 1192.7 of the Penal Code, or a violent felony, as defined in Section 667.5 of the Penal Code. The information sought and released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility. This paragraph shall be implemented with minimum disruption to health facility operations and patients, in accordance with Section 5212. If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility.

(2) For purposes of paragraph (1), a facility means all of the following:

(A) A state hospital, as defined in Section 4001.

(B) A general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, solely with regard to information pertaining to a mentally disordered person subject to this section.

(C) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

(D) A psychiatric health facility, as described in Section 1250.2 of the Health and Safety Code.
(E) A mental health rehabilitation center, as described in Section 5675.

(F) A skilled nursing facility with a special treatment program for chronically mentally disordered patients, as described in Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the California Code of Regulations.

(u) Between persons who are trained and qualified to serve on multidisciplinary personnel teams pursuant to Section 15610.55, 15753.5, or 15761. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused elder or dependent adult pursuant to Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

(v) The amendment of subdivision (d) enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

(w) This section shall not be limited by Section 5150.05 or 5332.

(x) (1) When an employee is served with a notice of adverse action, as defined in Section 19570 of the Government Code, the following information and records may be released:

(A) All information and records that the appointing authority relied upon in issuing the notice of adverse action.

(B) All other information and records that are relevant to the adverse action, or that would constitute relevant evidence as defined in Section 210 of the Evidence Code.

(C) The information described in subparagraphs (A) and (B) may be released only if both of the following conditions are met:

(i) The appointing authority has provided written notice to the consumer and the consumer’s legal representative or, if the consumer has no legal representative or if the legal representative is a state agency, to the clients’ rights advocate, and the consumer, the consumer’s legal representative, or the clients’ rights advocate has not objected in writing to the appointing authority within five business days of receipt of the notice, or the appointing authority, upon review of the objection has determined that the circumstances on which the adverse action is based are egregious or threaten the health, safety, or life of the consumer or other consumers and without the information the adverse action could not be taken.
(ii) The appointing authority, the person against whom the adverse action has been taken, and the person’s representative, if any, have entered into a stipulation that does all of the following:

(I) Prohibits the parties from disclosing or using the information or records for any purpose other than the proceedings for which the information or records were requested or provided.

(II) Requires the employee and the employee’s legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final except for the actual records and documents or copies thereof that are no longer in the possession of the employee or the employee’s legal representative because they were submitted to the administrative tribunal as a component of an appeal from the adverse action.

(III) Requires the parties to submit the stipulation to the administrative tribunal with jurisdiction over the adverse action at the earliest possible opportunity.

(2) For the purposes of this subdivision, the State Personnel Board may, prior to any appeal from adverse action being filed with it, issue a protective order, upon application by the appointing authority, for the limited purpose of prohibiting the parties from disclosing or using information or records for any purpose other than the proceeding for which the information or records were requested or provided, and to require the employee or the employee’s legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final, except for the actual records and documents or copies thereof that are no longer in the possession of the employee or the employee’s legal representatives because they were submitted to the administrative tribunal as a component of an appeal from the adverse action.

(3) Individual identifiers, including, but not limited to, names, social security numbers, and hospital numbers, that are not
necessary for the prosecution or defense of the adverse action, shall not be disclosed.

(4) All records, documents, or other materials containing confidential information protected by this section that have been submitted or otherwise disclosed to the administrative agency or other person as a component of an appeal from an adverse action shall, upon proper motion by the appointing authority to the administrative tribunal, be placed under administrative seal and shall not, thereafter, be subject to disclosure to any person or entity except upon the issuance of an order of a court of competent jurisdiction.

(5) For purposes of this subdivision, an adverse action becomes final when the employee fails to answer within the time specified in Section 19575 of the Government Code, or, after filing an answer, withdraws the appeal, or, upon exhaustion of the administrative appeal or of the judicial review remedies as otherwise provided by law.

SEC. 43.

SEC. 44. Section 5328.04 of the Welfare and Institutions Code is amended to read:

5328.04. (a) Notwithstanding Section 5328, information and records made confidential under that section may be disclosed to a county social worker, a probation officer, or any other person who is legally authorized to have custody or care of a minor, for the purpose of coordinating health care services and medical treatment, as defined in subdivision (b) of Section 56.103 of the Civil Code, mental health services, or services for developmental disabilities, for the minor.

(b) Information disclosed under subdivision (a) shall not be further disclosed by the recipient unless the disclosure is for the purpose of coordinating health care services and medical treatment, or mental health or developmental disability services, for the minor and only to a person who would otherwise be able to obtain the information under subdivision (a) or any other provision of law.

(c) Information disclosed pursuant to this section shall not be admitted into evidence in any criminal or delinquency proceeding against the minor. Nothing in this subdivision shall prohibit identical evidence from being admissible in a criminal proceeding if that evidence is derived solely from lawful means other than this section and is permitted by law.
(d) Nothing in this section shall be construed to compel a physician and surgeon, licensed psychologist, social worker with a master’s degree in social work, licensed marriage and family therapist, licensed professional clinical counselor, nurse, attorney, or other professional person to reveal information, including notes, that has been given to him or her in confidence by the minor or members of the minor’s family.

(e) The disclosure of information pursuant to this section is not intended to limit disclosure of information when that disclosure is otherwise required by law.

(f) Nothing in this section shall be construed to expand the authority of a social worker, probation officer, or custodial caregiver beyond the authority provided under existing law to a parent or a patient representative regarding access to confidential information.

(g) As used in this section, “minor” means a minor taken into temporary custody or for whom a petition has been filed with the court, or who has been adjudged a dependent child or ward of juvenile court pursuant to Section 300 or 601.

(h) Information and records that may be disclosed pursuant to this section do not include psychotherapy notes, as defined in Section 164.501 of Title 45 of the Code of Federal Regulations.

SEC. 44.

SEC. 45. Section 5696.5 of the Welfare and Institutions Code is amended to read:

5696.5. Prior to the opening of a facility, the board of directors shall establish written program standards and policies and procedures, approved by the Division of Juvenile Facilities that address and include, but are not limited to, the following:

(a) A staffing number and pattern that meets the special behavior, supervision, treatment, health, and educational needs of the population described in this chapter. Staff shall be qualified to provide intensive treatment and services and shall include, at a minimum:

(1) A project or clinical director, a psychiatrist or psychologist, a social worker, a registered nurse, and a recreation or occupational therapist.

(2) A pediatrician and a dentist, and a licensed marriage and family therapist or a licensed professional clinical counselor, or both of those professionals, on an as-needed basis.
(3) Educational staff in sufficient number and with the qualifications needed to meet the population served.

(4) Child care staff in sufficient numbers and with the qualifications needed to meet the special needs of the population.

(b) Programming to meet the needs of all wards admitted, including, but not limited to, all of the following:

1. Physical examinations on admission and ongoing health care.

2. Appropriate and closely monitored use of all behavioral management techniques.

3. The establishment of written, individual treatment and educational plans and goals for each ward within 10 days of admission and which are updated at least quarterly.

4. Written discharge planning that addresses each ward’s continued treatment, educational, and supervision needs.

5. Regular, written progress records regarding the care and treatment of each ward.

6. Regular and structured treatment of all wards, including, but not limited to, individual, group and family therapy, psychological testing, medication, and occupational, or recreational therapy.

7. Access to neurological testing and laboratory work as needed.

8. The opportunity for regular family contact and involvement.

9. A periodic review of the continued need for treatment within the facility.

10. Educational programming, including special education as needed.

SEC. 45. Section 5751 of the Welfare and Institutions Code is amended to read:

5751. (a) Regulations pertaining to the qualifications of directors of local mental health services shall be administered in accordance with Section 5607. These standards may include the maintenance of records of service which shall be reported to the State Department of Mental Health in a manner and at times as it may specify.

(b) Regulations pertaining to the position of director of local mental health services, where the local director is other than the local health officer or medical administrator of the county hospitals,
shall require that the director be a psychiatrist, psychologist, clinical social worker, marriage and family therapist, professional clinical counselor, registered nurse, or hospital administrator, who meets standards of education and experience established by the Director of Mental Health. Where the director is not a psychiatrist, the program shall have a psychiatrist licensed to practice medicine in this state and who shall provide to patients medical care and services as authorized by Section 2051 of the Business and Professions Code.

(c) The regulations shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 46.
SEC. 47. Section 5751.2 of the Welfare and Institutions Code is amended to read:

5751.2. (a) Except as provided in this section, persons employed or under contract to provide mental health services pursuant to this part shall be subject to all applicable requirements of law regarding professional licensure, and no person shall be employed in local mental health programs pursuant to this part to provide services for which a license is required, unless the person possesses a valid license.

(b) Persons employed as psychologists and clinical social workers, while continuing in their employment in the same class as of January 1, 1979, in the same program or facility, including those persons on authorized leave, but not including intermittent personnel, shall be exempt from the requirements of subdivision (a).

(c) While registered with the licensing board of jurisdiction for the purpose of acquiring the experience required for licensure, persons employed or under contract to provide mental health services pursuant to this part as clinical social workers, marriage and family therapists, or professional clinical counselors shall be exempt from subdivision (a). Registration shall be subject to regulations adopted by the appropriate licensing board.

(d) The requirements of subdivision (a) shall be waived by the department for persons employed or under contract to provide mental health services pursuant to this part as psychologists who are gaining the experience required for licensure. A waiver granted
under this subdivision may not exceed five years from the date of
employment by, or contract with, a local mental health program
for persons in the profession of psychology.
(e) The requirements of subdivision (a) shall be waived by the
department for persons who have been recruited for employment
from outside this state as psychologists, clinical social workers,
membership and family therapists, or professional clinical counselors
and whose experience is sufficient to gain admission to a licensing
examination. A waiver granted under this subdivision may not
exceed three years from the date of employment by, or contract
with, a local mental health program for persons in these four
professions who are recruited from outside this state.

SEC. 47.

SEC. 48. Section 15610.37 of the Welfare and Institutions
Code is amended to read:

15610.37. “Health practitioner” means a physician and surgeon,
psychiatrist, psychologist, dentist, resident, intern, podiatrist,
chiropractor, registered nurse, dental hygienist, licensed clinical
social worker or associate clinical social worker, marriage and
family therapist, licensed professional clinical counselor, or any
other person who is currently licensed under Division 2
(commencing with Section 500) of the Business and Professions
Code, any emergency medical technician I or II, paramedic, or
person certified pursuant to Division 2.5 (commencing with Section
1797) of the Health and Safety Code, a psychological assistant
registered pursuant to Section 2913 of the Business and Professions
Code, a marriage and family therapist trainee, as defined in
subdivision (c) of Section 4980.03 of the Business and Professions
Code, an unlicensed marriage and family therapist intern registered
under Section 4980.44 of the Business and Professions Code, a
clinical counselor trainee, as defined in subdivision (g) of Section
4999.12 of the Business and Professions Code, a clinical counselor
intern registered under Section 4999.42 of the Business and
Professions Code, a state or county public health or social service
employee who treats an elder or a dependent adult for any
condition, or a coroner.

SEC. 49. 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: SB 718 VERSION: AMENDED MAY 2, 2011
AUTHOR: VARGAS SPONSOR: COUNTY OF SAN DIEGO
RECOMMENDED POSITION: SUPPORT
SUBJECT: ELDER ABUSE – MANDATED REPORTING

Existing Law:

1) Requires mandated reporters of elder or adult physical abuse, including Marriage Family Therapists, Licensed Clinical Social Workers, and Licensed Educational Psychologists, to report suspected instances of abuse, including financial abuse, by telephone immediately or as soon as possible and submit a written report within two working days (Welfare and Institutions Code [WIC], Section 15630).

2) Requires the written report to be on a form prescribed by the State Department of Social Services (WIC, Section 15658).

This Bill:

1) Allows a mandated reporter of elder or adult physical abuse to report suspected instances of abuse, including financial abuse, by telephone or by a confidential Internet reporting tool immediately or as soon as practicably possible, and if reported by telephone, then submit a written report or Internet report within two working days.

2) Allows the written abuse report to be submitted through a confidential Internet reporting tool, if the county or long-term care ombudsman program chooses to implement such a system.

3) Requires a county or long-term care ombudsman program that chooses to implement a confidential Internet reporting system to report to the appropriate legislative committees one year after implementing the system.

4) Requires the legislative report to include changes in the number of mandated reporters reporting through the Internet reporting system, changes in the number of abandoned calls, and any other relevant data.

5) Subjects any information reported through the confidential Internet reporting tool to the same confidentiality and privacy requirements that govern nonelectronic submission of the same information.

Comments:

1) Background and Underlying Data. According to the fact sheet from the author’s office, the County of San Diego, Adult Protective Services currently receives reports of suspected elder and adult abuse from mandated reports and the public on the same phone line. Due to recent budget cuts, which led to decreased staffing, and a high volume of calls, wait time
has increased by 50 percent. As of November 2010, 27 percent of calls were abandoned.

2) **Impact.** This bill would have a minimal impact on reporting requirements for mandated reporters. This bill may benefit licensees by simplifying the reporting process.

3) **Fiscal Impact.** This bill does not include a funding mechanism for the county or long-term care ombudsman program that chooses to implement a confidential Internet reporting tool. The county or long-term care ombudsman program that chooses to implement such a system would have to secure its own funding.

4) **Recommended Position.** At its meeting on April 7, 2011, the Policy and Advocacy Committee recommended the Board take a support position on this bill.

5) **Support and Opposition.**

   **Support:** County of San Diego (Sponsor)
   AARP
   Alzheimer’s Association
   California District Attorneys Association
   California State Association of Counties
   California State Sheriffs' Association
   City of Carlsbad Police Department, Investigations Division
   San Diego County Sheriff's Department
   San Diego County District Attorney
   3 individuals

   **Opposition:** None

6) **History**

   **2011**
   May 3  Set for hearing May 9.
   May 2  Read second time and amended. Re-referred to Com. on APPR.
   Apr. 28  From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 7. Noes 0. Page 764.) (April 26).
   Apr. 12  Set for hearing April 26.
   Apr. 8  Measure version as amended on March 29 corrected.
   Mar. 29  From committee with author’s amendments. Read second time and amended. Re-referred to Com. on HUMAN S.
   Mar. 3  Referred to Com. on HUMAN S.
   Feb. 20  From printer. May be acted upon on or after March 22.
   Feb. 18  Introduced. Read first time. To Com. on RLS. for assignment. To print.

7) **Attachments**

   A. SB 718 Background Paper from the County of San Diego, Adult Protective Services
An act to amend Sections 15630, 15630.1, and 15658 of the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL’S DIGEST

SB 718, as amended, Vargas. Elder abuse: mandated reporting. Existing law requires specified people, known as mandated reporters, to report cases of elder abuse, as defined. Existing law requires mandated reporters, after reporting the abuse by telephone, to send written reports to specified entities containing prescribed information. This bill would authorize the required reports to be submitted through a confidential Internet reporting tool, if the county or long-term care ombudsman implements such a system, and would require a county or long-term care ombudsman program that chooses to implement this system to report specified information to the appropriate policy committees of the Legislature one year after full implementation.


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

SECTION 1. Section 15630 of the Welfare and Institutions Code is amended to read:

(a) Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent
adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.

(b) (1) Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone or through a confidential Internet reporting tool, as authorized by Section 15658, immediately or as soon as practicably possible, and, if possible. If reported by telephone, by written report or by Internet report sent a written report shall be sent, or an Internet report shall be made through the confidential Internet reporting tool established in Section 15658, within two working days, as follows:

(A) If the abuse has occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the report shall be made to the local ombudsperson or the local law enforcement agency.

The local ombudsperson and the local law enforcement agency shall, as soon as practicable, except in the case of an emergency or pursuant to a report required to be made pursuant to clause (v), in which case these actions shall be taken immediately, do all of the following:

(i) Report to the State Department of Public Health any case of known or suspected abuse occurring in a long-term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.

(ii) Report to the State Department of Social Services any case of known or suspected abuse occurring in a residential care facility
for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or in an adult day care facility, as defined in paragraph (2) of subdivision (a) of Section 1502.

(iii) Report to the State Department of Public Health and the California Department of Aging any case of known or suspected abuse occurring in an adult day health care center, as defined in subdivision (b) of Section 1570.7 of the Health and Safety Code.

(iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse any case of known or suspected criminal activity.

(v) Report all cases of known or suspected physical abuse and financial abuse to the local district attorney’s office in the county where the abuse occurred.

(B) If the suspected or alleged abuse occurred in a state mental hospital or a state developmental center, the report shall be made to designated investigators of the State Department of Mental Health or the State Department of Developmental Services, or to the local law enforcement agency.

Except in an emergency, the local law enforcement agency shall, as soon as practicable, report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.

(C) If the abuse has occurred any place other than one described in subparagraph (A), the report shall be made to the adult protective services agency or the local law enforcement agency.

(2) (A) A mandated reporter who is a clergy member who acquires knowledge or reasonable suspicion of elder or dependent adult abuse during a penitential communication is not subject to paragraph (1). For purposes of this subdivision, “penitential communication” means a communication that is 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.

(B) Nothing in this subdivision shall be construed to modify or limit a clergy member’s duty to report known or suspected elder and dependent adult abuse when he or she is acting in the capacity of a care custodian, health practitioner, or employee of an adult protective services agency.
(C) Notwithstanding any other provision in this section, a clergy member who is not regularly employed on either a full-time or part-time basis in a long-term care facility or does not have care or custody of an elder or dependent adult shall not be responsible for reporting abuse or neglect that is not reasonably observable or discernible to a reasonably prudent person having no specialized training or experience in elder or dependent care.

(3) (A) A mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist, as defined in Section 1010 of the Evidence Code, shall not be required to report, pursuant to paragraph (1), an incident where all of the following conditions exist:

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect.

(ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(iii) The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia.

(iv) In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the psychotherapist, as defined in Section 1010 of the Evidence Code, reasonably believes that the abuse did not occur.

(B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

(4) (A) In a long-term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident where all of the following conditions exist:

(i) The mandated reporter is aware that there is a proper plan of care.

(ii) The mandated reporter is aware that the plan of care was properly provided or executed.
(iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).

(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

(B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Public Health determines, upon approval by the Bureau of Medi-Cal Fraud and Elder Abuse and the state long-term care ombudsperson, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.

(c) (1) Any mandated reporter who has knowledge, or reasonably suspects, that types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult, or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsperson program. Except in an emergency, the local ombudsperson shall report any case of known or suspected abuse to the State Department of Public Health and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services or to a local law enforcement agency or to the local ombudsperson. Except in an emergency, the local ombudsperson and the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.
(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) When two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and when there is agreement among them, the telephone report or Internet report, as authorized by Section 15658, 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.

(e) A telephone report or Internet report, as authorized by Section 15658, of a known or suspected instance of elder or dependent adult abuse shall include, if known, the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other adult responsible for the elder’s or dependent adult’s care, the nature and extent of the elder’s or dependent adult’s condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse, as requested by the agency receiving the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(g) (1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective services agency shall, immediately upon request,
provide to that law enforcement agency a copy of its investigative
report concerning the reported matter.

(3) The requirement to disclose investigative reports pursuant
to this subdivision shall not include the disclosure of social services
records or case files that are confidential, nor shall this subdivision
be construed to allow disclosure of any reports or records if the
disclosure would be prohibited by any other provision of state or
federal law.

(h) Failure to report, or impeding or inhibiting a report of,
physical abuse, as defined in Section 15610.63 of the Welfare and
Institutions Code, abandonment, abduction, isolation, financial
abuse, or neglect of an elder or dependent adult, in violation of
this section, is a misdemeanor, punishable by not more than six
months in the county jail, by a fine of not more than one thousand
dollars ($1,000), or by both that fine and imprisonment. Any
mandated reporter who willfully fails to report, or impedes or
inhibits a report of, physical abuse, as defined in Section 15610.63
of the Welfare and Institutions Code, abandonment, abduction,
isolation, financial abuse, or neglect of an elder or dependent adult,
in violation of this section, where that abuse results in death or
great bodily injury, shall be punished by not more than one year
in a county jail, by a fine of not more than five thousand dollars
($5,000), or by both that fine and imprisonment. 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 a law enforcement agency specified in paragraph (1)
of subdivision (b) of Section 15630 of the Welfare and Institutions
Code discovers the offense.

(i) For purposes of this section, “dependent adult” shall have
the same meaning as in Section 15610.23.

SEC. 2. Section 15630.1 of the Welfare and Institutions Code
is amended to read:

15630.1. (a) As used in this section, “mandated reporter of
suspected financial abuse of an elder or dependent adult” means
all officers and employees of financial institutions.

(b) As used in this section, the term “financial institution” means
any of the following:

(1) A depository institution, as defined in Section 3(c) of the
Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).
(2) An institution-affiliated party, as defined in Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).

(3) A federal credit union or state credit union, as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752), including, but not limited to, an institution-affiliated party of a credit union, as defined in Section 206(r) of the Federal Credit Union Act (12 U.S.C. Sec. 1786(r)).

(c) As used in this section, “financial abuse” has the same meaning as in Section 15610.30.

(d) (1) Any mandated reporter of suspected financial abuse of an elder or dependent adult who has direct contact with the elder or dependent adult or who reviews or approves the elder or dependent adult’s financial documents, records, or transactions, in connection with providing financial services with respect to an elder or dependent adult, and who, within the scope of his or her employment or professional practice, has observed or has knowledge of an incident, that is directly related to the transaction or matter that is within that scope of employment or professional practice, that reasonably appears to be financial abuse, or who reasonably suspects that abuse, based solely on the information before him or her at the time of reviewing or approving the document, record, or transaction in the case of mandated reporters who do not have direct contact with the elder or dependent adult, shall report the known or suspected instance of financial abuse by telephone or through a confidential Internet reporting tool, as authorized pursuant to Section 15658, immediately, or as soon as practically possible, and, if possible. If reported by telephone, by written report or by Internet report sent a written report shall be sent, or an Internet report shall be made through the confidential Internet reporting tool established in Section 15658, within two working days to the local adult protective services agency or the local law enforcement agency.

(2) When two or more mandated reporters jointly have knowledge or reasonably suspect that financial abuse of an elder or a dependent adult for which the report is mandated has occurred, and when there is an agreement among them, the telephone report or Internet report, as authorized by Section 15658, may be made by a member of the reporting team who is selected by mutual agreement. A single report may be made and signed by the selected member of the reporting team. Any member of the team who has
knowledge that the member designated to report has failed to do so shall thereafter make that report.

(3) If the mandated reporter knows that the elder or dependent adult resides in a long-term care facility, as defined in Section 15610.47, the report shall be made to the local ombudsman or local law enforcement agency.

(e) An allegation by the elder or dependent adult, or any other person, that financial abuse has occurred is not sufficient to trigger the reporting requirement under this section if both of the following conditions are met:

(1) The mandated reporter of suspected financial abuse of an elder or dependent adult is aware of no other corroborating or independent evidence of the alleged financial abuse of an elder or dependent adult. The mandated reporter of suspected financial abuse of an elder or dependent adult is not required to investigate any accusations.

(2) In the exercise of his or her professional judgment, the mandated reporter of suspected financial abuse of an elder or dependent adult reasonably believes that financial abuse of an elder or dependent adult did not occur.

(f) Failure to report financial abuse under this section shall be subject to a civil penalty not exceeding one thousand dollars ($1,000) or if the failure to report is willful, a civil penalty not exceeding five thousand dollars ($5,000), which shall be paid by the financial institution that is the employer of the mandated reporter to the party bringing the action. Subdivision (h) of Section 15630 shall not apply to violations of this section.

(g) (1) The civil penalty provided for in subdivision (f) shall be recovered only in a civil action brought against the financial institution by the Attorney General, district attorney, or county counsel. No action shall be brought under this section by any person other than the Attorney General, district attorney, or county counsel. Multiple actions for the civil penalty may not be brought for the same violation.

(2) Nothing in the Financial Elder Abuse Reporting Act of 2005 shall be construed to limit, expand, or otherwise modify any civil liability or remedy that may exist under this or any other law.

(h) As used in this section, “suspected financial abuse of an elder or dependent adult” occurs when a person who is required to report under subdivision (a) observes or has knowledge of
behavior or unusual circumstances or transactions, or a pattern of
behavior or unusual circumstances or transactions, that would lead
an individual with like training or experience, based on the same
facts, to form a reasonable belief that an elder or dependent adult
is the victim of financial abuse as defined in Section 15610.30.
(i) Reports of suspected financial abuse of an elder or dependent
adult made by an employee or officer of a financial institution
pursuant to this section are covered under subdivision (b) of Section
47 of the Civil Code.
(j) 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. 3. Section 15658 of the Welfare and Institutions Code is
amended to read:
15658. (a) A written abuse report required by this chapter,
shall be submitted in one of the following ways:
(1) On a form adopted by the State Department of Social
Services after consultation with representatives of the various law
enforcement agencies, the California Department of Aging, the
State Department of Developmental Services, the State Department
of Mental Health, the bureau, professional medical and nursing
agencies, hospital associations, and county welfare departments.
These reporting forms shall be distributed by the county adult
protective services agencies and the long-term care ombudsman
programs. This reporting form may also be used for documenting
the telephone report of a known or suspected instance of abuse of
an elder or dependent adult by the county adult protective services
agency, local ombudsman program, and local law enforcement
agencies.
(2) Through a confidential Internet reporting tool, if the county
or long-term care ombudsman program chooses to implement such
a system.
(A) A county or long-term care ombudsman program that
chooses to implement this system shall report to the appropriate
policy committees of the Legislature one year after full
implementation. The report shall include changes in the number
of mandated reporters reporting through the confidential Internet
reporting tool, changes in the number of abandoned calls, and any
other quantitative or qualitative data that indicates the success,
or lack thereof, in employing a confidential Internet reporting tool.
to better protect the safety and financial security of elder and
dependent adults.

(B) Information sent and received through the confidential
Internet reporting tool shall be used only for its intended purpose
and shall be subject to the same confidentiality and privacy
requirements that govern nonelectronic transmission of the same
information.

(b) The form required by this section and the confidential
Internet reporting tool, if implemented, shall contain the following
items:

1. The name, address, telephone number, and occupation of
   the person reporting.
2. The name and address of the victim.
3. The date, time, and place of the incident.
4. Other details, including the reporter’s observations and
   beliefs concerning the incident.
5. Any statement relating to the incident made by the victim.
6. The name of any individuals believed to have knowledge
   of the incident.
7. The name of the individuals believed to be responsible for
   the incident and their connection to the victim.

(c) (1) Each county adult protective services agency shall report
to the State Department of Social Services monthly on the reports
received pursuant to this chapter. The reports shall be made on
forms adopted by the department. The information reported shall
include, but shall not be limited to, the number of incidents of
abuse, the number of persons abused, the type of abuse sustained,
and the actions taken on the reports. For purposes of these reports,
sexual abuse shall be reported separately from physical abuse.

(2) The county’s report to the department shall not include
reports it receives from the long-term care ombudsman program
pursuant to subdivision (d).

(3) The department shall refer to the bureau monthly data
summaries of the reports of elder and dependent adult abuse,
neglect, abandonment, isolation, financial abuse, and other abuse
it receives from county adult protective services agencies.

(d) Each long-term care ombudsman program shall report to
the Office of the State Long-Term Care Ombudsman of the
California Department of Aging monthly on the reports it receives
pursuant to this chapter and shall send a copy to the county adult
protective services agency. The office of the State Ombudsman shall submit a summarized quarterly report to the department based on the monthly reports submitted by local long-term care ombudsman programs. The reports shall be on forms adopted by the department and the office of the State Ombudsman. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the numbers of persons abused, the type of abuse, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.
The County of San Diego (County) is seeking a change in state law to provide mandated reporters of suspected elder and dependent adult abuse the option of filing a report over the Internet.

**Issue:**
California law requires certain categories of persons, defined as “mandated reporters” which are including, but not limited to, licensed health practitioners, to report to appropriate authorities the known or reasonably suspected abuse or neglect of a child, elder, or dependent adult. A mandated reporter must report to appropriate authorities when, in the course and scope of his or her employment or professional capacity, he or she knows of, or reasonably suspects, that a child, elder or dependent adult has been the victim of abuse or neglect. Existing law requires mandated reporters to report known or suspected elder and dependent adult abuse by telephone immediately or as soon as practicably possible, and by written report sent within two working days (Welfare & Institutions Code §15630).

The County of San Diego, Adult Protective Services currently receives reports of suspected abuse from mandated reporters and from members of the community on the same phone line. Due to the high volume of callers, there can be a lengthy wait before a call is answered. There is some concern that due to the long wait, members of the community who are not required to report, may hang up and not report the abuse. This could leave seniors and/or dependent adults at further risk of abuse.

**Background:**
In fiscal year 2008-09 the state reduced local assistance funding for the Adult Protective Services program by $11.4 million statewide. This represented a 10 percent reduction to the program which had not received a cost of doing business increase since 2001. Due to the state cuts and the cumulative impact of no cost of doing business increase, the number of County staff answering calls was reduced by four positions. As a result, wait times for those calling to make a report of elder and dependent adult abuse has increased and the number of callers that hung up while waiting to report abuse grew by 50 percent. Since staff was reduced in April 2008, the percent of calls that are abandoned has increased by 24 percent.

**Proposal:**
The County of San Diego is seeking a change in state law to authorize the submission of reports of suspected abuse through a secure electronic web referral system in addition to the current process (by telephone) for mandated reporters. In San Diego County, mandated reporters comprise more than 50 percent of the abuse calls. By allowing mandated reporters the option to file reports of suspected abuse through a secure electronic web referral system, it is estimated it could reduce the number of telephone reporters by half, thus reducing the wait time for phone reporting and the number of abandoned calls.

The County is requesting this web-based internet reporting option be made available for use by all counties in addition to existing telephone reporting for mandated reporters. The County of San Diego views this web referral system for reporting suspected abuse as a way to continue to improve the level of service to mandated reporters and to curtail further risk of abuse for seniors and/or dependent adults.

**Secure Internet System:**
- There is no cost to the state for this system.
- The County of San Diego system will be password protected. Mandated reporters would receive a password allowing them to enter the web referral system to report elder/dependent abuse. Additionally, mandated reporters would not be able to view any data related to other potential abuse victims.
- Mandated reporters would report the same information that is currently required to be provided by law over the telephone.
- A county’s timeframe for responding to reports of abuse is provided in law and would not change.
• The system would reduce the amount of County staff time required to take calls and process written reports.

• The County of San Diego currently uses a web referral process for In-Home Supportive Services and Case Management in Aging and Independent Services (AIS) and Public Health Services referrals to nurses.

• The Department of AIS is currently building a new software system which will include this component for web based reporting. The system will be completed in 2011.
CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: SB 747 VERSION: AMENDED APRIL 25, 2011
AUTHOR: KEHOE SPONSOR: EQUALITY CALIFORNIA
RECOMMENDED POSITION: SUPPORT IF AMENDED
SUBJECT: CONTINUING EDUCATION: LESBIAN, GAY, BISEXUAL AND TRANSGENDER PATIENTS

Existing Law:

1) Requires the director of the Department of Consumer Affairs to establish, by regulation, guidelines to prescribe components for mandatory continuing education programs administered by any board within the department. The guidelines shall be developed to ensure that mandatory continuing education is used as a means to create a more competent licensing population, thereby enhancing public protection. ((Business and Professions Code §166)

2) Requires licensees of the Board of Behavioral Sciences (Board), upon renewal of their license, to certify to the Board that he or she has completed at least 36 hours of approved continuing education in or relevant to their field of practice. (BPC §§4980.54(c), 4989.34(a), 4996.22(a), 4999.76(a)).

3) States that the system of continuing education shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served. (BPC §§ 4980.54(h)(3)(i), 4996.22(g), 4999.76(g))

This Bill:

1) Requires physicians and surgeons, registered nurses, licensed vocational nurses, psychologists, psychiatric technicians, physician assistants, nurse practitioners, certified nurse assistants, and the Board’s marriage and family therapist and clinical social worker licensees to take at least one continuing education course, between two and five hours in length, that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons. (BPC §4980.54(j), 4996.22(i)).

2) Requires the content of the course be similar to the content described in the publication of the Gay and Lesbian Medical Association titled “Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients.” (BPC §4980.54(j), 4996.22(i)).

3) Requires the Board to establish the required contents of the course by regulation, and to enforce this requirement in the same manner as it enforces other required continuing education requirements. (BPC §4980.54(j), 4996.22(i)).

4) Makes the provisions of this bill effective January 1, 2013. Persons licensed by the Board before January 1, 2013 must complete the course no later than January 1, 2017. Persons
newly licensed by the Board on and after January 1, 2013 must complete the course within four years of their initial license issuance date, or their second license renewal date, whichever occurs first. (BPC §4980.54(j), 4996.22(i)).

Comments:

1) Author’s Intent. According to the author’s office, research, studies and human experiences have demonstrated that members of the lesbian, gay, bisexual and transgender (LGBT) community receive sub-par quality medical and mental health care when compared with the health care quality provided to the general population. LGBT patients may require specialized care because of the unique nature of their medical and mental health problems.

The author notes the American Medical Association (AMA) made a public call in 1996 to improve the education of health care personnel regarding best practices for improving care provided to LGBT patients. A past president of the AMA reitered that call in 2005. The goal of this bill is to ensure that medical and mental health care providers receive training on cultural competency, sensitivity, and best practices for providing adequate care to LGBT persons.

2) Current Continuing Education Requirements. There is currently no requirement that a licensee of the Board must have continuing education which covers treatment of LGBT populations.

The Board does have several one-time continuing educational requirements that must be completed by all MFT, LCSW, and LPCC licensees. These additional courses must be completed prior to licensure or at the first renewal, depending on when the applicant began graduate study. These courses are as follows:

- Spousal/partner abuse (7 hours);
- Human Sexuality (10 hours);
- Child Abuse (7 hours);
- Substance Abuse (15 hours);
- Aging/long term care (3 hours); and
- HIV/AIDS (7 hours, currently MFTs and LCSWs only, Board is pursuing regulations to require this for LPCCs also).

All licensees must take a six-hour law and ethics course every renewal period. In total, a licensee must complete 36 hours of continuing education every renewal period.

3) Current Educational Requirements. The Board does have a requirement that may offer its licensees some exposure to LGBT issues. Applicants seeking an MFT or LPCC license who begin graduate study after August 1, 2012 or complete graduate study after December 31, 2018, must have a degree that includes instruction in “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.” (BPC §§4980.36(d)(2)(E) and 4999.33(d)(5)). There is no equivalent educational requirement for students seeking an LCSW license.

Staff research found that some schools do offer coursework covering LGBT issues. For example, JFK University offers a course titled “Healing Heterosexism and Sexual Discrimination, which is intended for psychotherapists to develop common-core cultural competency to work with the LGBT community. Philips Graduate Institute offers a Human
Diversity course within their MFT program which spends a half-day on LGBT issues. However, there is no specific requirement that graduate programs offer such a course.

4) **Qualifying Education.** If a school does offer educational coursework covering LGBT issues, this bill does not allow that coursework to be used to fulfill the proposed continuing educational requirement. Staff recommends that the following language be inserted in Sections 4980.54 and 4996.22:

§§4980.54(k), 4996.22(j) Coursework taken in fulfillment of other educational requirements for licensure, or in a separate course of study, may, at the discretion of the board, fulfill the requirement of this section. 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.

5) **Addition of Other Board Licensees.** The Board is in the process of implementing the licensure of professional clinical counselors (LPCCs). LPCCs have the same continuing education requirements as MFTs and LCSWs, with the exception that they are not currently required to take the one-time seven hour continuing education course covering the assessment and treatment of people living with HIV and AIDS. However, in February 2011 the Board directed staff to pursue regulations that would require LPCCs to complete this requirement.

LPCCs are as likely to work with LGBT patients as MFTs and LCSW licensees are, and therefore the Board may want to consider requesting an amendment be made to include LPCCs in the list of those who are required to take the course. This could best be done by adding the standard language requiring the course into B&P code section 4999.76.

Additionally, this bill does not include the Boards Licensed Educational Psychologist (LEP) licensees. LEPs are also likely to work with LGBT populations, and therefore the Board may want to consider the merits of including LEPs within the provisions of this bill as well.

6) **Recommended Position.** At its meeting on April 7, 2011, the Policy and Advocacy Committee recommended the Board take a support position on this bill, if the bill was amended to allow previous educational coursework covering LGBT issues to fulfill the requirement, and pending Board discussion on inclusion of LPCCs and LEPs in the CE requirements.

7) **Support and Opposition.**

Support:
- Equality California (Sponsor)
- California Communities United Institute
- California National Organization for Women
- California STD Controllers Association
- Dr. Susan Love Research Foundation
- Gay & Lesbian Medical Association
- Lesbian and Gay Psychotherapy Association of Southern California, Inc
- LGBT Psychotherapists Association of the San Francisco Bay Area
- Mental Health America of Northern California
- Numerous health care providers and individuals
Opposition:
- California Academy of Family Physicians
- California Association of Marriage and Family Therapists
- California Orthopedic Association
- California Psychological Association

8) **History**

2011
- Apr. 25  Set, first hearing. Hearing canceled at the request of author.
- Apr. 25  From committee with author’s amendments. Read second time and amended. Re-referred to Com. on APPR.
- Apr. 13  Set for hearing May 2.
- Apr. 4  From committee with author’s amendments. Read second time and amended. Re-referred to Com. on B., P. & E.D.
- Mar. 25  Set for hearing April 11.
- Mar. 24  Set, first hearing. Hearing canceled at the request of author.
- Mar. 18  Set for hearing April 4.
- Mar. 3  Referred to Com. on B., P. & E.D.
- Feb. 20  From printer. May be acted upon on or after March 22.
- Feb. 18  Introduced. Read first time. To Com. on RLS. for assignment. To print.

9) **Attachments**

A. “Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients” published by the Gay and Lesbian Medical Association

B. “Policy Options to Ensure that Lesbian, Gay, Bisexual and Transgender Persons in California Receive Competent Medical and Mental Health Care” by Ted Muhlhauser, Legislative Analyst for California State Senator Christine Kehoe


D. Board of Behavioral Sciences Continuing Education Requirement Chart
An act to amend Sections 2190.1, 2811.5, 2892.5, 2915, 3524.5, 4517, 4980.54, and 4996.22 of, and to add Section 2070.5 to, the Business and Professions Code, and to amend Section 1337.3 of the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST


Existing law provides for licensing and regulation of various healing arts professions and generally requires licensees to complete continuing education courses in order to remain eligible to renew their licenses or certifications. Existing law imposes various training requirements for certified nurse assistants regulated by the State Department of Public Health.

This bill would require physicians and surgeons, physician assistants, registered nurses, licensed vocational nurses, nurse practitioners, psychologists, marriage and family therapists, licensed clinical social workers, psychiatric technicians, medical assistants, and certified nurse assistants to complete at least one course of 2 to 5 hours in duration that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons, as specified. The bill would require the applicable licensing or certifying entity to enforce these requirements. The new requirements would become effective on January 1, 2013.
The people of the State of California do enact as follows:

SECTION 1. Section 2070.5 is added to the Business and Professions Code, to read:

2070.5. On and after January 1, 2013, the board shall require all medical assistants to take at least one training course that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons. The course shall be between two and five hours in duration and shall contain content similar to the content described in the publication of the Gay and Lesbian Medical Association entitled “Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients.” The board may specify the required contents of the course by regulation consistent with this section. The board shall enforce this requirement in the same manner as it enforces other requirements applicable to medical assistants.

SEC. 2.

SECTION 1. Section 2190.1 of the Business and Professions Code is amended to read:

2190.1. (a) The continuing medical education standards of Section 2190 may be met by educational activities that meet the standards of the board and serve to maintain, develop, or increase the knowledge, skills, and professional performance that a physician and surgeon uses to provide care, or improve the quality of care provided for patients, including, but not limited to, educational activities that meet any of the following criteria:

(1) Have a scientific or clinical content with a direct bearing on the quality or cost-effective provision of patient care, community or public health, or preventive medicine.

(2) Concern quality assurance or improvement, risk management, health facility standards, or the legal aspects of clinical medicine.

(3) Concern bioethics or professional ethics.

(4) Are designed to improve the physician-patient relationship.

(b) (1) On and after July 1, 2006, all continuing medical education courses shall contain curriculum that includes cultural and linguistic competency in the practice of medicine.
(2) Notwithstanding the provisions of paragraph (1), a continuing medical education course dedicated solely to research or other issues that does not include a direct patient care component and a course offered by a continuing medical education provider that is not located in this state are not required to contain curriculum that includes cultural and linguistic competency in the practice of medicine.

(3) Associations that accredit continuing medical education courses shall develop standards before July 1, 2006, for compliance with the requirements of paragraph (1). The associations may develop these standards in conjunction with an advisory group that has expertise in cultural and linguistic competency issues.

(4) A physician and surgeon who completes a continuing education course meeting the standards developed pursuant to paragraph (3) satisfies the continuing education requirement for cultural and linguistic competency.

(c) In order to satisfy the requirements of subdivision (b), continuing medical education courses shall address at least one or a combination of the following:

(1) Cultural competency. For the purposes of this section, “cultural competency” means a set of integrated attitudes, knowledge, and skills that enables a health care professional or organization to care effectively for patients from diverse cultures, groups, and communities. At a minimum, cultural competency is recommended to include the following:

(A) Applying linguistic skills to communicate effectively with the target population.

(B) Utilizing cultural information to establish therapeutic relationships.

(C) Eliciting and incorporating pertinent cultural data in diagnosis and treatment.

(D) Understanding and applying cultural and ethnic data to the process of clinical care.

(2) Linguistic competency. For the purposes of this section, “linguistic competency” means the ability of a physician and surgeon to provide patients who do not speak English or who have limited ability to speak English, direct communication in the patient’s primary language.

(3) A review and explanation of relevant federal and state laws and regulations regarding linguistic access, including, but not
limited to, the federal Civil Rights Act (42 U.S.C. Sec. 1981, et seq.), Executive Order 13166 of August 11, 2000, of the President of the United States, and the Dymally-Alatorre Bilingual Services Act (Chapter 17.5 (commencing with Section 7290) of Division 7 of Title 1 of the Government Code).

(d) On and after January 1, 2013, the board shall require all of its licensees under this chapter to take at least one continuing education course that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons. Persons licensed by the board before January 1, 2013, shall complete the course no later than January 1, 2017. Persons who are newly licensed by the board on and after January 1, 2013, shall complete the course within four years of their initial license issuance date or their second license renewal date, whichever occurs first. The course shall be between two and five hours in duration and shall contain content similar to the content described in the publication of the Gay and Lesbian Medical Association entitled “Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients.” The board may specify the required contents of the course by regulation consistent with this subdivision. The board shall enforce this requirement in the same manner as it enforces other required continuing education requirements.

(e) Notwithstanding subdivision (a), educational activities that are not directed toward the practice of medicine, or are directed primarily toward the business aspects of medical practice, including, but not limited to, medical office management, billing and coding, and marketing shall not be deemed to meet the continuing medical education standards for licensed physicians and surgeons.

(f) Educational activities that meet the content standards set forth in this section and are accredited by the California Medical Association or the Accreditation Council for Continuing Medical Education may be deemed by the Division of Licensing to meet its continuing medical education standards.

SEC. 2. Section 2811.5 of the Business and Professions Code is amended to read:

2811.5. (a) Each person renewing his or her license under Section 2811 shall submit proof satisfactory to the board that,
during the preceding two-year period, he or she has been informed of the developments in the registered nurse field or in any special area of practice engaged in by the licensee, occurring since the last renewal thereof, either by pursuing a course or courses of continuing education in the registered nurse field or relevant to the practice of the licensee, and approved by the board, or by other means deemed equivalent by the board.

(b) For purposes of this section, the board shall, by regulation, establish standards for continuing education. The standards shall be established in a manner to assure that a variety of alternative forms of continuing education are available to licensees, including, but not limited to, academic studies, in-service education, institutes, seminars, lectures, conferences, workshops, extension studies, and home study programs. The standards shall take cognizance of specialized areas of practice. The continuing education standards established by the board shall not exceed 30 hours of direct participation in a course or courses approved by the board, or its equivalent in the units of measure adopted by the board.

(c) The board shall encourage continuing education in spousal or partner abuse detection and treatment. In the event the board establishes a requirement for continuing education coursework in spousal or partner abuse detection or treatment, that requirement shall be met by each licensee within no more than four years from the date the requirement is imposed.

(d) In establishing standards for continuing education, the board shall consider including a course in the special care needs of individuals and their families facing end-of-life issues, including, but not limited to, all of the following:

(1) Pain and symptom management.
(2) The psycho-social dynamics of death.
(3) Dying and bereavement.
(4) Hospice care.

(e) In establishing standards for continuing education, the board may include a course on pain management.

(f) This section shall not apply to licensees during the first two years immediately following their initial licensure in California or any other governmental jurisdiction.

(g) On and after January 1, 2013, the board shall require all of its licensees to take at least one continuing education course that provides instruction on cultural competency, sensitivity, and best
practices for providing adequate care to lesbian, gay, bisexual, and
transgender persons. Persons licensed by the board before January
1, 2013, shall complete the course no later January 1, 2017. Persons
who are newly licensed by the board on and after January 1, 2013,
shall complete the course within four years of their initial license
issuance date or their second license renewal date, whichever
occurs first. The course shall be between two and five hours in
duration and shall contain content similar to the content described
in the publication of the Gay and Lesbian Medical Association
entitled “Guidelines for Care of Lesbian, Gay, Bisexual and
Transgender Patients.” The board may specify the required contents
of the course by regulation consistent with this subdivision. The
board shall enforce this requirement in the same manner as it
enforces other required continuing education requirements.
(h) The board may, in accordance with the intent of this section,
make exceptions from continuing education requirements for
licensees residing in another state or country, or for reasons of
health, military service, or other good cause.
(i) This section shall apply to all persons licensed under this
chapter, including nurse practitioners.

SEC. 4.  
SEC. 3. Section 2892.5 of the Business and Professions Code
is amended to read:
2892.5. (a) Each person renewing his or her license under the
provisions of this chapter shall submit proof satisfactory to the
board that, during the preceding two-year period, he or she has
informed himself or herself of developments in the vocational
nurse field or in any special area of vocational nurse practice,
occurring since the issuance of his or her certificate, or the last
renewal thereof, whichever last occurred, either by pursuing a
course or courses of continuing education approved by the board
in the vocational nurse field or relevant to the practice of such
licensee, and approved by the board; or by other means deemed
equivalent by the board.
(b) For purposes of this section, the board shall, by regulation,
establish standards for continuing education. The standards shall
be established in a manner to assure that a variety of alternative
forms of continuing education are available to licensees including,
but not limited to, academic studies, in-service education, institutes,
seminars, lectures, conferences, workshops, extension studies, and

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home study programs. The standards shall take cognizance of specialized areas of practice. The continuing education standards established by the board shall not exceed 30 hours of direct participation in a course or courses approved by the board, or its equivalent in the units of measure adopted by the board.

(c) This section shall not apply to the first license renewal following the initial issuance of a license.

(d) On and after January 1, 2013, the board shall require all of its licensees to take at least one continuing education course that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons. Persons licensed by the board before January 1, 2013, shall complete the course no later than January 1, 2017. Persons who are newly licensed by the board on and after January 1, 2013, shall complete the course within four years of their initial license issuance date or their second license renewal date, whichever occurs first. The course shall be between two and five hours in duration and shall contain content similar to the content described in the publication of the Gay and Lesbian Medical Association entitled “Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients.” The board may specify the required contents of the course by regulation consistent with this subdivision. The board shall enforce this requirement in the same manner as it enforces other required continuing education requirements.

(e) The board may, in accordance with the intent of this section, make exceptions from continuing education for licensees residing in another state or country, or for reasons of health, military service, or other good cause.

SEC. 5.

SEC. 4. Section 2915 of the Business and Professions Code is amended to read:

2915. (a) Except as provided in this section, on or after January 1, 1996, the board shall not issue any renewal license unless the applicant submits proof that he or she has completed no less than 18 hours of approved continuing education in the preceding year. On or after January 1, 1997, except as provided in this section, the board shall issue renewal licenses only to those applicants who have completed 36 hours of approved continuing education in the preceding two years.
(b) Each person renewing his or her license issued pursuant to this chapter shall submit proof of compliance with this section to the board. False statements submitted pursuant to this section shall be a violation of Section 2970.

c) A person applying for relicensure or for reinstatement to an active license status shall certify under penalty of perjury that he or she is in compliance with this section.

d)(1) The continuing education requirement shall include, but shall not be limited to, courses required pursuant to Sections 25 and 28. The requirement may include courses pursuant to Sections 32 and 2914.1.

(2) (A) The board shall require a licensed psychologist who began graduate study prior to January 1, 2004, to take a continuing education course during his or her first renewal period after the operative date of this section in spousal or partner abuse assessment, detection, and intervention strategies, including community resources, cultural factors, and same gender abuse dynamics. Equivalent courses in spousal or partner abuse assessment, detection, and intervention strategies taken prior to the operative date of this section or proof of equivalent teaching or practice experience may be submitted to the board and at its discretion, may be accepted in satisfaction of this requirement.

(B) Continuing education courses taken pursuant to this paragraph shall be applied to the 36 hours of approved continuing education required under subdivision (a).

(C) A licensed psychologist whose practice does not include the direct provision of mental health services may apply to the board for an exemption from the requirements of this paragraph.

(3) Continuing education instruction approved to meet the requirements of this section shall be completed within the State of California, or shall be approved for continuing education credit by the American Psychological Association or its equivalent as approved by the board.

e) The board may establish a policy for exceptions from the continuing education requirement of this section.

(f) The board may recognize continuing education courses that have been approved by one or more private nonprofit organizations that have at least 10 years’ experience managing continuing education programs for psychologists on a statewide basis, including, but not limited to:
(1) Maintaining and managing related records and data.
(2) Monitoring and approving courses.
(g) The board shall adopt regulations as necessary for implementation of this section.
(h) A licensed psychologist shall choose continuing education instruction that is related to the assessment, diagnosis, and intervention for the client population being served or to the fields of psychology in which the psychologist intends to provide services, that may include new theoretical approaches, research, and applied techniques. Continuing education instruction shall include required courses specified in subdivision (d).
(i) A psychologist shall not practice outside his or her particular field or fields of competence as established by his or her education, training, continuing education, and experience.
(j) On and after January 1, 2013, the board shall require every person licensed under this chapter to take at least one continuing education course that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons. Persons licensed by the board before January 1, 2013, shall complete the course no later January 1, 2017. Persons who are newly licensed by the board under this chapter on and after January 1, 2013, shall complete the course within four years of their initial license issuance date or their second license renewal date, whichever occurs first. The course shall be between two and five hours in duration and shall contain content similar to the content described in the publication of the Gay and Lesbian Medical Association entitled “Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients.” The board may specify the required contents of the course by regulation consistent with this subdivision. The board shall enforce this requirement in the same manner as it enforces other required continuing education requirements.
(k) The administration of this section may be funded through professional license fees and continuing education provider and course approval fees, or both. The fees related to the administration of this section shall not exceed the costs of administering the corresponding provisions of this section.
(l) Continuing education credit may be approved for those licensees who serve as commissioners on any examination pursuant to Section 2947, subject to limitations established by the board.
SEC. 6. 
SEC. 5. Section 3524.5 of the Business and Professions Code is amended to read:
3524.5. (a) The committee may require a licensee to complete continuing education as a condition of license renewal under Section 3523 or 3524. The committee shall not require more than 50 hours of continuing education every two years. The committee shall, as it deems appropriate, accept certification by the National Commission on Certification of Physician Assistants (NCCPA), or another qualified certifying body, as determined by the committee, as evidence of compliance with continuing education requirements.

(b) On and after January 1, 2013, the board shall require all of its licensees under this chapter to take at least one continuing education course that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons. Persons licensed by the board before January 1, 2013, shall complete the course no later January 1, 2017. Persons who are newly licensed by the board on and after January 1, 2013, shall complete the course within four years of their initial license issuance date or their second license renewal date, whichever occurs first. The course shall be between two and five hours in duration and shall contain content similar to the content described in the publication of the Gay and Lesbian Medical Association entitled “Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients.” The board may specify the required contents of the course by regulation consistent with this subdivision. The board shall enforce this requirement in the same manner as it enforces other required continuing education requirements.

SEC. 7. 
SEC. 6. Section 4517 of the Business and Professions Code is amended to read:
4517. (a) The board may, in its discretion, provide for a continuing education program in connection with the professional functions and courses described in this chapter. The number of course hours that the board may require in a continuing education program shall not exceed the number of course hours prescribed for licensed vocational nurses pursuant to Section 2892.5.
(b) On and after January 1, 2013, the board shall require all of its licensees to take at least one continuing education course that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons. Persons licensed by the board before January 1, 2013, shall complete the course no later January 1, 2017. Persons who are newly licensed by the board on and after January 1, 2013, shall complete the course within four years of their initial license issuance date or their second license renewal date, whichever occurs first. The course shall be between two and five hours in duration and shall contain content similar to the content described in the publication of the Gay and Lesbian Medical Association entitled “Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients.” The board may specify the required contents of the course by regulation consistent with this subdivision. The board shall enforce this requirement in the same manner as it enforces other required continuing education requirements.

SEC. 8.

SEC. 7. Section 4980.54 of the Business and Professions Code is amended to read:

4980.54. (a) The Legislature recognizes that the education and experience requirements in this chapter constitute only minimal requirements to assure that an applicant is prepared and qualified to take the licensure examinations as specified in subdivision (d) of Section 4980.40 and, if he or she passes those examinations, to begin practice.

(b) In order to continuously improve the competence of licensed marriage and family therapists and as a model for all psychotherapeutic professions, the Legislature encourages all licensees to regularly engage in continuing education related to the profession or scope of practice as defined in this chapter.

(c) Except as provided in subdivision (e), the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 36 hours of approved continuing education in or relevant to the field of marriage and family therapy in the preceding two years, as determined by the board.

(d) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completion of
required continuing education coursework for a minimum of two
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years and shall make these records available to the board for
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auditing purposes upon request.
(e) The board may establish exceptions from the continuing
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education requirements of this section for good cause, as defined
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by the board.
(f) The continuing education shall be obtained from one of the
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following sources:
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(1) An accredited school or state-approved school that meets
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the requirements set forth in Section 4980.36 or 4980.37. Nothing
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in this paragraph shall be construed as requiring coursework to be
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offered as part of a regular degree program.
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(2) Other continuing education providers, including, but not
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limited to, a professional marriage and family therapist association,
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a licensed health facility, a governmental entity, a continuing
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education unit of an accredited four-year institution of higher
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learning, or a mental health professional association, approved by
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the board.
(g) The board shall establish, by regulation, a procedure for
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approving providers of continuing education courses, and all
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providers of continuing education, as described in paragraphs (1)
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and (2) of subdivision (f), shall adhere to procedures established
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by the board. The board may revoke or deny the right of a provider
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to offer continuing education coursework pursuant to this section
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for failure to comply with the requirements of this section or any
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regulation adopted pursuant to this section.
(g) Training, education, and coursework by approved providers
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shall incorporate one or more of the following:
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(1) Aspects of the discipline that are fundamental to the
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understanding or the practice of marriage and family therapy.
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(2) Aspects of the discipline of marriage and family therapy in
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which significant recent developments have occurred.
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(3) Aspects of other disciplines that enhance the understanding
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or the practice of marriage and family therapy.
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(i) A system of continuing education for licensed marriage and
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family therapists shall include courses directly related to the
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diagnosis, assessment, and treatment of the client population being
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served.
(j) On and after January 1, 2013, the board shall require all of
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its licensees to take at least one continuing education course that
provides instruction on cultural competency, sensitivity, and best
practices for providing adequate care to lesbian, gay, bisexual, and
transgender persons. Persons licensed by the board before January
1, 2013, shall complete the course no later January 1, 2017. Persons
who are newly licensed by the board on and after January 1, 2013,
shall complete the course within four years of their initial license
issuance date or their second license renewal date, whichever
occurs first. The course shall be between two and five hours in
duration and shall contain content similar to the content described
in the publication of the Gay and Lesbian Medical Association
entitled “Guidelines for Care of Lesbian, Gay, Bisexual and
Transgender Patients.” The board may specify the required contents
of the course by regulation consistent with this subdivision. The
board shall enforce this requirement in the same manner as it
enforces other required continuing education requirements.

(k) The board shall, by regulation, fund the administration of
this section through continuing education provider fees to be
deposited in the Behavioral Sciences Fund. The fees related to the
administration of this section shall be sufficient to meet, but shall
not exceed, the costs of administering the corresponding provisions
of this section. For purposes of this subdivision, a provider of
continuing education as described in paragraph (1) of subdivision
(f) shall be deemed to be an approved provider.

(l) The continuing education requirements of this section shall
comply fully with the guidelines for mandatory continuing
education established by the Department of Consumer Affairs
pursuant to Section 166.

SEC. 8. Section 4996.22 of the Business and Professions Code
is amended to read:

4996.22. (a) (1) Except as provided in subdivision (c), the
board shall not renew any license pursuant to this chapter unless
the applicant certifies to the board, on a form prescribed by the
board, that he or she has completed not less than 36 hours of
approved continuing education in or relevant to the field of social
work in the preceding two years, as determined by the board.

(2) The board shall not renew any license of an applicant who
began graduate study prior to January 1, 2004, pursuant to this
chapter unless the applicant certifies to the board that during the
applicant’s first renewal period after the operative date of this
section, he or she completed a continuing education course in spousal or partner abuse assessment, detection, and intervention strategies, including community resources, cultural factors, and same gender abuse dynamics. On and after January 1, 2005, the course shall consist of not less than seven hours of training. Equivalent courses in spousal or partner abuse assessment, detection, and intervention strategies taken prior to the operative date of this section or proof of equivalent teaching or practice experience may be submitted to the board and at its discretion, may be accepted in satisfaction of this requirement. Continuing education courses taken pursuant to this paragraph shall be applied to the 36 hours of approved continuing education required under paragraph (1).

(b) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(c) The board may establish exceptions from the continuing education requirement of this section for good cause as defined by the board.

(d) The continuing education shall be obtained from one of the following sources:

1. An accredited school of social work, as defined in Section 4991.2, or a school or department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

2. Other continuing education providers, including, but not limited to, a professional social work association, a licensed health facility, a governmental entity, a continuing education unit of an accredited four-year institution of higher learning, and a mental health professional association, approved by the board.

(e) The board shall establish, by regulation, a procedure for approving providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2) of subdivision (d), shall adhere to the procedures established by the board. The board may revoke or deny the right
of a provider to offer continuing education coursework pursuant
to this section for failure to comply with the requirements of this
section or any regulation adopted pursuant to this section.
(f) Training, education, and coursework by approved providers
shall incorporate one or more of the following:
(1) Aspects of the discipline that are fundamental to the
understanding, or the practice, of social work.
(2) Aspects of the social work discipline in which signifi-
cant recent developments have occurred.
(3) Aspects of other related disciplines that enhance the
understanding, or the practice, of social work.
(g) A system of continuing education for licensed clinical social
workers shall include courses directly related to the diagnosis,
assessment, and treatment of the client population being served.
(h) The continuing education requirements of this section shall
comply fully with the guidelines for mandatory continuing
education established by the Department of Consumer Affairs
pursuant to Section 166.
(i) On and after January 1, 2013, the board shall require all of
its licensees to take at least one continuing education course that
provides instruction on cultural competency, sensitivity, and best
practices for providing adequate care to lesbian, gay, bisexual, and
transgender persons. Persons licensed by the board before January
1, 2013, shall complete the course no later January 1, 2017. Persons
who are newly licensed by the board on and after January 1, 2013,
shall complete the course within four years of their initial license
issuance date or their second license renewal date, whichever
occurs first. The course shall be between two and five hours in
duration and shall contain content similar to the content described
in the publication of the Gay and Lesbian Medical Association
entitled “Guidelines for Care of Lesbian, Gay, Bisexual and
Transgender Patients.” The board may specify the required contents
of the course by regulation consistent with this subdivision. The
board shall enforce this requirement in the same manner as it
enforces other required continuing education requirements.
(j) The board may adopt regulations as necessary to implement
this section.
(k) The board shall, by regulation, fund the administration of
this section through continuing education provider fees to be
deposited in the Behavioral Science Examiners Fund. The fees
related to the administration of this section shall be sufficient to
meet, but shall not exceed, the costs of administering the
corresponding provisions of this section. For purposes of this
subdivision, a provider of continuing education as described in
paragraph (1) of subdivision (d) shall be deemed to be an approved
provider.

SEC. 10.
SEC. 9. Section 1337.3 of the Health and Safety Code is
amended to read:
1337.3. (a) The state department shall prepare and maintain
a list of approved training programs for nurse assistant certification.
The list shall include training programs conducted by skilled
nursing or intermediate care facilities, as well as local agencies
and education programs. In addition, the list shall include
information on whether a training center is currently training nurse
assistants, their competency test pass rates, and the number of
nurse assistants they have trained. Clinical portions of the training
programs may be obtained as on-the-job training, supervised by a
qualified director of staff development or licensed nurse.
(b) It shall be the duty of the state department to inspect a
representative sample of training programs. The state department
shall protect consumers and students in any training program
against fraud, misrepresentation, or other practices that may result
in improper or excessive payment of funds paid for training
programs. In evaluating a training center’s training program, the
state department shall examine each training center’s trainees’
competency test passage rate, and require each program to maintain
an average 60 percent test score passage rate to maintain its
participation in the program. The average test score passage rate
shall be calculated over a two-year period. If the state department
determines that any training program is not complying with
regulations or is not meeting the competency passage rate
requirements, notice thereof in writing shall be immediately given
to the program. If the program has not been brought into
compliance within a reasonable time, the program may be removed
from the approved list and notice thereof in writing given to it.
Programs removed under this article shall be afforded an
opportunity to request reinstatement of program approval at any
time. The state department’s district offices shall inspect
facility-based centers as part of their annual survey.
(c) Notwithstanding Section 1337.1, the approved training program shall consist of at least the following:

1. A 16-hour orientation program to be given to newly employed nurse assistants prior to providing direct patient care, and consistent with federal training requirements for facilities participating in the Medicare or Medicaid programs.

2. (A) A certification training program consisting of at least 60 classroom hours of training on basic nursing skills, patient safety and rights, the social and psychological problems of patients, and elder abuse recognition and reporting pursuant to subdivision (e) of Section 1337.1. The 60 classroom hours of training may be conducted within a skilled nursing facility, an intermediate care facility, or an educational institution.

   (B) In addition to the 60 classroom hours of training required under subparagraph (A), the certification program shall also consist of 100 hours of supervised and on-the-job training clinical practice. The 100 hours may consist of normal employment as a nurse assistant under the supervision of either the director of staff development or a licensed nurse qualified to provide nurse assistant training who has no other assigned duties while providing the training.

3. At least two hours of the 60 hours of classroom training and at least four hours of the 100 hours of the supervised clinical training shall address the special needs of persons with developmental and mental disorders, including mental retardation, Alzheimer’s disease, cerebral palsy, epilepsy, dementia, Parkinson’s disease, and mental illness.

4. On and after January 1, 2013, at least two, but not more than five, hours of the classroom training shall provide instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons. Persons certified by the state department under this article before January 1, 2013, shall complete the course no later January 1, 2017. Persons who are newly certified by the state department under this article on and after January 1, 2013, shall complete the course within four years of their initial certificate issuance date or their second certificate renewal date, whichever occurs first. The instruction shall contain content similar to the content described in the publication of the Gay and Lesbian Medical Association entitled “Guidelines for Care of Lesbian, Gay, Bisexual and
Transgender Patients.” The state department may specify the required contents of the course by regulation consistent with this paragraph. The state department shall enforce this requirement in the same manner as it enforces other required training requirements.

(d) The state department, in consultation with the State Department of Education and other appropriate organizations, shall develop criteria for approving training programs, that includes program content for orientation, training, inservice and the examination for testing knowledge and skills related to basic patient care services and shall develop a plan that identifies and encourages career ladder opportunities for certified nurse assistants. This group shall also recommend, and the department shall adopt, regulation changes necessary to provide for patient care when facilities utilize noncertified nurse assistants who are performing direct patient care. The requirements of this subdivision shall be established by January 1, 1989.

(e) On or before January 1, 2004, the state department, in consultation with the State Department of Education, the American Red Cross, and other appropriate organizations, shall do the following:

1. Review the current examination for approved training programs for certified nurse assistants to ensure the accurate assessment of whether a nurse assistant has obtained the required knowledge and skills related to basic patient care services.

2. Develop a plan that identifies and encourages career ladder opportunities for certified nurse assistants, including the application of on-the-job post-certification hours to educational credits.

(f) A skilled nursing or intermediate care facility shall determine the number of specific clinical hours within each module identified by the state department required to meet the requirements of subdivision (d), subject to subdivisions (b) and (c). The facility shall consider the specific hours recommended by the state department when adopting the certification training program required by this chapter.

(g) This article shall not apply to a program conducted by any church or denomination for the purpose of training the adherents of the church or denomination in the care of the sick in accordance with its religious tenets.

(h) The Chancellor of the California Community Colleges shall provide to the state department a standard process for approval of
college credit. The state department shall make this information available to all training programs in the state.
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CREATING A WELCOMING CLINICAL ENVIRONMENT
CREATING A WELCOMING CLINICAL ENVIRONMENT FOR LESBIAN, GAY, BISEXUAL, AND TRANSGENDER (LGBT) PATIENTS

Background

Studies show that lesbian, gay, bisexual, transgender and (LGBT) populations, in addition to having the same basic health needs as the general population, experience health disparities and barriers related to sexual orientation* and/or gender identity or expression. Many avoid or delay care or receive inappropriate or inferior care because of perceived or real homophobia, biphobia, transphobia, and discrimination by health care providers and institutions.

Homophobia in medical practice is a reality. A 1998 survey of nursing students showed that 8–12% “despised” lesbian, gay, and bisexual (LGB) people, 5–12% found them “disgusting,” and 40–43% thought LGB people should keep their sexuality private.¹

Health care providers can take positive steps to promote the health of their LGBT patients by examining their practices, offices, policies and staff training for ways to improve access to quality health care for LGBT people.

*the term sexual orientation is used in this document to mean sexual orientation identities, behaviors, and/or attractions, all of which are important in the health care context.
There are some simple ways to make your practice environment more welcoming and safe for your LGBT patients. Here are a few ideas to update your physical environment, add or change intake and health history form questions, improve provider-patient discussions, and increase staff’s knowledge about and sensitivity to your LGBT patients. We hope you find this tool useful.

Create a Welcoming Environment

Lesbian, gay, bisexual, and transgender (LGBT) patients often “scan” an office for clues to help them determine what information they feel comfortable sharing with their health care provider.

Participating in provider referral programs through LGBT organizations (e.g., www.glma.org, www.gayhealth.com, or local LGBT organizations) or advertising your practice in LGBT media can create a welcoming environment even before a patient enters the door.

If your office develops brochures or other educational materials, or conducts trainings, make sure that these include relevant information for LGBT patients.

Open dialogue with a patient about their gender identity/expression, sexual orientation, and/or sexual practices means more relevant and effective care.

You may want to implement some of the following suggestions as appropriate for the type and location of your office:

- Post rainbow flag, pink triangle, unisex bathroom signs, or other LGBT-friendly symbols or stickers.
- Exhibit posters showing racially and ethnically diverse same-sex couples or transgender people. Or posters from non-profit LGBT or HIV/AIDS organizations.
- Display brochures (multilingual when possible and appropriate) about LGBT health concerns, such as breast cancer, safe sex, hormone therapy, mental health, substance use, and sexually transmitted diseases (STDs—also called sexually transmitted infections or STIs such as HIV/AIDS, syphilis, and Hepatitis A and B).
  See Resources section for where to find brochures and other materials.
- Disseminate or visibly post a non-discrimination statement stating that equal care will be provided to all patients, regardless of age, race, ethnicity, physical ability or attributes, religion, sexual orientation, or gender identity/expression.
- Acknowledge relevant days of observance in your practice such as World AIDS Day, LGBT Pride Day, and National Transgender Day of Remembrance.
- Display LGBT-specific media, including local or national magazines or newsletters about and for LGBT and HIV-positive individuals.
  See Resources section
General Guidelines for Forms and Patient-Provider Discussions

Filling out the intake form gives patients one of their first and most important impressions of your office. The experience sets the tone for how comfortable a patient feels being open about their sexual orientation or gender identity/expression.

On page xx are recommendations for questions you may want to consider adding to your standard intake and health history forms, or—ideally—discuss with the patient while taking an oral history. Examples include more inclusive choices for answers to questions, open-ended questions, and adding “partner” wherever the word “spouse” is used. The following are additional topics for possible inclusion in health history forms or to help a provider with in-person discussions with LGBT patients:

◆ Intake forms should use the term “relationship status” instead of “marital status,” including options like “partnered.” When asking—on the form or verbally—about a patient’s significant other, use terms such as “partner,” in addition to “spouse” and/or “husband/wife.”

◆ Adding a “transgender” option to the male/female check boxes on your intake form can help capture better information about transgender patients, and will be an immediate sign of acceptance to that person.

◆ As with all patient contacts, approach the interview showing empathy, open-mindedness, and without rendering judgment.

◆ Prepare now to treat a transgender patient someday. Health care providers’ ignorance, surprise, or discomfort as they treat transgender people may alienate patients and result in lower quality or inappropriate care, as well as deter them from seeking future medical care.

◆ Transgender individuals may have had traumatic past experiences with doctors causing fear or mistrust. Therefore, developing rapport and trust with transgender patients may take longer and require added sensitivity from the provider.

◆ When talking with transgender people, ask questions necessary to assess the issue, but avoid unrelated probing. Explaining why you need information can help avoid the perception of intrusion, for example: “To help assess your health risks, can you tell me about any history you have had with hormone use?”

◆ Be aware of additional barriers caused by differences in socioeconomic status, cultural norms, racial/ethnic discrimination, age, physical ability, and geography. Do not make assumptions about literacy, language capacity, and comfort with direct communication.

◆ When talking about sexual or relationship partners, use gender-neutral language such as “partner(s)” or “significant other(s).” Ask open-ended questions, and avoid making assumptions about the gender of a patient’s partner(s) or about sexual behavior(s). Use the same language that a patient does to describe self, sexual partners, relationships, and identity.
When discussing sexual history, it is very important to reflect patients’ language and terminology about their partners and behaviors. Many people do not define themselves through a sexual orientation label, yet may have sex with persons of their same sex or gender, or with more than one sex. For example: some men who have sex with men (MSM), especially African American and Latino men, may identify as heterosexual and have both female and male partners.

When assessing the sexual history of transgender people, there are several special considerations:

1. do not make assumptions about their behavior or bodies based on their presentation;

2. ask if they have had any gender confirmation surgeries to understand what risk behaviors might be possible; and

3. understand that discussion of genitals or sex acts may be complicated by a disassociation with their body, and this can make the conversation particularly sensitive or stressful to the patient.

Ask the patient to clarify any terms or behaviors with which you are unfamiliar, or repeat a patient’s term with your own understanding of its meaning, to make sure you have no miscommunication.

It is important to discuss sexual health issues openly with your patients. Non-judgmental questions about sexual practices and behaviors are more important than asking about sexual orientation or gender identity/expression.

For additional information on sexual risk assessment for LGBT populations, see Resources section.

Be aware that sexual behavior of a bisexual person may not differ significantly from that of heterosexual or lesbian/gay people. They may be monogamous for long periods of time and still identify as bisexual; they may be in multiple relationships with the full knowledge and consent of their partners. However, they may have been treated as confused, promiscuous, or even dangerous. They may be on guard against health care providers who assume that they are “sick” simply because they have sexual relationships with more than one sex. Yet they may also, in fact, lack comprehensive safer-sex information that reflects their sexual practices and attitudes, and may benefit from thorough discussions about sexual safety.

When discussing sexual practices and safer sex avoid language that may presume heterosexuality or discriminate.

There are so few trained experts in transgender health that you will often have to become that expert. Likewise, providers who treat transgender patients often have to build the base of specialty-care referrals by pre-screening other providers for sensitivity or guiding them to educational resources. Do not be afraid to tell your patient of your inexperience. Your willingness to become educated will often stand out from their previous healthcare experiences.
Confidentiality

Encourage openness by explaining that the patient-provider discussion is confidential and that you need complete and accurate information to have an understanding of the patient’s life in order to provide appropriate care. Ensure that the conversation will remain confidential and specify what, if any, information will be retained in the individual’s medical records.

Developing and distributing a written confidentiality statement will encourage LGBT and other patients to disclose information pertinent to their health knowing that it is protected. Key elements of such a policy include:

1. The information covered
2. Who has access to the medical record
3. How test results remain confidential
4. Policy on sharing information with insurance companies
5. Instances when maintaining confidentiality is not possible

Display the confidentiality statement prominently and provide it in writing to every patient. Consider having staff agree to the statement in writing.

Some Specific Issues to Discuss with LGBT Patients

Homophobia, biphobia, transphobia, discrimination, harassment, stigma and isolation related to sexual orientation and/or gender identity/expression can contribute to depression, stress and anxiety in LGBT people. Conduct depression and mental health screening as appropriate, and do not discount these sources of stress for your LGBT patients.

◆ Explore the degree to which LGBT patients are “out” to their employers, family, and friends, and/or the extent of social support or participation in community. One’s level of identification with community in many cases strongly correlates with decreased risk for STDs (including HIV) and improved mental health.

◆ Understand that LGBT people are particularly vulnerable to social stresses that lead to increased tobacco and substance use. A recent large study showed GBT men smoked 50% more than other men, and LBT women smoked almost 200% more than other women. Emphasis on other health issues may leave many people unaware of the disproportionate impact of tobacco in this population. Be prepared to intervene and provide treatment options. Likewise, explore whether LGBT patients are dealing with social stress through alcohol or drug use and be prepared to present treatment options. Social stress may also contribute to body image, exercise, and eating habits.

◆ Discuss safer sex techniques and be prepared to answer questions about STDs and HIV transmission risk for various sexual activities relevant to LGBT people.
If a female patient identifies as lesbian, or indicates a female sexual partner, do not assume that she has never had a male sexual partner, has no children, has never been pregnant, or has little or no risk of STDs. If a male patient identifies as gay or bisexual, or identifies a male sexual partner, do not assume that the patient has never had a female sexual partner or has no children. Do not make assumptions about past, current, and future sexual behavior.

Rates of syphilis are rising among MSM in some areas. Other STDs among MSM continue to be of concern to public health officials. The CDC now recommends annual screening of MSM for syphilis, gonorrhea, chlamydia, HIV, and immunization against hepatitis A and B for those MSM who are not already immune. If patients do not have coverage for vaccination, refer them to a community clinic or STD clinic offering free or low-cost vaccination.

Transgender people are sometimes subject to the most extreme levels of social exclusion. This can destabilize individuals and create a host of adverse health outcomes. Risks and response behaviors to watch out for include: cycling in and out of employment (and therefore health insurance); having a history of interrupted medical care; avoiding medical care; pursuing alternate gender confirmation therapies (like injecting silicone or taking black market hormones); engaging in survival sex; interrupted education; social isolation; trauma; and extreme poverty. Health interventions will need to consider the aggregate impact of health risks resulting from this stigma.

Conduct violence screening: LGBT people are often targets of harassment and violence, and LGBT people are not exempt from intimate partner/domestic violence. Individuals being battered may fear being “outed,” i.e., that if they report the violence to providers or authorities, their batterer could retaliate by telling employers, family, or others that they are gay. Assure the patient of confidentiality to the extent possible depending on your state laws regarding mandatory reporting.

Ask all patients—men and women—violence screening questions in a gender neutral way:

- Have you ever been hurt (physically or sexually) by someone you are close to or involved with, or by a stranger?
- Are you currently being hurt by someone you are close to or involved with?
- Have you ever experienced violence or abuse?
- Have you ever been sexually assaulted/raped?

Transgender people who are visibly gender variant may be exposed to a very high routine level of violence. For this population, the assessment of risk should be much more in-depth. If a person reports frequent violence, be sure to explore health issues related to long-term and post-traumatic stress.

Regardless of whether a transgender person is visibly gender variant, they may experience trauma, increased stress, and direct grief as a result of violence against other community
members. Asking about possible associative trauma can help identify health risks.

**Language**

- Listen to your patients and how they describe their own sexual orientation, partner(s) and relationship(s), and reflect their choice of language. Be aware that although many LGBT people may use words such as “queer,” “dyke,” and “fag” to describe themselves, these and other words have been derogatory terms used against LGBT individuals. Although individuals may have reclaimed the terms for themselves, they are not appropriate for use by health care providers who have not yet established a trusting and respectful rapport with LGBT patients. If you are in doubt as to how to refer to a patient, ask what word or phrase they prefer.

- Avoid using the term “gay” with patients even if they have indicated a same-sex or same-gender sexual partner. If patients themselves have not indicated a particular identity or have indicated a sexual orientation other than “gay,” using this term may cause alienation and mistrust that will interfere with information-gathering and appropriate care. The key is to follow the patient’s lead about their self-description (which builds respect and trust) while exploring how this relates to their current and potential medical needs.

- Young people as well as adults may be unlikely to self-identify using traditional sexual orientation labels such as gay, lesbian, or bisexual. While some may identify as “queer,” others may not choose any label at all.

- Respect transgender patients by making sure all office staff is trained to use their preferred pronoun and name. Clearly indicate this information on their medical record in a manner that allows you to easily reference it for future visits.

The Resources section includes web sites and documents that provide definitions and background information related to sexual orientation and gender identity/expression.

**Staff Sensitivity and Training**

- When possible, it is helpful to have openly lesbian, gay, bisexual, and transgender people as staff. They can provide valuable knowledge and perspectives about serving LGBT patients, as well as help patients feel represented and comfortable.

- It is especially important to train all front-line staff in office standards of respect towards transgender people, including: using their chosen name, and referring to them by their chosen pronoun.

- Circulate these Guidelines to all administrative, nursing, and clinical staff. Training for all staff is critical to creating and maintaining practice environments deemed safe for LGBT patients. Training should be periodic to address staff changes and keep all staff up-to-date. Designate an on-site LGBT resource person to answer any questions that arise in the interim.
Topics to include in a staff training program should include:

1 Use of appropriate language when addressing or referring to patients and/or their significant others

2 Learning how to identify and challenge any internalized discriminatory beliefs about LGBT people

3 Basic familiarity with important LGBT health issues (e.g., impacts of homophobia, discrimination, harassment, and violence; mental health and depression; substance abuse; safe sex; partner violence; HIV/STDs)

4 Indications and mechanisms for referral to LGBT-identified or LGBT-friendly providers

Developing resource lists and guidelines for patient interactions can reduce possible staff anxiety in dealing with LGBT patients.

◆ All employees need to understand that discrimination against LGBT patients, whether overt or subtle, is as unethical and unacceptable—and in many states as illegal—as any other kind of discrimination. Employers should make it clear to employees that discrimination against LGBT patients “will not be tolerated.” It is also important to monitor compliance and provide a mechanism for patients to report any disrespectful behavior.

◆ Some of your employees may have long-standing prejudices or negative feelings about LGBT patients due to ignorance or lack of familiarity with LGBT issues. Some may also feel that their religious beliefs require them to condemn LGBT people.

◆ Some employees may need individual training and counseling.

See Resources section.

Other Suggestions

◆ A universal gender-inclusive “Restroom” is recommended. Many transgender and other people not conforming to physical gender stereotypes have been harassed for entering the “wrong” bathroom, so at least one restroom without Men or Women labels would help create a safer and more comfortable atmosphere.

◆ Be aware of other resources for LGBT individuals in your local community, as well as national/internet resources, and build collaborative relationships between your office and local lesbian, gay, bisexual, and transgender organizations and support groups.

See Resources section.

Sample Recommended Questions for LGBT-Sensitive Intake Forms

These are sample questions to include as part of your intake form or ideally when taking a patient’s oral history as part of a comprehensive intake; please do NOT use this list as an intake form.

Legal name

Name I prefer to be called (if different)

Preferred pronoun?

☑ She

☑ He
Gender: Check as many as are appropriate (An alternative is to leave a blank line next to Gender, to be completed by the patient as desired)

- Female
- Male
- Transgender
  - Female to Male
  - Male to Female
  - Other
- Other (leave space for patient to fill in)

Are your current sexual partners men, women, or both?

In the past, have your sexual partners been men, women, or both?

Current relationship status (An alternative is to leave a blank line next to current relationship status)

- Single
- Married
- Domestic Partnership/Civil Union
- Partnered
- Involved with multiple partners
- Separated from spouse/partner
- Divorced/permanently separated from spouse/partner
- Other (leave space for patient to fill in)

Living situation

- Live alone
- Live with spouse or partner
- Live with roommate(s)
- Live with parents or other family members
- Other (leave space for patient to fill in)

Children in home

- No children in home
- My own children live with me/us
- My spouse or partner’s children live with me/us
- Shared custody with ex-spouse or partner

Sexual Orientation Identity

- Bisexual
- Gay
- Heterosexual/Straight
- Lesbian
- Queer
- Other (state “please feel free to explain” and leave space for patient to fill in)
- Not Sure
- Don’t Know

What safer sex methods do you use, if any?

Do you need any information about safer-sex techniques? If yes, with:

- Men
- Women
- Both

Are you currently experiencing any sexual problems?

Do you want to start a family?

Are there any questions you have or information you would like with respect to starting a family?

Do you have any concerns related to your gender identity/expression or your sex of assignment?

Do you currently use or have you used hormones (e.g., testosterone, estrogen, etc.)?

Do you need any information about hormone therapy?
Have you been tested for HIV?

- Yes
  - most recent test (space for date)
- No

Are you HIV-positive?

- Yes
  - when did you test positive? (space for date)
- No
- Unknown

I have been diagnosed with and/or treated for:

- Bacterial Vaginosis
- Chlamydia
- Gonorrhea
- Herpes
- HPV/human papilloma virus (causes genital warts & abnormal pap smear)
- Syphilis
- None

Have you ever been diagnosed with or treated for hepatitis A, B, and/or C?

- Hepatitis A
- Hepatitis B
- Hepatitis C

Have you ever been told that you have chronic hepatitis B or C, or are a “hepatitis B or C carrier?”

- If yes, which and when?

Have you ever been vaccinated against hepatitis A or B?

- Vaccinated against hepatitis A
- Vaccinated against hepatitis B

Below is a list of risk factors for hepatitis A, B, and C.

Check any that apply to you.

- Sexual activity that draws blood or fluid
- Multiple sex partners
- Oral-fecal contact
- Sexual activity during menstrual period
- Travel extensively
- Dine out extensively
- Tattooing, piercing
- Use intravenous or snorted drugs
- Ever been diagnosed with or treated for an STD
- Close contact with someone who has chronic hepatitis B or C

- None apply
- Not sure if any apply

Reference and Resource Documents

**Chapter 1 Endnotes**

2. Gay Men’s Health. Small Effort, Big Change. www.gmhp.demon.co.uk/guides/gp

**Chapter 1 Resource Documents**


See also Resources section, pages 53–59.
Introduction

Lesbians and bisexual women are an infinitely diverse group and comprise the full spectrum of women. Lesbians and bisexual women are part of every age group, ethnicity, race, geographic area, income stratum, and cultural and linguistic group, and can be of any size, education level, profession, and gender expression, from very traditionally feminine to androgynous to very masculine or “butch”. The health care needs of lesbians and bisexual women are similar to those of all women. However, many experience additional risk factors and barriers to care that can impact their health status. This section is to help you understand how common physical and mental health issues and risk factors may be particularly relevant in the context of the lives of lesbian and bisexual women.

Coming out safely to a health care provider may be the single most important thing lesbians and bisexual women can do in order to maximize the quality of their health care and reduce the associated risk factors for health problems. Therefore, the most important thing for health care providers to do is make it safe, comfortable and easy for all women to make honest disclosures.
about their health-related behaviors, including sexual histories and practices. As many as 45% of lesbian and bisexual women are not out to their providers. Establishing a lesbian and bisexual-friendly practice will ensure that your patients can be honest with you about all health-related matters.

The risk factors discussed below are meant to convey the general context of health for lesbians and bisexual women. It should be noted that most lesbians and bisexual women are healthy and well-adjusted. Care should be taken to avoid further stigmatizing lesbians and bisexual women as inherently sicker or more “difficult” than heterosexual patients.

**Risk Factors**

The risk factors that lesbians and bisexual women disproportionately experience are primarily social and behavioral. Many result from marginalized social status and accompanying history of discrimination and harassment.

- **Homophobia and stigma based on sexual orientation and gender expression**
  Lifelong stigma, harassment, and/or discrimination—or fear of them—is a major cause of chronic stress, depression, anxiety, and other mental health problems for lesbians and bisexual women. In addition to the direct health impacts of societal homophobia, perceived or real homophobia from health care providers may discourage lesbians and bisexual women from seeking care. Without evidence to the contrary, lesbian and bisexual patients may expect discrimination in the health care environment. Therefore, it is important to take the steps suggested elsewhere in this pamphlet to make your practice environment visibly welcoming.

- **Avoidance or underutilization of medical care**
  Due to fear of discrimination, past negative experiences with health care providers, and/or false beliefs that pap smears and other health screenings are not necessary for lesbians, many do not seek needed medical care. This avoidance can result in failure to detect and treat health problems early, including cancer. It also limits lesbians’ access to health information and preventive care.

- **Lack of health insurance**
  Because legally sanctioned marriage is one of the primary routes to health insurance in the U.S. (along with employment), lesbians experience lower health insurance rates than heterosexual women. Studies have estimated that between 20% and 30% of lesbians do not have health insurance compared to 15% of the general population. If your insured patient is partnered with a woman, her partner is much less likely to also be insured as compared to the spouses of your married partners. This may limit the opportunity for lesbian partners to both be treated for a communicable disease, increasing the chance of re-infection. Lack of insurance among your lesbian and bisexual women patients may also mean that follow-up visits, and expensive prescriptions and treatments are not feasible, so be sure to talk with your patients about all options.
**Overweight or obesity**
There is evidence that lesbians are more likely to be overweight than their heterosexual counterparts,\(^5\) possibly because of cultural norms within the lesbian community and because lesbians may relate differently to, not accept or not internalize mainstream notions of ideal beauty and thinness. While lesbians as a group tend to have better body image than heterosexual women\(^6\)—a positive health characteristic—they may consequently be less motivated to avoid being overweight. The prevalence of overweight among lesbians raises the risk of heart disease, diabetes, hypertension, and other health problems.

**Smoking and substance abuse**
Lesbians and bisexual women, especially young women, may drink alcohol and use other drugs, and smoke at higher rates than heterosexual women, again increasing the risk of heart disease, chronic obstructive pulmonary disease (COPD), and other health problems. Reasons for the increased prevalence of these risk factors among lesbians and bisexual women include the chronic stress and other mental health challenges of discrimination and homophobia, as well as the prominent role that bars and clubs have played in lesbian subcultures and as women-only spaces.

**Lower rates of pregnancy**
Lesbians as a group have fewer pregnancies, and when they do bear children, it tends to be at older ages than heterosexual women. Because of this absence of or delayed childbearing, lesbians and bisexual women may be at greater risk for some cancers, such as breast cancer.

**Screenings and Health Concerns**
Provide the age-appropriate screenings to lesbians and bisexual women that you would offer to any woman in your practice. Remember to focus on actual behaviors and practices more than your patient’s lesbian or bisexual identity when discussing risk, especially regarding sexually transmitted diseases (STDs):

**Colon Cancer**
Lesbians and bisexual women should receive colon cancer screenings on the same age-appropriate screening schedule as heterosexual women. Because there is often discomfort and lack of familiarity with these procedures among the general public, it is especially important to ensure that lesbian and bisexual patients feel comfortable with their providers so that they will be more likely to ask about and take advantage of all screenings available to them.

**Depression**
Research has shown lesbians and bisexual women to have higher rates of depression than heterosexual women, often due to stigma-related stress.\(^7\) Depression can interfere with disease treatment and negatively affect all aspects of life and health. Be aware that being subject to the chronic stresses of discrimination, isolation, lack of acceptance by family, hiding aspects of one’s life and identity, and other challenges faced by lesbians and bisexual women can cause severe depression. Depression screening should be taken seriously. Lesbians and bisexual women of color face a “double jeopardy” due to the added stress of racial or ethnic discrimination that may place them at even higher risk.
Diabetes
The prevalence of overweight and other risk factors for diabetes among lesbians and bisexual women makes screening for diabetes another important step in improving health outcomes and reducing disparities in this population.

Fertility and Pregnancy
Lesbians are increasingly choosing to become pregnant and have children, with or without partners. Do not assume that the lesbian in your office has no plans to bear children, or that she has never been pregnant. Be prepared to discuss options for conception and pregnancy with your lesbian patients. Include women’s partners in those discussions regardless of gender.

Heart Health
Heart disease is the top killer of women, and there is no evidence to suggest that this statistic is any different for lesbians and bisexual women. In fact, they may have additional risk factors for heart disease, such as higher rates of overweight, smoking, and elevated stress levels. Therefore, be careful to include heart health screenings when appropriate.

HIV/AIDS
While documentation of female-to-female HIV transmission has been controversial and not definitive, lesbians can become infected through other risk behaviors, such as intravenous drug use, accidental needle sticks, and sex with men. Be able to talk openly with your lesbian and bisexual women patients about risk behaviors and offer HIV testing and counseling when appropriate. Remember to focus on actual behaviors rather than sexual orientation identity when discussing STD and HIV risk.

Hypertension
Many of the same factors that put women at risk for heart disease also contribute to high blood pressure, which increases the risk of heart disease, stroke, and congestive heart failure. This problem is even more prevalent among African Americans. Because lesbians and bisexual women as a group experience risk factors such as overweight, lack of exercise, and high stress they may be at greater risk; with African American lesbians likely being at greater risk than any other group.

Intimate Partner Violence/ Domestic Violence
It is estimated that 50,000 to 100,000 women are battered by a same-sex partner each year in the U.S. However, they are offered fewer protections and services than heterosexual women who are battered. Seven states exclude same-sex violence from their definitions of domestic violence, which can prevent lesbian victims from getting help. Battered women’s shelters, if uneducated about lesbians’ and bisexual women’s lives, may also discriminate. Be sure to extend domestic violence screening to your lesbian patients by using gender-neutral language that avoids assuming that the batterer is male. In addition, be aware of domestic violence services in your area that do not discriminate against women who have been abused by women.
◆ Mammograms
Lesbians and bisexual women should receive mammograms on the same age-appropriate screening schedule as heterosexual women. Gender variant or butch women may especially avoid mammograms. Because delayed detection and diagnosis are associated with poorer outcomes, it is important to ensure that all women in your practice are aware of the need, feel comfortable receiving mammograms, and do receive this screening.

◆ Pap Smear “Pap” Screening
Pap smears are no less important for lesbians and bisexual women than they are for heterosexual women. Human papilloma virus (HPV) can be transmitted among women who exclusively have sex with women. Women who partner with women may also have (past or present) sexual contact with men. Unfortunately, many lesbians and some health care practitioners mistakenly assume that lesbians are not at risk for HPV or cervical cancer, and that Pap smears are unnecessary.

◆ STD Screening
Most sexually transmitted diseases and infections can be transmitted by lesbians’ sexual practices. In addition, women who identify as lesbian may have had male sexual partners (past or current), or have experienced sexual abuse. Additionally, do not assume that older lesbians and bisexual women are not sexually active or that they don’t need STD screening or safer sex information. Women can “come out” or begin sexual relationships with women at any age.

◆ Substance Abuse
Lesbians may drink alcohol and use other drugs at higher rates, especially young lesbians and bisexual women. Because of homophobia and heterosexism, lesbians may not be comfortable in or helped by mainstream cessation and treatment programs. In addition, factors that contribute to substance abuse among lesbians may differ from those for heterosexual women, and interventions that do not target these factors may not be effective.

There are often lesbian- and gay-specific Alcoholics Anonymous, Narcotics Anonymous, and other treatment programs available locally. Find out if your area offers any. See Resources section.

◆ Tobacco Use
Not only is tobacco the number one cause of mortality for the full population, but lesbians and bisexual women rank among the top groups in the country who smoke at disproportionately high rates. Lesbians and bisexual women are more likely to smoke than heterosexual women, and are the only demographic group whose smoking actually increases with age. A recent large study showed LBT women smoked almost 200% more than other women. Again, it is important that smoking cessation interventions are sensitive to the unique factors that contribute to these higher smoking rates among LBT women. If possible, refer patients to local LGBT-specific smoking cessation programs.
Other Recommendations

In addition to general health screenings, be sure to talk with your patients about diet, exercise, and other general health behaviors that can improve health status. Find out what each patient considers to be barriers to a healthier lifestyle and help her problem-solve. For instance, if a gender-variant lesbian feels uncomfortable in gyms or walking/jogging/swimming alone for fear of harassment, suggest that she recruit a work-out buddy or group to make physical activity safer. Other ways lesbians can get more engaged in physical activity that may be safer and more fun are organized sports and activity clubs. The use of the Internet and online communities may help lesbians find each other and organize such groups, although be aware that not everyone has easy access to the Internet.

It is important to treat each patient appropriately for her own particular risk factors, health history, and needs. Knowledge about the common risk factors of lesbians, or any group, should inform your general concept of what may be important concerns of your lesbian and bisexual patients. However, it is important to not assume that just because a patient is lesbian or bisexual she has all or even any of the risk factors outlined above. Asking open-ended questions in a non-judgmental manner is the best way to ascertain the actual risks and health concerns of your patient. Seek to acquire information that you would gather about any female patient, doing so without assuming heterosexuality. Because of the fluidity of sexuality, it is critical to remain open to changes in patients’ sexual orientation and behaviors over time. Keep questions open-ended, gender-neutral, and non-judgmental throughout your relationship with a patient, knowing that people can come out at any time of life.

Remember that many mainstream women’s health organizations and resources can be unaware about and insensitive to lesbians and bisexual women. Do not assume that the same referral you give out regularly to your heterosexual patients will be helpful to a lesbian or bisexual woman. It may be helpful to offer LGBT-specific resources along with traditional resources to all women in your practice in an integrated way. This integration will further establish you as lesbian- and bi-friendly; signal to closeted patients that it would be safe and beneficial to come out to you; and help you develop a fluency and comfort with the resources in your community. Many areas have local LGBT community centers. As part of your efforts to maintain a lesbian-friendly practice, contact your local community center and check the Resources section of this guide to gather information about lesbian and bisexual-specific health resources. These can range from a lesbian-only cancer support group to a battered women’s shelter that is inclusive to women in same-sex relationships. Have these referrals on hand in your office to give to lesbian and bisexual women patients when appropriate.

Chapter 2 Endnotes


Chapter 2 Resource Documents
Mautner Project, the National Lesbian Health Organization. www.mautnerproject.org Coordinates Removing the Barriers project, training more than 3000 providers since 1997. Also has informational documents on a variety of lesbian health issues, appropriate for consumers or providers: http://www.mautnerproject.org/health%5Finformation/Lesbian%5FHealth%5F101/
  Barriers to Care for Women
  Facts about Lesbians and Smoking
  Health Factors for Lesbians
  Nutrition and Obesity
  The Heart Truth for Lesbians
  Why Lesbians Are Medically Underserved—White Paper


See also Resources section, pages 53–59.
Caring for Gay and Bisexual Men: Additional Considerations for Clinicians

Introduction

Gay and bisexual men’s health care needs are similar to the needs of all men, however, they also may experience additional risk factors and barriers to care that can impact their health.

In a 1992 study, 44% of self-identified gay men had not told their primary care physician about their sexual orientation. However, if health care providers know that a male patient is gay, bisexual, or has sex with men, they can properly screen for risk factors and provide more comprehensive care. Also, gay and bisexual men may sometimes consciously avoid medical care because of fear of discrimination.

Therefore, it is vital that health care providers create a safe and welcoming environment for gay and bisexual men to self-identify and discuss their sexual histories and behaviors and other health-related issues. Establishing a gay and bisexual-friendly practice will encourage your patients to seek care and address all health-related matters openly.
**Risk Factors**

The risk factors that gay and bisexual men experience disproportionately are sexual, social, and behavioral. Clinicians must consider social and cultural variables, mental health, and substance abuse, in addition to specific risk behaviors when discussing health issues or tailoring prevention messages to gay and bisexual men. These variables can create barriers to the effectiveness of prevention messages in helping patients to enact behavior changes.

◆ **Stigma**

Gay and bisexual men often face stigma in every aspect of their lives. This stigma creates a higher level of lifelong stress, which has been linked to an array of mental and physical health problems.³ African-American, Asian and Pacific Islander (A&PI), Latino, and other gay and bisexual men face additional stigma, and have to contend with racial discrimination from society at large. The twin effects of homophobia within their own racial/ethnic groups and racism within the mainstream gay community often combine to enhance their level of social exclusion. Fear of alienation and lack of community support often prevent these men of color from identifying with the gay community, which in turn serves to isolate them from the protective benefits of social support and limits their exposure to prevention messages.⁴

Fear of identifying as gay, bisexual, or as a man who has sex with men may keep some patients from addressing specific health issues. Perception of a clinician's stigmatization can irrevocably harm the therapeutic relationship, preventing honest disclosure and delivery of appropriate prevention messages.

◆ **Socioeconomic status**

Lower socioeconomic status often results in poorer health outcomes. A 1998 analysis of data from the General Social Survey, the 1990 Census and the Yankelovich Monitor indicated that gay and lesbian people earn less than their heterosexual counterparts.⁵ African-American gay and bisexual men are disproportionately affected by homelessness, substance abuse, and sexually transmitted diseases, all correlated with a lower socioeconomic status.⁶ Native American/Alaskan gay and bisexual men are at both economic and geographical disadvantages when considering access to prevention messages.⁷ While A&PI communities are often stereotyped as highly educated and economically successful, one demographic profile of a major urban area found that by per capita income, APIs make 19% less than the general population and about 20% of A&PIs live in poverty.⁸

◆ **Lack of health insurance**

Generally, gay men lack access to health insurance through marriage, and many employers and jurisdictions do not recognize domestic partnership, further reducing their ability to secure coverage. Lack of insurance among gay and bisexual men patients limit their ability to access ongoing care and treatment for health conditions as well as prevention messages.
Homophobia and harassment based on sexual orientation

Discrimination and harassment have been shown to be factors in causing stress, anxiety, depression, and mental illnesses for gay and bisexual men.9

Cultural norms.

Cultural norms can affect the way gay and bisexual men disclose information and incorporate prevention messages into the health care setting. Some Latino gay and bisexual men may not be open about their sexuality in order to avoid potential shame or embarrassment.10 Homosexuality conflicts with machismo, or masculinity, which has a high value in many Latino cultures. A diverse range of cultures and languages prevents A&PIs from receiving appropriate prevention messages,11 and discussions of sexual health, including homosexuality, are not part of their cultural norms.12

False assumptions

HIV prevention messages targeting gay and bisexual men are seen as becoming less effective. In surveys, gay and bisexual men report difficulty in sustaining behavior change for a lifetime. In addition, false beliefs among gay and bisexual men create barriers to behavior change based on prevention messages. Studies have shown that newer HIV treatments lead some gay and bisexual men to be more optimistic about treatment options if they were to seroconvert, and to take more sexual risks. Similarly, the false assumption that HIV-positive men on antiretroviral therapy are unlikely to transmit the virus contributes to risk-taking and unprotected anal sex among some gay and bisexual men.14

Incorporating Sexual Risk Assessment in Routine Visits for Gay and Bisexual Men

Despite significant reductions in HIV incidence among gay and bisexual men, they are still disproportionately affected—with an estimated 42% of new HIV infections each year. A recent rise in sexually transmitted diseases and risk behaviors among gay and bisexual men, documented in several cities, is concerning, since it may herald a resurgence of HIV infections.15

With these trends there remains a great need for clinicians to address sexual health issues. One survey showed only 20% of patients had discussed risk factors for HIV with their provider in the last five years. Of those respondents only 21% reported that the provider had started the discussion.16 In another study, only 35% of providers reported often or always taking a sexual history.17 One study documented physician awkwardness around issues of sexual health and HIV, leading to incomplete discussion of these topics.18 Routine health maintenance visits are opportunities for clinicians to practice primary prevention for HIV and other sexually transmitted infection through sexual risk assessments.
◆ What Can Be Done?
Asking about sexual behavior should be part of every routine visit, regardless of the patient’s identified sexual orientation or marital status. Sexual behavior exists on a continuum. Eliciting specific risk behaviors can direct the clinician in assessing the patient’s knowledge, selecting appropriate prevention messages, and determining the need for testing for sexually transmitted disease or HIV. Knowing that there are significant barriers in place between clinician and patient in addressing sexual health and utilizing a sensitive approach is key to attaining pertinent information.

◆ Tips For A Successful Patient Sexual Risk Assessment:
Discussing information about sexual behavior can be difficult for the patient and the clinician. Tailoring prevention messages to the individual patient requires that they feel comfortable in discussing these topics and revealing sensitive information. During an initial visit with a clinician, gay and bisexual men may withhold important information. Becoming comfortable in raising and discussing such topics comes only with repeated experience.

When discussing sexual health during an initial visit, or if indicated, in subsequent visits:
Begin with a statement that taking a sexual history is routine for your practice.
Focus on sexual behavior rather than sexual orientation/identity.
Assess knowledge of the risk of sexually transmitted diseases in relation to sexual behavior early on. Some well-informed gay and bisexual men may resent a discussion of HIV risk; for example, assuming a clinician is equating homosexuality with HIV.

Ask the patient to clarify terms or behavior with which you are unfamiliar.

Respect a patient’s desire to withhold answers to sensitive questions. Offer to discuss the issue at a later time.

◆ What Is The Best Approach?
The Mountain-Plains Regional AIDS Education Training Center developed a useful model for approaching sexual risk assessment, modified below:

1. Assess risk at every new patient visit and when there is evidence that behavior is changing.
2. Sexual risk assessment should be part of a comprehensive health risk assessment, including use of seatbelts and firearms, domestic violence, and substance abuse.
3. Qualify the discussion of sexual health, emphasizing that it is a routine part of the interview and underscore the importance of understanding sexual behavior for providing quality care. Remind the patient that your discussion is confidential. You may need to negotiate what ultimately becomes part of the medical record.
   a. “In order to take the best possible care of you, I need to understand in what ways you are sexually active.”
   b. “Anything we discuss stays in this room.”
Avoid use of labels like “straight,” “gay,” or “queer” that do not relate to behaviors because they may lead to misinformation. For example, a significant percentage of both African-American and Latino men who have sex with men identify as heterosexual, even though they may engage in anal intercourse with other men.20

Be careful while taking a history to not make assumptions about behavior based on age, marital status, disability or other characteristics.

Ask specific questions regarding behavior in a direct and non-judgmental way.

a “Are you sexually active?”

b “When was the last time you were sexually active?”

c “Do you have sex with men, women, or both?”

d Determine the number of partners, the frequency of condom use, and the type of sexual contact (e.g., oral, anal, genital).

Honest responses may be more forthcoming if the question is worded in such a way as to “normalize” the behavior: “Some people (inject drugs, have anal intercourse, exchange sex for drugs, money, or other services). Have you ever done this?”

Assess the patient’s history of STDs.

If the patient’s responses indicate a high level of risk (e.g., unprotected sexual activity, significant history of STDs), determine the context in which these behaviors occur, including concurrent substance use and mood state.

a “I want to get an understanding of when you use alcohol or drugs in relation to sex.”

b “How often are you high or drunk when you’re sexually active? How does what you do change in that case?”

c “How often do you feel down or depressed when you’re sexually active? Do you act differently?”

Summarize the patient’s responses at the end of the interview.

Other Screening and Health Concerns

Along with sexual risk assessments, gay and bisexual men should receive the same screenings that you would offer to any man in your practice. In addition, you should pay attention to health issues that disproportionately affect gay and bisexual men.

Anal Cancer

Gay and bisexual men are at risk for human papilloma virus infection, which plays a role in the increased risk of anal cancers. Some health professionals now recommend routine screening with anal Pap smears, similar to the test done for women to detect early cancers.
Depression/Anxiety
Depression and anxiety appear to affect gay men at a higher rate than in the general population, especially if they are not out and lack significant social support. Adolescents and young adults may be at particularly high risk of suicide because of these concerns. Being able to refer your gay and bisexual clients to culturally sensitive mental health services may be more effective in the prevention, early detection, and treatment of depression and anxiety.

Fitness (Diet and Exercise)
Gay men are more likely to have body image problems and to experience eating disorders than heterosexual men. On the opposite end of the spectrum, overweight and obesity are problems that also affect a large segment of the gay community. Be able to discuss your patient's fitness and diet regimen and provide adequate and culturally sensitive counseling.

Heart Health
Gay and bisexual men may have additional risk factors for heart disease, given higher rates of smoking, alcohol, and substance use. Heart screenings should be included when appropriate.

Hepatitis Immunization
Gay and bisexual men are at an increased risk of contracting hepatitis A and B. Universal immunization for hepatitis A and B viruses is recommended for all sexually active gay and bisexual men.

Intimate Partner Violence/Domestic Violence
Gay and bisexual men can experience domestic violence, but are rarely screened. Appropriate and sensitive screening for domestic violence should occur in the health care setting. Be prepared to refer to domestic violence services in your area that serve gay and bisexual men.

Prostate, Testicular, and Colon Cancer
Gay and bisexual men may not receive adequate screening for these cancers because of challenges in receiving culturally sensitive care. All gay and bisexual men should undergo these screenings routinely as recommended for the general population.

Substance and Alcohol Use
Studies show that gay men use substances and alcohol at higher rates than heterosexual men. Gay and bisexual men might not be comfortable with mainstream treatment programs. Find out if there are any gay-specific or gay-friendly alcohol/substance abuse treatment programs in your area and be prepared to refer patients to culturally sensitive services.

Tobacco Use
Not only is tobacco the number one cause of mortality for the full population, gay males rank among the top groups in the country disproportionately affected by this issue. A recent population-based study found that gay, bisexual and transgender males smoked at rates 50% higher than the general population. Emphasis on other health issues has often eclipsed the impact of tobacco on this group, leaving individuals less educated about the need
to quit or resources to assist the process.
For all gay male patients, be prepared to assess

tobacco use, advise quitting, discuss medication
options, and refer the person to the local quitline
or culturally competent cessation groups.

References and Resource Documents


Chapter 3 Resource Documents


CDC MSM Information Center: Addresses increased risk of MSM for multiple STDs including HIV/AIDS syphilis, gonorrhea, chlamydia, hepatitis B and hepatitis A. Many resources including CDC’s Four Division ‘Dear Colleague’ letter highlighting the 2002 STD Treatment Guidelines recommendations for MSM—March 8, 2004. www.cdc.gov/ncidod/diseases/hepatitis/msm/

CDC National Prevention Information Network (NPIN): reference and referral service for information on HIV/AIDS, STDs, and TB. www.cdcnpin.org Helpline: 800-458-5231 (also Spanish)


See also Resources section, pages 53–59.
Resources

General Background: LGBT Health

Gay and Lesbian Medical Association
www.glfma.org

Suggested sections:
◆ Hepatitis section
◆ Publications, such as:
  LGBT Health: Findings and Concerns (includes transgender health section with definitions)
◆ Healthy People 2010 Companion Document for LGBT Health (see resources chapter for potential referrals)

The GLBT Health Access Project
www.glbthealth.org

Suggested sections:
◆ Community Standards of Practice For Provision of Quality Health Care Services For Gay, Lesbian, Bisexual and Transgendered Clients
◆ Educational posters

National Coalition for LGBT Health
www.lgbthealth.net

Seattle/King County GLBT Health Web Pages
www.metrokc.gov/health/glbth

National Association of Gay and Lesbian Community Centers
www.glbtcen.org

Suggested sections:
◆ Directory (for centers throughout the U.S. which will have additional referrals for local LGBT-sensitive services—e.g. counseling services, support groups, health educations, and legal resources)

GLBT National Help Center
www.glnh.org

National non-profit organization offering toll-free peer counseling, information, and local resources, including local switchboard numbers and gay-related links
888-THE-GNLH (843-4564)

GLBT National Youth Talkline
Youth peer counseling, information, and local resources, through age 25
800-246-PRIDE (7743)

Substance Abuse Mental Health Services Administration/National Clearinghouse for Alcohol and Drug Information—LGBT site
www.health.org/features/lgbt
General Information: National LGBT Rights

Human Rights Campaign
www.hrc.org
(national organization working for LGBT equal rights on federal government level)

Lambda Legal
www.lambdalegal.org
(national LGBT legal and policy organization protecting civil rights of LGBT and people living with HIV)
legal helpdesk: 212-809-8585

National Center for Lesbian Rights
www.ncrlrights.org
(national legal resource center advancing the rights and safety of lesbians and their families, and representing gay men and bisexual and transgender individuals on legal issues that also advance lesbian rights.
or hotline: 415-392-6257

National Gay and Lesbian Task Force
www.ngltf.org
(national grassroots organization supporting LGBT advocacy efforts at state and federal levels)

Media (for waiting room)

BROCHURES

American Cancer Society
◆ Cancer Facts for Gay and Bisexual Men
◆ Cancer Facts for Lesbians and Bisexual Women
◆ Tobacco and the LGBT Community
Place order for free brochures by phone:
800-ACS-2345

American College Health Association
http://www.acha.org/info_resources/his_brochures.cfm
Numerous brochures, such as:
◆ Man to Man: Three Steps to Health for Gay, Bisexual, or Any Men Who Have Sex With Men
◆ Woman to Woman: Three Steps to Health for Lesbian, Bisexual, or Any Women Who Have Sex With Women

Mautner Project, the National Lesbian Health Organization
http://www.mautnerproject.org/health%5Finformation%5FLesbian%5FHealth%5F101/
Informational documents on various lesbian health issues, appropriate for consumers or providers, for example:
◆ Facts about Lesbians and Smoking
◆ Nutrition and Obesity
◆ The Heart Truth for Lesbians

PERIODICALS
◆ Advocate
◆ Curve
◆ Girlfriends
◆ Instinct
◆ Out
◆ Out Traveler
◆ Renaissance News (formerly Transgender Community News)
◆ Your local LGBT newspapers or other publication(s)

General Lesbian Health

The Lesbian Health Research Center at UCSF
www.lesbianhealthinfo.org

Mautner Project, the National Lesbian Health Organization
www.mautnerproject.org

Planned Parenthood Lesbian Health section

Verbena Health
www.verbenahealth.org

U.S. Department of Health and Human Services
womenshealth.org
Screening Schedule for Women:
www.4woman.gov/screeningcharts

General Gay Men’s Health
GayHealth.com@
www.gayhealth.com

The Institute for Gay Men’s Health
A project of Gay Men’s Health Crisis and AIDS Project
Los Angeles
http://www.gmhc.org/programs/institute.html

Gay City—Seattle, WA
www.gaycity.org

General Bisexual Health

Bisexual Resource Center Health Resources
www.biresource.org/health

Bi Health Program, Fenway Community Health
www.biresource.org/health/bihealth.html

“Safer Sex For Bisexuals and Their Partners” pamphlet
contact: bihealth@fenwayhealth.org
**Transgender Health**
FTM International  
www.ftmi.org

International Foundation for Gender Education  
www.ifge.org

TransGenderCare  
www.transgendercare.com

Transgender Forum’s Community Center  
www.transgender.org

Transgender Law Center  
Recommendations for Transgender Health Care  
www.transgenderlaw.org/resources/ltchealth.htm

Transgender Resource and Neighborhood Space (TRANS)  
www.caps.ucsf.edu/TRANS

Transgender Health Care Conference (2000)  
http://hivinsite.ucsf.edu/InSite.jsp?doc=2098.473a

Trans-Health.com (online magazine)  
www.trans-health.com

Transsexual Road Map  
www.tsroadmap.com

Transsexual Women’s Resources  
www.annelawrence.com/twr/

**Intersex Health**
Intersex Society of North America  
www.isna.org

**Sexually Transmitted Diseases (STDs)**
STDs AND LESBIANS AND BISEXUAL WOMEN

LesbianSTD  
www.lesbianstd.com

Planned Parenthood  
www.plannedparenthood.org/sti/lesbian.html

STDs AND MEN WHO HAVE SEX WITH MEN (MSM)

CDC MSM Information Center  
This includes various resources for MSM about HIV/AIDS, syphilis, gonorrhea, chlamydia, hepatitis B and hepatitis A, such as fact sheets, posters, booklet, and pocket card.  
www.cdc.gov/ncidod/diseases/hepatitis/msm/

Gay City  
www.gaycity.org

HEPATITIS

Gay and Lesbian Medical Association  
They have a campaign on Hepatitis A and B and MSM addressing the importance of vaccination, including poster and brochures. For more information or to order copies, email: info@glma.org

Free and low-cost hepatitis clinics:  
www.hepclinics.com

Centers for Disease Control and Prevention Division of Viral Hepatitis  
www.cdc.gov/ncidod/diseases/hepatitis/msm/

Model programs for MSM and hepatitis A, B, and C prevention:  
www.hepprograms.org/msm/

**HIV/AIDS:**

**HIV/AIDS—GENERAL RESOURCES**

National HIV and AIDS Hotline  
800-342-AIDS; 800-344-SIDA (7432) (Spanish); TDD: 800-243-7889

AEGIS  
(largest keyword-searchable online database for HIV/AIDS)  
www.aegis.com

American Foundation for AIDS Research (amfAR)  
www.amfar.org

The Body: an AIDS and HIV information resource  
www.thebody.com

Center for AIDS Prevention Studies  
www.caps.ucsf.edu

Centers for Disease Control and Prevention  
www.cdc.gov/hiv/dhap.htm

HIVandHepatitis.com  
www.hivandhepatitis.com

National AIDS Treatment Advocacy Project  
www.natap.org

New Mexico AIDSNet  
(online fact sheets in English and Spanish regarding various aspects of HIV/AIDS)  
www.aidsinfonet.org

Project Inform  
(HIV/AIDS health information and treatment options) Hotline: 800-822-7422  
www.projectinform.org

Youth HIV: a project of Advocates for Youth  
www.youthhiv.org

National Association on HIV over 50 (NAHOF)  
www.hivoverfifty.org

**HIV AND PEOPLE OF COLOR**

Asian and Pacific Islander Wellness Center  
www.apiwellness.org

Black AIDS Institute  
www.blackaids.org

Latino Coalition on AIDS  
www.latinoids.com

National Minority AIDS Coalition  
www.nmac.org

National Native American AIDS Prevention Center  
www.nnaapc.org
HIV AND LESBIANS
TheBody.com
www.thebody.com/whatis/lesbians.html
Lesbian AIDS Project, Gay Men’s Health Crisis
www.gmhc.org/programs/wfs.html#lap

HIV AND TRANSGENDER POPULATIONS
AEGIS
www.aegis.com
HIV InSite
http://hivinsite.ucsf.edu/InSite.jsp?page+kbr-07-04-16

HIV RESOURCES FOR PROVIDERS
HIV InSite: University of California San Francisco
http://hivinsite.ucsf.edu
Medscape: resource for clinicians and CME credit
www.medscape.com
U.S. DHHS HIV/AIDS Education and Resource Center
www.aidsinfo.nih.gov
Helpline: 800-448-0440 (also Spanish); 888-480-3739 (TTY)
AEGIS: HIV news from around the world
www.aegis.com
Infectious Diseases Society of America
www.idsociety.org

Intimate Partner Violence
Community United Against Violence
www.cuav.org
Family Violence Prevention Fund Health Care Program
www.endabuse.org/programs/healthcare/
National Domestic Violence Hotline
(local referrals, including LGBT-sensitive) 800-799-SAFE
(7233) (24 hours in English and Spanish); TDD: 800-787-3224
Network for Battered Lesbians and Bisexual Women Hotline
info@thenetworklared.org
617-423-SAFE
New York City Gay and Lesbian Anti-Violence Project
212-714-1141 (local referrals; Spanish-speaking services)
Stop Partner Abuse/Domestic Violence Program, Los Angeles Gay and Lesbian Center
www.laglc.org/domesticviolence/

See also References and Other Resource Documents.

Substance Abuse
Sober Dykes
www.soberdykes.org
Stonewall Project
www.tweaker.org
Substance Abuse Mental Health Services Administration/National Clearinghouse for Alcohol and Drug Information—LGBT site
www.health.org/features/lgbt

Youth
National Gay, Lesbian, Bisexual Youth Hotline
800-347-TEEN
Youth Guardian Services: on-line support
www.youth-guard.org
Youth Resource: a project of Advocates for Youth
www.youthresource.com
National Youth Advocacy Coalition
www.nyacyouth.org
Seattle and King County Public Health
www.metrokc.gov/health/glbt/youth.htm

See also HIV/AIDS and General Bisexual Health sections

Elders
SAGE: Services and Advocacy for Gay, Lesbian, Bisexual, and Transgender Elders
www.sageusa.org
National Gay and Lesbian Task Force
www.thetaskforce.org/theissues
Outing Age: Public Policy Issues Affecting GLBT Elders, November 9, 2000
www.thetaskforce.org/theissues/library.cfm?issueID=24&pubTypeID=2

See also HIV/AIDS section
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The Gay and Lesbian Medical Association is a national organization committed to ensuring equality in health care for lesbian, gay, bisexual, and transgender (LGBT) individuals and health care professionals. GLMA achieves its goals by using medical expertise in professional education, public policy work, patient education and referrals, and the promotion of research. To join GLMA or for more information, please visit www.glma.org.

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POLICY OPTIONS TO ENSURE THAT LESBIAN, GAY, BISEXUAL AND TRANSGENDER PERSONS IN CALIFORNIA RECEIVE COMPETENT MEDICAL AND MENTAL HEALTH CARE

Prepared by Ted Muhlhauser
Legislative Analyst for California State Senator Christine Kehoe
MEMO PURPOSE, CONTENTS AND POLICY QUESTION

This memo addresses a health policy question that has gained increasing focus among state legislators, medical and mental health care providers, academic experts, and affected patients: Should state legislators take affirmative steps toward improving medical and mental health care received by lesbian, gay, bisexual and transgender (LGBT) persons in California? And if so, what steps should be taken?

APPROACH TO POLICY QUESTION

Research, studies and human experiences have demonstrated that lesbian, gay, bisexual and transgender persons receive sub-par quality medical and mental health care when compared with the health care quality provided to the general population. Moreover, LGBT persons require unique provision of care; many medical and mental health problems or disease rates that LGBT persons experience are significantly different than health issues that affect non-LGBT patients.

This memo serves three purposes: 1) provide recent information on equity based considerations regarding the need to improve quality of care for LGBT persons, 2) explore whether improving LGBT health care has public value on economic efficiency grounds, and 3) provide a recommendation for policymaker action to enhance the quality medical and mental health care received by LGBT patients. There is precedence for using legislative authority to improve health treatment of minority or other poorly served patient populations. Prior legislative action in similar issue areas will be presented in the section on policy options.

CLARIFYING THE SCOPE OF THIS MEMO

The scope of this memo is limited to the topic of whether improving LGBT cultural competency of health care providers is a public policy issue that warrants legislative action. “Culturally competent” care, in this sense, means providing types and levels of health care quality for LGBT patients that address their unique medical and mental health care needs. Although the issue of visitation rights for unmarried LGBT partners is not addressed in this memo, readers should be aware that LGBT patients will be unlikely to appreciate the benefits of improved health care quality if they and their partners do not enjoy full visitation rights. Another cautionary note about terminology: this memo presumes that the term “health care” is inclusive of both medical and mental health care; the term “medical” includes medical and psychiatric care, but does not refer to dental or eye care.

BACKGROUND INFORMATION: THE CURRENT STATE OF HEALTH CARE QUALITY AND EQUITY FOR LGBT PERSONS

The American Medical Association (AMA) made a public call in 1996 to improve the education of health care personnel regarding best practices for improving care provided to LGBT patients. Unfortunately, from 1996-2005, the quality of care provided to LGBT patients in the U.S. did not improve substantially. As a result of the continuing disparity of care received by LGBT patients, a president of the AMA publicly apologized for poor health care received by LGBT persons during a 2005 speech to a conference of the
Gay and Lesbian Medical Association. With that background in mind, this section of the memo will explore some of the specific barriers to high-quality health care that LGBT persons have experienced.

**What portion of the population is affected by LGBT health issues?**

There have been numerous studies and surveys that seek to estimate the lesbian and gay populations in the United States and elsewhere, but estimates of bisexual and transgender populations are few and far between. Using a large random sample size of 6000 people, a recent survey of the National Survey of Sexual Health and Behavior at Indiana University estimates that 7% of U.S. women are lesbian and 8% of U.S. men are gay. That estimate differs from other estimates, but may arguably be more accurate than other surveys or studies due to the large random sample size used. Regardless of the exact size of LGBT populations in the U.S., one academic study on this topic concludes that a majority of doctors can be expected to encounter LGBT patients during their careers.

**Do attitudes of health care providers toward LGBT patients create a barrier to adequate medical care?**

Kaiser Permanente, which has received high ratings for ensuring culturally competent care for LGBT clients, indicates in a report issued in 2000 that LGBT persons are likely at some point in their lives to confront bias from health care providers. The report cited surveys of nursing students and physicians who stated bias or discomfort with LGBT patients or doctors. Another survey of medical students confirmed the presence of negative attitudes toward LGBT patients.

Even if bias is not a barrier to adequate medical care, LGBT persons can miss out on having their health issues properly understood, diagnosed and treated because health care providers or health care office staff persons often neglect to ascertain the sexual orientation or gender identity of LGBT patients. Reports cited in subsequent sections of this memo cite research that demonstrates LGBT persons are confronted by medical and mental health issues that are directly tied to their status as a lesbian, gay, bisexual, or transgender person. Therefore, it appears that LGBT patients are disserved by both bias against LGBT persons, and the inability of health care professionals to fully recognize the importance of understanding whether they are serving patients who have a propensity to suffer from ailments associated with people who exhibit attributes of the LGBT population.

**A Brief Review of LGBT Health Care Quality in California**

California has numerous health facilities that appear to do well when it comes to preparing their medical staff to provide culturally competent care to LGBT patients. Unfortunately, available data is limited to few hospitals and even fewer health care networks, clinics or offices and mental health providers. The lack of comprehensive data makes it impossible to conclude that California care providers are providing the type of care that LGBT clients really need, but policy makers seeking to improve LGBT cultural competency among care providers would benefit from considering the success stories of some California health facilities.

The Human Rights Campaign – an advocacy and research group committed to the promotion of LGBT equality – manages an annual survey of U.S. health care facilities called the Health Equality Index (HEI). The HEI rates hospitals and other medical health care providers, which are not required to participate in the survey, for the quality of LGBT health care that they provide based on seven criteria, including:
- “Sexual Orientation” in Patients’ Bill of Rights and/or Non-Discrimination Policy;
- “Gender Identity” in Patients’ Bill of Rights and/or Non-Discrimination Policy;
- Equal Visitation Access for Same-Sex Couples;
- Equal Visitation Access for Same-Sex Parents;
- LGBT Cultural Competency Training for Staff;
- “Sexual Orientation” in Equal Employment Opportunity Policy; and,
- “Gender Identity” in Equal Employment Opportunity Policy.

One criterion is specific to the subject of this memo: whether a health care facility provides training in LGBT cultural competency. The survey data was collected from 178 hospitals nationwide and 35 hospitals in California; however, most of the hospitals reviewed in California (29 of 35) were from one health system, Kaiser Permanente. All 29 Kaiser Permanente facilities inside California received a top score on each of the seven criteria, including the criterion relating to cultural competency. Of the remaining six facilities that responded to the survey, two received “top performer” status for high marks in all seven criteria, and all but one of the six facilities received high marks for providing LGBT cultural competency training.

Although these results show that many California facilities have strong LGBT cultural competency training, there are hundreds of hospitals, and thousands of medical offices and mental health facilities, whose policies and procedures regarding LGBT health care are not readily known. Based on the fact that the AMA recognized in 2005 that treatment disparities for LGBT patients are pervasive and ongoing, it seems unlikely that the high scores for the facilities surveyed in the HEI are indicative of California health care providers.

IN THE BEST INTEREST OF ECONOMIC EFFICIENCY? LEGISLATING LGBT HEALTH CARE SERVICE QUALITY

As evidenced in the previous section, improving overall healthcare experiences for LGBT patients is a policy issue that is gaining attention in both the public and private sectors. In most of those cases, the policy changes have been initiated by equity-based concerns. Equity is one factor to consider in pursuing legislation to improve LGBT cultural competency in health care.

Inequitable social and economic conditions sometimes produce economic inefficiencies. In those cases, government often institutes public sector reforms to improve economic efficiency. This section presents evidence that legislation regarding LGBT cultural competency could also improve the economic efficiency of the overall health care system.

Economic Considerations for LGBT patients

Due to disparities in health insurance coverage, LGBT patients – especially those in partnered relationships – are likely to experience a substantially greater economic burden than non-LGBT patients experience when it comes to paying for health care treatment. Therefore, when LGBT patients obtain health care, they are in particular need of competent care because the numbers of their initial and return visits to medical care providers – and their ability to pay for prescription drugs – are limited by the enhanced financial burden that they may experience.

A recent study found that uninsured gay men in a two-person relationship are 42% less likely to receive dependent health insurance through their insured partner than are uninsured men in a married
heterosexual relationship. Uninsured lesbians have even less access to health coverage; those who are in a two-person lesbian relationship are 28% less likely to receive dependent health insurance through their partner than are uninsured women in a married heterosexual relationship.

**Economic and public health efficiency considerations for LGBT patients and the general population**

LGBT patients are already less likely to receive medical care due to insurance barriers. For those with or without medical insurance who receive poor quality care, culturally incompetent care means that it is entirely possible that the health problems of LGBT patients will go unresolved; they would have to spend more individual financial resources to get sufficient care or use publicly funded health facilities.

Cost barriers, including opportunity costs, for LGBT patients who receive inadequate care and must continually seek improved care adequate care are exacerbated by the marginal increase in money that LGBT persons need to spend on health care as a result of the fact that they suffer from high propensities of certain health conditions. Many of those health problems can be costly and longstanding. For example, gay men experience severe medical challenges associated with high rates of AIDS and HIV cases – including the communicable diseases that accompany immunodeficiency conditions – and other sexually transmitted diseases. Lesbians are more than twice as likely as heterosexual men or women to receive mental health treatment. Evidence indicates that mental health problems among lesbians – and perhaps other LGBT persons – can exacerbate physical health problems.

The overall medical expenses of LGBT patients are affected by both general human health problems and LGBT-specific health issues. According to the Gay and Lesbian Medical Association and other expert research, LGBT patients experience direct and associative mental health problems that can lead to physical health problems, which, in turn, can lead to increased medical costs if treated incorrectly or incompetently. Those physical and mental health problems, and other social bias problems, include: enhanced levels of substance abuse – including tobacco; enhanced risk of diseases associated with enhanced levels of substance abuse – such as heart disease, lung cancer and pancreatic disorders like diabetes; safe sex barriers; violent assaults, depression, stress, anxiety, post-traumatic stress and substance abuse associated with stigma and isolation related to sexual orientation and/or gender identity – such as homophobia; biphobia; transphobia; discrimination and harassment; non-traditional sexual history; and, sexually transmitted diseases.

**POLICY OPTIONS TO ENHANCE THE QUALITY OF HEALTH CARE RECEIVED BY LGBT PATIENTS**

This memo has provided background on several economic, political and policy aspects of the policy question posed at the beginning of this memo. The previous sections have explored rationale for taking legislative action to improve the cultural competency of health care professionals in California. This section recommends a policy option for addressing this topic.

*Policy Action Recommendation: Statutorily require regulatory boards that license or certify health care personnel to mandate continuing education on LGBT cultural competency in health care*

This recommendation has the greatest possible public value among other potential policy options because it ensures that current and future health care providers would be trained to provide culturally competent care to LGBT patients. There is precedence for this approach. Business and Professions Code stipulates certain types of continuing education (i.e., pain management, palliative care) that some
health care professionals must obtain. Moreover, other non-LGBT cultural competency is already offered through continuing education (CE) based on legislative and regulatory requirements. There has also been legislation (Assembly Bill 1195, Coto, 2005) that encouraged (but did not require) boards that certify and license medical and mental health professionals to allow CME credit for courses designed to improve another form of health care cultural competency. AB 1195 encouraged certain regulatory boards to encourage their licensees to obtain CE regarding culturally and linguistically competent care for race and ethnic minorities.

CE does not put onerous cost burdens on educational institutions, hospitals or clinics, but it would place minor costs on health care providers required to take the course if they are statutorily mandated to obtain CE training above and beyond current CE requirements. Some minor burdens may also be presented to state regulatory entities. However, the recommended approach is unlikely to present substantive financial burdens on the state, which is an important distinction because legislative fiscal committees – that are required to reduce state fiscal impact resulting from all proposed legislation – are unlikely to have a fiscal justification to keep the recommended statutory proposal from advancing.

The probability of bill passage is an issue that requires consideration. Gauging the likelihood of bill passage, however, is difficult because the membership and chairships of relevant policy committees has changed significantly this year and the effects of those changes are unknown. A statutory mandate regarding CE is likely to attract opposition from the affected health care professionals and may elicit concern or opposition from boards that regulate those professionals.
ENDNOTES


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Council on Social Work Education–Lambda Legal Study of LGBT Issues in Social Work

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Acknowledgments

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Abstract
This study by the Council on Social Work Education and the Lambda Legal sought to determine the level of preparation for social work students to serve lesbian, gay, bisexual, and transgender (LGBT) individuals, especially young people. An Internet-hosted, two-stage survey collected data from a random sample of social work program directors (N=299) and faculty members (N=547). Results indicated that most programs do not formally assess student competence in serving LGBT individuals; do not contain content on LGBT youth; do not provide field placements in LGBT-specific, youth-oriented settings; and do not have faculty members with sufficient awareness of LGBT issues. Recommendations include infusion of content on LGBT youth throughout the curriculum, particularly in child welfare courses; additional field experiences that involve work with LGBT youth; more attention to gender-identity issues; increased faculty development opportunities that focus on LGBT issues; and assessments of support systems for LGBT students at the program, institution, and community levels.
Purpose and History of Project

The purpose of this study was to determine how well social work education programs in the United States are preparing students to provide competent services to lesbian, gay, bisexual, and transgender (LGBT) individuals and, in particular, to LGBT youth.

LGBT individuals have been subjected to historical discrimination and oppression in American society, causing attendant challenges to their well-being. LGBT youth in out-of-home care are especially vulnerable to discrimination and stigma based on their sexual orientation or gender identity. The social work profession, with its commitment to promote social justice and social change with and on behalf of clients, plays an important role in addressing the problems faced by LGBT people. Indeed, both the Council on Social Work Education (CSWE, 2008) and the National Association of Social Workers (NASW, 2008) have adopted standards to ensure that social work professionals are trained to provide competent, respectful services to those who are LGBT.

Although there has been considerable discussion among social work educators about the treatment of sexual orientation and, to a lesser extent, gender identity issues in social work education (McPhail, 2008; Morrow, 1996; Van Den Bergh & Crisp, 2004; Vanderwoerd, 2002; Van Soest, 1996), as well as the environment in social work programs for lesbian and gay students (e.g., Martin, 1995; Messinger, 2004; Newman, Bogo, & Daley, 2009; Towns, 2006), few empirical studies of this kind have been conducted. Mackelprang, Ray, and Hernandez-Peck (1996) surveyed deans and directors of all U.S. programs that were accredited as of 1996; emphasis on LGB content was found to lag far behind emphasis on race and ethnicity, and few programs placed a priority on recruiting LGB faculty members or recruiting and retaining LGB students. Mackelprang and colleagues did not examine gender identity/expression issues, treatment of transgender faculty members and students, or issues pertaining to LGBT youth.

The study was initiated by Lambda Legal, a nonprofit national organization committed to achieving full recognition of the civil rights of LGBT people and those with HIV through impact litigation, education, and public policy work. Since 1973, Lambda Legal has used educational campaigns, policy advocacy, and groundbreaking litigation to set standards for fair and equal treatment of LGBT individuals. In particular, Lambda Legal’s Youth in Out-of-Home Care Project raises awareness and advances reform on behalf of LGBT youth in child welfare, juvenile justice, and homeless settings who are routinely denied basic services and face neglect, discrimination, and abuse because of their sexual orientation or gender identity.
Recognizing the problems faced by these youth in out-of-home care, Lambda Legal collaborated with the Child Welfare League of America (CWLA) to organize a series of listening forums in 2003-2004, which were held in more than a dozen locations around the nation. A clear consensus was voiced at these forums that case workers, social workers, and child welfare administrators lack adequate training to competently serve LGBT and questioning youth in out-of-home care. Young people reported this situation as well as social work practitioners, who felt that they and their colleagues often did not have the requisite background in sexual orientation and gender identity issues that would enable them to serve these individuals with competence and professionalism (Woronoff, Estrada, & Sommer, 2006). In light of these findings, Lambda Legal initiated a collaboration with CSWE to determine the level of proficiency in preparing social work students to work with LGBT individuals, especially LGBT youth in out-of-home care. The ultimate aim was to more fully equip social work students with the knowledge and skills that would best serve LGBT individuals, especially youth. Adding to the effort to improve preparation of social work students, Lambda Legal and NASW developed a curriculum to train social workers and other providers of services to LGBT youth in out-of-home care (see Elze & McHaelen, 2009).

This study also represents a long-delayed response to concerns voiced by the CSWE Commission on Sexual Orientation and Gender Expression about the treatment of LGBT issues, students, and faculty members in social work education programs. In their commentary on the second draft of the proposed Educational Policy and Accreditation Standards in 2001, the commission co-chairs noted that many students reported a dearth of LGBT-related content in their program’s curriculum, and some faculty members reported a lack of attention to LGBT issues among accreditation site teams. The co-chairs expressed concern about the lack of any systematic attempt by CSWE to determine the extent of these problems and the treatment of LGBT faculty members and students in social work programs (Martin & Hunter, 2001a).

Methods

Study Design

An Internet-hosted, two-stage survey design was selected for this study, with data being collected first from a sample of social work program directors, and then from a sample of social work program faculty. The authors initially discussed studying outcomes among social work students, but it was determined not to be feasible to obtain student enrollment lists from programs in order to develop a sampling frame. Participation in the study was confidential; names of participants and their institutions were known to the project coordinator, but they were not shared with the principal investigators or others involved with data analysis. Multiple drawings for Amazon.com gift certificates worth $50 were used as incentives for participation. A list of all participants' e-mail addresses unconnected to any of their survey responses was used by the project.
director to select the winners of each drawing through random-number generation. A total of 78 gift certificates were awarded. The study was approved by New York University’s Committee on Activities Involving Human Subjects.

Sample

This study used a random sample of all 664 CSWE-accredited programs stratified according to auspice (public, private sectarian, private nonsectarian) and degree level (baccalaureate, master’s). Because of their relatively small number, baccalaureate and master’s private, nonsectarian programs and master’s private sectarian programs were over-sampled. Forty percent of baccalaureate and master’s public programs and baccalaureate private sectarian programs were randomly selected for participation in the study, as were 75% of baccalaureate and master’s private nonsectarian and master’s private sectarian programs. Programs were selected from the sampling frame using random-number generation until the desired number of programs in each category was obtained. Because programs were sampled rather than institutions, both a baccalaureate and a master’s program from the same institution could be invited to participate.

A total of 301 social work programs were invited to participate in the study, but two programs closed during the study. Completed surveys were received from the directors of 157 of the resulting 299 programs. Across the categories of auspice and degree level, response rates ranged from 45% (baccalaureate private sectarian) to 62% (master’s public), with an overall response rate of 52%. Tables 1, 2, and 3 show the demographic characteristics of programs, both in the sampling frame and the final sample. There were few major differences between the sampling frame and the final sample of accredited programs with respect to setting (urban, suburban, rural) or regional distribution. However, the setting is unknown for 14% of programs in the sampling frame, while the setting was reported for all programs in the final sample. Programs from the northeast were somewhat over-represented in the sample (15% as compared to 10% in the population), and programs from the Great Lakes were under-represented (13% as compared to 20% in the population).

Directors provided contact information for a “most knowledgeable” faculty member for each curriculum area in their program, and in the second stage of the study each of the identified faculty were subsequently invited to participate as a “curriculum area expert.” Completed surveys were received from 52% of invited practice and field learning faculty members, 48% of research faculty members, 45% of human behavior and the social environment (HBSE) faculty members, and 40% policy faculty members.
Table 1
*Auspice and Degree Levels in Final Sample and Sampling Frame: Number and Percent*

<table>
<thead>
<tr>
<th>Auspice</th>
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<tr>
<td>Private sectarian</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sample</td>
<td>29</td>
<td>18</td>
<td>9</td>
</tr>
<tr>
<td>Sampling frame</td>
<td>162</td>
<td>24</td>
<td>22</td>
</tr>
<tr>
<td>Private nonsectarian</td>
<td>21</td>
<td>13</td>
<td>11</td>
</tr>
<tr>
<td>Sample</td>
<td>51</td>
<td>8</td>
<td>26</td>
</tr>
<tr>
<td>Sampling frame</td>
<td>257</td>
<td>32</td>
<td>36</td>
</tr>
<tr>
<td>Public</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sample</td>
<td>51</td>
<td>32</td>
<td>36</td>
</tr>
<tr>
<td>Sampling frame</td>
<td>257</td>
<td>39</td>
<td>146</td>
</tr>
<tr>
<td>Total</td>
<td>101</td>
<td>64</td>
<td>56</td>
</tr>
<tr>
<td>Sample</td>
<td>470</td>
<td>71</td>
<td>194</td>
</tr>
</tbody>
</table>

Table 2
*Program Setting in Final Sample and Sampling Frame: Number and Percent*

<table>
<thead>
<tr>
<th>Program setting</th>
<th>Sample</th>
<th></th>
<th>Sampling frame</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n</td>
<td>%</td>
<td>n</td>
<td>%</td>
</tr>
<tr>
<td>Urban</td>
<td>73</td>
<td>46</td>
<td>270</td>
<td>41</td>
</tr>
<tr>
<td>Suburban</td>
<td>38</td>
<td>24</td>
<td>136</td>
<td>20</td>
</tr>
<tr>
<td>Rural</td>
<td>42</td>
<td>27</td>
<td>163</td>
<td>25</td>
</tr>
<tr>
<td>Missing/unknown</td>
<td>4</td>
<td>3</td>
<td>95</td>
<td>14</td>
</tr>
<tr>
<td>Total</td>
<td>157</td>
<td>100</td>
<td>664</td>
<td>100</td>
</tr>
</tbody>
</table>

Table 3
*Regional Distribution in Final Sample and Sampling Frame: Number and Percent*

<table>
<thead>
<tr>
<th>Region</th>
<th>Sample</th>
<th></th>
<th>Sampling frame</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n</td>
<td>%</td>
<td>n</td>
<td>%</td>
</tr>
<tr>
<td>New England</td>
<td>12</td>
<td>8</td>
<td>42</td>
<td>6</td>
</tr>
<tr>
<td>Northeast</td>
<td>23</td>
<td>15</td>
<td>64</td>
<td>10</td>
</tr>
<tr>
<td>Mid-Atlantic</td>
<td>16</td>
<td>10</td>
<td>82</td>
<td>12</td>
</tr>
<tr>
<td>Southeast</td>
<td>32</td>
<td>20</td>
<td>126</td>
<td>19</td>
</tr>
<tr>
<td>Great Lakes</td>
<td>21</td>
<td>13</td>
<td>135</td>
<td>20</td>
</tr>
<tr>
<td>South central</td>
<td>18</td>
<td>11</td>
<td>73</td>
<td>11</td>
</tr>
<tr>
<td>Mid-central</td>
<td>14</td>
<td>9</td>
<td>50</td>
<td>8</td>
</tr>
<tr>
<td>North central</td>
<td>4</td>
<td>3</td>
<td>23</td>
<td>3</td>
</tr>
<tr>
<td>West</td>
<td>8</td>
<td>5</td>
<td>43</td>
<td>7</td>
</tr>
<tr>
<td>Northwest</td>
<td>5</td>
<td>3</td>
<td>22</td>
<td>3</td>
</tr>
</tbody>
</table>
Measurement

A self-administered questionnaire was designed for directors, and different self-administered questionnaires were designed for faculty members. Items had various response formats, primarily matrix or yes/no/don’t know. A few items had four-point rating scales. For example, on one of these items, response choices ranged from (1) “not at all comfortable” to (4) “very comfortable.” It was estimated that it would take less than 15 minutes to complete the questionnaire.

The directors’ questionnaire consisted of 39 items focusing on institutional and program demographics (e.g., institutional auspice, program levels offered, program size); institutional and program structure (e.g., nondiscrimination policies); program admissions (e.g., “other” gender category on applications); faculty members (e.g., how knowledgeable faculty members are about sexual orientation and gender identity/expression); students (e.g., how comfortable LGBT students are likely to feel in the program); curriculum (e.g., whether the program has a course focusing on LGBT issues or child welfare courses that provide content on LGBT youth); and assessment (e.g., how well the program trains students to work with LGBT youth or LGBT individuals in general). In addition, the following open-ended item appeared at the end of the directors’ questionnaire: “Is there anything else you would like to tell us about the ways in which your program addresses LGBT issues in its policies, practices, or curriculum?”

There were five versions of the faculty questionnaire intended for identified experts in each of the curriculum areas (i.e., human behavior [HBSE], policy, practice, research, and field). All versions began with eight common items focusing on program faculty members (e.g., how knowledgeable faculty members are about sexual orientation and gender identity/expression) and students (e.g., how comfortable LGBT students are likely to feel in the program). On all but the field faculty version, these items were followed by five specialized items that focused on curriculum (e.g., which LGBT-related topics are covered in courses in the curriculum area) and faculty members (e.g., how knowledgeable are faculty members who teach in the curriculum area about sexual orientation and gender identity/expression). The field faculty version contained eight specialized items (e.g., whether there are field placements that provide opportunities to work on LGBT-related issues or with LGBT clients; whether any training on LGBT issues is provided to field instructors).

These questionnaires were developed from literature on teaching culturally competent practice with LGBT populations (e.g., Black, Oles, Cramer, & Bennett,
1999; Crisp & McCave, 2007; Crisp, Wayland, & Gordon, 2008; Foreman & Quinlan, 2008; Mackelprang et al., 1996; Martin & Hunter, 2001b; Meezan & Martin, 2003, 2009; Mulé, 2006; Newman, 1989; Van Den Bergh & Crisp, 2004), optimal LGBT-supportive program policies (Mackelprang et al., 1996; Messinger, 2002), and issues of heterosexism in social work education (Aronson, 1995; Fish, 2008; Messinger, 2004; Morrow, 1996). The researchers used this literature base, along with textbooks on social work practice with LGBT populations (Hunter, Shannon, Knox, & Martin, 1998; Morrow & Messinger, 2006), to identify items associated with specific content to be addressed in each of the subject areas (HBSE, policy, practice, research, and field) on the faculty questionnaires. These items were reviewed by subject experts among members of the CSWE Council on Sexual Orientation and Gender Expression for thoroughness and completeness.

Data Collection

On March 3, 2009, invitation e-mails were sent to the directors of the programs selected for participation. Invitations incorporated a description of the study and informed consent information. A direct link to the study questionnaire, which was hosted on the Web site Zarca Interactive, was also included in the e-mail. Data collection from directors was terminated on April 1, 2009. On March 16, 2009, similar invitation e-mails were sent to faculty members who had been identified by their directors as the “most knowledgeable” and appropriate person to answer questions about each of the five curriculum areas (HBSE, policy, practice, research, and field). Invitations to faculty members were sent out on a rolling basis as their names and contact information were received from the directors of their programs. Data collection from faculty members was terminated on May 1, 2009. In order to maximize the response rate, four reminder e-mails were sent to directors and faculty members between the respective opening and closing dates.

Findings

This study’s primary question pertained to how well social work education programs are preparing their students to provide competent services to LGBT individuals and particularly to LGBT youth. Only 19% of directors reported that their programs assess the competence of their graduates to provide services to LGBT individuals. When asked how well they thought their programs trained students to provide competent services to LGBT individuals, 59% responded “very well” to “fairly well,” and 41% thought their programs trained students “slightly well” to “not at all well.” Directors’ ratings were somewhat lower when asked how well they thought their programs trained students to provide
competent services to LGBT youth: 47% reported “very well” to “fairly well,” and 53% reported “slightly well” to “not at all well.”

In the rest of this section descriptive findings are presented on the explicit and implicit curricula among social work education programs, followed by analysis of variables that are associated with the primary research question and the related question of how comfortable LGBT students are likely to feel in the program. Variables are also examined that are associated with the presence of open LGBT students in social work education programs. Finally, a summary of qualitative data that program directors provided is presented.

Explicit Curriculum

Course material. Only 14% of directors reported that their programs offered a course that focuses specifically on LGBT issues. Such courses were more common among master’s programs than undergraduate programs, $\chi^2 (1, N = 154) = 15.99, p < .001$. Sixty-eight percent reported their programs offered courses on diversity that are external to the curriculum areas; among them, nearly all purportedly include content on sexual orientation, gender identity/expression, or LGBT people. In addition, nearly all directors (95%) reported their programs offered a course on human sexuality during the past two years. About 82% stated their programs regularly offered courses on child welfare, but material specific to LGBT youth was reportedly not included in many of them: Only 54% reported material on identity development among LGBT youth, 50% on LGBT youth in out-of-home care, and 41% on best practices with LGBT youth.

Coverage of LGBT-related topics within the curriculum areas, as reported by the faculty “experts,” varied greatly, as shown in Tables 4, 5, 6, and 7. Programs reporting coverage within HBSE courses ranged from 97% for “gender identity development” to 44% for “LGBT history.” Among policy courses that range was from 95% for “lesbian and gay discrimination” to 49% for “diversity among LGBT populations.” Among practice courses it was from 92% for “self-awareness of values and biases” to 50% for “legal issues.” Among research courses the range was from 78% for “avoiding sexual orientation bias” to 16% for “issues facing LGBT researchers.” The full list of coverage of LGBT-related topics in each of these four curriculum areas appears below. Because the number of faculty “experts” responding to each item varied among curriculum areas, this number is noted for each table.

Table 4
Coverage of LGBT-Related Topics in HBSE Courses: Number and Percent*

<table>
<thead>
<tr>
<th>HBSE course content</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender identity development</td>
<td>70</td>
<td>97</td>
</tr>
<tr>
<td>LGB identity development</td>
<td>68</td>
<td>96</td>
</tr>
<tr>
<td><strong>Policy course content</strong></td>
<td><strong>n</strong></td>
<td><strong>%</strong></td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>-------</td>
<td>-------</td>
</tr>
<tr>
<td>Prejudice and discrimination—lesbian and gay populations</td>
<td>60</td>
<td>95</td>
</tr>
<tr>
<td>Civil rights issues—LGBT populations</td>
<td>57</td>
<td>92</td>
</tr>
<tr>
<td>Implications of social welfare policies for LGBT populations</td>
<td>49</td>
<td>78</td>
</tr>
<tr>
<td>Prejudice and discrimination—transgender populations</td>
<td>46</td>
<td>74</td>
</tr>
<tr>
<td>Policies directed specifically at LGBT populations</td>
<td>46</td>
<td>73</td>
</tr>
<tr>
<td>Social and economic issues facing LGBT populations</td>
<td>45</td>
<td>71</td>
</tr>
<tr>
<td>Prejudice and discrimination—bisexual populations</td>
<td>44</td>
<td>70</td>
</tr>
<tr>
<td>LGBT advocacy and organizing</td>
<td>40</td>
<td>63</td>
</tr>
<tr>
<td>LGBT history</td>
<td>40</td>
<td>62</td>
</tr>
<tr>
<td>Human sexuality as it relates to social policies</td>
<td>34</td>
<td>54</td>
</tr>
<tr>
<td>Implications of youth-related policies for LGBT youth</td>
<td>33</td>
<td>53</td>
</tr>
<tr>
<td>Diversity among LGBT populations</td>
<td>31</td>
<td>49</td>
</tr>
<tr>
<td>International LGBT issues</td>
<td>10</td>
<td>16</td>
</tr>
</tbody>
</table>

* N = 70–72 for each item
* N = 62–64 for each item

Table 6
Coverage of LGBT-Related Topics in Practice Courses: Number and Percent*

<table>
<thead>
<tr>
<th>Practice course content specifically with LGBT clients</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Practitioner self-awareness—values/biases</td>
<td>75</td>
<td>92</td>
</tr>
<tr>
<td>Cultural competence</td>
<td>73</td>
<td>89</td>
</tr>
<tr>
<td>Confidentiality/privacy</td>
<td>70</td>
<td>85</td>
</tr>
<tr>
<td>Self-determination</td>
<td>69</td>
<td>84</td>
</tr>
<tr>
<td>Assessing strengths, problems, needs, and resources</td>
<td>67</td>
<td>82</td>
</tr>
<tr>
<td>Engagement</td>
<td>66</td>
<td>81</td>
</tr>
<tr>
<td>Ethical issues other than confidentiality/privacy</td>
<td>65</td>
<td>79</td>
</tr>
<tr>
<td>Advocating for services for clients</td>
<td>62</td>
<td>76</td>
</tr>
<tr>
<td>Issues in practice with couples and families</td>
<td>58</td>
<td>71</td>
</tr>
<tr>
<td>Issues in practice with LGBT youth</td>
<td>55</td>
<td>67</td>
</tr>
<tr>
<td>Issues in maintaining a positive working relationship</td>
<td>54</td>
<td>66</td>
</tr>
<tr>
<td>Issues in practice with groups</td>
<td>52</td>
<td>63</td>
</tr>
<tr>
<td>Goal-setting and contracting</td>
<td>47</td>
<td>57</td>
</tr>
<tr>
<td>Issues in practice with communities</td>
<td>41</td>
<td>51</td>
</tr>
<tr>
<td>Legal issues in practice</td>
<td>41</td>
<td>50</td>
</tr>
</tbody>
</table>

* N = 81–82 for each item

Table 7
Coverage of LGBT-Related Topics in Research Courses: Number and Percent*

<table>
<thead>
<tr>
<th>Research course content</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Avoiding sexual orientation bias in research</td>
<td>58</td>
<td>78</td>
</tr>
<tr>
<td>Avoiding gender identity/expression bias in research</td>
<td>56</td>
<td>74</td>
</tr>
<tr>
<td>Special ethical issues in research with LGBT adults</td>
<td>49</td>
<td>64</td>
</tr>
<tr>
<td>Special ethical issues in research with LGBT youth</td>
<td>41</td>
<td>55</td>
</tr>
<tr>
<td>Sampling and recruitment issues with LGBT populations</td>
<td>41</td>
<td>54</td>
</tr>
<tr>
<td>Definitions and measurement of sexual orientation</td>
<td>28</td>
<td>37</td>
</tr>
<tr>
<td>Definitions and measurement of gender identity/expression</td>
<td>28</td>
<td>37</td>
</tr>
<tr>
<td>Issues facing LGBT researchers</td>
<td>12</td>
<td>16</td>
</tr>
</tbody>
</table>

* N = 74–76 for each item
**Field learning.** Among field learning faculty “experts,” 86% reported their program offers field placements where there is an opportunity to work on LGBT issues or with LGBT clients; 13% reported no such opportunities. Among the programs not offering these opportunities ($n = 11$), all are baccalaureate programs (primarily in institutions that do not also offer a master’s program in social work). No other demographic differences were discernable between programs offering and not offering opportunities to work on LGBT issues or with LGBT clients. Table 8 shows the extent to which field learning faculty experts reported the availability of opportunities to work on LGBT issues or with LGBT clients in agencies providing services to youth, including youth in out-of-home care. Table 9 shows the extent to which these experts reported having field placement opportunities in agencies providing LGBT-specific services for youth or adults.

**Table 8**
*Availability of Field Placements with Opportunities to Work on LGBT Issues or with LGBT Clients in General Youth or Youth in Out-of-Home Care Settings*

<table>
<thead>
<tr>
<th>Field placement settings</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Youth services programs</td>
<td>66</td>
<td>79</td>
</tr>
<tr>
<td>Health/mental health programs</td>
<td>61</td>
<td>75</td>
</tr>
<tr>
<td>School-based programs</td>
<td>54</td>
<td>65</td>
</tr>
<tr>
<td>Foster care/adoption programs</td>
<td>47</td>
<td>57</td>
</tr>
<tr>
<td>Runaway/homeless shelters</td>
<td>45</td>
<td>54</td>
</tr>
<tr>
<td>Juvenile detention programs</td>
<td>41</td>
<td>50</td>
</tr>
</tbody>
</table>

* $N = 81–84$ for each item

**Table 9**
*Availability of Field Placements with Opportunities to Work on LGBT Issues or with LGBT Clients: LGBT-Specific Settings for Adults or Youth*

<table>
<thead>
<tr>
<th>Field placement settings</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>HIV/AIDS programs</td>
<td>56</td>
<td>67</td>
</tr>
<tr>
<td>Violence prevention/victim services programs</td>
<td>43</td>
<td>52</td>
</tr>
<tr>
<td>Other adult health/mental health programs</td>
<td>41</td>
<td>49</td>
</tr>
<tr>
<td>Political advocacy organizations</td>
<td>34</td>
<td>41</td>
</tr>
<tr>
<td>Health/mental health programs for LGBT youth</td>
<td>22</td>
<td>26</td>
</tr>
<tr>
<td>LGBT community centers</td>
<td>17</td>
<td>20</td>
</tr>
<tr>
<td>Runaway/homeless shelters for LGBT youth</td>
<td>15</td>
<td>18</td>
</tr>
</tbody>
</table>
Faculty Members

Among all respondents (which usually includes multiple respondents from each program), only 9% rated faculty members in their programs as being only “slightly knowledgeable” to “not at all knowledgeable” about sexual orientation. However, 30% rated their colleagues as only “slightly knowledgeable” to “not at all knowledgeable” about gender identity/expression. Faculty “curriculum area experts” were also asked to rate knowledge of LGBT-related issues among colleagues within their identified curriculum area. In this case, there was only one respondent per program. In just 12 – 13% of programs that were rated by a “curriculum area expert,” HBSE (n = 71), policy (n = 63), and practice (n = 82) faculty members were rated “slightly knowledgeable” to “not at all knowledgeable.” However, research faculty members (n = 76) were given this low rating in 33% of programs.

A little more than half of all respondents (53%) reported that there were open LGBT full-time faculty in their programs, and 5% were unsure. Fewer respondents (37%) reported open LGBT part-time faculty, but 20% were unsure. Open LGBT faculty members were more common among master’s programs than undergraduate programs, both full-time faculty, \( \chi^2 (1, N = 424) = 127.50, p < .001 \), and part-time faculty, \( \chi^2 (1, N = 339) = 85.42, p < .001 \). Nearly two thirds of respondents (61%) reported there were no faculty development opportunities in their programs during the past two years focusing on sexual orientation, gender identity/expression, or LGBT people; 11% were unsure. Faculty development opportunities were more often reported by master’s programs, \( \chi^2 (1, N = 400) = 6.89, p < .01 \). Among the 83 field learning faculty experts, only 16% reported having field instructor training on these topics during the past two years.

About 41% of all respondents reported having program faculty whose area of scholarship focuses on sexual orientation, gender identity/expression, or LGBT people. Scholarship on these areas was more common among master’s programs than undergraduate programs, \( \chi^2 (1, N = 418) = 34.76, p < .001 \). However, among 41% of the 130 programs for which the director and at least one faculty member responded, there was either a difference of opinion on whether there was any such scholarship or respondents did not know.

Program and Institutional Environment

Among directors, only 9% reported that LGBT students are likely to feel “not at all comfortable” to “slightly comfortable” in their programs, and among faculty
respondents that figure was 15%. Correspondingly, 87% of both directors and faculty members reported there were open LGB students in their programs within the past two years. But only 22% of directors and 21% of faculty members reported open transgender students during the past two years.

Table 10 shows resources and characteristics of social work programs’ institutions that are relevant to LGBT students and faculty members. Among directors, 53% reported their programs are in a jurisdiction with a nondiscrimination law that includes sexual orientation, and 15% were unsure. There were 36% who reported their jurisdiction has a nondiscrimination law that includes gender identity, and 26% were unsure. Hardly any programs are located in institutions that have prohibitions against same-sex sexual behavior or advocacy on behalf of LGBT people. As shown below, the great majority of directors reported that their programs are located in institutions that have sexual orientation nondiscrimination policies, but less than half have gender identity nondiscrimination policies or partner benefits available to same-sex couples. Notably, about a quarter of directors were unsure whether their institution has a gender identity nondiscrimination policy. Although about three quarters of the institutions are reported to have LGBT student groups, less than half have LGBT-oriented student services.

Table 10

<table>
<thead>
<tr>
<th>Institutional resources</th>
<th>Yes</th>
<th>No</th>
<th>Don’t know</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n</td>
<td>%</td>
<td>n</td>
</tr>
<tr>
<td>Sexual orientation nondiscrimination policy</td>
<td>119</td>
<td>79</td>
<td>26</td>
</tr>
<tr>
<td>Gender identity nondiscrimination policy</td>
<td>58</td>
<td>39</td>
<td>54</td>
</tr>
<tr>
<td>LGBT student services</td>
<td>68</td>
<td>45</td>
<td>69</td>
</tr>
<tr>
<td>LGBT student groups</td>
<td>110</td>
<td>73</td>
<td>33</td>
</tr>
<tr>
<td>Partner benefits for same-sex couples</td>
<td>58</td>
<td>39</td>
<td>65</td>
</tr>
</tbody>
</table>

Directors were also asked about resources within their programs and the facilities in which the programs are housed. Table 11 shows that nearly all programs reportedly have sexual orientation nondiscrimination policies; less than two thirds have gender identity nondiscrimination policies. While only 2% of directors were unsure whether their program has a sexual orientation nondiscrimination policy, 7% did not know if it has a nondiscrimination policy that includes gender identity or expression. Few programs allow prospective students to identify a gender other than “male” or “female” on their application, and hardly any of the programs’ facilities have gender-neutral bathrooms.
Table 11
Program Resources and Characteristics Reported by Directors: Number and Percent

<table>
<thead>
<tr>
<th>Program resources</th>
<th>Yes</th>
<th></th>
<th>No</th>
<th></th>
<th>Don’t know</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n</td>
<td>%</td>
<td>n</td>
<td>%</td>
<td>n</td>
<td>%</td>
</tr>
<tr>
<td>Sexual orientation nondiscrimination policy</td>
<td>134</td>
<td>90</td>
<td>12</td>
<td>8</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Gender identity nondiscrimination policy</td>
<td>94</td>
<td>63</td>
<td>44</td>
<td>30</td>
<td>11</td>
<td>7</td>
</tr>
<tr>
<td>LGBT student groups</td>
<td>34</td>
<td>23</td>
<td>116</td>
<td>77</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Gender-neutral bathrooms</td>
<td>5</td>
<td>3</td>
<td>146</td>
<td>96</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Applications ask about sexual orientation</td>
<td>5</td>
<td>3</td>
<td>146</td>
<td>96</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Categories of “other” gender or “transgender” on</td>
<td>10</td>
<td>7</td>
<td>130</td>
<td>87</td>
<td>10</td>
<td>7</td>
</tr>
<tr>
<td>application</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Among field learning experts ($n = 81$), 25% reported having open LGBT-identified field instructors or liaisons, but fewer reported using specifically designed resource materials (13%) or support groups (4%) for LGBT students in field placements. Likewise, few reported offering any specific field instructor training during the past two years on working with LGBT students (11%). However, many field-learning experts reported that agencies had to agree not to discriminate against students on the basis of sexual orientation (82%) or gender identity/expression (73%) in order to be approved as field placements.

Variables Related to Student Competence and Comfort, and Presence of Open LGBT Students in Programs

In addition to the findings reported above, the relationships of other study variables with the major “outcomes” were examined, i.e., how well programs train students to deliver competent services to LGBT individuals and LGBT youth, and how comfortable LGBT students are likely to feel in the program. Also examined were variables associated with the presence of open LGBT students in social work.

The Pearson chi-square test of association was used to test the statistical significance of these bivariate relationships. However, several chi-square analyses resulting in significant findings had violations of the assumption of normality due to low expected values. As a result, the four response categories for training students to provide competent services (not at all well, slightly well, fairly well, very well) were collapsed into two (slightly to not at all well, fairly to very well), and the four categories for LGBT student comfort (not at all knowledgeable, slightly knowledgeable, fairly knowledgeable, very knowledgeable) were collapsed into two (slightly to not at all knowledgeable,
fairly to very knowledgeable). In many cases, violations of the assumption of normality still occurred because of a low number of “don’t know” responses on other variables. To check whether such violations were likely to have compromised the accuracy of the findings, the chi square was run again after filtering out the “don’t know” responses (which resolved the violations in nearly all instances). Findings were reported only when filtering out the “don’t know” responses did not change whether chi square produced a significant result. As noted below, the Fischer Exact test was run in one instance when filtering out “don’t know” responses failed to resolve the violation of the assumption of normality. Phi or Cramer’s V was used to estimate the strength of the bivariate relationships. According to Cohen’s (1988) criteria, a Phi or Cramer’s V score of .1 indicates a weak relationship, .3 a moderate relationship, and .5 a strong relationship.

**Preparation of students to provide competent services.** Several variables were associated with directors’ ratings of how well their programs train students to provide competent services to LGBT individuals in general and to LGBT youth in particular, as shown in Tables 12 and 13. The strongest associations were with faculty knowledge about gender identity/expression.

Table 12
Variables Associated with How Well Programs Train Students to Provide Competent Services to LGBT Individuals: Assessment by Directors

<table>
<thead>
<tr>
<th>Variable</th>
<th>Significance</th>
<th>Strength</th>
</tr>
</thead>
<tbody>
<tr>
<td>Faculty knowledge about gender identity/expression</td>
<td>$\chi^2 (1, N = 146) = 32.50, p &lt; .001$</td>
<td>.47</td>
</tr>
<tr>
<td>Faculty knowledge about sexual orientation</td>
<td>$\chi^2 (1, N = 146) = 14.98, p &lt; .001$</td>
<td>.32</td>
</tr>
<tr>
<td>Gender-neutral bathrooms in program’s facilities</td>
<td>$\chi^2 (2, N = 146) = 9.77, p &lt; .01$</td>
<td>.26</td>
</tr>
<tr>
<td>Faculty development on LGBT issues (past 2 years)</td>
<td>$\chi^2 (2, N = 145) = 8.77, p &lt; .05$</td>
<td>.25</td>
</tr>
</tbody>
</table>

All of the above associations were in the “expected” direction. That is, better assessments of training were associated with greater faculty knowledge about sexual orientation and gender identity/expression, presence of gender-neutral bathrooms, and faculty development opportunities on LGBT issues during the past two years.
Table 13

Variables Associated with How Well Programs Train Students to Provide Competent Services to LGBT Youth: Assessment by Directors

<table>
<thead>
<tr>
<th>Variable</th>
<th>Significance</th>
<th>Strength</th>
</tr>
</thead>
<tbody>
<tr>
<td>Faculty knowledge about gender identity/expression</td>
<td>$\chi^2 (1, N = 148) = 29.09, p &lt; .001$</td>
<td>.44</td>
</tr>
<tr>
<td>Material on best practices with LGBT youth in child welfare courses</td>
<td>$\chi^2 (2, N = 121) = 20.61, p &lt; .001$</td>
<td>.41</td>
</tr>
<tr>
<td>Material on LGBT youth in out-of-home care in child welfare courses</td>
<td>$\chi^2 (2, N = 122) = 17.80, p &lt; .001$</td>
<td>.38</td>
</tr>
<tr>
<td>Material on LGBT identity development in child welfare courses</td>
<td>$\chi^2 (2, N = 122) = 14.12, p = .001$</td>
<td>.34</td>
</tr>
<tr>
<td>Gender-neutral bathrooms in program facilities</td>
<td>$\chi^2 (2, N = 148) = 9.70, p &lt; .01$</td>
<td>.26</td>
</tr>
<tr>
<td>Faculty knowledge about sexual orientation</td>
<td>$\chi^2 (1, N = 147) = 8.25, p &lt; .01$</td>
<td>.24</td>
</tr>
<tr>
<td>Faculty development on LGBT issues (past 2 years)</td>
<td>$\chi^2 (2, N = 147) = 7.34, p &lt; .05$</td>
<td>.22</td>
</tr>
</tbody>
</table>

These associations were also in the “expected” direction. Assessments of better training were associated with greater faculty knowledge about sexual orientation and gender identity/expression; content on best practices with LGBT youth, LGBT youth in out-of-home care, and LGBT identity development in child welfare courses; the presence of gender-neutral bathrooms; and faculty development opportunities involving LGBT issues.

**Comfort of LGBT students in program.** Directors and faculty respondents were asked how comfortable LGBT students are likely to feel in their programs. Tables 14 and 15 show the variables that were associated with estimates of LGBT student comfort according to directors and faculty members, respectively. Among both sets of respondents comfort was most strongly associated with faculty knowledge about sexual orientation and gender identity/expression. Directors and faculty members differed on other associations with estimates of comfort, but these differences may have occurred because the two sets of respondents were asked different questions on their respective surveys.
Table 14  
**Variables Associated with How Comfortable LGBT Students Are Likely to Feel in Program: Assessment by Directors**

<table>
<thead>
<tr>
<th>Variable</th>
<th>Significance</th>
<th>Strength</th>
</tr>
</thead>
<tbody>
<tr>
<td>Faculty knowledge about sexual orientation</td>
<td>$\chi^2 (1, N = 150) = 22.80, p &lt; .001$</td>
<td>.39</td>
</tr>
<tr>
<td>Faculty knowledge about gender identity/expression</td>
<td>$\chi^2 (1, N = 151) = 11.69, p &lt; .01$</td>
<td>.28</td>
</tr>
<tr>
<td>Human sexuality content in required courses</td>
<td>$\chi^2 (2, N = 150) = 8.36, p &lt; .05$</td>
<td>.24</td>
</tr>
<tr>
<td>Domestic partner benefits for same-sex couples</td>
<td>$\chi^2 (2, N = 147) = 6.11, p &lt; .05$</td>
<td>.20</td>
</tr>
</tbody>
</table>

The above associations were all in the “expected” direction, with directors’ estimates of greater comfort among LGBT students associated with greater faculty knowledge about sexual orientation and gender identity/expression, inclusion of human sexuality content in required courses, and the existence of domestic partner benefits for same-sex couples. Among directors, estimations of how comfortable LGBT students are likely to feel were positively correlated with assessments of how well students were being prepared to provide competent services to LGBT individuals ($r_s = .40, p < .001$) and to LGBT youth in particular ($r_s = .31, p < .001$). The variables with noncollapsed response categories were used for these correlations.

Table 15  
**Variables Associated with How Comfortable LGBT Students Are Likely to Feel in Program: Assessment by Faculty Members**

<table>
<thead>
<tr>
<th>Variable</th>
<th>Significance</th>
<th>Strength</th>
</tr>
</thead>
<tbody>
<tr>
<td>Faculty knowledge about sexual orientation*</td>
<td>$\chi^2 (2, N = 300) = 12.69, p &lt; .01$</td>
<td>.21</td>
</tr>
<tr>
<td>Faculty knowledge about gender identity/expression</td>
<td>$\chi^2 (2, N = 299) = 8.50, p &lt; .05$</td>
<td>.17</td>
</tr>
<tr>
<td>Faculty scholarship on LGBT issues</td>
<td>$\chi^2 (2, N = 298) = 6.11, p &lt; .05$</td>
<td>.14</td>
</tr>
</tbody>
</table>

* Fischer's Exact = .001
Once again, the above associations were in the “expected” direction, with faculty estimates of greater comfort among LGBT students associated with greater faculty knowledge about sexual orientation and gender identity/expression, and the presence of faculty members who engage in scholarship on LGBT issues.

**Presence of open LGBT students in program.** The reported presence of open LGBT students in programs within the past two years was associated with estimations among all respondents (directors and faculty members combined) of LGBT student comfort, $\chi^2 (2, N = 449) = 10.12, p < .01$, Cramer’s $V = .15$. However, the association of LGBT student comfort and reported presence of open transgender students was not significant. As shown in Table 16, the reported presence of open LGB and transgender students was also associated with program level, auspice, and existence of nondiscrimination laws in the jurisdiction in which the program is located. LGB and transgender students were more likely to be in master’s level and nonsectarian programs, and in programs located in jurisdictions with sexual orientation and gender identity nondiscrimination laws.

Table 16
*Program Variables Associated with Directors’ Reports of Open LGB or Transgender Students in Program During Past Two Years*

<table>
<thead>
<tr>
<th>Variable, open LGBT students</th>
<th>Significance</th>
<th>Strength</th>
</tr>
</thead>
<tbody>
<tr>
<td>Master’s-level program</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LGB</td>
<td>$\chi^2 (2, N = 423) = 22.71, p &lt; .001$</td>
<td>.23</td>
</tr>
<tr>
<td>Transgender</td>
<td>$\chi^2 (2, N = 416) = 64.86, p &lt; .001$</td>
<td>.44</td>
</tr>
<tr>
<td>Gender-identity nondiscrimination law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LGB</td>
<td>$\chi^2 (2, N = 423) = 22.71, p &lt; .001$</td>
<td>.23</td>
</tr>
<tr>
<td>Transgender</td>
<td>$\chi^2 (2, N = 335) = 64.86, p &lt; .001$</td>
<td>.44</td>
</tr>
<tr>
<td>Nonsectarian program</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LGB</td>
<td>$\chi^2 (1, N = 416) = 20.50, p &lt; .001$</td>
<td>.22</td>
</tr>
<tr>
<td>Transgender</td>
<td>$\chi^2 (1, N = 331) = 20.23, p &lt; .001$</td>
<td>.25</td>
</tr>
<tr>
<td>Sexual orientation nondiscrimination law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LGB</td>
<td>$\chi^2 (1, N = 349) = 6.35, p &lt; .05$</td>
<td>.13</td>
</tr>
<tr>
<td>Transgender</td>
<td>$\chi^2 (1, N = 278) = 3.92, p &lt; .05$</td>
<td>.12</td>
</tr>
</tbody>
</table>
Qualitative Findings

Fifty-six program directors provided specific comments in response to the open-ended question, “Is there anything else you would like to tell us about the ways in which your program addresses LGBT issues in its policies, practices, or curriculum?” These comments broke down into four general categories: (a) current faculty member and student engagement around LGBT issues and concerns outside the social work program; (b) efforts undertaken by programs to enhance or improve the implicit and explicit curriculum related to LGBT issues; (c) challenges and barriers faced in making program improvements; and (d) further explanations of quantitative responses.

Faculty and student engagement around LGBT concerns. Directors identified a number of ways that social work faculty members were engaged in education, advocacy, and support related to LGBT issues, including:

1. serving as adviser or sponsor for campus LGBT student groups;
2. conducting research and scholarship on LGBT topics;
3. offering continuing education in the community on LGBT topics;
4. serving on boards or leading local LGBT agencies/projects;
5. advocating for LGBT-supportive policies on campus and in the community; and
6. being an active force on campus on LGBT issues.

Directors noted that social work students were active contributors as well, by volunteering at LGBT-related agencies, coordinating LGBT-related learning opportunities for faculty members and students, and providing leadership for campus LGBT services and/or LGBT student groups.

Efforts to improve programs. Efforts to improve programs related to four areas: implicit curriculum, explicit curriculum, teaching methods, and extra- and co-curricular activities. Implicit curriculum, a term recently adopted by CSWE, relates to the program policies and practices that shape student learning. Directors identified several aspects of their programs that enhanced students’ experiences and their learning. These include:

1. identifying gender-neutral bathrooms for students;
2. existing LGBT faculty members who were out and serving as role models for students;
3. supporting LGBT students through LGBT-specific student groups and caucuses;
4. updating admissions materials to be more inclusive of LGBT applicants;
5. encouraging faculty members and staff to place Safe Zone stickers on faculty office doors and to complete Safe Zone training;
6. creating a plan to improve the program setting for LGBT students; and
7. wearing of rainbow-colored academic stoles by LGBT faculty members and graduating seniors.

In commenting on the inclusion of LGBT topics in the explicit curriculum, several respondents noted that their programs infused LGBT content throughout the curriculum, while others described specific courses on diversity that included LGBT populations. Other approaches to ensure coverage of LGBT topics in the curriculum included:

1. monitoring curriculum to ensure LGBT content is included in all courses;
2. revising curriculum to ensure LGBT topics are included;
3. offering specific LGBT elective courses or reworking curriculum to develop these electives;
4. supporting students taking sexuality and LGBT issues courses in other departments;
5. bringing in an outside professor to teach a sexuality course;
6. having LGBT-specific field placement agencies; and
7. offering a graduate certification in LGBT studies.

Directors commented on a number of teaching methods used in their programs’ courses to address LGBT topics. The most popular approach was to bring LGBT guest speakers and panels into classes, although faculty members also facilitated in-class discussions about LGBT issues, assigned LGBT-related research articles and LGBT narratives, or listed these materials in the syllabus bibliography. Other respondents reported using extra- or co-curricular activities to enhance the curriculum, including special lectures and presentations about LGBT topics for faculty members and students; student-initiated learning activities for faculty members and students; and LGBT alumni engaged in LGBT education who could present on these issues.

Barriers and challenges to program improvement. One issue that arose for several directors related to their program’s size. Programs with few faculty members or small numbers of students found it challenging to offer LGBT-specific courses due to problems in finding knowledgeable instructors or enrolling sufficient numbers of students in elective courses. Several respondents reported that not all faculty members were equally knowledgeable or comfortable with LGBT topics. Similarly, several other directors noted that they needed practical information resources to improve their programs. Several of them learned about program and curriculum inadequacies as a result of participating in this study. As one director noted, “until I read your questions, I thought we did a pretty good job. Taking the survey has been informative about areas, such as the child welfare classes, that we need to enhance.”

Discussion
The purpose of this survey of program directors and faculty members was to identify areas of strength and weakness within the implicit and explicit curricula of social work programs in the United States, with the hope that both directors and faculty members could use the findings to make improvements in their programs. Both strengths and areas of concern were found regarding the treatment of LGBT issues, students, and faculty members. The picture looks somewhat better for sexual orientation issues than for gender identity and expression issues; for LGB faculty members and students than for those who are transgender; and for the preparation of students to work with LGBT adults than with LGBT youth (including youth in out-of-home care). It appears that undergraduate programs may lag behind master’s programs in some of these areas.

Most programs do not even formally assess their students’ competence in providing services to LGBT individuals. More than half of directors estimated that their programs prepared students to provide competent services to LGBT youth only slightly to not at all well. Directors’ estimation of the preparation to work competently with LGBT individuals in general was somewhat better. By contrast, the overwhelming majority of directors and faculty members believed that LGBT students are likely to feel comfortable in their programs. Most reported open LGB students were enrolled in their programs during the past two years, but only about one-fifth reported having open transgender students in their programs.

Even though the findings on competence and comfort were quite different, their strongest correlates overlapped considerably. In the view of program directors, both variables were most strongly associated with the faculty’s level of knowledge about sexual orientation and/or gender identity/expression. Faculty members were not asked the competence question, but in their view, comfort was also associated with faculty knowledge. These two outcome variables are conceptually related in that programmatic environments where scholarship on LGBT issues, or knowledge about them, is considered unimportant may tend to direct little attention to the preparation of students to provide competent services to LGBT clients. The large amount of disagreement among respondents within the same programs on whether any of their colleagues focused their scholarship on LGBT issues, or knowledge about them, is considered unimportant may tend to direct little attention to the preparation of students to provide competent services to LGBT clients. The large amount of disagreement among respondents within the same programs on whether any of their colleagues focused their scholarship on LGBT issues might reflect a marginalization of LGBT scholarship, as described by LaSala, Jenkins, Wheeler, and Fredriksen-Goldsen (2008). Although marginalization might not necessarily indicate a homophobic or transphobic environment, it could indicate the presence of heterosexist or binary gender biases, either of which may have negative impacts on LGBT students and faculty members, and the quality of the training offered by the programs.

Although the data show the presence of considerable infusion of LGBT content, they also show some gaps. Content on LGBT youth is frequently absent from each of the curriculum areas, including courses on child welfare. It is hard to imagine how programs can prepare students to deliver competent services to LGBT youth in out-of-home care without including such content in the explicit
Similarly, there are relatively few programs that provide field placement opportunities in LGBT-specific settings for youth, although many programs report having opportunities to work with LGBT clients in general youth settings. The lack of availability among some undergraduate programs of field placements providing any exposure to LGBT issues or clients is a particular concern. Content on gender identity/expression and transgender people lags considerably behind content on sexual orientation and LGB people, and curriculum specific to bisexuals is less common than curriculum on lesbians and gay men. There is much less infusion of LGBT content in research courses as compared to the other curriculum areas.

The data also show strengths and gaps with respect to the implicit curriculum or program environment. One of the most important of these variables is the level of faculty knowledge about sexual orientation, gender identity/expression, and LGBT people. Although most respondents assessed their faculty members as being at least fairly knowledgeable about sexual orientation and LGB people, nearly a third gave their faculty members a relatively low rating on knowledge about gender identity/expression and transgender people. Although most faculty experts concurred that colleagues teaching in their curriculum area were at least fairly knowledgeable, faculty members teaching research courses were considered to be relatively lacking in knowledge about these issues among one-third of the research faculty experts.

One way to enhance faculty knowledge about LGBT issues is through faculty development initiatives. Unfortunately, less than a third of directors reported any LGBT-related faculty development during the past two years. The present findings indicate several areas in which the need for faculty development is especially pressing: information about LGBT youth, especially how content on LGBT youth can be infused in courses on child welfare and throughout the curriculum; information about gender identity/expression and transgender people; and information on how to infuse LGBT-related content in research courses.

In addition to faculty knowledge, the present findings indicate other gaps among programs’ implicit curriculum on gender identity/expression and transgender people. Relatively few programs have a gender identity nondiscrimination policy, and almost none allow for the identification of other gender or transgender on their admissions applications or have gender-neutral bathrooms in their facilities. Gaps such as these contribute to a less positive educational environment for transgender students than for LGB students among social work programs, and they may reflect a lower level of consciousness about gender identity/expression than sexual orientation among program administrators and faculty members. The large proportion of directors who did not know whether their institution had a gender identity nondiscrimination policy or, to a lesser extent, whether their program had such a policy, speaks to a relative lack of consciousness about these issues. Finally, the greater proportion of sectarian programs reporting an absence of open LGBT students could indicate a less positive environment in
such programs for these students. That is, LGBT students might be less likely to apply to such programs; once enrolled, they might be less likely to be open.

Limitations

This study had several important limitations. First, although the sample was randomly selected, the ability to generalize the findings to the population of social work programs is somewhat limited by self-selection bias, as indicated by the 55% overall response rate. In particular, baccalaureate programs in private sectarian institutions and programs in the Great Lakes region were under-represented in the final sample. In addition, faculty responses are likely to contain selection biases since faculty participants were suggested by their directors. It is possible that faculty members engaged in scholarly work on LGBT issues, especially faculty members who are openly LGBT, are over-represented in the sample.

Second, all of the study’s findings are based on self-report by program directors and faculty identified by their directors. As such, the data are likely to contain biases commonly associated with self-report data. Social desirability seems especially likely, and a measure of it was not included in the survey instrument. Thus the data might present a more positive picture of LGBT issues in social work education than may exist in reality. However, many participants reported less-than-positive characteristics about their programs.

Third, although the study asked how well programs are preparing students to provide competent services to LGBT clients, there was no direct measure of competent practice among students or graduates of social work programs. Likewise, comfort among LGBT students and knowledge about LGBT issues among faculty members were not measured directly. Thus findings on these questions must be considered only estimates; future studies may measure competent practice, student comfort, and faculty knowledge more directly.

Fourth, the lists of LGBT-related topics in each curriculum area are not exhaustive. These data should be used only for comparative purposes. Finally, because the study was cross-sectional, no causal explanations can be advanced regarding the relationships among preparation for competent practice, LGBT student comfort, and any of the correlates identified.

Recommendations

The findings suggest that, as a first step, social work education programs should make greater efforts to assess how well they are preparing their students to provide competent services to LGBT individuals, including to youth in out-of-home care. Because providing such preparation is a core part of their mission, programs should monitor how well they are living up to this responsibility.
Although programs may already include some material about LGBT populations, there is considerable room for improvement; many topics that are less frequently addressed can be integrated into each curriculum area. The lists of LGBT-related topics that appear in this report can be used as a resource for faculty members attempting to increase and diversify content on LGBT issues across curriculum areas. Programs do not necessarily need to have LGBT-specific electives. Having such electives without also infusing LGBT content throughout the curriculum segregates this knowledge such that most students will not be exposed to it. In order to deliver both breadth and depth of LGBT-related knowledge, both infusion (see Bassett & Day, 2003) and specialized electives are likely to play important roles. Programs must also monitor the extent to which these topics are integrated across instructors teaching the same courses.

Programs should make special efforts to increase the infusion of material about LGBT youth throughout the curriculum, particularly in child welfare courses, in order to adequately prepare their students for providing competent services to LGBT young people. In addition to topics infused throughout required courses, programs should endeavor to increase field-learning opportunities to work with LGBT youth, especially youth in out-of-home care.

Greater attention to transgender and gender identity/expression issues is especially needed. The findings show particularly large gaps in the preparation offered by social work programs on these issues.

As part of their assessments of the implicit curriculum, programs should evaluate the support systems for LGBT students and faculty members at the program, institution, and local levels. Doing this kind of assessment would require the collection of data on both sexual orientation and gender identity/expression, which most programs are not currently gathering. Programs should consider including these categories on their applications and evaluation instruments to better assess whether LGBT students and faculty members experience heterosexism, binary gender bias, or other forms of oppression.

Programs should also ensure that they have faculty members who are knowledgeable about LGBT issues, including open LGBT faculty members and those whose scholarship focuses on LGBT topics. There is particular need for more knowledgeable faculty members in the research curriculum area. Both academic and field faculty could benefit from more faculty development opportunities on LGBT issues, especially youth and transgender issues. Because of the emergent nature of LGBT identities and developmental trajectories, and the changing social environment in which LGBT individuals live (Martin & D’Augelli, 2009), even relatively well-informed faculty members might benefit from greater exposure to the most current knowledge about these issues. Faculty members can also be encouraged to attend sessions on LGBT issues at local, state, and national social work conferences.
Programs should examine whether faculty scholarship on LGBT issues is marginalized; they should make efforts to support and foster such work among their faculty members.

To better recruit and support LGBT faculty members and students, programs should advocate for their institutions to adopt both sexual orientation and gender identity nondiscrimination policies. Other supportive policies, such as domestic partner benefits, can also contribute to a positive and supportive educational environment.

At the very least, directors and faculty members should take the time to learn the status of LGBT-supportive policies and conditions in their institutions and the jurisdictions in which they are located. Such efforts are especially needed with respect to gender identity/expression and transgender people. One very basic but important way to ensure respect for transgender students and faculty members is to provide gender-neutral bathrooms. Programs should also make sure there is an “other” category on admissions applications and other forms that ask people to identify their gender.

References


# BOARD OF BEHAVIORAL SCIENCES
## Continuing Education Requirement

<table>
<thead>
<tr>
<th>MFT</th>
<th>LCSW</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>36 CE hours required to renew</strong>&lt;br&gt;Business and Professions Code: 4980.54(c)(1)&lt;br&gt;California Code of Regulations: 1887.3(a)</td>
<td><strong>36 CE hours required to renew</strong>&lt;br&gt;Business and Professions Code: 4996.22(a)(1)&lt;br&gt;California Code of Regulations: 1887.3(a)</td>
</tr>
<tr>
<td><strong>Spousal/Partner Abuse</strong>&lt;br&gt;If course is taken <strong>before</strong> January 1, 2005 there is not hour length specified&lt;br&gt;If the course is taken <strong>after</strong> January 1, 2005 It must be seven hours in length&lt;br&gt;B&amp;P Code: 4980.57(a)</td>
<td><strong>Spousal/Partner Abuse</strong>&lt;br&gt;If course is taken <strong>before</strong> January 1, 2005 there is not hour length specified&lt;br&gt;If the course is taken <strong>after</strong> January 1, 2005 It must be seven hours in length&lt;br&gt;B&amp;P Code: 4996.22(a)(3)</td>
</tr>
<tr>
<td><strong>Aging and Long Term Care</strong>&lt;br&gt;Three hour requirement&lt;br&gt;B&amp;P Code: 4980.395(a)</td>
<td><strong>Aging and Long Term Care</strong>&lt;br&gt;Three hour requirement&lt;br&gt;B&amp;P Code: 4996.26(a)</td>
</tr>
<tr>
<td><strong>HIV/AIDS</strong>&lt;br&gt;Seven hour requirement&lt;br&gt;California Code of Regulations 1887.3(c)</td>
<td><strong>HIV/AIDS</strong>&lt;br&gt;Seven hour requirement&lt;br&gt;California Code of Regulations 1887.3(c)</td>
</tr>
<tr>
<td><strong>Law and Ethics</strong>&lt;br&gt;Six hours for every renewal period&lt;br&gt;California Code of Regulations 1887.3(d)</td>
<td><strong>Law and Ethics</strong>&lt;br&gt;Six hours for every renewal period&lt;br&gt;California Code of Regulations 1887.3(d)</td>
</tr>
</tbody>
</table>

Mandated courses are one-time only courses, and once taken, need not be taken again. The only exception is the Law and Ethics course. Law and Ethics must be taken for each renewal.

18 hours of CE are required for your first renewal, but that is a MINIMUM, not a maximum. All mandated courses are required for your first renewal. If you have taken any of the mandated courses in the past, you are not required to repeat it. The only exception is the Law and Ethics course. Law and Ethics must be taken for each renewal.

Supervisors of Associate Clinical Social Workers and Marriage and Family Therapist Interns may apply their supervisor course training hours to their continuing education requirement as long as the training has been taken by an approved continuing education provider.

(chart updated: 10/06)
Blank Page
To: Board Members  
From: Rosanne Helms  
Subject: Legislative Update

Date: May 5, 2011  
Telephone: (916) 574-7897

Board staff is currently pursuing the following legislative proposals:

**SB 274 (Wyland) Healing Arts**

Currently, SB 274 makes conforming changes to licensing law for the professions regulated by the Board. It would define the act of “engaging in the practice” for the Board’s educational psychologist, clinical social worker, and professional clinical counselor licensees (LPCCs). Additionally, it would require applicants for professional clinical counselor licensure to provide the Board with a W-2 tax form or a letter verifying volunteer service for each year of experience toward licensure that they are claiming.

If the Board chooses to extend the grandparenting period for LPCCs at today’s meeting, staff will request an amendment to Business and Professions Code 4999.54, which specifies the grandparenting period be placed in this bill. Staff will also request this bill be made an urgency measure.

*Status: This bill has been referred to the Senate Appropriations Committee.*

**SB 363 (Emmerson) MFT Experience and Supervision**

This bill seeks to clarify and amend supervision and experience requirements for those seeking licensure as a Marriage and Family Therapist (MFT). This proposal does the following:

1. **MFT Trainee Practicum Requirements:** Previously, this bill proposed allowing an MFT trainee to continue to counsel clients while not enrolled in practicum if that lapse of enrollment is less than 45 days.

The bill has now been amended to allow an MFT trainee to continue to counsel clients while not enrolled in practicum if that lapse of enrollment is less than 90 calendar days, and if that period is immediately preceded and immediately followed by enrollment in a practicum course.
2. **Client-Centered Advocacy**: Limits the client centered advocacy allowed for an MFT intern to 500 hours.

3. **Supervision of MFT Interns**: Allows Licensed Professional Clinical Counselors (LPCCs) to supervise MFT interns, but clarifies that they must first meet additional training and education requirements in order to do so.

*Status: This bill has been sent to third reading in the Senate.*

**SB 704 (Negrete-McLeod) Examination Re-Structure**

The proposed exam re-structure would change the exam process for applicants seeking MFT and Clinical Social Worker (LCSW) licensure on or after January 1, 2013. If this legislation is successful, then effective January 1, 2013, applicants for MFT and LCSW licensure would need to pass two exams: a California law and ethics examination (law and ethics exam) and a clinical examination (clinical exam). These new exams would replace the standard written and the clinical vignette exams currently in place.

*Status: This bill is on the second reading file in the Senate.*

**SB 943 Omnibus Legislation (Senate Business, Professions, and Economic Development Committee)**

The omnibus bill proposes several non-substantive amendments which will add clarity and consistency to licensing law. The changes being proposed can be organized into two major categories:

1) Technical clean-up; and

2) Amendments either including LPCCs in statute where the Board’s other licensees are included, or making LPCC law consistent with the law for the Board’s other licenses.

To date, staff has submitted the following amendments and additions to the legislature to be included in this year’s omnibus legislation:

1) **Amend BPC Sections 4980.36, 4980.37, 4980.40.5, and 4999.12: Bureau for Private Postsecondary Education**

   **Background:** BPC sections 4980.36, 4980.37, 4980.40.5, and 4999.12 refer to the Bureau for Private Postsecondary and Vocational Education (BPPVE). As a result of AB 48, Chapter 310, Statutes of 2009, the Bureau for Private Postsecondary Education (BPPE) was created, which replaced the former BPPVE.

   **Amendment:** Correct errant references to BPPVE by amending sections 4980.36, 4980.37, 4980.40.5, and 4999.12 to reflect the Bureau's new name.

2) **Amend BPC Sections 4980.36, 4980.37, 4980.40.5: Couple and Family Therapy Degree Title**

   **Background:** A growing number of graduate programs nationwide have begun offering degrees in "Couple and Family Therapy." This degree title reflects a growing trend to acknowledge a greater diversity of relationships with which Marriage and Family Therapists (MFTs) work. A degree in
Couple and Family Therapy is currently not listed in statute as one of the degrees the Board may accept in order to qualify for an MFT license.

**Amendment:** Add the degree title “Couple and Family Therapy” to the list of degrees titles in BPC sections 4980.36, 4980.37, and 4980.40.5 that are accepted to qualify for MFT licensure.

3) **Amend BPC Section 4980.36: MFT Client Centered Advocacy Hours**

**Background:** BPC section 4980.36(d)(1)(B)(ii) requires that a qualifying degree for licensure include practicum that includes a minimum of 225 hours of face-to-face experience counseling individuals, couples, families or groups, and states that up to 75 of these hours may be gained performing client centered advocacy as defined in section 4980.03. However, client centered advocacy, as defined in section 4980.03, does not consist of face-to-face contact.

**Amendment:** In order to clarify the type of experience required, the proposed amendment to section 4980.36 (d)(1)(B) separates the 225 hours into 150 hours of face-to-face experience and 75 hours of either client centered advocacy or face-to-face experience.

4) **Amend BPC Section 4980.42: Trainee Work Setting**

**Background:** BPC section 4980.42(a) discusses the conditions of a trainee’s services. The section incorrectly references section 4980.43(e), which outlines requirements of work settings for interns. It should reference 4980.43(d), which discusses the requirements of work settings for trainees.

**Amendment:** Amend section 4980.42(a) to correctly reference 4980.43(d) relating to trainees’ work settings.

5) **Amend BPC Section 4980.45 and 4996.24; Add BPC Section 4999.455: Supervision of Registrants Limitation**

**Background:** Last year the Board voted to limit the number of registrants a supervisor can supervise in a private practice setting. Current MFT and LCSW law now limits the number of registrants that a licensed professional in private practice may supervise or employ to two individuals registered either as an MFT intern or an ASW. Additionally, an MFT, LCSW, or LPCC corporation may currently employ no more than ten individuals registered either as MFT interns or ASWs at any one time. There is currently no limit on the number of clinical counselor interns that may be supervised in private practice.

**Amendment:** The proposed amendments to sections 4980.45 and 4996.24 impose a limitation of three registrants for a supervisor in private practice. Additionally, the corporation may currently employ no more than fifteen individuals registered by the Board at any one time. Section 4999.455 is added in order to apply these same limitations to LPCCs.

6) **Amend BPC Sections 4982.25, 4989.54, and 4992.36; Add Section 4999.91: Disciplinary Action**

**Background:** Currently sections 4982.25(b) (for MFTs), 4989.54(i) (for Licensed Educational Psychologists (LEPs)), and 4992.36 (for LCSWs) discuss grounds for denial of application or disciplinary action for unprofessional conduct. Each section lists the various licenses the Board issues and states that actions against any of these licenses constitute grounds for disciplinary action against the license that is the subject of that particular code. However, each code section leaves out action against its own license as grounds for disciplinary conduct.
Additionally, there is no equivalent section in LPCC law stating that action against a Board license or registration constitutes grounds for disciplinary action against an LPCC license or registration.

**Amendment:** For consistency, amend sections 4982.25(b), 4989.54(i), and 4992.36 to list all four of the Board’s license types. This would clarify the intention that disciplinary action against any one of the Board’s license types would constitute grounds for disciplinary action against any other of the Board’s licenses if an individual held more than one license with the Board. Add section 4999.91 to LPCC code to mirror the above listed codes.

7) **Amend BPC Section 4990.38: Disciplinary Action Taken by the State of California**

**Background:** BPC section 4990.38 currently allows the Board to deny an application or suspend or revoke a license or application if disciplinary action has been taken by another state, territory or governmental agency against a license, certificate or registration to practice marriage and family therapy, clinical social work, educational psychology or any other healing art.

As written, the code does not allow the Board to deny or suspend a license or application based on disciplinary action taken by the State of California.

**Amendment:** Amend section 4990.38 to include disciplinary action taken by the State of California.

8) **Amend BPC Section 4992.3: LCSW Scope of Competence**

**Background:** BPC section 4992.3(m) of the LCSW code states that holding one’s self out as being able to perform any service beyond the scope of one’s license is unprofessional conduct. However, the equivalent code sections in MFT, LEP, and LPCC law state that it is considered unprofessional conduct to perform any professional services beyond the scope of one’s *competence*.

**Amendment:** Amend BPC section 4992.3(m) of the LCSW code to include scope of competence in order to make it consistent with MFT, LEP, and LPCC code.

9) **Amend BPC Section 4996.13: LCSW Work of a Psychosocial Nature**

**Background:** Current law allows certain other professional groups to practice work of a psychosocial nature as long as they don’t hold themselves out to be a LCSW. The professional groups that are allowed to practice social work are listed in section 4996.13. Licensed professional clinical counselors are not included in the list.

**Amendment:** Add licensed professional clinical counselors to the list in section 4996.13 of professional groups allowed to practice work of a psychosocial nature.

*Status: This bill has been referred to the Senate Appropriations Committee.*
To: Policy and Advocacy Committee

From: Rosanne Helms
Legislative/Regulatory Analyst

Subject: Rulemaking Update

Date: March 22, 2011
Telephone: (916) 574-7897

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, 1832, 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**

**Background**

This proposal would implement all provisions related to SB 788, Chapter 619, Statutes of 2009, and the creation of Licensed Professional Clinical Counselors. Additionally, this rulemaking incorporates changes approved by the Board relating to Continuing Education requirements for licensed educational psychologists. The Board approved the proposed text at its September 1, 2010 meeting.

**Status**

The rulemaking package was approved by the State and Consumer Services Agency (Agency) on March 18, 2011. Next, it must be reviewed by the Department of Finance and then by the Office of Administrative Law.

**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, 2008. Staff will address this rulemaking proposal in 2011 after the current pending regulatory proposal is approved.

**Title 16, CCR Section 1887.3, HIV/AIDS Continuing Education Course for LPCCs**

This proposal revises current Board regulations to include LPCCs in the requirement to take a one-time, seven hour continuing education course covering the assessment and treatment of
people living with HIV/AIDS. The Board approved the proposed text at its February 23, 2011 meeting and directed staff to submit a regulation package to make the proposed change. Staff will address this rulemaking proposal after the current pending regulatory proposal is approved.
An act to amend Sections 7000.5 and 7011 of the Business and Professions Code, relating to contractors, profession and vocations, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 541, as amended, Price. Contractors’ State License—Board.

Regulatory boards: expert consultants.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department 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. Existing law, the Osteopathic Act, requires the Osteopathic Medical Board of California to regulate osteopathic physicians and surgeons. Existing law generally requires applicants for a license to pass an examination and authorizes boards to take disciplinary action against licensees for violations of law. Existing law establishes standards relating to personal service contracts in state employment.

This bill would authorize these boards to enter into an agreement with an expert consultant, subject to the standards regarding personal service contracts described above, to provide enforcement and examination assistance. The bill would require each board to establish policies and procedures for the selection and use of these consultants. This bill would declare that it is to take effect immediately as an urgency statute.
Existing law establishes within the Department of Consumer Affairs, until January 1, 2012, the Contractors’ State License Board and a registrar of contractors, for purposes of the licensure and regulation of contractors. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

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


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

1. SECTION 1. Section 40 is added to the Business and Professions Code, to read:

   40. (a) Subject to the standards described in Section 19130 of the Government Code, any board, as defined in Section 22, the State Board of Chiropractic Examiners, or the Osteopathic Medical Board of California may enter into an agreement with an expert consultant to do any of the following:
   (1) Provide an expert opinion on enforcement-related matters, including providing testimony at an administrative hearing.
   (2) Assist the board as a subject matter expert in examination development, examination validation, or occupational analyses.
   (3) Evaluate the mental or physical health of a licensee or an applicant for a license as may be necessary to protect the public health and safety.
   (b) An executed contract between a board and an expert consultant shall be exempt from the provisions of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.
   (c) Each board shall establish policies and procedures for the selection and use of expert consultants.

2. SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure that licensees engaging in certain professions and vocations are adequately regulated at the earliest possible time
in order to protect and safeguard consumers and the public in this
state, it is necessary that this act take effect immediately.

SECTION 1. Section 7000.5 of the Business and Professions
Code is amended to read:

7000.5. (a) There is in the Department of Consumer Affairs
a Contractors’ State License Board, which consists of 15 members.
(b) Notwithstanding any other provision of law, the repeal of
this section renders the board subject to review by the appropriate
policy committees of the Legislature.
(c) This section shall remain in effect only until January 1, 2016,
and as of that date is repealed, unless a later enacted statute, that
is enacted before January 1, 2016, deletes or extends that date.

SEC. 2. Section 7011 of the Business and Professions Code is
amended to read:
7011. (a) The board, by and with the approval of the director,
shall appoint a registrar of contractors and fix his or her
compensation.
(b) The registrar shall be the executive officer and secretary of
the board and shall carry out all of the administrative duties as
provided in this chapter and as delegated to him or her by the
board.
(c) For the purpose of administration of this chapter, there may
be appointed a deputy registrar, a chief reviewing and hearing
officer, and, subject to Section 159.5, other assistants and
subordinates as may be necessary.
(d) Appointments shall be made in accordance with the
provisions of civil service laws.
(e) This section shall remain in effect only until January 1, 2016.
and as of that date is repealed, unless a later enacted statute, that
is enacted before January 1, 2016, deletes or extends that date.
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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES
BILL ANALYSIS

BILL NUMBER: SB 541 VERSION: AMENDED APRIL 13, 2011
AUTHOR: PRICE SPONSOR: CALIFORNIA CONTRACTORS STATE LICENSE BOARD AND MEDICAL BOARD OF CALIFORNIA

RECOMMENDED POSITION: NONE
SUBJECT: REGULATORY BOARDS: EXPERT CONSULTANTS

Existing Law:

1. Allows personal services contracting to achieve cost savings when the services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary knowledge, experience and ability are not available within civil service. (Government Code §19130(b))

2. Defines a “Consulting Services Contract” means services that do the following (Public Contract Code (PCC) §10335.5(a)):
   a. Are advisory in nature.
   b. Provide a recommended course of action or professional expertise.
   c. Have an end product that is a transmittal of information related to the functions of the state agency.
   d. May include workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

3. Exempts certain contracts from advertising and bidding requirements, including the following (PCC §10335.5(c)):
   a. Contracts solely for the purpose of obtaining expert witnesses for litigation.
   b. Contracts for legal defense, legal advice, or legal services.
   c. Contracts of an amount less than $5,000.

4. Requires a state agency to secure at least three competitive bids or proposals for each contract. Exemptions to this requirement are made under certain conditions, including when a contract is for development, maintenance, administration, or use of licensing or proficiency testing examinations. (PCC §10340)

5. Requires the following of all consulting services contracts (PCC §10371):
a. A state agency shall use available private resources only when the quality of work of private resources is of at least equal quality compared with the state agency resources, regardless of the fiscal amount involved.

b. Requires a state agency that enters or expects to enter into more than one consulting services contract with the same individual, business, or corporation within a 12 month period for a total amount of $12,500 or more to notify the department and obtain approval.

c. For a consulting services contract of $5,000 or more, a state agency must prepare a detailed criteria and mandatory progress schedule for the contract and must require each selected contractor to provide a detailed analysis of the costs of performing the contract.

d. Prohibits, except in an emergency, consulting services to begin prior to formal approval by the department.

6. States that no officer or employee in state civil service shall contract on his or her own individual behalf as an independent contractor with a state agency (PCC §10410)

**This Bill:**

1. Allows a board to contract with an expert consultant, without being subject to the provisions of the State Contract Act, if the expert consulting is providing any of the following services. (Business and Professions Code (BPC) §40(a)(b)):

   a. Providing an expert opinion on enforcement-related matters, including providing testimony at an administrative hearing.

   b. Assisting the board as a subject matter expert in exam development, exam validation, or occupational analysis.

   c. Evaluating the mental or physical health of a licensee or applicant for licensure.

2. Allows a board to establish policies and procedures for selecting and using expert consultants. (BPC §40(c))

3. Exempts the Board from the provisions PCC §10410, therefore allowing the Board to enter into an agreement with a subject matter expert who is employed by a state agency. (BPC §40(b))

4. Makes this an urgency statute, effective immediately upon approval.

**Comment:**

1) **Background.** In November 2010, the Department of Consumer Affairs (DCA) issued a memorandum to all Boards and Bureaus under its jurisdiction stating that all expert consultants utilized by the department must enter into a formal consulting services contract and follow all guidelines, procedures, and rules governed by the State Contracting Manual and the California Public Contract Code.

This action by DCA is in response to ambiguity as to whether current law, as written in the Public Contract Code, applies to DCA’s subject matter experts.
A formal consulting services contract is a lengthy process which may greatly inhibit the ability of DCA Boards and Bureaus to utilize subject matter experts (SMEs). DCA uses approximately 1,700 expert consultants annually. If SMEs may not be utilized, this could have a devastating impact on the timelines for enforcement and exam development. This bill seeks to exempt SMEs utilized by DCA from the State Contract Act.

2) Effect on Board Processes. The Board utilizes the services of approximately 375 expert consultants per year for development of its licensing exams, evaluation of school curriculum content, and expert opinions concerning enforcement matters. The new DCA policy would require the following of all SME consulting contracts:

a. DCA Human Resources approval;

b. Detailed performance criteria and schedule for performance, for all contracts $1,000 or more.

c. A detailed analysis of the costs of performing the contract.

d. A complete resume for each contract participant with a major role (for contracts of $5,000 or more).

e. For a contract of $5,000 or more, an agency must request a copy of any negative performance evaluations from the Department of General Services.

Under this new policy, SMEs would be prohibited from beginning work until the contract is approved. DCA estimates a 60 day lead time will be needed for the contracting process before the SME can actually begin work.

A 60 day lead time would significantly inhibit the Board’s ability to develop exams, evaluate school programs. It would also create a significant backlog of enforcement investigations, placing consumers at risk.

3) Support and Opposition.

Support: Contractors State License Board (Sponsor)
Medical Board of California (Sponsor)
Court Reporters Board of California

Opposition: None on file.

4) History.

2011
May 3 From committee: Do pass and re-refer to Com. on APPR. (Ayes 8. Noes 0.) (May 2). Re-referred to Com. on APPR.
Apr. 13 From committee with author's amendments. Read second time and amended. Re-referred to Com. on B., P. & E.D.
Apr. 12 Set for hearing May 2.
Apr. 11 Hearing postponed by committee.
Apr. 4 Set for hearing April 25.
Mar. 3 Referred to Com. on B., P. & E.D.
Feb. 18 From printer. May be acted upon on or after March 20.
Feb. 17 Introduced. Read first time. To Com. on RLS. for assignment. To print.
CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: SB 544 VERSION: AMENDED APRIL 14, 2011
AUTHOR: PRICE SPONSOR: AUTHOR
RECOMMENDED POSITION: NONE
SUBJECT: PROFESSIONS AND VOCATIONS: REGULATORY BOARDS

Existing Law:

1. Allows the director of the Department of Consumer Affairs (DCA) to audit and review inquiries and complaints, dismissals of disciplinary cases, opening or closure of investigations, and discipline short of formal accusation regarding licensees of the Medical Board of California and the Board of Podiatric Medicine. (Business and Professions Code (BPC) §116)

2. States that any act of sexual abuse, misconduct, or relations with a patient, client, or customer by a board licensee is unprofessional conduct and subject to disciplinary action. (BPC §726(a))

3. Requires a physician and surgeon, osteopathic physician and surgeon, and doctor of podiatric medicine to report the following to their licensing entity within 30 days of the indictment. Failure to report is subject to a fine of $5,000. (BPC §802.1):
   a. The indictment or information charging them with a felony.
   b. Conviction of the licensee of any felony or misdemeanor.

4. Requires that the clerk of the court rendering a judgment to report within 10 days that a licensee of a specified board, including the Board of Behavioral Sciences, has committed a crime or is liable for any death or injury resulting in a judgment of more than $30,000 due to negligence, error, or unauthorized professional services. (BPC §803)

5. Requires a prosecuting agency to notify certain health boards of any filings of a felony on one of their licensees immediately. (BPC §803.5)

6. Allows a licensing agency to take one of the following actions if it determines a licensee is unable to practice safely due to mental or physical illness (BPC §822):
   a. Revoke the license;
   b. Suspend the right to practice;
   c. Place the licensee on probation; or
   d. Take another action the agency deems proper.
7. Requires the Board to revoke a license or registration for a marriage and family therapist or clinical social worker if it finds that person had sexual contact with a patient or former patient. (BPC §§4982.26, 4992.33)

8. Establishes the Health Quality Enforcement Section within the Department of Justice. This section is responsible for investigating and prosecuting proceedings against licensees and applicants for the Medical Board, Board of Podiatric Medicine and the Board of Psychology. (Government Code §12529(a))

This Bill:

1. Requires a state agency, upon written request from a healing arts board, to immediately release all records about a licensee who is in the custody of a state agency. A state agency with knowledge that a person it is investigating is licensed by a board must immediately notify that board of the investigation. (BPC §40)

2. Requires any of the following agencies to provide a board with records, upon request, including medical records, confidential records, and records related to closed or open investigations (BPC §42):
   a. Local and state law enforcement agencies;
   b. State and local governments;
   c. State agencies;
   d. Licensed health care facilities; and
   e. Employers of a licensee of a board.

3. Prohibits a licensee of a board from including either of the following in a settlement agreement to a civil litigation action, and makes the violation unprofessional conduct (BPC §44):
   a. A provision prohibiting another party to the dispute from contacting or cooperating with the board.
   b. A provision prohibiting another party to the dispute from filing a complaint with the board or withdrawing a complaint already filed.

4. Allows the director of the Department of Consumer Affairs (DCA), or a designee, to audit and review inquiries and complaints, dismissals of disciplinary cases, opening or closure of investigations, and discipline short of formal accusation regarding licensees of any healing arts board. (Business and Professions Code §116)

5. Requires each healing arts board to annually report various information to DCA and the Legislature (BPC §505):
   a. Total complaints closed without discipline;
   b. Total complaints and reports referred for formal investigation;
   c. Number of accusations filed and final disposition of accusations;
d. Number of citations issued;

e. Number of final licensee disciplinary actions taken;

f. Total cases in the enforcement process from time of complaint, for more than six months, twelve months, eighteen months, and twenty-four months.

g. Average process time for complaints;

h. Total number of licensees in diversion or on probation for drug and alcohol abuse;

i. Number of probation violation reports;

j. Number of petitions for reinstatement.

6. States that conviction for any act of sexual abuse, misconduct, or conviction of a felony requiring registration as a sex offender is considered a crime substantially related to the qualifications, functions, or duties of a licensee of a healing arts board.  (BPC §726(b))

7. States that a conviction or violation of a federal or state statute or regulation regulating dangerous drugs or controlled substances is unprofessional conduct, and that discipline may be ordered against a licensee or a license denied once time for appeal has elapsed. (BPC §§734, 735)

8. States use of any controlled substance, dangerous drugs, or alcoholic beverages to the extent it is dangerous to the licensee, others, or to the extent it impairs the ability of the licensee to safely practice is a misdemeanor and unprofessional conduct and discipline may be ordered against a licensee by a healing arts board.  (BPC §736)

9. Expands unprofessional conduct of a licensee of a healing arts board to include the following (BPC §737):

   a. Failure to provide information in a timely manner to the board or its investigators upon request.

   b. Failure to cooperate and participate in an investigation or disciplinary proceeding against the licensee.

10. Requires a licensee of any healing arts board to report the following to their licensing entity (BPC §802.1):

    a. The indictment or information charging them with a felony.

    b. Conviction of the licensee of any felony or misdemeanor.

    c. Any disciplinary action taken by another licensing entity or authority of this state, another state, or the federal government.

11. Requires the report referenced in #10 above to be made within 30 days of the indictment, charging of the felony, or of the arrest, conviction, or disciplinary action, and makes failure to report subject to a fine of $5,000 and is considered unprofessional conduct.
12. Requires that the clerk of the court rendering a judgment to report within 10 days that a licensee of a healing arts board has committed a crime or is liable for any death or injury resulting in a judgment of more than $30,000 due to negligence, error, or unauthorized professional services. (BPC §803)

13. Requires a prosecuting agency to notify a healing arts board of any filings of a felony against one of their licensees immediately. (BPC §803.5)

14. Requires the Department of Justice to submit any subsequent reports or information to a board regarding one of its licensees within 30 days from notification of subsequent arrests, convictions, or other updates. (BPC §803.7)

15. Requires the office of the Attorney General to serve an accusation, or submit to a healing arts board for service, within 60 calendar days of receipt from the board. (BPC §803.8(a))

16. Requires the office of the Attorney General to serve a default decision, or submit to a healing arts board for service, within 5 days after the time period allowed for filing a notice of defense. (BPC §803.8(b))

17. Requires the office of the Attorney General to set a hearing date within three days of receiving a notice of defense, unless the healing arts board instructs otherwise. (BPC §803.8(c))

18. Adds issuing a limited or restricted license to the list of actions a licensing agency may take if it determines a licensee is unable to practice safely due to mental or physical illness. (BPC §822)

19. Requires a healing arts board to query the federal National Practitioner Data Bank prior to doing the following (BPC §857):
   a. Granting a license to an applicant who lives in another state.
   b. Granting a license to an applicant who is currently or has ever been licensed as a health care practitioner in this state or another state.
   c. Granting a petition for reinstatement of a revoked or surrendered license.

20. Allows a healing arts board to query the data bank before issuing any license. The board may charge a fee to cover the cost of the query. (BPC §857)

21. Makes practicing a healing art without a current and valid license, a licensee supervising the practice of such a person, or fraudulently buying, selling, or obtaining a license to practice a healing art, a public offense punishable by a fine of up to $100,000 and one year in jail, or both. (BPC §880)

22. Requires the Board to revoke a license for a marriage and family therapist or clinical social worker if it finds that person has committed a sex offense, as defined. (BPC §§4982.26, 4992.33)

23. Allows a board to give its executive officer authority to adopt a proposed default decision to revoke a license if the licensee fails to file a notice of defense or appear at the hearing. The executive officer may also adopt a proposed settlement agreement to
revoke a license if the licensee has agreed to the revocation or surrender of the license. (BPC §4990.44)

24. The executive officer must report the number of these default decisions and settlement agreements adopted at scheduled board meetings. (BPC §4990.44)

25. Allows the board to enter into a settlement agreement with a licensee or applicant. Settlement agreements against a licensee are considered public record and must be posted on the board’s web site. (BPC §4990.45)

26. Requires a license be automatically suspended while a licensee is incarcerated after conviction of a felony, even if the conviction is being appealed. Upon notification of the conviction, the board must do the following: (BPC §4990.46(a),(b))

   a. Determine the duration of the suspension.
   
   b. Notify the licensee in writing of the suspension.
   
   c. If determined that the conviction was substantially related to the qualifications, functions, or duties of the licensee, the license must be suspended until the time for appeal has elapsed.

27. States that a conviction or charge regulating dangerous drugs or controlled substances, or a conviction of Penal Code sections 187, 261, 262, or 288 (which outline crimes of murder, rape, or lewd or lascivious acts) are substantially related to the qualifications, functions, or duties of a licensee and no hearing is needed to decide this issue. However, a board may decline or set aside the suspension when it appears to be in the interest of justice, or to maintain the integrity or confidence in the regulated practice. (BPC §4990.46(c))

28. States that discipline may be ordered against a licensee once the following has happened (BPC §4990.46(d)):

   a. The time for appeal has elapsed;
   
   b. The conviction has been affirmed on appeal; or
   
   c. An order grants probation and suspends the imposition of the sentence.

29. States that once the conviction of one of the actions described in item #28 is finalized or the probation has been granted, the penalty must be heard by an administrative law judge. (BPC §4990.46(d))

30. Requires the board to deny an application, revoke the license, and not reinstate or reissue the license of a licensee or applicant who is required to register as a sex offender. (BPC §4990.48)

31. Allows a board the authority to examine the records of patients, in the office of a licensee, who have complained to the board about that licensee. (BPC §4990.49(a))

32. Allows the Attorney General and the board to investigate alleged violations of the law within the following constraints: (BPC §4990.49)
a. Documents relevant to the investigation may be inspected and copied if the patient's written permission is obtained.

b. Documents related to a licensee's business operations may be inspected and copied where relevant.

c. Review and copying of documents must not unnecessarily disrupt business operations.

d. A licensee has 10 days to comply with a request for certified documents by the Attorney General or the board. Failure to comply is unprofessional conduct unless good cause can be shown.

33. Sets the following penalties: (BPC §4990.50)

   a. For a licensee or health care facility that fails or refuses to comply with a request for a patient’s certified medical records (with patient’s written authorization): $1,000 per day the records are not produced after the 15th day, up to $10,000.

   b. For a licensee or health care facility that fails or refuses to comply with a court order mandating the release of records to the board: $1,000 per day for each day after the due date set by the court, up to $10,000. Licensee is guilty of a misdemeanor and subject to a fine of up to $5,000.

   c. Multiple violations of the above subject a licensee to a fine of up to $5,000 or six months in county jail, or both. Multiple violations of the above subject a health care facility to a fine of up to $5,000 and reporting to the State Department of Public Health for disciplinary action with respect to licensure.

   d. Failure to comply with a court order mandating a release of records is unprofessional conduct and grounds for suspension or revocation of a license.

34. Requires a licensee’s employer to report any of the following to the board within 15 business days, and makes failure to report subject to a fine of up to $100,000 if it is a willful failure to report, or $50,000 if it is not a willful failure: (BPC §4990.51)

   a. Suspension or termination for cause.

   b. Resignation in lieu of suspension or termination for cause.

35. Requires the board to post the following on its web site for each licensee, along with disclaimers and explanations of the information being disclosed, and an explanation of the types of information not disclosed. (BPC §4990.52)

   a. The status of the license, including good standing, subject to temporary restraining order, interim suspension order, or subject to a restriction or cease practice order;

   b. Whether the licensee has been subject to discipline by the board or by any other board;

   c. Any felony convictions;

   d. All current accusations filed by the Attorney General;
e. All malpractice judgments or arbitration awards;

f. A hospital disciplinary action resulting in termination or revocation of hospital staff privileges; and

g. A misdemeanor conviction resulting in disciplinary action.

The website must have disclaimers and explanations of the information being disclosed, as well as an explanation of the types of information not disclosed. (BPC §4990.52)

36. Requires the board to automatically suspend a license if the licensee has a license in another state or with the federal government and that license is suspended or revoked. The board may decide not to suspend the license for good cause when it appears to be in the interest of justice or maintains the integrity of the profession. This does not apply to a licensee who maintains primary practice in California. (BPC §4990.53)

37. Allows any healing arts board to utilize the Health Quality Enforcement Section and its vertical investigative model. (Government Code §12529.8)

Comment:

1) Legislative Intent. Over the past three years, there have been several efforts to streamline the enforcement processes for healing arts boards within the Department of Consumer Affairs (DCA). Currently, many boards take an average of three years to investigate and prosecute violations of the law, leaving consumers unprotected against potentially dangerous practitioners during this timeframe. The intent of this bill is to improve efficiency and increase accountability for boards within DCA, by providing these boards with additional regulatory tools and authority for investigating and prosecuting violations of law. With these new authorities, it is expected that healing arts boards will be able to reduce the average timeframe for an enforcement investigation to 12 to 18 months.

2) Previous Legislation. SB 1111 (Negrete McLeod) was introduced in 2010 as part of DCA’s Consumer Protection Enforcement Initiative (CPEI). The goal of this bill was also to provide the boards under DCA with additional authority and resources to make the enforcement process more efficient. SB 1111 failed passage in the Senate Business, Professions and Economic Development Committee.

3) Attorney General’s Office Timeframes. This bill requires the Attorney General’s office to submit a default decision within five days of the time period allowed to file a notice of defense, and to set a hearing date within three days of receiving notice of defense. Currently these processes are taking approximately two to three months, and three to four months, respectively. Staff recommends a more feasible time frame, such as thirty days, be considered.

4) National Databank. This bill requires the Board to query the federal National Practitioner Data Bank prior to the licensure of certain applicants, and states the Board may query this databank prior to issuing any license. It also allows the Board to charge a fee to cover the cost of the query.

This would require a significant amount of staff time, as well as impose significant costs on the Board to run the queries. Although the statute does allow the Board to charge a fee to cover the costs, a statute or regulatory change would be needed in order to be able to charge a fee.
In addition, this bill requires the Board to post on its web site whether or not a licensee has been disciplined by another state. There would be no way for the Board to obtain this information unless it queried all applicants for licensure.

Staff recommends an amendment be considered that would clarify that all applicants for licensure must be queried, and a corresponding fee be set in statute that would allow the Board to cover the costs of doing this.

5) Unlicensed Practice. This bill adds a new section of law stating that notwithstanding any other provision of law, a licensee who supervises the practice of a healing art by any person who does not hold a current and valid license to practice that healing art is guilty of a crime.

Licensees of the Board routinely supervise registrants or trainees who are gaining experience toward licensure. An amendment is needed that does one of the following:

   a. Removes the term "notwithstanding" so that provisions allowing supervision of registrants or trainees remain valid; or

   b. Inserts language exempting from this provision a qualified supervisor who is supervising a trainee or registrant.

6) Sexual Contact with a Patient. This bill would require the Board to revoke a license for a marriage and family therapist or clinical social worker if it finds that person has committed a sex offense. The bill also contains some general language requiring the board to revoke a license of a psychotherapist if a sex offense has been committed.

Current Board statute, BPC Section 4990.40, already requires the Board to revoke a license or registration upon finding that they engaged in sexual contact with a patient or former patient when the relationship was terminated for that reason. Staff suggests that the language this bill is adding in a new section as 4990.47 instead be added to section 4990.40, in order to expand the scope of that section to include committing a sex offense, as well as to define the term "sex offense."

In addition, this bill writes language into code specifically requiring the license of an MFT or LCSW be revoked if a sex offense has been committed. If the suggested language above is added to general Board statute, it would cover all four of the Board’s licenses and adding language to each licensing statute would no longer be necessary. However, if this language remains in MFT and LCSW statute, staff recommends conforming language be added to LEP and LPCC licensing law.

7) Suspension of a License. This bill requires the Board to suspend a license under certain conditions, such as having a suspended or revoked license in another state or being incarcerated after conviction of a felony. However, provisions are needed in order to establish procedures for expiration, renewal, and reinstatement of a license that has been suspended under these conditions.

8) Internet Disclaimers. This bill requires the board to post certain disciplinary information about its licensees on its web site for each licensee, along with disclaimers and explanations of the information being disclosed, and an explanation of the types of information not disclosed. The bill requires these explanations be adopted by regulation.
Staff requests that the provision requiring explanations be adopted by regulation be deleted from the bill, as it is not necessary that standard explanations be placed in regulation.

9) **Unnecessary Language.** There are two sections in this bill, BPC §§4990.50(h), and 4990.53(i), which place language in statute for this Board that relates specifically to another board. Specifically, these sections state that the Dental Board, Medical Board, and the Board of Psychology are not subject to the requirements of the section being added. These sections are not relevant to this Board and should be deleted.

10) **Support and Opposition.**

   **Support:** None on file.

   **Oppose Unless Amended:** California Nurses Association

   **Opposition:** None on file.

11) **History.**

   **2011**
   May 2 Set, first hearing. Hearing canceled at the request of author.
   Apr. 21 Set for hearing May 2.
   Apr. 20 Hearing postponed by committee.
   Apr. 14 From committee with author’s amendments. Read second time and amended. Re-referred to Com. on B., P. & E.D.
   Apr. 8 Set for hearing April 25.
   Mar. 24 Re-referred to Coms. on B., P. & E.D. and JUD.
   Mar. 21 From committee with author’s amendments. Read second time and amended. Re-referred to Com. on RLS.
   Mar. 3 Referred to Com. on RLS.
   Feb. 18 From printer. May be acted upon on or after March 20.
   Feb. 17 Introduced. Read first time. To Com. on RLS. for assignment. To print.
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SENATE BILL No. 544

Introduced by Senator Price

February 17, 2011

An act to add Section 1623 to the Business and Professions Code, relating to dentistry. An act to amend Sections 116, 155, 159.5, 726, 802.1, 803, 803.5, 803.6, 822, 2246, 2960.1, 4982.26, and 4992.33 of, and to add Sections 40, 42, 44, 505, 734, 735, 736, 737, 803.7, 803.8, 857, 1688, 1688.1, 1688.2, 1688.3, 1688.4, 1688.5, 1688.6, 1947.1, 1947.2, 1947.3, 1947.4, 1947.5, 1947.6, 1947.7, 1947.8, 2533.5, 2533.6, 2533.7, 2533.8, 2533.9, 2533.10, 2533.11, 2533.12, 2533.13, 2533.14, 2570.38, 2570.39, 2570.40, 2570.41, 2570.42, 2570.43, 2570.44, 2570.45, 2570.46, 2570.47, 2661.8, 2661.9, 2661.10, 2661.11, 2661.12, 2661.13, 2661.14, 2661.15, 2661.16, 2661.17, 2766, 2766.1, 2766.2, 2766.3, 2766.4, 2766.5, 2766.6, 2766.7, 2766.8, 2879.1, 2879.2, 2879.3, 2879.4, 2879.5, 2879.6, 2879.7, 2879.8, 2879.9, 2879.10, 2969.1, 2969.2, 2969.3, 2969.4, 3112, 3112.1, 3112.2, 3112.3, 3112.4, 3112.5, 3112.6, 3112.7, 3112.8, 3112.9, 3405, 3405.1, 3405.2, 3405.3, 3405.4, 3405.5, 3405.6, 3405.7, 3405.8, 3405.9, 3531.1, 3531.2, 3531.3, 3531.4, 3531.5, 3531.6, 3531.7, 3531.8, 3531.9, 3531.10, 3665, 3665.1, 3665.2, 3665.3, 3665.4, 3665.5, 3665.6, 3665.7, 3665.8, 3665.9, 3769.4, 3769.5, 3769.6, 3769.7, 3769.8, 3769.9, 3769.10, 4316, 4316.1, 4316.2, 4316.3, 4316.4, 4316.5, 4316.6, 4375, 4526, 4526.1, 4526.2, 4526.3, 4526.4, 4526.5, 4526.6, 4526.8, 4526.9, 4888, 4888.1, 4888.2, 4888.3, 4888.4, 4888.5, 4888.6, 4888.7, 4964.1, 4964.2, 4964.3, 4964.4, 4964.5, 4964.6, 4964.7, 4964.8, 4964.9, 4964.10, 4990.44, 4990.45, 4990.46, 4990.47, 4990.48, 4990.49, 4990.50, 4990.51, 4990.52, and 4990.53 to, to add Article 16 (commencing with Section 880) to Chapter 1 of Division 2 of, and to repeal Sections 2608.5 and 2660.5 of, the Business and...
Professions Code, and to add section 12529.8 to the Government Code, relating to professions and vocations.

LEGISLATIVE COUNSEL’S DIGEST


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

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

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

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

This bill would additionally authorize the director or his or her designee to audit and review the aforementioned activities by any of the healing arts boards.

Existing law authorizes the director to employ investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law, the enforcement of which is charged to the department, or to any board in the department. Inspectors used by the boards are not required to be employees of the Division of Investigation, but may be employees of, or under contract to, the boards.
This bill would authorize healing arts boards to employ investigators who are not employees of the Division of Investigation, and would authorize those boards to contract for investigative services provided by the Department of Justice. The bill would also establish within the Division of Investigation the Health Quality Enforcement Unit to provide investigative services for healing arts proceedings.

The bill would require all healing arts boards within the department to report annually, by October 1, to the department and the Legislature certain information, including, but not limited to, the total number of complaints closed or resolved without discipline, the total number of complaints and reports referred for formal investigation, and the total number of accusations filed and the final disposition of accusations through the board and court review, respectively.

The bill would also provide that it is an act of unprofessional conduct for any licensee of a healing arts board to fail to furnish information in a timely manner to the board or the board’s investigators, or to fail to cooperate and participate in any disciplinary investigation pending against him or her, except as specified.

Existing law requires a physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine to report to his or her respective board when there is an indictment or information charging a felony against the licensee or he or she has been convicted of a felony or misdemeanor.

This bill would expand that requirement to a licensee of any healing arts board, as specified, and would further require a report when disciplinary action is taken against a licensee by another healing arts board or by a healing arts board of another state or an agency of the federal government.

Existing law requires the district attorney, city attorney, and other prosecuting agencies to notify the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, and other allied health boards and the court clerk if felony charges have been filed against one of the board’s licensees. Existing law also requires, within 10 days after a court judgment, the clerk of the court to report to the appropriate board when a licentiate has committed a crime or is liable for any death or personal injury resulting in a specified judgment. Existing law also requires the clerk of the court to transmit to certain boards specified felony preliminary transcript hearings concerning a defendant licensee.
The bill would instead make those provisions applicable to all healing arts boards. By imposing additional duties on these local agencies, the bill would impose a state-mandated local program.

The bill would require a healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California to query the federal National Practitioner Data Bank prior to, among other things, granting a license to an applicant who is currently residing in another state or granting a petition for reinstatement of a revoked or surrendered license.

This bill would make it a crime to engage in the practice of healing arts without a current and valid license, except as specified; or to fraudulently buy, sell, or obtain a license to practice healing arts. By creating new crimes, the bill would impose a state-mandated local program.

(3) Under existing law, healing arts licensees are regulated by various healing arts boards within the department. These boards are authorized to issue, deny, suspend, and revoke licenses based on various grounds and to take disciplinary action against a licensee for the failure to comply with their laws and regulations. Existing law requires or authorizes a board to appoint an executive officer to, among other things, perform duties delegated by the board.

This bill would authorize a healing arts board to delegate to its executive officer, where an administrative action has been filed by the board to revoke the license of a licensee and the licensee has failed to file a notice of defense or appear at the hearing, the authority to adopt a proposed default decision. The bill would also authorize a healing arts board to enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against the licensee or applicant.

The bill would also provide that the license of a licensee of a healing arts board shall be suspended if the licensee is incarcerated after the conviction of a felony and would require the board to notify the licensee of the suspension and of his or her right to a specified hearing. The bill would specify that no hearing is required, however, if the conviction was for a violation of federal law or state law for the use of dangerous drugs or controlled substances or specified sex offenses; a violation for the use of dangerous drugs or controlled substances would also constitute unprofessional conduct and a crime, thereby imposing a state-mandated local program.
The bill would prohibit the issuance of a healing arts license to any person who is a registered sex offender, and would provide for the revocation of a license upon the conviction of certain sex offenses, as defined. The bill would provide that the commission of, and conviction for, any act of sexual abuse, misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration as a sex offender, be considered a crime substantially related to the qualifications, functions, or duties of a healing arts licensee. The bill would impose requirements on boards with respect to individuals required to register as a sex offender.

This bill would authorize the Attorney General and his or her investigative agents and certain healing arts boards to inquire into any alleged violation of the laws under the boards’ jurisdiction and to inspect documents subject to specified procedures. The bill would make the licensees of those healing arts boards or a health care facility that fails to comply with a patient’s medical record request, as specified, within 15 days, or who fails or refuses to comply with a court order mandating release of records, subject to civil and criminal penalties, as specified. By creating a new crime, the bill would impose a state-mandated local program.

The bill would require the employer of certain health care licensees to report to the appropriate board within a specified timeframe information relating to a health care licensee who is suspended or terminated for cause or who resigns. The bill would require a board to investigate these reports, including the inspection and copying of certain documents relating to that suspension, termination, or resignation.

The bill would require specified healing arts boards, on or after July 1, 2013, to post on their Internet Web sites specified information in their possession, custody, or control regarding their licensees and their license status, prior discipline, and convictions.

The bill would authorize a healing arts board to automatically suspend the license of any licensee who also has an out-of-state license or a license issued by an agency of the federal government that is suspended or revoked, except as specified.

(4) The bill would declare the intent of the Legislature that the Bureau of State Audits conduct a specified review of the Pharmacists Recovery Program by January 1, 2013.

(5) Existing law establishes in the Department of Justice the Health Quality Enforcement Section, whose primary responsibility is to investigate and prosecute proceedings against licensees and applicants
within the jurisdiction of the Medical Board of California and any committee of the board, the California Board of Podiatric Medicine, and the Board of Psychology.

This bill would authorize a healing arts board to utilize the services of the Health Quality Enforcement Section or licensing section. If utilized, the bill would require the Attorney General to assign attorneys employed by the office of the Attorney General to work on location at the licensing unit of the Division of Investigation of the Department of Consumer Affairs, as specified.

(6) The bill would delete, revise and recast various provisions of the Physical Therapy Practice Act and would make other conforming changes.

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

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

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

Existing law, the Dental Practice Act, provides for the licensure and regulation of dentists by the Dental Board of California. Existing law establishes specified fees for licenses, permits, and certificates issued by the board. Existing law also sets forth specified fines and penalties for violations of the Dental Practice Act.

This bill would authorize the board to contract with a collection agency to collect outstanding fees, fines, or cost recovery amounts from persons who owe those moneys to the board, as specified. The bill would require the contract with a collection agency to contain specified safeguards to protect an individual's personal information from unauthorized disclosure and to provide for the liability of the collection agency for the unauthorized use or disclosure of that information.

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

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

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

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

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

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

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

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

SEC. 3. Section 40 is added to the Business and Professions Code, to read:

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

(c) A board shall maintain the confidentiality of any personally identifying information contained in the records maintained pursuant to this section, and shall not share, sell, or transfer the information to any third party unless it is otherwise authorized by federal or state law.

SEC. 4. Section 42 is added to the Business and Professions Code, to read:

42. Notwithstanding any other provision of law, all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and employers of a licensee of a board shall provide records to the board upon request prior to receiving payment from the board for the cost of providing the records. These records include, but are not limited to, confidential records, medical records, and records related to closed or open investigations.

SEC. 5. Section 44 is added to the Business and Professions Code, to read:

44. (a) A licensee of a board shall not include or permit to be included any of the following provisions in an agreement to settle a civil litigation action filed by a consumer arising from the licensee’s practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting or cooperating with the board.
(2) A provision that prohibits another party to the dispute from filing a complaint with the board.
(3) A provision that requires another party to the dispute to withdraw a complaint he or she has filed with the board.
(b) A provision described in subdivision (a) is void as against public policy.
(c) A violation of this section constitutes unprofessional conduct and may subject the licensee to disciplinary action.

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

SEC. 6. Section 116 of the Business and Professions Code is amended to read:

116. (a) The director or his or her designee may audit and review, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by the Medical Board of California, the allied health professional boards, and the California Board of Podiatric Medicine any of the healing arts boards described in Division 2 (commencing with Section 500). The director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both, for their consideration.

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

SEC. 7. Section 155 of the Business and Professions Code is amended to read:

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

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

(c) Investigators used by any healing arts board, as described in Division 2 (commencing with Section 500), shall not be required to be employees of the Division of Investigation and a healing arts board may contract for investigative services provided by the Department of Justice.

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

SEC. 8. Section 159.5 of the Business and Professions Code is amended to read:

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

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

SEC. 9. Section 505 is added to the Business and Professions Code, to read:

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

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

(2) The total number of complaints and reports referred for formal investigation.
(3) The total number of accusations filed and the final disposition of accusations through the board and court review, respectively.

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

(5) The total number of final licensee disciplinary actions taken, by category.

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

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

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

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

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

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

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

(d) A report to be submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

(e) This section shall become inoperative on October 1, 2016.

SEC. 10. Section 726 of the Business and Professions Code is amended to read:

726. (a) The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, and under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.
(b) For purposes of Division 1.5 (commencing with Section 475), the commission of, and conviction for, any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration pursuant to Section 290 of the Penal Code, shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee of a healing arts board described in this division.

This 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. 11. Section 734 is added to the Business and Professions Code, to read:

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

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

SEC. 12. Section 735 is added to the Business and Professions Code, to read:

735. A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.
SEC. 13. Section 736 is added to the Business and Professions Code, to read:

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

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

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

SEC. 14. Section 737 is added to the Business and Professions Code, to read:

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

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

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

SEC. 15. Section 802.1 of the Business and Professions Code is amended to read:

802.1. (a) (1) A physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine shall report either licensee of a healing arts board described in this division shall report any of the following to the entity that issued his or her license:

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

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(C) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or information or of the conviction, or of the arrest, conviction, or disciplinary action.

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars ($5,000) and shall constitute unprofessional conduct.

SEC. 16. Section 803 of the Business and Professions Code is amended to read:

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

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

SEC. 17. Section 803.5 of the Business and Professions Code is amended to read:

803.5. (a) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, or other appropriate allied health board, appropriate healing arts board described in this division and the clerk of the court in which the charges have been filed, of any filings against a licensee of that board charging a felony immediately upon obtaining information that the defendant is a licensee of the board. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license from one of the boards described above.

(b) The clerk of the court in which a licensee of one of the boards is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the applicable board.

SEC. 18. Section 803.6 of the Business and Professions Code is amended to read:

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

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

SEC. 19. Section 803.7 is added to the Business and Professions Code, to read:

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

SEC. 20. Section 803.8 is added to the Business and Professions Code, to read:

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

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

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

SEC. 21. Section 822 of the Business and Professions Code is amended to read:

822. If a licensing agency determines that its licentiate’s ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

(a) Revoking the licentiate’s certificate or license.

(b) Suspending the licentiate’s right to practice.

(c) Placing the licentiate on probation.
(d) Taking such other action in relation to the licentiate as the
licensing agency in its discretion deems proper, including issuing
a limited or restricted license.

The licensing agency shall not reinstate a revoked or suspended
certificate or license or lift any restrictions or limitations until it
has received competent evidence of the absence or control of the
condition which caused its action and until it is satisfied that with
due regard for the public health and safety the person’s right to
practice his or her profession may be safely reinstated.

SEC. 22. Section 857 is added to the Business and Professions
Code, to read:

857. (a) Each healing arts board, the State Board of
Chiropractic Examiners, and the Osteopathic Medical Board of
California shall query the federal National Practitioner Data Bank
prior to any of the following:

(1) Granting a license to an applicant who is currently residing
in another state.

(2) Granting a license to an applicant who is currently or has
ever been licensed as a health care practitioner in California or
another state.

(3) Granting a petition for reinstatement of a revoked or
surrendered license.

(b) Notwithstanding subdivision (a), a healing arts board, the
State Board of Chiropractic Examiners, and the Osteopathic
Medical Board of California may query the federal National
 Practitioner Data Bank prior to issuing any license.

(c) A healing arts board shall charge a fee to cover the actual
cost to conduct the queries described in this section.

SEC. 23. Article 16 (commencing with Section 880) is added
to Chapter 1 of Division 2 of the Business and Professions Code,
to read:

Article 16. Unlicensed Practice

880. (a) (1) It is a public offense, punishable by a fine not to
exceed one hundred thousand dollars ($100,000), by imprisonment
in a county jail not to exceed one year, or by both that fine and
imprisonment, for:
(A) Any person who does not hold a current and valid license
to practice a healing art under this division to engage in that
practice.
(B) Any person who fraudulently buys, sells, or obtains a license
to practice any healing art in this division or to violate any
provision of this division.
(2) Subparagraph (A) of paragraph (1) shall not apply to any
person who is already being charged with a crime under the
specific healing arts licensing provisions for which he or she
engaged in unauthorized practice.
(b) Notwithstanding any other provision of law, any person who
is licensed under this division, and who supervises the practice of
a healing art by any person who does not hold a current and valid
license to practice that healing art under this division, is guilty of
a public crime, punishable by a fine not to exceed one hundred
thousand dollars ($100,000), by imprisonment in a county jail not
to exceed one year, or by both that fine and imprisonment.
SEC. 24. Section 1688 is added to the Business and Professions
Code, to read:
1688. (a) The board may delegate to its executive officer the
authority to adopt a proposed default decision where an
administrative action to revoke a license has been filed and the
licensee has failed to file a notice of defense or to appear at the
hearing and a proposed default decision revoking the license has
been issued.
(b) The board may delegate to its executive officer the authority
to adopt a proposed settlement agreement where an administrative
action to revoke a license has been filed by the board and the
licensee has agreed to the revocation or surrender of his or her
license.
(c) The executive officer shall, at scheduled board meetings,
report to the board the number of proposed default decisions or
proposed settlement agreements adopted pursuant to this section.
SEC. 25. Section 1688.1 is added to the Business and
Professions Code, to read:
1688.1. (a) Notwithstanding Section 11415.60 of the
Government Code, the board may enter into a settlement with a
licensee or applicant in lieu of the issuance of an accusation or
statement of issues against that licensee or applicant, as applicable.
(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

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

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 26. Section 1688.2 is added to the Business and Professions Code, to read:

1688.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

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

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled
substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

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

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

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

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.
SEC. 27. Section 1688.3 is added to the Business and Professions Code, to read:

1688.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

1. Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

2. Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

3. Any attempt to commit any of the offenses specified in this section.

4. Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 28. Section 1688.4 is added to the Business and Professions Code, to read:

1688.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

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

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

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

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

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

2. An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee’s conviction under Section 314 of the Penal Code.

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

SEC. 29. Section 1688.5 is added to the Business and Professions Code, to read:

1688.5. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice order pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.
(b) With regard to prior discipline of a licensee, whether or not
the licensee or former licensee has been subject to discipline by
the board or by the board of another state or jurisdiction, as
described in Section 803.1.
(c) Any felony conviction of a licensee reported to the board.
(d) All current accusations filed by the Attorney General,
including those accusations that are on appeal. For purposes of
this paragraph, “current accusation” means an accusation that
has not been dismissed, withdrawn, or settled, and has not been
finally decided upon by an administrative law judge and the board
unless an appeal of that decision is pending.
(e) Any malpractice judgment or arbitration award imposed
against a licensee and reported to the board.
(f) Any hospital disciplinary action imposed against a licensee
that resulted in the termination or revocation of a licensee’s
hospital staff privileges for a medical disciplinary cause or reason
pursuant to Section 805.
(g) Any misdemeanor conviction of a licensee that results in a
disciplinary action or an accusation that is not subsequently
withdrawn or dismissed.
(h) Appropriate disclaimers and explanatory statements to
accompany the above information, including an explanation of
what types of information are not disclosed. These disclaimers
and statements shall be developed by the board and shall be
adopted by regulation.
(i) The information provided on the Internet shall be in
accordance with the California Public Records Act (Chapter 3.5
(commencing with Section 6250) of Division 7 of Title 1 of the
Government Code) and the Information Practices Act of 1977
(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
of Division 3 of the Civil Code) and shall comply with the
Department of Consumer Affairs Guidelines for Access to Public
Records.
(j) Information provided on the Internet may not include
personal information, unless otherwise provided pursuant to this
chapter, including the home telephone number, date of birth, or
social security number. The information may not include the
licensee’s address, but may include the city and county of the
licensee’s address of record.
SEC. 30. Section 1688.6 is added to the Business and Professions Code, to read:

1688.6. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

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

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

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

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee’s license from being suspended pursuant to any other provision of law.
(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

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

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

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

SEC. 31. Section 1947.1 is added to the Business and Professions Code, to read:

1947.1. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

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

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 32. Section 1947.2 is added to the Business and Professions Code, to read:

1947.2. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.
(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

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

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 33. Section 1947.3 is added to the Business and Professions Code, to read:

1947.3. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

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

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled
substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

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

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

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

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.
SEC. 34. Section 1947.4 is added to the Business and Professions Code, to read:

1947.4. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 35. Section 1947.5 is added to the Business and Professions Code, to read:

1947.5. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

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

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

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

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

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

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee’s conviction under Section 314 of the Penal Code.

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

SEC. 36. Section 1947.6 is added to the Business and Professions Code, to read:

1947.6. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.
(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

e) For purposes of this section, “suspension or termination for cause” or “resignation in lieu of suspension or termination for cause” is defined as resignation, suspension, or termination from employment for any of the following reasons:

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

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

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

(4) Gross negligence or incompetence.

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

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

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

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

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the board.

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

(k) No report is required under this section where a report of the action taken is already required under Section 805.

SEC. 37. Section 1947.7 is added to the Business and Professions Code, to read:

1947.7. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

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

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

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

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

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

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee’s address, but may include the city and county of the licensee’s address of record.

SEC. 38. Section 1947.8 is added to the Business and Professions Code, to read:
1947.8. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

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

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

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

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

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

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

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

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

SEC. 39. Section 2246 of the Business and Professions Code 
is amended to read:

2246. (a) Any proposed decision or decision issued under this 
article that contains any finding of fact that the licensee engaged 
in any act of sexual exploitation, as described in paragraphs (3) to 
(5), inclusive, of subdivision (b) of Section 729, with a patient 
shall contain an order of revocation. The revocation shall not be 
stayed by the administrative law judge.

(b) Except as otherwise provided, any proposed decision or 
decision issued under this article in accordance with the 
procedures set forth in Chapter 5 (commencing with Section 11500) 
of Part 1 of Division 3 of Title 2 of the Government Code, that 
contains any finding of fact that the licensee has committed a sex 
offense, shall contain an order revoking the license. The proposed 
decision or decision shall not contain any order staying the 
revocation of the licensee.

(c) As used in this section, the term sex offense shall mean any 
of the following:

(1) Any offense for which registration is required by Section 
290 of the Penal Code or a finding that a person committed such 
an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, 
or 647(a) or (d) of the Penal Code or a finding that a person 
committed such an act.
(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 40. Section 2533.5 is added to the Business and Professions Code, to read:

2533.5. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

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

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 41. Section 2533.6 is added to the Business and Professions Code, to read:

2533.6. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

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

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

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

(e) The executive officer shall, at scheduled board meetings,
report to the board the number of proposed settlement agreements
adopted pursuant to this section.

SEC. 42. Section 2533.7 is added to the Business and
Professions Code, to read:

2533.7. (a) The license of a licensee shall be suspended
automatically during any time that the licensee is incarcerated
after conviction of a felony, regardless of whether the conviction
has been appealed. The board shall, immediately upon receipt of
the certified copy of the record of conviction, determine whether
the license of the licensee has been automatically suspended by
virtue of his or her incarceration, and if so, the duration of that
suspension. The board shall notify the licensee in writing of the
license suspension and of his or her right to elect to have the issue
of penalty heard as provided in subdivision (d).

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

(c) Notwithstanding subdivision (b), a conviction of a charge
of violating any federal statute or regulation or any statute or
regulation of this state, regulating dangerous drugs or controlled
substances, or a conviction of Section 187, 261, 262, or 288 of the
Penal Code, shall be conclusively presumed to be substantially
related to the qualifications, functions, or duties of a licensee and
no hearing shall be held on this issue. However, upon its own
motion or for good cause shown, the board may decline to impose
or may set aside the suspension when it appears to be in the interest
of justice to do so, with due regard to maintaining the integrity of,
and confidence in, the practice regulated by the board.

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

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

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

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

SEC. 43. Section 2533.8 is added to the Business and Professions Code, to read:

2533.8. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.
(b) As used in this section, the term sex offense shall mean any of the following:
(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.
(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such act.
(3) Any attempt to commit any of the offenses specified in this section.
(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this Section.

SEC. 44. Section 2533.9 is added to the Business and Professions Code, to read:
2533.9. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:
(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.
(3) The board shall not reinstate or reissue the individual’s license. The board shall not issue a stay of license denial nor place the license on probation.
(b) This section shall not apply to any of the following:
(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.
(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee’s conviction under Section 314 of the Penal Code.

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

SEC. 45. Section 2533.10 is added to the Business and Professions Code, to read:

2533.10. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:
(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

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

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

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

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

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

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 46. Section 2533.11 is added to the Business and Professions Code, to read:
2533.11. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient’s written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient’s written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient’s certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient’s authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.
(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee’s renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

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

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

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

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

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

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

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

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

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 47. Section 2533.12 is added to the Business and Professions Code, to read:

2533.12. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall
be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.
(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, “suspension or termination for cause” or “resignation in lieu of suspension or termination for cause” is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee’s ability to safely practice.
(2) Unlawful sale of a controlled substance or other prescription items.
(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.
(4) Gross negligence or incompetence.
(5) Theft from a patient or client, any other employee, or the employer.

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

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

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

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

(g) (1) Willful failure of an employer to make a report required
by this section is punishable by an administrative fine not to exceed
one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to
make a report required by this section is punishable by an
administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The board shall investigate the circumstances underlying
any report received pursuant to this section within 30 days to
determine if an interim suspension order or temporary restraining
order should be issued. The board shall otherwise provide timely
disposition of the reports received pursuant to this section.

(i) The board shall send to the licentiate a copy of the report
along with the reasons for the filing of the report and notice
advising the licentiate of his or her right to submit additional
statements or other information to the board.

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

(k) No report is required under this section where a report of
the action taken is already required under Section 805.

SEC. 48. Section 2533.13 is added to the Business and
Professions Code, to read:

2533.13. Unless otherwise provided, on or after July 1, 2013,
the board shall post on its Internet Web site the following
information including the name and license number in its
possession, custody, or control regarding every licensee for which
the board licenses:

(a) With regard to the status of every license, whether or not
the licensee or former licensee is in good standing, subject to a
temporary restraining order, subject to an interim suspension
order, subject to a restriction or cease practice ordered pursuant
to Section 23 of the Penal Code, or subject to any of the
enforcement actions described in Section 803.1.
(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee’s hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 2533.11 or 805.

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

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

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee’s address, but may include the city and county of the licensee’s address of record.
SEC. 49. Section 2533.14 is added to the Business and Professions Code, to read:

2533.14. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

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

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

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

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee’s license from being suspended pursuant to any other provision of law.
(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

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

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

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

SEC. 50. Section 2570.38 is added to the Business and Professions Code, to read:

2570.38. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

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

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 51. Section 2570.39 is added to the Business and Professions Code, to read:

2570.39. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.
(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

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

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 52. Section 2570.40 is added to the Business and Professions Code, to read:

2570.40. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

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

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, does not constitute a suspension due to incarceration.
substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

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

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

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

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.
SEC. 53. Section 2570.41 is added to the Business and Professions Code, to read:

2570.41. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 54. Section 2570.42 is added to the Business and Professions Code, to read:

2570.42. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

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

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

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

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

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

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee’s conviction under Section 314 of the Penal Code.

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

SEC. 55. Section 2570.43 is added to the Business and Professions Code, to read:

2570.43. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee
is limited to records of patients who have complained to the board about that licensee.

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

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

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

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

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

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.
(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the healing arts board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 56. Section 2570.44 is added to the Business and Professions Code, to read:

2570.44. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient’s written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient’s written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient’s certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient’s authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

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

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

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

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the healing arts board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.
(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

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

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

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

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

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

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 57. Section 2570.45 is added to the Business and Professions Code, to read:

2570.45. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or
termination for cause, of any licensee in its employ within 15
business days. The report shall not be made until after the
conclusion of the review process specified in Section 52.3 of Title
2 of the California Code of Regulations and Skelly v. State
Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This
required reporting shall not constitute a waiver of confidentiality
of medical records. The information reported or disclosed shall
be kept confidential except as provided in subdivision (c) of Section
800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include
the name and license number of the licentiate involved, a
description of the facts and circumstances of the suspension or
termination for cause, any resignation in lieu of suspension or
termination for cause, and any other relevant information deemed
appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following
documents in the record for any suspension or termination for
cause, or any resignation in lieu of suspension or termination for
cause, resulting in action that is required to be reported pursuant
to this section:

(1) Any statement for suspension or termination of the licensee.
(2) Any document or exhibits relevant to the suspension or
termination.

(d) If, during the investigation by the board of the cause for the
termination or suspension or resignation of the licensee, it is found
that there has been a violation of existing state or federal law, the
board shall report the violation to the appropriate agency.

(e) For purposes of this section, “suspension or termination for
cause” or “resignation in lieu of suspension or termination for
cause” is defined as resignation, suspension, or termination from
employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it
impairs the licensee’s ability to safely practice.
(2) Unlawful sale of a controlled substance or other prescription
items.
(3) Patient or client abuse, neglect, physical harm, or sexual
contact with a patient or client.
(4) Gross negligence or incompetence.
(5) Theft from a patient or client, any other employee, or the
employer.
(f) As used in this section, the following definitions apply:

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

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

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

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the board.

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

(k) No report is required under this section where a report of the action taken is already required under Section 805.

SEC. 58. Section 2570.46 is added to the Business and Professions Code, to read:

2570.46. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its
possession, custody, or control regarding every licensee for which
the board licenses:

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

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

(c) Any felony conviction of a licensee reported to the board.

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

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

(f) Any hospital disciplinary action imposed against a licensee
that resulted in the termination or revocation of a licensee’s
hospital staff privileges for a medical disciplinary cause or reason
pursuant to Section 2570.44 or 805.

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

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

(i) The information provided on the Internet shall be in
accordance with the California Public Records Act (Chapter 3.5
(commencing with Section 6250) of Division 7 of Title 1 of the
Government Code) and the Information Practices Act of 1977
(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
of Division 3 of the Civil Code) and shall comply with the
(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee’s address, but may include the city and county of the licensee’s address of record.

SEC. 59. Section 2570.47 is added to the Business and Professions Code, to read:

2570.47. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

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

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

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

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

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

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

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

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

SEC. 60. Section 2608.5 of the Business and Professions Code is repealed.

2608.5. Each member of the board, or any licensed physical therapist appointed by the board, may inspect, or require reports from, a general or specialized hospital or any other facility providing physical therapy care, treatment or services and the physical therapy staff thereof, with respect to the physical therapy care, treatment, services, or facilities provided therein, and may inspect physical therapy patient records with respect to the care, treatment, services, or facilities. The authority to make inspections and to require reports as provided by this section shall not be delegated by a member of the board to any person other than a physical therapist and shall be subject to the restrictions against disclosure described in Section 2263.
SEC. 61. Section 2660.5 of the Business and Professions Code is repealed.

2660.5. The board shall deny a physical therapist license or physical therapist assistant approval to an applicant who is required to register pursuant to Section 290 of the Penal Code. This section does not apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

SEC. 62. Section 2661.8 is added to the Business and Professions Code, to read:

2661.8. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

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

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 63. Section 2661.9 is added to the Business and Professions Code, to read:

2661.9. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

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

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

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

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 64. Section 2661.10 is added to the Business and Professions Code, to read:

2661.10. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

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

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

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

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

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

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

SEC. 65. Section 2661.11 is added to the Business and
Professions Code, to read:

2661.11. (a) Except as otherwise provided, any proposed
decision or decision issued in accordance with the procedures set
forth in Chapter 5 (commencing with Section 11500) of Part 1 of
Division 3 of Title 2 of the Government Code, that contains any
finding of fact that the licensee engaged in any act of sexual contact
with a patient, as defined in subdivision (c) of Section 729, or any
finding that the licensee has committed a sex offense, shall contain
an order revoking the license. The proposed decision shall not
contain any order staying the revocation of the licensee.
(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 66. Section 2661.12 is added to the Business and Professions Code, to read:

2661.12. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

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

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

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

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

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

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

SEC. 67. Section 2661.13 is added to the Business and Professions Code, to read:

2661.13. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:
(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

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

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

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

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

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

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 68. Section 2661.14 is added to the Business and Professions Code, to read:
2661.14. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient’s written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient’s written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient’s certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient’s authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.
(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

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

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

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.
(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

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

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

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

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

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 69. Section 2661.15 is added to the Business and Professions Code, to read:

2661.15. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a
description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.
(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, “suspension or termination for cause” or “resignation in lieu of suspension or termination for cause” is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee’s ability to safely practice.
(2) Unlawful sale of a controlled substance or other prescription items.
(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.
(4) Gross negligence or incompetence.
(5) Theft from a patient or client, any other employee, or the employer.

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

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

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

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the board.

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

(k) No report is required under this section where a report of the action taken is already required under Section 805.

SEC. 70. Section 2661.16 is added to the Business and Professions Code, to read:

2661.16. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information including the name and license number in its possession, custody, or control regarding every licensee for which the board licenses:

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

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee’s hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 2661.14 or 805.

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

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

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee’s address, but may include the city and county of the licensee’s address of record.

SEC. 71. Section 2661.17 is added to the Business and Professions Code, to read:
2661.17. (a) Unless otherwise provided, if a licensee possesses
a license or is otherwise authorized to practice in any state other
than California or by any agency of the federal government and
that license or authority is suspended or revoked outright, the
California license of the licensee shall be suspended automatically
for the duration of the suspension or revocation, unless terminated
or rescinded as provided in subdivision (c). The board shall notify
the licensee of the license suspension and of his or her right to
have the issue of penalty heard as provided in this section.

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

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

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

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

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

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

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

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

SEC. 72. Section 2766 is added to the Business and Professions Code, to read:

2766. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

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

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 73. Section 2766.1 is added to the Business and Professions Code, to read:

2766.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.
(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

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

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 74. Section 2766.2 is added to the Business and Professions Code, to read:

2766.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

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

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and
no hearing shall be held on this issue. However, upon its own
motion or for good cause shown, the board may decline to impose
or may set aside the suspension when it appears to be in the interest
of justice to do so, with due regard to maintaining the integrity of;
and confidence in, the practice regulated by the board.

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

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

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

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

SEC. 75. Section 2766.3 is added to the Business and
Professions Code, to read:

2766.3. (a) Except as otherwise provided, any proposed
decision or decision issued in accordance with the procedures set
forth in Chapter 5 (commencing with Section 11500) of Part 1 of
Division 3 of Title 2 of the Government Code, that contains any
finding of fact that the licensee engaged in any act of sexual contact
with a patient, as defined in subdivision (c) of Section 729, or any
finding that the licensee has committed a sex offense, shall contain
an order revoking the license. The proposed decision shall not
contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any
of the following:

(1) Any offense for which registration is required by Section
290 of the Penal Code or a finding that a person committed such
an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
or 647(a) or (d) of the Penal Code or a finding that a person
committed such an act.

(3) Any attempt to commit any of the offenses specified in this
section.

(4) Any offense committed or attempted in any other state or
against the laws of the United States which, if committed or
attempted in this state, would have been punishable as one or more
of the offenses specified in this section.

SEC. 76. Section 2766.4 is added to the Business and
Professions Code, to read:

2766.4. (a) Except as otherwise provided, with regard to an
individual who is required to regis
er as a sex offender pursuant
to Section 290 of the Penal Code, or the equivalent in another
state or territory, under military law, or under federal law, the
board shall be subject to the following requirements:

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

(2) If the individual is licensed under this chapter, the board
shall promptly revoke the license of the individual in accordance
with the procedures set forth in Chapter 5 (commencing with
Section 11500) of Part 1 of Division 3 of Title 2 of the Government
Code. The board shall not stay the revocation and place the license
on probation.
(3) The board shall not reinstate or reissue the individual’s license. The board shall not issue a stay of license denial nor place the license on probation.

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

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

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee’s conviction under Section 314 of the Penal Code.

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

SEC. 77. Section 2766.5 is added to the Business and Professions Code, to read:

2766.5. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.
(b) Notwithstanding any other provision of law, the Attorney
General and his or her investigative agents, and the board and its
investigators and representatives may inquire into any alleged
violation of the laws under the jurisdiction of the board or any
other federal or state law, regulation, or rule relevant to the
practice regulated by the board, whichever is applicable, and may
inspect documents relevant to those investigations in accordance
with the following procedures:

(1) Any document relevant to an investigation may be inspected,
and copies may be obtained, where a patient provides written
authorization.

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

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

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

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

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

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 78. Section 2766.6 is added to the Business and Professions Code, to read:

2766.6. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient’s written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient’s written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient’s certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient’s authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

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

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

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

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

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

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

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

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

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

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

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 79. Section 2766.7 is added to the Business and Professions Code, to read:

2766.7. (a) Unless otherwise provided, on or after July 1, 2013, the board shall post on the Internet the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:
(1) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(3) Any felony conviction of a licensee reported to the board.

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

(5) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board.

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

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

(b) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(c) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the
licensee’s address, nor the city and county of the licensee’s address
of record.

SEC. 80. Section 2766.8 is added to the Business and
Professions Code, to read:

2766.8. (a) Unless otherwise provided, if a licensee possesses
a license or is otherwise authorized to practice in any state other
than California or by any agency of the federal government and
that license or authority is suspended or revoked outright, the
California license of the licensee shall be suspended automatically
for the duration of the suspension or revocation, unless terminated
or rescinded as provided in subdivision (c). The healing arts board
shall notify the licensee of the license suspension and of his or her
right to have the issue of penalty heard as provided in this section.

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

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

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

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

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

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

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

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

SEC. 81. Section 2879.1 is added to the Business and Professions Code, to read:

2879.1. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

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

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 82. Section 2879.2 is added to the Business and Professions Code, to read:

2879.2. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a
licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

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

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

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

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 83. Section 2879.3 is added to the Business and Professions Code, to read:

2879.3. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

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

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

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

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.
(f) Any other provision of law setting forth a procedure for the
suspension or revocation of a license issued by the board shall not
apply to proceedings conducted pursuant to this section.

SEC. 84. Section 2879.4 is added to the Business and
Professions Code, to read:

2879.4. (a) Except as otherwise provided, any proposed
decision or decision issued in accordance with the procedures set
forth in Chapter 5 (commencing with Section 11500) of Part 1 of
Division 3 of Title 2 of the Government Code, that contains any
finding of fact that the licensee engaged in any act of sexual contact
with a patient, as defined in subdivision (c) of Section 729, or any
finding that the licensee has committed a sex offense, shall contain
an order revoking the license. The proposed decision shall not
contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any
of the following:

(1) Any offense for which registration is required by Section
290 of the Penal Code or a finding that a person committed such
an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
or 647(a) or (d) of the Penal Code or a finding that a person
committed such an act.

(3) Any attempt to commit any of the offenses specified in this
section.

(4) Any offense committed or attempted in any other state or
against the laws of the United States which, if committed or
attempted in this state, would have been punishable as one or more
of the offenses specified in this section.

SEC. 85. Section 2879.5 is added to the Business and
Professions Code, to read:

2879.5. (a) Except as otherwise provided, with regard to an
individual who is required to register as a sex offender pursuant
to Section 290 of the Penal Code, or the equivalent in another
state or territory, under military law, or under federal law, the
board shall be subject to the following requirements:

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

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

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

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

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee’s conviction under Section 314 of the Penal Code.

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

SEC. 86. Section 2879.6 is added to the Business and Professions Code, to read:

2879.6. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names,
except as is necessary during the course of an investigation, unless
and until proceedings are instituted. The authority under this
subdivision to examine records of patients in the office of a licensee
is limited to records of patients who have complained to the board
about that licensee.
(b) Notwithstanding any other provision of law, the Attorney
General and his or her investigative agents, and the board and its
investigators and representatives may inquire into any alleged
violation of the laws under the jurisdiction of the board or any
other federal or state law, regulation, or rule relevant to the
practice regulated by the board, whichever is applicable, and may
inspect documents relevant to those investigations in accordance
with the following procedures:
(1) Any document relevant to an investigation may be inspected,
and copies may be obtained, where a patient provides written
authorization.
(2) Any document relevant to the business operations of a
licensee, and not involving medical records attributable to
identifiable patients, may be inspected and copied where relevant
to an investigation of a licensee.
(c) In all cases where documents are inspected or copies of
those documents are received, their acquisition or review shall be
arranged so as not to unnecessarily disrupt the medical and
business operations of the licensee or of the facility where the
records are kept or used.
(d) Where certified documents are lawfully requested from
licensees in accordance with this section by the Attorney General
or his or her agents or deputies, or investigators of any board, the
documents shall be provided within 10 business days of receipt of
the request, unless the licensee is unable to provide the certified
documents within this time period for good cause, including, but
not limited to, physical inability to access the records in the time
allowed due to illness or travel. Failure to produce requested
certified documents or copies thereof, after being informed of the
required deadline, shall constitute unprofessional conduct. A board
may use its authority to cite and fine a licensee for any violation
of this section. This remedy is in addition to any other authority
of the board to sanction a licensee for a delay in producing
requested records.
(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

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

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 87. Section 2879.7 is added to the Business and Professions Code, to read:

2879.7. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient’s written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient’s written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient’s certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the healing arts board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient’s authorization. The board shall pay the reasonable costs of copying
the certified medical records, but shall not be required to make
that payment prior to the production of the medical records.

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

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

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

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

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

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

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

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

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

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

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 88. Section 2879.8 is added to the Business and Professions Code, to read:
2879.8. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

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

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee’s hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 2879.7 or 805.

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

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

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977.
(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee’s address, but may include the city and county of the licensee’s address of record.

SEC. 89. Section 2879.10 is added to the Business and Professions Code, to read:

2879.10. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

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

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

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

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

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

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

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

SEC. 90. Section 2960.1 of the Business and Professions Code is amended to read:

2960.1. (a) Notwithstanding Section 2960, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 728, when that act is with a patient, or with a former patient within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.
(b) Except as otherwise provided, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

c) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 91. Section 2969.1 is added to the Business and Professions Code, to read:

2969.1. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

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

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 92. Section 2969.2 is added to the Business and Professions Code, to read:
2969.2. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

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

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

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

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 93. Section 2969.3 is added to the Business and Professions Code, to read:

2969.3. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

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

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

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of
this paragraph, “current accusation” means an accusation that
has not been dismissed, withdrawn, or settled, and has not been
finally decided upon by an administrative law judge and the board
unless an appeal of that decision is pending.
(e) Any malpractice judgment or arbitration award imposed
against a licensee and reported to the board.
(f) Any hospital disciplinary action imposed against a licensee
that resulted in the termination or revocation of a licensee’s
hospital staff privileges for a medical disciplinary cause or reason
pursuant to Section 805.
(g) Any misdemeanor conviction of a licensee that results in a
disciplinary action or an accusation that is not subsequently
withdrawn or dismissed.
(h) Appropriate disclaimers and explanatory statements to
accompany the above information, including an explanation of
what types of information are not disclosed. These disclaimers
and statements shall be developed by the board and shall be
adopted by regulation.
(i) The information provided on the Internet shall be in
accordance with the California Public Records Act (Chapter 3.5
(commencing with Section 6250) of Division 7 of Title 1 of the
Government Code) and the Information Practices Act of 1977
(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
of Division 3 of the Civil Code) and shall comply with the
Department of Consumer Affairs Guidelines for Access to Public
Records.
(j) Information provided on the Internet may not include
personal information, unless otherwise provided pursuant to this
chapter, including the home telephone number, date of birth, or
social security number. The information may not include the
licensee’s address, but may include the city and county of the
licensee’s address of record.
SEC. 94. Section 2969.4 is added to the Business and
Professions Code, to read:
2969.4. (a) Unless otherwise provided, if a licensee possesses
a license or is otherwise authorized to practice in any state other
than California or by any agency of the federal government and
that license or authority is suspended or revoked outright, the
California license of the licensee shall be suspended automatically
for the duration of the suspension or revocation, unless terminated
or rescinded as provided in subdivision (c). The board shall notify
the licensee of the license suspension and of his or her right to
have the issue of penalty heard as provided in this section.

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

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

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

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

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

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

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

SEC. 95. Section 3112 is added to the Business and Professions Code, to read:

3112. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a certificate of registration has been filed and the registrant has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the certificate of registration has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a certificate of registration has been filed by the board and the registrant has agreed to the revocation or surrender of his or her certificate of registration.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 96. Section 3112.1 is added to the Business and Professions Code, to read:

3112.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a registrant or applicant in lieu of the issuance of an accusation or statement of issues against that registrant or applicant, as applicable.

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

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.
(d) Any settlement against a registrant executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board’s Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board’s Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 97. Section 3112.2 is added to the Business and Professions Code, to read:

3112.2. (a) The certificate of registration of a registrant shall be suspended automatically during any time that the registrant is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the certificate of registration of the registrant has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the registrant in writing of the certificate of registration suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the registrant was convicted was substantially related to the qualifications, functions, or duties of a registrant, the board shall suspend the certificate of registration until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a registrant and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest
of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

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

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

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

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a certificate of registration issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 98. Section 3112.3 is added to the Business and Professions Code, to read:

3112.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any
finding of fact that the registrant engaged in any act of sexual
contact with a patient, as defined in subdivision (c) of Section 729,
or any finding that the licensee has committed a sex offense, shall
contain an order revoking the license. The proposed decision shall
not contain any order staying the revocation of the certificate.

(b) As used in this section, the term sex offense shall mean any
of the following:

(1) Any offense for which registration is required by Section
290 of the Penal Code or a finding that a person committed such
an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
or 647(a) or (d) of the Penal Code or a finding that a person
committed such an act.

(3) Any attempt to commit any of the offenses specified in this
section.

(4) Any offense committed or attempted in any other state or
against the laws of the United States which, if committed or
attempted in this state, would have been punishable as one or more
of the offenses specified in this section.

SEC. 99. Section 3112.4 is added to the Business and
Professions Code, to read:

3112.4. (a) Except as otherwise provided, with regard to an
individual who is required to register as a sex offender pursuant
to Section 290 of the Penal Code, or the equivalent in another
state or territory, under military law, or under federal law, the
board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for
registration in accordance with the procedures set forth in Chapter
5 (commencing with Section 11500) of Part 1 of Division 3 of Title

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

(3) The board shall not reinstate or reissue the individual’s
certificate of registration. The board shall not issue a stay of
certificate of registration denial nor place the certificate of
registration on probation.
(b) This section shall not apply to any of the following:

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

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee’s conviction under Section 314 of the Penal Code.

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

SEC. 100. Section 3112.5 is added to the Business and Professions Code, to read:

3112.5. (a) Notwithstanding any other provision of law making a communication between a registrant and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

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

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

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

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

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

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

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

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other
types of documents that belong to or are controlled by a health facility or clinic.

SEC. 101. Section 3112.6 is added to the Business and Professions Code, to read:

3112.6. (a) (1) Notwithstanding any other provision of law, a registrant who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient’s written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the registrant is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient’s written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient’s certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient’s authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

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

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

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

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

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

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

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

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

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

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

(i) This section shall not apply to a registrant who does not have
access to, or control over, certified medical records or other types
of documents that belong to or are controlled by a health facility
or clinic.

SEC. 102. Section 3112.7 is added to the Business and
Professions Code, to read:

3112.7. (a) Notwithstanding any other provision of law, any
employer of a licensee shall report to the board the suspension or
termination for cause, or any resignation in lieu of suspension or
termination for cause, of any licensee in its employ within 15
business days. The report shall not be made until after the
conclusion of the review process specified in Section 52.3 of Title
2 of the California Code of Regulations and Skelly v. State
Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This
required reporting shall not constitute a waiver of confidentiality
of medical records. The information reported or disclosed shall
be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

1. Any statement for suspension or termination of the registrant.
2. Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the registrant, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, “suspension or termination for cause” or “resignation in lieu of suspension or termination for cause” is defined as resignation, suspension, or termination from employment for any of the following reasons:

1. Use of controlled substances or alcohol to the extent that it impairs the licensee’s ability to safely practice.
2. Unlawful sale of a controlled substance or other prescription items.
3. Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.
4. Gross negligence or incompetence.
5. Theft from a patient or client, any other employee, or the employer.

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

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

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

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

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the board.

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

(k) No report is required under this section where a report of the action taken is already required under Section 805.

SEC. 103. Section 3112.8 is added to the Business and Professions Code, to read:

3112.8. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every registrant for which the board licenses:

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

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

(c) Any felony conviction of a registrant reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a registrant that resulted in the termination or revocation of a registrant’s hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 3112.6 or 805.

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

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

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee’s address, but may include the city and county of the licensee’s address of record.
SEC. 104. Section 3112.9 is added to the Business and Professions Code, to read:

3112.9. (a) Unless otherwise provided, if a registrant possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

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

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

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

(e) This section shall not apply to a registrant who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a registrant’s license from being suspended pursuant to any other provision of law.
(f) This section shall not apply to a registrant whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

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

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

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

SEC. 105. Section 3405 is added to the Business and Professions Code, to read:

3405. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

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

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 106. Section 3405.1 is added to the Business and Professions Code, to read:

3405.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.
(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.
(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.
(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board’s Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board’s Internet Web site.
(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 107. Section 3405.2 is added to the Business and Professions Code, to read:

3405.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

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

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, to be posted on the applicable board’s Internet Web site.
substances, or a conviction of Section 187, 261, 262, or 288 of the
Penal Code, shall be conclusively presumed to be substantially
related to the qualifications, functions, or duties of a licensee and
no hearing shall be held on this issue. However, upon its own
motion or for good cause shown, the board may decline to impose
or may set aside the suspension when it appears to be in the interest
of justice to do so, with due regard to maintaining the integrity of,
and confidence in, the practice regulated by the board.
(d) (1) Discipline may be ordered against a licensee in
accordance with the statutes and regulations of the board when
the time for appeal has elapsed, the judgment of conviction has
been affirmed on appeal, or an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent
order under Section 1203.4 of the Penal Code allowing the person
to withdraw his or her plea of guilty and to enter a plea of not
guilty, setting aside the verdict of guilty, or dismissing the
accusation, complaint, information, or indictment.
(2) The issue of penalty shall be heard by an administrative law
judge from the Office of Administrative Hearings. The hearing
shall not be held until the judgment of conviction has become final
or, irrespective of a subsequent order under Section 1203.4 of the
Penal Code, an order granting probation has been made
suspending the imposition of sentence; except that a licensee may,
at his or her option, elect to have the issue of penalty decided
before those time periods have elapsed. Where the licensee so
elects, the issue of penalty shall be heard in the manner described
in subdivision (b) at the hearing to determine whether the
conviction was substantially related to the qualifications, functions,
or duties of a licensee. If the conviction of a licensee who has made
this election is overturned on appeal, any discipline ordered
pursuant to this section shall automatically cease. Nothing in this
subdivision shall prohibit the board from pursuing disciplinary
action based on any cause other than the overturned conviction.
(e) The record of the proceedings resulting in a conviction,
including a transcript of the testimony in those proceedings, may
be received in evidence.
(f) Any other provision of law setting forth a procedure for the
suspension or revocation of a license issued by the board shall not
apply to proceedings conducted pursuant to this section.
SEC. 108. Section 3405.3 is added to the Business and Professions Code, to read:

3405.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 109. Section 3405.4 is added to the Business and Professions Code, to read:

3405.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

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

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

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

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

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

2. An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee’s conviction under Section 314 of the Penal Code.

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

SEC. 110. Section 3405.5 is added to the Business and Professions Code, to read:

3405.5. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee
is limited to records of patients who have complained to the board about that licensee.

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

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

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

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

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

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.
(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 111. Section 3405.6 is added to the Business and Professions Code, to read:

3405.6. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient’s written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient’s written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient’s certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist a board in obtaining the patient’s authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

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

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

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

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.
(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

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

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

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

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

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

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

SEC. 112. Section 3405.7 is added to the Business and Professions Code, to read:

3405.7. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title
2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.
(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, “suspension or termination for cause” or “resignation in lieu of suspension or termination for cause” is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee’s ability to safely practice.
(2) Unlawful sale of a controlled substance or other prescription items.
(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.
(4) Gross negligence or incompetence.
(5) Theft from a patient or client, any other employee, or the employer.

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

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

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

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

(g) (1) Willful failure of an employer to make a report required
by this section is punishable by an administrative fine not to exceed
one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to
make a report required by this section is punishable by an
administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The board shall investigate the circumstances underlying
any report received pursuant to this section within 30 days to
determine if an interim suspension order or temporary restraining
order should be issued. The board shall otherwise provide timely
disposition of the reports received pursuant to this section.

(i) The board shall send to the licentiate a copy of the report
along with the reasons for the filing of the report and notice
advising the licentiate of his or her right to submit additional
statements or other information to the board.

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

(k) No report is required under this section where a report of
the action taken is already required under Section 805.

SEC. 113. Section 3405.8 is added to the Business and
Professions Code, to read:

3405.8. Unless otherwise provided, on or after July 1, 2013,
the board shall post on its Internet Web site the following
information, including the name and license number, in its
possession, custody, or control regarding every licensee for which
the board licenses:

(a) With regard to the status of every license, whether or not
the licensee or former licensee is in good standing, subject to a
temporary restraining order, subject to an interim suspension
order, subject to a restriction or cease practice ordered pursuant
to Section 23 of the Penal Code, or subject to any of the
enforcement actions described in Section 803.1.
(b) With regard to prior discipline of a licensee, whether or not
the licensee or former licensee has been subject to discipline by
the board or by the board of another state or jurisdiction, as
described in Section 803.1.
(c) Any felony conviction of a licensee reported to the board.
(d) All current accusations filed by the Attorney General,
including those accusations that are on appeal. For purposes of
this paragraph, “current accusation” means an accusation that
has not been dismissed, withdrawn, or settled, and has not been
finally decided upon by an administrative law judge and the board
unless an appeal of that decision is pending.
(e) Any malpractice judgment or arbitration award imposed
against a licensee and reported to the healing arts board.
(f) Any hospital disciplinary action imposed against a licensee
that resulted in the termination or revocation of a licensee’s
hospital staff privileges for a medical disciplinary cause or reason
pursuant to Section 3405.6 or 805.
(g) Any misdemeanor conviction of a licensee that results in a
disciplinary action or an accusation that is not subsequently
withdrawn or dismissed.
(h) Appropriate disclaimers and explanatory statements to
accompany the above information, including an explanation of
what types of information are not disclosed. These disclaimers
and statements shall be developed by the board and shall be
adopted by regulation.
(i) The information provided on the Internet shall be in
accordance with the California Public Records Act (Chapter 3.5
(commencing with Section 6250) of Division 7 of Title 1 of the
Government Code) and the Information Practices Act of 1977
(Chapter I (commencing with Section 1798) of Title 1.8 of Part 4
of Division 3 of the Civil Code) and shall comply with the
Department of Consumer Affairs Guidelines for Access to Public
Records.
(j) Information provided on the Internet may not include
personal information, unless otherwise provided pursuant to this
chapter, including the home telephone number, date of birth, or
social security number. The information may not include the
licensee’s address, but may include the city and county of the
licensee’s address of record.

SEC. 114. Section 3405.9 is added to the Business and
Professions Code, to read:

3405.9. (a) Unless otherwise provided, if a licensee possesses
a license or is otherwise authorized to practice in any state other
than California or by any agency of the federal government and
that license or authority is suspended or revoked outright, the
California license of the licensee shall be suspended automatically
for the duration of the suspension or revocation, unless terminated
or rescinded as provided in subdivision (c). The healing arts board
shall notify the licensee of the license suspension and of his or her
right to have the issue of penalty heard as provided in this section.

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

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

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

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

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

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

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

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

SEC. 115. Section 3531.1 is added to the Business and Professions Code, to read:

3531.1. (a) The committee may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

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

(c) The executive officer shall, at scheduled committee meetings, report to the committee the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 116. Section 3531.2 is added to the Business and Professions Code, to read:
3531.2. (a) Notwithstanding Section 11415.60 of the Government Code, the committee may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

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

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

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

(e) The executive officer shall, at scheduled committee meetings, report to the committee the number of proposed settlement agreements adopted pursuant to this section.

SEC. 117. Section 3531.3 is added to the Business and Professions Code, to read:

3531.3. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The committee shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The committee shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

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

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the committee may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the committee.

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

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

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

SEC. 118. Section 3531.4 is added to the Business and Professions Code, to read:

3531.4. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 119. Section 3531.5 is added to the Business and Professions Code, to read:

3531.5. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the committee shall be subject to the following requirements:

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

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

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

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

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

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the committee from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee’s conviction under Section 314 of the Penal Code.

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

SEC. 120. Section 3531.6 is added to the Business and Professions Code, to read:

3531.6. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the committee. Members of the committee, deputies, employees, agents, the office of the Attorney General, and representatives of the committee shall
keep in confidence during the course of investigations the names
of any patients whose records are reviewed and may not disclose
or reveal those names, except as is necessary during the course
of an investigation, unless and until proceedings are instituted.
The authority under this subdivision to examine records of patients
in the office of a licensee is limited to records of patients who have
complained to the committee about that licensee.

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

(1) Any document relevant to an investigation may be inspected,
and copies may be obtained, where a patient provides written
authorization.

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

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

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

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

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

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 121. Section 3531.7 is added to the Business and Professions Code, to read:

3531.7. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient’s written authorization for release of records to the committee together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the committee a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient’s written authorization for release of records to the committee together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient’s certified medical records to the committee within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the committee, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require
health care facilities to assist the committee in obtaining the patient’s authorization. The committee shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

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

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

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the committee, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the committee a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the committee against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.
(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee is guilty of a misdemeanor punishable by a fine payable to the committee not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the committee against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

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

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

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

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

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

(h) If the committee complies with Section 1684.1, 2225.5, or 2969, the committee shall not be subject to the requirements of this section.
(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 122. Section 3531.8 is added to the Business and Professions Code, to read:

3531.8. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the committee the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The committee shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.
(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the committee of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the committee shall report the violation to the appropriate agency.

(e) For purposes of this section, “suspension or termination for cause” or “resignation in lieu of suspension or termination for
cause” is defined as resignation, suspension, or termination from employment for any of the following reasons:

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

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

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

(4) Gross negligence or incompetence.

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

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

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

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

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

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The committee shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The committee shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The committee shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the committee.
(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

SEC. 123. Section 3531.9 is added to the Business and Professions Code, to read:

3531.9. Unless otherwise provided, on or after July 1, 2013, the committee shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the committee licenses:

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

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

(c) Any felony conviction of a licensee reported to the committee.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the committee.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee’s hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 3531.7 or 805.

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

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

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee’s address, but may include the city and county of the licensee’s address of record.

SEC. 124. Section 3531.10 is added to the Business and Professions Code, to read:

3531.10. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The committee shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

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

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

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

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

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

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

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

(i) If the committee complies with Section 2310 it shall not be subject to the requirements of this section.

SEC. 125. Section 3665 is added to the Business and Professions Code, to read:

3665. (a) The committee may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the
hearing and a proposed default decision revoking the license has been issued.

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

c) The executive officer shall, at scheduled committee meetings, report to the committee the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 126. Section 3665.1 is added to the Business and Professions Code, to read:

3665.1. (a) Notwithstanding Section 11415.60 of the Government Code, the committee may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

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

c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

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

Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable committee’s Internet Web site.

e) The executive officer shall, at scheduled committee meetings, report to the committee the number of proposed settlement agreements adopted pursuant to this section.

SEC. 127. Section 3665.2 is added to the Business and Professions Code, to read:

3665.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The committee shall, immediately upon receipt of the certified copy of the record of conviction, determine whether...
the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The committee shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

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

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the committee may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the committee.

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

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made
suspending the imposition of sentence; except that a licensee may,
4 at his or her option, elect to have the issue of penalty decided
5 before those time periods have elapsed. Where the licensee so
6 elects, the issue of penalty shall be heard in the manner described
7 in subdivision (b) at the hearing to determine whether the
8 conviction was substantially related to the qualifications, functions,
9 or duties of a licensee. If the conviction of a licensee who has made
10 this election is overturned on appeal, any discipline ordered
11 pursuant to this section shall automatically cease. Nothing in this
12 subdivision shall prohibit the board from pursuing disciplinary
13 action based on any cause other than the overturned conviction.
14 (e) The record of the proceedings resulting in a conviction,
15 including a transcript of the testimony in those proceedings, may
16 be received in evidence.
17 (f) Any other provision of law setting forth a procedure for the
18 suspension or revocation of a license issued by the board shall not
19 apply to proceedings conducted pursuant to this section.
20 SEC. 128. Section 3665.3 is added to the Business and
21 Professions Code, to read:
22 3665.3. (a) Except as otherwise provided, any proposed
23 decision or decision issued in accordance with the procedures set
24 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
25 Division 3 of Title 2 of the Government Code, that contains any
26 finding of fact that the licensee engaged in any act of sexual contact
27 with a patient, as defined in subdivision (c) of Section 729, or any
28 finding that the licensee has committed a sex offense, shall contain
29 an order revoking the license. The proposed decision shall not
30 contain any order staying the revocation of the licensee.
31 (b) As used in this section, the term sex offense shall mean any
32 of the following:
33 (1) Any offense for which registration is required by Section
34 290 of the Penal Code or a finding that a person committed such
35 an act.
36 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
37 or 647(a) or (d) of the Penal Code or a finding that a person
38 committed such an act.
39 (3) Any attempt to commit any of the offenses specified in this
40 section.
41 (4) Any offense committed or attempted in any other state or
42 against the laws of the United States which, if committed or
attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 129. Section 3665.4 is added to the Business and Professions Code, to read:

3665.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the committee shall be subject to the following requirements:

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

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

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

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

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

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the committee from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee’s conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this

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paragraph, and the prohibition against reinstating a license to an
individual who is required to register as a sex offender shall be
applicable.
SEC. 130. Section 3665.5 is added to the Business and
Professions Code, to read:
3665.5. (a) Notwithstanding any other provision of law making
a communication between a licensee and his or her patients a
privileged communication, those provisions shall not apply to
investigations or proceedings conducted by the board. Members
of the board, deputies, employees, agents, the office of the Attorney
General, and representatives of the board shall keep in confidence
during the course of investigations the names of any patients whose
records are reviewed and may not disclose or reveal those names,
except as is necessary during the course of an investigation, unless
and until proceedings are instituted. The authority under this
subdivision to examine records of patients in the office of a licensee
is limited to records of patients who have complained to the board
about that licensee.
(b) Notwithstanding any other provision of law, the Attorney
General and his or her investigative agents, and the committee
and its investigators and representatives may inquire into any
alleged violation of the laws under the jurisdiction of the committee
or any other federal or state law, regulation, or rule relevant to
the practice regulated by the committee, whichever is applicable,
and may inspect documents relevant to those investigations in
accordance with the following procedures:
(1) Any document relevant to an investigation may be inspected,
and copies may be obtained, where a patient provides written
authorization.
(2) Any document relevant to the business operations of a
licensee, and not involving medical records attributable to
identifiable patients, may be inspected and copied where relevant
to an investigation of a licensee.
(c) In all cases where documents are inspected or copies of
those documents are received, their acquisition or review shall be
arranged so as not to unnecessarily disrupt the medical and
business operations of the licensee or of the facility where the
records are kept or used.
(d) Where certified documents are lawfully requested from
licensees in accordance with this section by the Attorney General
or his or her agents or deputies, or investigators of any board, the
documents shall be provided within 10 business days of receipt of
the request, unless the licensee is unable to provide the certified
documents within this time period for good cause, including, but
not limited to, physical inability to access the records in the time
allowed due to illness or travel. Failure to produce requested
certified documents or copies thereof, after being informed of the
required deadline, shall constitute unprofessional conduct. The
committee may use its authority to cite and fine a licensee for any
violation of this section. This remedy is in addition to any other
authority of the committee to sanction a licensee for a delay in
producing requested records.

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

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

(g) This section shall not apply to a licensee who does not have
access to, and control over, certified medical records or other
types of documents that belong to or are controlled by a health
facility or clinic.

SEC. 131. Section 3665.6 is added to the Business and
Professions Code, to read:

3665.6. (a) (1) Notwithstanding any other provision of law,
a licensee who fails or refuses to comply with a request for the
certified medical records of a patient that is accompanied by that
patient’s written authorization for release of records to the
committee together with a notice citing this section and describing
the penalties for failure to comply with this section shall be
required to pay to the board a civil penalty of up to one thousand
dollars ($1,000) per day for each day that the documents have not
been produced after the 15th day, up to ten thousand dollars
($10,000), unless the licensee is unable to provide the documents
within this time period for good cause.

(2) A health care facility shall comply with a request for the
certified medical records of a patient that is accompanied by that
patient’s written authorization for release of records to the
committee together with a notice citing this section and describing
the penalties for failure to comply with this section. Failure to
provide the authorizing patient’s certified medical records to the
board within 15 days of receiving the request, authorization, and
notice shall subject the health care facility to a civil penalty,
payable to the committee, of up to one thousand dollars ($1,000)
per day for each day that the documents have not been produced
after the 15th day, up to ten thousand dollars ($10,000), unless
the health care facility is unable to provide the documents within
this time period for good cause. This paragraph shall not require
health care facilities to assist the committee in obtaining the
patient’s authorization. The committee shall pay the reasonable
costs of copying the certified medical records, but shall not be
required to make that payment prior to the production of the
medical records.

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

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

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

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

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

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

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the committee pursuant to this section shall be deposited into the fund administered by the committee.
(f) For purposes of this section, “certified medical records” means a copy of the patient’s medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee’s board.

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

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

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 132. Section 3665.7 is added to the Business and Professions Code, to read:

3665.7. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the committee the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The committee shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:
(1) Any statement for suspension or termination of the licensee.
(2) Any document or exhibits relevant to the suspension or termination.

d) If, during the investigation by the committee of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the committee shall report the violation to the appropriate agency.

e) For purposes of this section, “suspension or termination for cause” or “resignation in lieu of suspension or termination for cause” is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee’s ability to safely practice.
(2) Unlawful sale of a controlled substance or other prescription items.
(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.
(4) Gross negligence or incompetence.
(5) Theft from a patient or client, any other employee, or the employer.

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

(1) “Gross negligence” means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.
(2) “Incompetence” means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.
(3) “Willful” means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.
(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The committee shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The committee shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the board.

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

(k) No report is required under this section where a report of the action taken is already required under Section 805.

SEC. 133. Section 3665.8 is added to the Business and Professions Code, to read:

3665.8. Unless otherwise provided, on or after July 1, 2013, the committee shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the committee licenses:

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

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed
against a licensee and reported to the committee.

(f) Any hospital disciplinary action imposed against a licensee
that resulted in the termination or revocation of a licensee’s
hospital staff privileges for a medical disciplinary cause or reason
pursuant to Section 3665.8 or 805.

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

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

(i) The information provided on the Internet shall be in
accordance with the California Public Records Act (Chapter 3.5
(commencing with Section 6250) of Division 7 of Title 1 of the
Government Code) and the Information Practices Act of 1977
(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
of Division 3 of the Civil Code) and shall comply with the
Department of Consumer Affairs Guidelines for Access to Public
Records.

(j) Information provided on the Internet may not include
personal information, unless otherwise provided pursuant to this
chapter, including the home telephone number, date of birth, or
social security number. The information may not include the
licensee’s address, but may include the city and county of the
licensee’s address of record.

SEC. 134. Section 3665.9 is added to the Business and
Professions Code, to read:

3665.9. (a) Unless otherwise provided, if a licensee possesses
a license or is otherwise authorized to practice in any state other
than California or by any agency of the federal government and
that license or authority is suspended or revoked outright, the
California license of the licensee shall be suspended automatically
for the duration of the suspension or revocation, unless terminated
or rescinded as provided in subdivision (c). The committee shall
notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

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

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

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

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

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

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

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

SEC. 135. Section 3769.4 is added to the Business and Professions Code, to read:

3769.4. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

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

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 136. Section 3769.5 is added to the Business and Professions Code, to read:

3769.5. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

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

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and
shall be posted on the applicable board’s Internet Web site. Any
settlement against an applicant executed pursuant to this section
shall be considered a public record and shall be posted on the
applicable board’s Internet Web site.
(e) The executive officer shall, at scheduled board meetings,
report to the board the number of proposed settlement agreements
adopted pursuant to this section.
SEC. 137. Section 3769.6 is added to the Business and
Professions Code, to read:
3769.6. (a) The license of a licensee shall be suspended
automatically during any time that the licensee is incarcerated
after conviction of a felony, regardless of whether the conviction
has been appealed. The board shall, immediately upon receipt of
the certified copy of the record of conviction, determine whether
the license of the licensee has been automatically suspended by
virtue of his or her incarceration, and if so, the duration of that
suspension. The board shall notify the licensee in writing of the
license suspension and of his or her right to elect to have the issue
of penalty heard as provided in subdivision (d).
(b) Upon receipt of the certified copy of the record of conviction,
if after a hearing before an administrative law judge from the
Office of Administrative Hearings it is determined that the felony
for which the licensee was convicted was substantially related to
the qualifications, functions, or duties of a licensee, the board
shall suspend the license until the time for appeal has elapsed, if
no appeal has been taken, or until the judgment of conviction has
been affirmed on appeal or has otherwise become final, and until
further order of the board.
(c) Notwithstanding subdivision (b), a conviction of a charge
of violating any federal statute or regulation or any statute or
regulation of this state, regulating dangerous drugs or controlled
substances, or a conviction of Section 187, 261, 262, or 288 of the
Penal Code, shall be conclusively presumed to be substantially
related to the qualifications, functions, or duties of a licensee and
no hearing shall be held on this issue. However, upon its own
motion or for good cause shown, the board may decline to impose
or may set aside the suspension when it appears to be in the interest
of justice to do so, with due regard to maintaining the integrity of,
and confidence in, the practice regulated by the board.
(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

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

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

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

SEC. 138. Section 3769.7 is added to the Business and Professions Code, to read:

3769.7. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain
an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 139. Section 3769.8 is added to the Business and Professions Code, to read:

3769.8. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

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

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

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

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

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

(2) An individual who is required to register as a sex offender
pursuant to Section 290 of the Penal Code solely because of a
misdemeanor conviction under Section 314 of the Penal Code.
However, nothing in this paragraph shall prohibit the board from
exercising its discretion to discipline a licensee under any other
provision of state law based upon the licensee’s conviction under
Section 314 of the Penal Code.

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

SEC. 140. Section 3769.9 is added to the Business and
Professions Code, to read:

3769.9. Unless otherwise provided, on or after July 1, 2013,
the board shall post on its Internet Web site the following
information in its possession, custody, or control regarding every
licensee for which the board licenses:

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

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

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General,
including those accusations that are on appeal. For purposes of
this paragraph, “current accusation” means an accusation that
has not been dismissed, withdrawn, or settled, and has not been
finally decided upon by an administrative law judge and the board
unless an appeal of that decision is pending.
(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board.

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

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

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

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee’s address, but may include the city and county of the licensee’s address of record.

SEC. 141. Section 3796.10 is added to the Business and Professions Code, to read:

3796.10. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.
(b) Upon its own motion or for good cause shown, a healing arts board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

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

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

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

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

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

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

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

SEC. 142. Section 4316 is added to the Business and Professions Code, to read:

4316. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

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

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 143. Section 4316.1 is added to the Business and Professions Code, to read:

4316.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

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

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

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

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 144. Section 4316.2 is added to the Business and Professions Code, to read:

4316.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

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

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

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

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

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

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

SEC. 145. Section 4316.3 is added to the Business and Professions Code, to read:

4316.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.
(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 146. Section 4316.4 is added to the Business and Professions Code, to read:

4316.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

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

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

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

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

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

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

SEC. 147. Section 4316.5 is added to the Business and Professions Code, to read:

4316.5. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information in its possession, custody, or control regarding every licensee for which the board licenses:

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

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board.
(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee’s hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 805.

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

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

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee’s address, but may include the city and county of the licensee’s address of record.

SEC. 148. Section 4316.6 is added to the Business and Professions Code, to read:

4316.6. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

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

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

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

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

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

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

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

time as a hearing on the accusation.

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

SEC. 149. Section 4375 is added to the Business and

Professions Code, to read:

4375. (a) It is the intent of the Legislature, through a request
in 2012 from the Joint Legislative Audit Committee, that the Bureau
of State Audits conduct a thorough performance audit of the
Pharmacists Recovery Program to evaluate the effectiveness and

efficiency of the program, and make recommendations regarding
the continuation of the program and any changes or reforms
required to ensure that pharmacists and intern pharmacists
participating in the program are appropriately monitored, and
the public is protected from pharmacists and intern pharmacists
who are impaired due to alcohol or drug abuse or mental or
physical illness. The audit shall be completed by January 1, 2013.
The board and its staff shall cooperate with the audit, and the
board shall provide data, information, and case files as requested
by the auditor to perform all of its duties. The provision of
confidential data, information, and case files by the board to the
auditor shall not constitute a waiver of any exemption from
disclosure or discovery or of any confidentiality protection or
privilege otherwise provided by law that is applicable to the data,
information, or case files.

(b) It is the intent of the Legislature that the audit shall be paid
for with funds from the Pharmacy Board Contingent Fund.

SEC. 150. Section 4526 is added to the Business and

Professions Code, to read:

4526. (a) The board may delegate to its executive officer the
authority to adopt a proposed default decision where an
administrative action to revoke a license has been filed and the
licensee has failed to file a notice of defense or to appear at the
hearing and a proposed default decision revoking the license has
been issued.

(b) The board may delegate to its executive officer the authority
to adopt a proposed settlement agreement where an administrative
action to revoke a license has been filed by the board and the
licensee has agreed to the revocation or surrender of his or her
license.
(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 151. Section 4526.1 is added to the Business and Professions Code, to read:

4526.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

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

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

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

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 152. Section 4526.2 is added to the Business and Professions Code, to read:

4526.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

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

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

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

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

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

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

SEC. 153. Section 4526.3 is added to the Business and
Professions Code, to read:

4526.3. (a) Except as otherwise provided, any proposed
decision or decision issued in accordance with the procedures set
forth in Chapter 5 (commencing with Section 11500) of Part 1 of
Division 3 of Title 2 of the Government Code, that contains any
finding of fact that the licensee engaged in any act of sexual contact
with a patient, as defined in subdivision (c) of Section 729, or any
finding that the licensee has committed a sex offense, shall contain
an order revoking the license. The proposed decision shall not
contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any
of the following:

(1) Any offense for which registration is required by Section
290 of the Penal Code or a finding that a person committed such
an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
or 647(a) or (d) of the Penal Code or a finding that a person
committed such an act.

(3) Any attempt to commit any of the offenses specified in this
section.

(4) Any offense committed or attempted in any other state or
against the laws of the United States which, if committed or
attempted in this state, would have been punishable as one or more
of the offenses specified in this section.

SEC. 154. Section 4526.4 is added to the Business and
Professions Code, to read:

4526.4. (a) Except as otherwise provided, with regard to an
individual who is required to register as a sex offender pursuant
to Section 290 of the Penal Code, or the equivalent in another
state or territory, under military law, or under federal law, the
board shall be subject to the following requirements:
(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

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

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

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

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

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee’s conviction under Section 314 of the Penal Code.

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

SEC. 155. Section 4526.5 is added to the Business and Professions Code, to read:

4526.5. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members
of the board, deputies, employees, agents, the office of the Attorney
General, and representatives of the board shall keep in confidence
during the course of investigations the names of any patients whose
records are reviewed and may not disclose or reveal those names,
except as is necessary during the course of an investigation, unless
and until proceedings are instituted. The authority under this
subdivision to examine records of patients in the office of a licensee
is limited to records of patients who have complained to the board
about that licensee.

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

   (1) Any document relevant to an investigation may be inspected,
and copies may be obtained, where a patient provides written
authorization.

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

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

   (d) Where certified documents are lawfully requested from
licensees in accordance with this section by the Attorney General
or his or her agents or deputies, or investigators of any board, the
documents shall be provided within 10 business days of receipt of
the request, unless the licensee is unable to provide the certified
documents within this time period for good cause, including, but
not limited to, physical inability to access the records in the time
allowed due to illness or travel. Failure to produce requested
certified documents or copies thereof, after being informed of the
required deadline, shall constitute unprofessional conduct. A board
may use its authority to cite and fine a licensee for any violation

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of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

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

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

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 156. Section 4526.6 is added to the Business and Professions Code, to read:

4526.6. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient’s written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient’s written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient’s certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the healing arts board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this
time period for good cause. This paragraph shall not require health
care facilities to assist the board in obtaining the patient’s
authorization. The board shall pay the reasonable costs of copying
the certified medical records, but shall not be required to make
that payment prior to the production of the medical records.

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

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

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

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

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

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

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

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

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

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

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types
of documents that belong to or are controlled by a health facility
or clinic.

SEC. 157. Section 4526.8 is added to the Business and
Professions Code, to read:
4526.8. Unless otherwise provided, on or after July 1, 2013,
the board shall post on its Internet Web site the following
information, including the name and the license number, in its
possession, custody, or control regarding every licensee for which
the board licenses:
(a) With regard to the status of every license, whether or not
the licensee or former licensee is in good standing, subject to a
temporary restraining order, subject to an interim suspension
order, subject to a restriction or cease practice ordered pursuant
to Section 23 of the Penal Code, or subject to any of the
enforcement actions described in Section 803.1.
(b) With regard to prior discipline of a licensee, whether or not
the licensee or former licensee has been subject to discipline by
the board or by the board of another state or jurisdiction, as
described in Section 803.1.
(c) Any felony conviction of a licensee reported to the board.
(d) All current accusations filed by the Attorney General,
including those accusations that are on appeal. For purposes of
this paragraph, “current accusation” means an accusation that
has not been dismissed, withdrawn, or settled, and has not been
finally decided upon by an administrative law judge and the board
unless an appeal of that decision is pending.
(e) Any malpractice judgment or arbitration award imposed
against a licensee and reported to the board.
(f) Any hospital disciplinary action imposed against a licensee
that resulted in the termination or revocation of a licensee’s
hospital staff privileges for a medical disciplinary cause or reason
pursuant to Section 4526.6 or 805.
(g) Any misdemeanor conviction of a licensee that results in a
disciplinary action or an accusation that is not subsequently
withdrawn or dismissed.
(h) Appropriate disclaimers and explanatory statements to
accompany the above information, including an explanation of
what types of information are not disclosed. These disclaimers
and statements shall be developed by the board and shall be
adopted by regulation.
(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee’s address, but may include the city and county of the licensee’s address of record.

SEC. 158. Section 4526.9 is added to the Business and Professions Code, to read:

4526.9. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

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

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

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

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

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

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

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

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

SEC. 159. Section 4888 is added to the Business and Professions Code, to read:

4888. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.
(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 160. Section 4888.1 is added to the Business and Professions Code, to read:

4888.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

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

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

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

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 161. Section 4888.2 is added to the Business and Professions Code, to read:

4888.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the
license suspension and of his or her right to elect to have the issue
of penalty heard as provided in subdivision (d).

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

(c) Notwithstanding subdivision (b), a conviction of a charge
of violating any federal statute or regulation or any statute or
regulation of this state, regulating dangerous drugs or controlled
substances, or a conviction of Section 187, 261, 262, or 288 of the
Penal Code, shall be conclusively presumed to be substantially
related to the qualifications, functions, or duties of a licensee and
no hearing shall be held on this issue. However, upon its own
motion or for good cause shown, the board may decline to impose
or may set aside the suspension when it appears to be in the interest
of justice to do so, with due regard to maintaining the integrity of,
and confidence in, the practice regulated by the board.

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

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

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

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

SEC. 162. Section 4888.3 is added to the Business and Professions Code, to read:

4888.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:
(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.
(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.
(3) Any attempt to commit any of the offenses specified in this section.
(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 163. Section 4888.4 is added to the Business and Professions Code, to read:
4888.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

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

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

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

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

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

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee’s conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.
SEC. 164. Section 4888.5 is added to the Business and Professions Code, to read:

4888.5. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.
(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, “suspension or termination for cause” or “resignation in lieu of suspension or termination for cause” is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee’s ability to safely practice.
(2) Unlawful sale of a controlled substance or other prescription items.
(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.
(4) Gross negligence or incompetence.
(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:
(1) “Gross negligence” means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.
(2) “Incompetence” means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.
(3) “Willful” means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.
(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the board.

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

(k) No report is required under this section where a report of the action taken is already required under Section 805.
SEC. 165. Section 4888.6 is added to the Business and Professions Code, to read:

4888.6. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

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

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

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

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

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

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 of Title 10 of the Government Code).
(commencing with Section 6250) of Division 7 of Title 1 of the
Government Code) and the Information Practices Act of 1977
(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
of Division 3 of the Civil Code) and shall comply with the
Department of Consumer Affairs Guidelines for Access to Public
Records.

(j) Information provided on the Internet may not include
personal information, unless otherwise provided pursuant to this
chapter, including the home telephone number, date of birth, or
social security number. The information may not include the
licensee’s address, but may include the city and county of the
licensee’s address of record.

SEC. 166. Section 4888.7 is added to the Business and
Professions Code, to read:

4888.7. (a) Unless otherwise provided, if a licensee possesses
a license or is otherwise authorized to practice in any state other
than California or by any agency of the federal government and
that license or authority is suspended or revoked outright, the
California license of the licensee shall be suspended automatically
for the duration of the suspension or revocation, unless terminated
or rescinded as provided in subdivision (c). The board shall notify
the licensee of the license suspension and of his or her right to
have the issue of penalty heard as provided in this section.

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

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

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

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

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

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

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

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

SEC. 167. Section 4964.1 is added to the Business and
Professions Code, to read:

4964.1. (a) The board may delegate to its executive officer the
authority to adopt a proposed default decision where an
administrative action to revoke a license has been filed and the
licensee has failed to file a notice of defense or to appear at the
hearing and a proposed default decision revoking the license has
been issued.

(b) The board may delegate to its executive officer the authority
to adopt a proposed settlement agreement where an administrative
action to revoke a license has been filed by the board and the
licensee has agreed to the revocation or surrender of his or her
license.
(c) The executive officer shall, at scheduled board meetings,
report to the board the number of proposed default decisions or
proposed settlement agreements adopted pursuant to this section.
SEC. 168. Section 4964.2 is added to the Business and
Professions Code, to read:
4964.2. (a) Notwithstanding Section 11415.60 of the
Government Code, the board may enter into a settlement with a
licensee or applicant in lieu of the issuance of an accusation or
statement of issues against that licensee or applicant, as applicable.
(b) The settlement shall include language identifying the factual
basis for the action being taken and a list of the statutes or
regulations violated.
(c) A person who enters a settlement pursuant to this section is
not precluded from filing a petition, in the timeframe permitted by
law, to modify the terms of the settlement or petition for early
termination of probation, if probation is part of the settlement.
(d) Any settlement against a licensee executed pursuant to this
section shall be considered discipline and a public record and
shall be posted on the applicable board’s Internet Web site. Any
settlement against an applicant executed pursuant to this section
shall be considered a public record and shall be posted on the
applicable board’s Internet Web site.
(e) The executive officer shall, at scheduled board meetings,
report to the board the number of proposed settlement agreements
adopted pursuant to this section.
SEC. 169. Section 4964.3 is added to the Business and
Professions Code, to read:
4964.3. (a) The license of a licensee shall be suspended
automatically during any time that the licensee is incarcerated
after conviction of a felony, regardless of whether the conviction
has been appealed. The board shall, immediately upon receipt of
the certified copy of the record of conviction, determine whether
the license of the licensee has been automatically suspended by
virtue of his or her incarceration, and if so, the duration of that
suspension. The board shall notify the licensee in writing of the
license suspension and of his or her right to elect to have the issue
of penalty heard as provided in subdivision (d).
(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

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

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

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

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

SEC. 170. Section 4964.4 is added to the Business and
Professions Code, to read:

4964.4. (a) Except as otherwise provided, any proposed
decision or decision issued in accordance with the procedures set
forth in Chapter 5 (commencing with Section 11500) of Part 1 of
Division 3 of Title 2 of the Government Code, that contains any
finding of fact that the licensee engaged in any act of sexual contact
with a patient, as defined in subdivision (c) of Section 729, or any
finding that the licensee has committed a sex offense, shall contain
an order revoking the license. The proposed decision shall not
contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any
of the following:

(1) Any offense for which registration is required by Section
290 of the Penal Code or a finding that a person committed such
an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
or 647(a) or (d) of the Penal Code or a finding that a person
committed such an act.

(3) Any attempt to commit any of the offenses specified in this
section.

(4) Any offense committed or attempted in any other state or
against the laws of the United States which, if committed or
attempted in this state, would have been punishable as one or more
of the offenses specified in this section.

SEC. 171. Section 4964.55 is added to the Business and
Professions Code, to read:

4964.55. (a) Except as otherwise provided, with regard to an
individual who is required to register as a sex offender pursuant
to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

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

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

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

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

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

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee’s conviction under Section 314 of the Penal Code.

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

SEC. 172. Section 4964.6 is added to the Business and Professions Code, to read:
4964.6. (a) Notwithstanding any other provision of law making
a communication between a licensee and his or her patients a
privileged communication, those provisions shall not apply to
investigations or proceedings conducted by the board. Members
of the board, deputies, employees, agents, the office of the Attorney
General, and representatives of the board shall keep in confidence
during the course of investigations the names of any patients whose
records are reviewed and may not disclose or reveal those names,
except as is necessary during the course of an investigation, unless
and until proceedings are instituted. The authority under this
subdivision to examine records of patients in the office of a licensee
is limited to records of patients who have complained to the board
about that licensee.

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

(1) Any document relevant to an investigation may be inspected,
and copies may be obtained, where a patient provides written
authorization.

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

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

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

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

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

(g) This section shall not apply to a licensee who does not have
access to, and control over, certified medical records or other
types of documents that belong to or are controlled by a health
facility or clinic.

SEC. 173. Section 4964.7 is added to the Business and
Professions Code, to read:

4964.7. (a) (1) Notwithstanding any other provision of law,
a licensee who fails or refuses to comply with a request for the
certified medical records of a patient that is accompanied by that
patient’s written authorization for release of records to a board
together with a notice citing this section and describing the
penalties for failure to comply with this section shall be required
to pay to the board a civil penalty of up to one thousand dollars
($1,000) per day for each day that the documents have not been
produced after the 15th day, up to ten thousand dollars ($10,000),
unless the licensee is unable to provide the documents within this
time period for good cause.

(2) A health care facility shall comply with a request for the
certified medical records of a patient that is accompanied by that
patient’s written authorization for release of records to a board
together with a notice citing this section and describing the
penalties for failure to comply with this section. Failure to provide
the authorizing patient’s certified medical records to the board
within 15 days of receiving the request, authorization, and notice
shall subject the health care facility to a civil penalty, payable to
the healing arts board, of up to one thousand dollars ($1,000) per
day for each day that the documents have not been produced after
the 15th day, up to ten thousand dollars ($10,000), unless the
health care facility is unable to provide the documents within this
time period for good cause. This paragraph shall not require health
care facilities to assist the board in obtaining the patient’s
authorization. The board shall pay the reasonable costs of copying
the certified medical records, but shall not be required to make
that payment prior to the production of the medical records.

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

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

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

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

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

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

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

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

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

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.
(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 174. Section 4964.8 is added to the Business and Professions Code, to read:

4964.8. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.
(2) Any document or exhibit relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, “suspension or termination for cause” or “resignation in lieu of suspension or termination for cause” is defined as resignation, suspension, or termination from employment for any of the following reasons:
(1) Use of controlled substances or alcohol to the extent that it
impairs the licensee’s ability to safely practice.
(2) Unlawful sale of a controlled substance or other prescription
items.
(3) Patient or client abuse, neglect, physical harm, or sexual
contact with a patient or client.
(4) Gross negligence or incompetence.
(5) Theft from a patient or client, any other employee, or the
employer.
(f) As used in this section, the following definitions apply:
(1) “Gross negligence” means a substantial departure from the
standard of care, which, under similar circumstances, would have
ordinarily been exercised by a competent licensee, and which has
or could have resulted in harm to the consumer. An exercise of so
slight a degree of care as to justify the belief that there was a
conscious disregard or indifference for the health, safety, or
welfare of the consumer shall be considered a substantial departure
from the standard of care.
(2) “Incompetence” means the lack of possession of, and the
failure to exercise that degree of learning, skill, care, and
experience ordinarily possessed by, a responsible licensee.
(3) “Willful” means a knowing and intentional violation of a
known legal duty.
(g) (1) Willful failure of an employer to make a report required
by this section is punishable by an administrative fine not to exceed
one hundred thousand dollars ($100,000) per violation.
(2) Any failure of an employer, other than willful failure, to
make a report required by this section is punishable by an
administrative fine not to exceed fifty thousand dollars ($50,000).
(h) The board shall investigate the circumstances underlying
any report received pursuant to this section within 30 days to
determine if an interim suspension order or temporary restraining
order should be issued. The board shall otherwise provide timely
disposition of the reports received pursuant to this section.
(i) The board shall send to the licentiate a copy of the report
along with the reasons for the filing of the report and notice
advising the licentiate of his or her right to submit additional
statements or other information to the board.
(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

SEC. 175. Section 4964.9 is added to the Business and Professions Code, to read:

4964.9. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

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

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee’s hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 4964.7 or 805.

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

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

(i) The information provided on the Internet shall be in
accordance with the California Public Records Act (Chapter 3.5
(commencing with Section 6250) of Division 7 of Title 1 of the
Government Code) and the Information Practices Act of 1977
(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
of Division 3 of the Civil Code) and shall comply with the
Department of Consumer Affairs Guidelines for Access to Public
Records.

(j) Information provided on the Internet may not include
personal information, unless otherwise provided pursuant to this
chapter, including the home telephone number, date of birth, or
social security number. The information may not include the
licensee’s address, but may include the city and county of the
licensee’s address of record.

SEC. 176. Section 4964.10 is added to the Business and
Professions Code, to read:

4964.10. (a) Unless otherwise provided, if a licensee possesses
a license or is otherwise authorized to practice in any state other
than California or by any agency of the federal government and
that license or authority is suspended or revoked outright, the
California license of the licensee shall be suspended automatically
for the duration of the suspension or revocation, unless terminated
or rescinded as provided in subdivision (c). The board shall notify
the licensee of the license suspension and of his or her right to
have the issue of penalty heard as provided in this section.

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

(c) The issue of penalty shall be heard by an administrative law
judge sitting alone or with a panel of the board, in the discretion
of the board. A licensee may request a hearing on the penalty and
that hearing shall be held within 90 days from the date of the
request. If the order suspending or revoking the license or authority
to practice is overturned on appeal, any discipline ordered
pursuant to this section shall automatically cease. Upon a showing
to the administrative law judge or panel by the licensee that the
out-of-state action is not a basis for discipline in California, the
suspension shall be rescinded. If an accusation for permanent
discipline is not filed within 90 days of the suspension imposed
pursuant to this section, the suspension shall automatically
terminate.
(d) The record of the proceedings that resulted in the suspension
or revocation of the licensee’s out-of-state license or authority to
practice, including a transcript of the testimony therein, may be
received in evidence.
(e) This section shall not apply to a licensee who maintains his
or her primary practice in California, as evidenced by having
maintained a practice in this state for not less than one year
immediately preceding the date of suspension or revocation.
Nothing in this section shall preclude a licensee’s license from
being suspended pursuant to any other provision of law.
(f) This section shall not apply to a licensee whose license has
been surrendered, whose only discipline is a medical staff
disciplinary action at a federal hospital and not for medical
disciplinary cause or reason as that term is defined in Section 805,
or whose revocation or suspension has been stayed, even if the
licensee remains subject to terms of probation or other discipline.
(g) This section shall not apply to a suspension or revocation
imposed by a state that is based solely on the prior discipline of
the licensee by another state.
(h) The other provisions of this article setting forth a procedure
for the suspension or revocation of a licensee’s license or
certificate shall not apply to summary suspensions issued pursuant
to this section. If a summary suspension has been issued pursuant
to this section, the licensee may request that the hearing on the
penalty conducted pursuant to subdivision (c) be held at the same
time as a hearing on the accusation.
(i) A board that complies with Section 2310 shall not be subject
to the requirements of this section.
SEC. 177. Section 4982.26 of the Business and Professions
Code is amended to read:
4982.26. (a) The board shall revoke any license issued under
this chapter upon a decision made in accordance with the
procedures set forth in Chapter 5 (commencing with Section 11500)
of Part 1 of Division 3 of Title 2 of the Government Code, that
contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act. The revocation shall not be stayed by the administrative law judge or the board.

(b) Except as otherwise provided, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(c) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 178. Section 4990.44 is added to the Business and Professions Code, to read:

4990.44. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

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

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 179. Section 4990.45 is added to the Business and Professions Code, to read:

4990.45. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.
(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.
(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.
(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board’s Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board’s Internet Web site.
(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 180. Section 4990.46 is added to the Business and Professions Code, to read:

4990.46. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).
(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

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

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

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

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

SEC. 181. Section 4990.47 is added to the Business and Professions Code, to read:

4990.47. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 182. Section 4990.48 is added to the Business and Professions Code, to read:

4990.48. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant
to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

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

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

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

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

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

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee’s conviction under Section 314 of the Penal Code.

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

SEC. 183. Section 4990.49 is added to the Business and Professions Code, to read:
4990.49. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

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

1. Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

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

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

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

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

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

(g) This section shall not apply to a licensee who does not have
access to, and control over, certified medical records or other
types of documents that belong to or are controlled by a health
facility or clinic.

SEC. 184. Section 4990.50 is added to the Business and
Professions Code, to read:

4990.50. (a) (1) Notwithstanding any other provision of law,
a licensee who fails or refuses to comply with a request for the
certified medical records of a patient that is accompanied by that
patient’s written authorization for release of records to a board
together with a notice citing this section and describing the
penalties for failure to comply with this section shall be required
to pay to the board a civil penalty of up to one thousand dollars
($1,000) per day for each day that the documents have not been
produced after the 15th day, up to ten thousand dollars ($10,000),
unless the licensee is unable to provide the documents within this
time period for good cause.

(2) A health care facility shall comply with a request for the
certified medical records of a patient that is accompanied by that
patient’s written authorization for release of records to a board
together with a notice citing this section and describing the
penalties for failure to comply with this section. Failure to provide
the authorizing patient’s certified medical records to the board
within 15 days of receiving the request, authorization, and notice
shall subject the health care facility to a civil penalty, payable to
the board, of up to one thousand dollars ($1,000) per day for each
day that the documents have not been produced after the 15th day,
up to ten thousand dollars ($10,000), unless the health care facility
is unable to provide the documents within this time period for good
cause. This paragraph shall not require health care facilities to
assist the board in obtaining the patient’s authorization. The board
shall pay the reasonable costs of copying the certified medical
records, but shall not be required to make that payment prior to
the production of the medical records.

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

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

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

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be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

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

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

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

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

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

(g) For purposes of this section, a “health care facility” means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.
(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 185. Section 4990.51 is added to the Business and Professions Code, to read:

4990.51. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, “suspension or termination for cause” or “resignation in lieu of suspension or termination for
cause” is defined as resignation, suspension, or termination from employment for any of the following reasons:

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

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

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

(4) Gross negligence or incompetence.

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

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

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

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

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

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the board.
(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

SEC. 186. Section 4990.52 is added to the Business and Professions Code, to read:

4990.52. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

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

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee’s hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 4990.50 or 805.

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

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

(i) The information provided on the Internet shall be in
accordance with the California Public Records Act (Chapter 3.5
(commencing with Section 6250) of Division 7 of Title 1 of the
Government Code) and the Information Practices Act of 1977
(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
of Division 3 of the Civil Code) and shall comply with the
Department of Consumer Affairs Guidelines for Access to Public
Records.

(j) Information provided on the Internet may not include
personal information, unless otherwise provided pursuant to this
chapter, including the home telephone number, date of birth, or
social security number. The information may not include the
licensee’s address, but may include the city and county of the
licensee’s address of record.

SEC. 187. Section 4990.53 is added to the Business and
Professions Code, to read:

4990.53. (a) Unless otherwise provided, if a licensee possesses
a license or is otherwise authorized to practice in any state other
than California or by any agency of the federal government and
that license or authority is suspended or revoked outright, the
California license of the licensee shall be suspended automatically
for the duration of the suspension or revocation, unless terminated
or rescinded as provided in subdivision (c). The board shall notify
the licensee of the license suspension and of his or her right to
have the issue of penalty heard as provided in this section.

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

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

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

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

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

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

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

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

SEC. 188. Section 4992.33 of the Business and Professions
Code is amended to read:

4992.33. (a) The board shall revoke any license issued under
this chapter upon a decision made in accordance with the
procedures set forth in Chapter 5 (commencing with Section 11500)
of Part 1 of Division 3 of Title 2 of the Government Code, that
contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act. The revocation shall not be stayed by the administrative law judge or the board.

(b) Except as otherwise provided, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(c) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 189. Section 12529.8 is added to the Government Code, to read:

12529.8. (a) Any healing arts board described in Division 2 (commencing with Section 500) of the Business and Professions Code may utilize the model prescribed in Sections 12529 to 12529.6, inclusive, for the investigation and prosecution of some or all of its enforcement actions and may utilize the services of the Department of Justice Health Quality Enforcement Section or the licensing section. If a board elects to proceed pursuant to this section and utilizes the services of the licensing section, the Department of Justice shall assign attorneys to work on location
at the licensing unit of the Division of Investigation of the  
Department of Consumer Affairs.

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

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

SEC. 190. (a) It is the intent of the Legislature that the  
Department of Consumer Affairs shall, on or before December  
31, 2012, establish an enterprise information technology system  
necessary to electronically create and update healing arts license  
information, track enforcement cases, and allocate enforcement  
efforts pertaining to healing arts licensees. The Legislature intends  
the system to be designed as an integrated system to support all  
business automation requirements of the department’s licensing  
and enforcement functions.

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

SEC. 191. No reimbursement is required by this act pursuant  
to Section 6 of Article XIII B of the California Constitution for  
certain costs that may be incurred by a local agency or school  
district because, in that regard, this act creates a new crime or  
infraction, eliminates a crime or infraction, or changes the penalty  
for a crime or infraction, within the meaning of Section 17556 of  
the Government Code, or changes the definition of a crime within  
the meaning of Section 6 of Article XIII B of the California  
Constitution.

However, if the Commission on State Mandates determines that  
this act contains other costs mandated by the state, reimbursement  
to local agencies and school districts for those costs shall be made  
pursuant to Part 7 (commencing with Section 17500) of Division  
4 of Title 2 of the Government Code.

SECTION 1. Section 1623 is added to the Business and  
Professions Code, to read:

1623. (a) Notwithstanding any other provision of law, the  
board may contract with a collection agency for the purpose of  
collecting outstanding fees, fines, or cost recovery amounts from  
any person who owes that money to the board, and, for those
purposes, may provide to the collection agency the personal information of that person, including his or her birth date, telephone number, and social security number. The contractual agreement shall provide that the collection agency may use or release personal information only as authorized by the contract, and shall provide safeguards to ensure that the personal information is protected from unauthorized disclosure. The contractual agreement shall hold the collection agency liable for the unauthorized use or disclosure of personal information received or collected under this section.

(b) The board shall not use a collection agency to recover outstanding fees, fines, or cost recovery amounts until the person has exhausted all appeals and the decision is final.
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The Enforcement and Compliance Committee met on March 24, 2011. The Committee reviewed the Board’s enforcement performance measures and information related to process improvements. One such improvement is the Board’s participation in the DCA drug testing contract. The Board’s participation in this contract has streamlined the drug testing process for Board staff and improved the monitoring of probationers with drug testing requirements.

Shelly Menzel from the SOLID Training Office presented an overview of the DCA Enforcement Training Academy. The academy is comprised of seven modules that provide a standard baseline of knowledge and practices for employees who work in an enforcement program.

The Committee’s next meeting will be June 16, 2011 in Sacramento, CA.
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To: Board Members
From: Kim Madsen
Executive Officer
Date: April 21, 2011
Telephone: (916) 574-7841

Subject: Substance Abuse Coordination Committee 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.

Uniform Standard #4, Random Testing, sets forth the requirements for biological testing frequency, collection method, notification, permissible testing sites, and standards for specimen collectors. In the initial proposal, the standard for testing frequency was established at 104 times per year. Following receipt of numerous comments regarding the testing frequency, the SACC formed a sub-committee to review the testing frequency.

The sub-committee met on August 4, 2010 and on March 9, 2011 to review this standard. At the March 9, 2011, proposed language was developed to address the concerns raised regarding the testing frequency.

SACC Update

On April 11, 2011, the Substance Abuse Coordination Committee (SACC) met to consider the proposed revisions to the Uniform Standards regarding substance abusing licensees. The SACC accepted proposed revisions to Uniform Standard #4, #5, and #7. The revisions are as follows:

- Uniform Standard #4 - Random Testing
  - Sets forth two testing levels. Year one testing frequency ranges from 52 times to 104 times per year. Year two and beyond, testing frequency ranges from 36 times to 104 times per year.
  - Provides exceptions to the testing frequency schedule.
• Requires collection of data for two years prior to the implementation of the Standard.
• Requires collection of data annually for a period of three years.
• Requires the data to be reported to the Department of Consumer Affairs and the Legislature.

• Uniform Standard #5 – Group Meeting Facilitator Requirements
  ➢ Revises the requirement a meeting facilitator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five (5) years to one (1) year.

• Uniform Standard #7 – Worksite Monitoring
  ➢ Adds that a worksite monitor may be a person in a position of authority who is capable of monitoring the licensee at work.

The SACC accepted the proposed changes to the Uniform Standards. Attached are the Uniform Standards approved by the SACC on April 11, 2011.

Implementation of the Uniform Standards

To implement the Uniform Standards, the Board must review its current disciplinary guidelines to identify what revisions, if any, are needed. If revisions are identified, the Board must propose the revisions through the rulemaking process.

Currently, the Board cannot propose any revisions to our disciplinary guidelines until approval of our LPCC regulation packet is received. The Board anticipates beginning the implementation process later this year.
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 2011
Substance Abuse Coordination Committee

Brian Stiger, Chair
Director, Department of Consumer Affairs

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

Janelle Wedge
Acupuncture Board

Kim Madsen
California Board of Behavioral Sciences

Robert Puleo
Board of Chiropractic Examiners

Lori Hubble
Dental Hygiene Committee of California

Richard De Cuir
Dental Board of California

Linda Whitney
Medical Board of California

Heather Martin
California Board of Occupational Therapy

Mona Maggio
California State Board of Optometry

Teresa Bello-Jones
Board of Vocational Nursing and Psychiatric Technicians

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

Francine Davies
Naturopathic Medicine Committee

Virginia Herold
California State Board of Pharmacy

Steve Hartzell
Physical Therapy Board of California

Elberta Portman
Physician Assistant Committee

Jim Rathlesberger
Board of Podiatric Medicine

Robert Kahane
Board of Psychology

Louise Bailey
Board of Registered Nursing

Stephanie Nunez
Respiratory Care Board of California

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

Susan Geranen
Veterinary Medical Board
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#1 SENATE BILL 1441 REQUIREMENT

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

#1 Uniform Standard

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

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
   - holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
   - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
   - is approved by the board.

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

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

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

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination.
For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.
#2 SENATE BILL 1441 REQUIREMENT

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

#2 Uniform Standard

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

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

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

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

- the license type;
- the licensee’s history;
- the documented length of sobriety/time that has elapsed since substance use
- the scope and pattern of use;
- the treatment history;
- the licensee’s medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.
#3 SENATE BILL 1441 REQUIREMENT

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

#3 Uniform Standard

If the licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee’s work status, performance, and monitoring.
#4 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, 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 standards shall govern all aspects of testing required to determine abstention from alcohol and drugs for any person whose license is placed on probation or in a diversion program due to substance use:

TESTING FREQUENCY SCHEDULE

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

<table>
<thead>
<tr>
<th>Level</th>
<th>Segments of Probation/Diversion</th>
<th>Minimum Range of Number of Random Tests</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Year 1</td>
<td>52-104 per year</td>
</tr>
<tr>
<td>II*</td>
<td>Year 2+</td>
<td>36-104 per year</td>
</tr>
</tbody>
</table>

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

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

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE

I. PREVIOUS TESTING/SOBRIETY

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

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

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

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

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

OTHER DRUG STANDARDS

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

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

Licensees shall be required to make daily contact to determine if drug testing is required.
Licensees shall be drug tested on the date of notification as directed by the board.

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

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

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

Collection of specimens shall be observed.

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

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

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

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

PETITIONS FOR REINSTATEMENT
Nothing herein shall limit a board’s authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the board that contains different provisions for reinstatement or reduction of penalty.

OUTCOMES AND AMENDMENTS

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

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

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

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

Probationer/Diversion Participant Unique Identifier  
License Type  
Probation/Diversion Effective Date  
General Range of Testing Frequency by/for Each Probationer/Diversion Participant  
Dates Testing Requested  
Dates Tested  
Identify the Entity that Performed Each Test  
Dates Tested Positive  
Dates Contractor (if applicable) was informed of Positive Test  
Dates Board was informed of Positive Test  
Dates of Questionable Tests (e.g. dilute, high levels)  
Date Contractor Notified Board of Questionable Test  
Identify Substances Detected or Questionably Detected  
Dates Failed to Appear  
Date Contractor Notified Board of Failed to Appear  
Dates Failed to Call In for Testing  
Date Contractor Notified Board of Failed to Call In for Testing  
Dates Failed to Pay for Testing  
Date(s) Removed/Suspended from Practice (identify which)  
Final Outcome and Effective Date (if applicable)
#5 SENATE BILL 1441 REQUIREMENT

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

#5 Uniform Standard

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

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

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

Group Meeting Facilitator Qualifications and Requirements:

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

2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year.

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, be another health care professional if no monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.

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

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

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

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

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

   c) Review the licensee’s work attendance.
Reporting by the worksite monitor to the board shall be as follows:

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

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

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the board to allow the board to communicate with the worksite monitor.
#8 SENATE BILL 1441 REQUIREMENT

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

#8 Uniform Standard

When a licensee tests positive for a banned substance:

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

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

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

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

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

1. Consult the specimen collector and the laboratory;

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

3. Communicate with any treatment provider, including group facilitator/s.
#9 SENATE BILL 1441 REQUIREMENT

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

#9 Uniform Standard

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.
#10 SENATE BILL 1441 REQUIREMENT

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

#10 Uniform Standard

Major Violations include, but are not limited to:

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

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

1. Licensee will be ordered to cease practice.
   a) the licensee must undergo a new clinical diagnostic evaluation, and
   b) the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.
Minor Violations include, but are not limited to:

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

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

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the board.
#11 SENATE BILL 1441 REQUIREMENT

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

#11 Uniform Standard

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

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

1. Demonstrated sustained compliance with current recovery program.

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

3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.
#12 SENATE BILL 1441 REQUIREMENT

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

#12 Uniform Standard

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

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

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

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

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

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

5. Continuous sobriety for three (3) to five (5) years.
#13 SENATE BILL 1441 REQUIREMENT

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

#13 Uniform Standard

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

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

   (a) **Specimen Collectors**:

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

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

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

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

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

   (6) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.
(7) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.

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

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

(b) Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

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

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

(3) must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year;

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

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

(c) Work Site Monitors:

The worksite monitor must meet the following qualifications:

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

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

(3) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

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

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

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

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

   c) Review the licensee’s work attendance.

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

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

   • the licensee’s name;

   • license number;

   • worksite monitor’s name and signature;

   • worksite monitor’s license number;

   • worksite location(s);

   • dates licensee had face-to-face contact with monitor;

   • staff interviewed, if applicable;

   • attendance report;

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

(d) Treatment Providers

Treatment facility staff and services must have:

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

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

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

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

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

(e) General Vendor Requirements

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

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

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

(3) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.
#14 SENATE BILL 1441 REQUIREMENT

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

#14 Uniform Standard

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

- Licensee’s name;
- Whether the licensee’s practice is restricted, or the license is on inactive status;
- A detailed description of any restriction imposed.
#15 SENATE BILL 1441 REQUIREMENT

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

#15 Uniform Standard

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

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

3. The board and the department shall respond to the findings in the audit report.
#16 SENATE BILL 1441 Requirement

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

#16 Uniform Standard

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

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

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

If the data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of a program. It may also be used to determine the risk factor when a board is determining whether a license should be revoked or placed on probation.
The board shall use the following criteria to determine if its program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

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

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

From: Marina Karzag
Board of Behavioral Sciences

Date: May 10, 2011

Subject: Update on Fingerprinting Requirement for Licensees and Registrants

Background

As a result of the adopted regulations in 2009 (Title 16, California Code of Regulations Section 1815), all licensees and registrants who have previously not submitted fingerprints as a condition of licensure or registration for the Board of Behavioral Sciences (BBS), or for whom fingerprints do not exist in the California Department of Justice’s (DOJ) criminal offender record identification database for BBS, must do so prior to their next renewal date occurring on or after October 31, 2009. Failure to comply with this requirement can result in disciplinary action or the issuance of a citation, which may include a fine of up to $5,000.

Using data from the DOJ and the BBS, staff identified 34,665 individuals in the BBS licensing population affected by this requirement. Effective July 2009, the BBS began notifying affected individuals in writing.

Status Update

As of April 2011, approximately 29,000 of the 34,665 individuals have been fingerprinted. Licensees or registrants with their first expiration date occurring on September 30, 2011, are the last group of individuals that must comply under the new regulation.

Attachment

Retroactive Fingerprint Statistics: Number of Non-compliers as of April 29, 2011.
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## RETROACTIVE FINGERPRINT STATISTICS

As of 4/29/11

<table>
<thead>
<tr>
<th>Month</th>
<th>Year</th>
<th># of Licensees/Registrants to Comply</th>
<th># of Non Compliers</th>
<th>% of Month Non Compliers</th>
</tr>
</thead>
<tbody>
<tr>
<td>October</td>
<td>2009</td>
<td>1329</td>
<td>34</td>
<td>3%</td>
</tr>
<tr>
<td>November</td>
<td>2009</td>
<td>1337</td>
<td>61</td>
<td>5%</td>
</tr>
<tr>
<td>December</td>
<td>2009</td>
<td>1311</td>
<td>80</td>
<td>6%</td>
</tr>
<tr>
<td>January</td>
<td>2010</td>
<td>1241</td>
<td>126</td>
<td>10%</td>
</tr>
<tr>
<td>February</td>
<td>2010</td>
<td>1262</td>
<td>111</td>
<td>9%</td>
</tr>
<tr>
<td>March</td>
<td>2010</td>
<td>1356</td>
<td>118</td>
<td>9%</td>
</tr>
<tr>
<td>April</td>
<td>2010</td>
<td>1307</td>
<td>137</td>
<td>10%</td>
</tr>
<tr>
<td>May</td>
<td>2010</td>
<td>1230</td>
<td>123</td>
<td>10%</td>
</tr>
<tr>
<td>June</td>
<td>2010</td>
<td>1307</td>
<td>127</td>
<td>10%</td>
</tr>
<tr>
<td>July</td>
<td>2010</td>
<td>1246</td>
<td>98</td>
<td>8%</td>
</tr>
<tr>
<td>August</td>
<td>2010</td>
<td>1217</td>
<td>78</td>
<td>6%</td>
</tr>
<tr>
<td>September</td>
<td>2010</td>
<td>1301</td>
<td>128</td>
<td>10%</td>
</tr>
<tr>
<td>October</td>
<td>2010</td>
<td>1234</td>
<td>89</td>
<td>7%</td>
</tr>
<tr>
<td>November</td>
<td>2010</td>
<td>1176</td>
<td>119</td>
<td>10%</td>
</tr>
<tr>
<td>December</td>
<td>2010</td>
<td>1237</td>
<td>159</td>
<td>13%</td>
</tr>
<tr>
<td>January</td>
<td>2011</td>
<td>1148</td>
<td>208</td>
<td>18%</td>
</tr>
<tr>
<td>February</td>
<td>2011</td>
<td>1332</td>
<td>260</td>
<td>20%</td>
</tr>
<tr>
<td>March</td>
<td>2011</td>
<td>1322</td>
<td>303</td>
<td>23%</td>
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<tr>
<td>April</td>
<td>2011</td>
<td>1220</td>
<td>319</td>
<td>26%</td>
</tr>
<tr>
<td>May</td>
<td>2011</td>
<td>1250</td>
<td>510</td>
<td>41%</td>
</tr>
<tr>
<td>June</td>
<td>2011</td>
<td>1156</td>
<td>579</td>
<td>50%</td>
</tr>
<tr>
<td>July</td>
<td>2011</td>
<td>1161</td>
<td>610</td>
<td>53%</td>
</tr>
<tr>
<td>August</td>
<td>2011</td>
<td>1181</td>
<td>684</td>
<td>58%</td>
</tr>
<tr>
<td>September</td>
<td>2011</td>
<td>1211</td>
<td>699</td>
<td>58%</td>
</tr>
</tbody>
</table>

**Total Number of Non Compliers = 5,760**

*In December all remaining licensees were sent notification of the requirement to submit fingerprints.*
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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 for 2011/2012.

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/Reappointed</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>7/6/2010</td>
<td>6/1/2014</td>
<td>8/1/2014</td>
</tr>
<tr>
<td>Elise Froistad, Vice Chair *</td>
<td>MFT</td>
<td>Governor</td>
<td>7/7/2010</td>
<td>6/1/2014</td>
<td>8/1/2014</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>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>Vacant</td>
<td>LSCW</td>
<td>Governor</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vacant</td>
<td>Public</td>
<td>Governor</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vacant</td>
<td>Public</td>
<td>Governor</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Vacant</td>
<td>Public</td>
<td>Governor</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Effective January 1, 2012</td>
<td>LPCC</td>
<td>Governor</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Appointed to second term
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To: Board Members

From: Kim Madsen
Executive Officer

Subject: Petition for Modification of Probation Term

Date: May 4, 2011

Telephone: (916) 574-7841

The following individual is before the Board to petition for modification of probation terms.

1. Dana Lynn Thomas, MFC 35710
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