



**EXECUTIVE MANAGEMENT COMMITTEE  
FEBRUARY 10, 2016**

**SUBJECT: PROPOSED LEGISLATION TO REMOVE THE MEDICAL BOARD OF CALIFORNIA AS THE PHYSICIAN LICENSING BOARD RESPONSIBLE FOR LICENSING DOCTORS OF PODIATRIC MEDICINE**

**14**

**ACTION: DISCUSS, CONSIDER AND RECOMMEND A POSITION TO SUPPORT OR OPPOSE PROPOSED MEDICAL BOARD LEGISLATION AND AUTHORIZE THE EXECUTIVE OFFICER TO ADVOCATE THE BOARD'S POSITION**

**RECOMMENDATION**

Discuss, consider and recommend a position to support or oppose the proposed legislation sought by the Medical Board to remove the Medical Board of California as the physician licensing board responsible for licensing doctors of podiatric medicine and authorize the Executive Officer to advocate the Board's position.

**ISSUE**

The Medical Board of California seeks to remove its legislatively mandated responsibility for licensing doctors of podiatric medicine after a recommendation for licensure by the California Board of Podiatric Medicine.

**APPLICABLE AUTHORITY**

**Section 101.6 of the Business and Professions Code ("B&P") provides in pertinent part**

The boards [...] in the department [of Consumer Affairs] are established for the purpose of ensuring that those [...] professions deemed to engage in activities which have potential impact upon the public health, safety and welfare are adequately regulated in order to protect the people of California.

To this end, [boards]



- [1] establish minimum qualifications and levels of competency and
- [2] license persons desiring to engage in the occupations [the boards] regulate [...]
- [3] determin[e] that such persons possess the requisite skills and qualifications necessary to provide safe and effective services to the public, or [...] otherwise certify persons in order to identify practitioners and ensure performance according to set and accepted professional standards.
- [4] investigate allegations of unprofessional conduct, incompetence, fraudulent action, or unlawful activity brought to their attention by members of the public and institute disciplinary action against persons licensed [...] under the provisions of the [business and professions] code when such action is warranted [and]
- [5] conduct periodic checks of licensees [...] in order to ensure compliance with relevant sections of [the business and professions] code.

**Section 2004 B&P provides in pertinent part:**

The [Medical Board of California] shall have the responsibility for the following:

[...]

(h) Issuing licenses and certificates under the board's jurisdiction.

[...]

**Section 2460 B&P provides in pertinent part:**

(a) There is created within the jurisdiction of the Medical Board of California the California Board of Podiatric Medicine.

[...]

**Section 2479 B&P provides in pertinent part:**

The division [of licensing of the Medical Board of California] shall issue, upon the recommendation of the board [of Podiatric Medicine], a certificate to practice medicine to each applicant who meets the requirements of [the Medical Practice Act.]

[...]

**Section 19 B&P provides:**

“Shall” is mandatory and “may” is permissive.

**Title 16, CCR, section 1301 of the Medical Practice Regulations provide in pertinent part:**



(a) The authority of the division [of licensing of the Medical Board of California] to [...] issue certificates or licenses [...] is hereby delegated to the chief of licensing of the division [of licensing of the Medical Board of California], or his or her designee.

**Section 2480 B&P provides in pertinent part:**

The [California Board of Podiatric Medicine] shall have full authority to investigate and to evaluate each applicant applying for a certificate to practice podiatric medicine and to make a determination of [...] the issuance of a certificate in accordance with the provisions and requirements of the [Medical Practice Act].

**Section 2486 B&P provides in pertinent part:**

The Medical Board of California shall issue, upon the recommendation of the board [of Podiatric Medicine], a certificate to practice podiatric medicine if the applicant has submitted directly to the board [of Podiatric Medicine] from the credentialing organizations verification that he or she meets all of the [requirements for podiatric licensure in the Medical Practice Act].

**SUMMARY**

While not evident from the posted meeting agenda or materials of the Medical Board of California (“Medical Board”) for the quarterly board meeting taking place on January 22, 2016, (Attachment A), during presentation of Agenda Item number 8—covering “Discussion and Possible Action on Legislation/Regulations”—the Medical Board received an oral report through staff providing an update on previously board approved staff efforts to seek an author for a legislative “clean-up” proposal related to the Board of Podiatric Medicine. Staff indicated the alleged purpose of the legislative proposal was to “make the law actually reflect what happens in real practice.” Staff also pointed out that the pertinent documents concerning the proposal were not included in the board packets but that an update could nevertheless be provided.

Staff orally provided that it had located a legislative author, Assembly Member Chris Holden (D – Pasadena) as member of the Assembly Committee on Business and Professions, who agreed to introduce requested “clean-up” legislation concerning the Board of Podiatric Medicine and which was expected



to be introduced in the next week. Specifically, it was stated in brief through oral testimony that:

*For the Board of Podiatric Medicine, right now, and the Board of Podiatric Medicine statutes it says that the Medical Board actually issues their licenses. That's not actually what happens and so that came to our attention last year during the legislative proposals, so we want to fix that law to make it actually reflect what happens is [sic] which is the Board of Podiatric Medicine issues their own licenses.*

## **FACTS AND ANALYSIS**

- The Legislature has defined the role and purpose of consumer licensing boards to include five specific roles that serve to provide the minimum criteria necessary to qualify as an independent and autonomous board within the Department of Consumer Affairs. These functions include:
  1. To establish qualification and competency levels;
  2. To determine eligibility of persons for licensure;
  3. To license individuals;
  4. To investigate allegations of wrongdoing by licensees and to institute disciplinary action when warranted; and
  5. To periodically check licensees for compliance with relevant licensure requirements.
- The Board of Podiatric Medicine has been vested with the authority to perform four out of the five roles that define an independent board under the laws of the state as defined in section 101.6 B&P. The Board of Podiatric Medicine neither has authority to issue licenses nor does it issue its own licenses.
- Authority to issue licenses for doctors of podiatric medicine has been specifically placed with the Medical Board of California alone under sections 2004, 2479, 2486 and 2488 B&P. As a result, the Board of Podiatric Medicine is neither fully autonomous as defined by section 101.6 B&P nor as established through its enabling statute under section 2460 B&P.



- The Medical Board of California is “the” doctor licensing board in the state mandated with responsibility to issue licenses and certificates for those under the board’s jurisdiction as mandated by section 2004 B&P which includes the Board of Podiatric Medicine as provided under section 2460 B&P.
- Medical Board regulations in fact delegate all authority to issue certificates and licenses to the Medical Board’s Chief of Licensing or his or her designee as specified by Medical Practice Regulation 1301(a).
- Nevertheless, as referenced above, Medical Board staff recently discussed at a quarterly meeting of the Medical Board of California on January 22, 2016, a bill proposal asserting a need for “clean-up” legislation allegedly required to make law conform to actual practice based on the claim that “*the Board of Podiatric Medicine issues their own licenses.*” (MBC Webcast available at: <https://www.youtube.com/watch?v=WYvKccUKoYM> pertinent footage beginning at 1:34:18)
- For nearly the last 60 years, since the establishment of the Board of Podiatric Medicine as a unit explicitly under the jurisdiction of the Medical Board of California, all certificates to practice podiatric medicine have borne the name of the Medical Board of California alone. They in fact bear the signatures of both the President and Secretary of the Medical Board and are affixed with the official Seal of the Medical Board of California. (Attachment B)
- Actual practice for the Board of Podiatric Medicine has been limited to investigating and evaluating every applicant for a certificate in order to determine eligibility and qualification to practice podiatric medicine as it is authorized to do so by section 2480 B&P.
- The applicant investigation and evaluation process is not itself the license issuance function as that function is defined by section 101.6 B&P; rather it is an adjunct to the license issuance function and a matter of determining candidate eligibility for podiatric licensure. The Board of



Podiatric Medicine is fully authorized to make eligibility determinations as provided by section 2480 B&P.

- Rather than possessing authority to issue licenses—which is one of the criteria defining an autonomous board within the Department of Consumer Affairs—one of the Board of Podiatric Medicine’s uniquely specified roles as a semi-autonomous board under the jurisdiction of the Medical Board is to issue recommendations for licensure to the Medical Board for those determined to have met Medical Practice Act requirements for podiatric licensure as provided by sections 2479, 2486 and 2488 B&P instead. (Attachment C)
- The Medical Board proposal characterized by staff as a “clean-up” provision appears to belie an undisclosed motivation for seeking legislation to transfer the existing authority to license doctors of podiatric medicine from the Medical Board of California to the Board of Podiatric Medicine because when recently presented with recommendations for licensure by the Board of Podiatric Medicine, the Medical Board of California explicitly refused to issue certificates to practice podiatric medicine to the recommended applicants. (Attachment D)
- It is important to understand that the Medical Board of California’s responsibility to issue a certificate to practice podiatric medicine upon the recommendation of the Board of Podiatric Medicine is mandatory and not discretionary as provided in sections 2479, 2486 and 2488 B&P and as that term is defined by section 19 B&P.
- Existing licensing software design configurations (BreEZe) with full access licensing rights to the Chief of Licensing for the Division of Licensing of the Medical Board of California to all of the Board of Podiatric Medicine’s electronic licensing candidate files—including the ability to initiate the licensure issuance function—is directly indicative of the Medical Board’s statutory authority, responsibility, mandate and ability to issue certificates to practice podiatric medicine. One simple stroke of the computer keyboard by medical board staff after receipt of a recommendation for licensure by the Board of Podiatric Medicine is all that is necessary for law



- and practice to conform. Inarguably, this cannot be described as a burdensome responsibility.
- Unfortunately, refusal to issue certificates to practice podiatric medicine by the Medical Board of California after presentation of recommendations for licensure by the Board of Podiatric Medicine is directly contrary to existing law. Regrettably, this cannot be exactly characterized as a faithful execution of the laws of the state by executive management officials charged with upholding the State Constitution under sworn oath.
  - The Medical Board's staff proposal therefore does not appear to be based on any desire or motivation to make law and practice conform. Rather, the proposal appears to be a tacit attempt to separate out the Board of Podiatric Medicine from under the Medical Board's jurisdiction.
  - This objective can be gleaned from comments previously provided by Medical Board staff at a prior quarterly meeting of the Medical Board of California held on October 30, 2015, where the need for seeking the "clean-up" legislation concerning the Board of Podiatric Medicine was previously expressed as a need to dispel or remove the existence of jurisdictional association and oversight of the Board of Podiatric Medicine by the Medical Board of California from the law. (Attachment E) (MBC Webcast also available at: [https://www.youtube.com/watch?v=tNTPKxH1\\_U8&feature=player\\_embedded](https://www.youtube.com/watch?v=tNTPKxH1_U8&feature=player_embedded) pertinent footage beginning at 2:44:45)
  - After a meeting between Executive leadership of the Medical and Podiatric Boards on December 21, 2015, regarding the proposed measure, Medical Board staff changed strategy and articulated an alternate measure to amend the Medical Practice Act to transfer authority to issue licenses from the Medical Board of California to the Board of Podiatric Medicine.
  - Although seemingly unrelated to jurisdictional association and oversight between the Medical and Podiatric Boards, suggesting a transfer of authority to issue licenses from the Medical Board of California to the California Board of Podiatric Medicine would in fact achieve the Medical Board's goal to separate the Boards. This is true because the measure would complete all legislative criteria necessary for the Podiatric Board to



- be considered an autonomous and independent board within the Department of Consumer Affairs under section 101.6 B&P.
- A Board of Podiatric Medicine with all section 101.6 B&P criterion satisfied would therefore legally be considered independent under state law therefore permitting the Medical Board of California to plausibly deny oversight or jurisdiction over any of the Podiatric Board's functions as originally intended. Thus, it appears that the Medical Board's true unstated objective is true legal and factual separation of the two boards.
  - The Medical Board of California—as the main doctor licensing board in the state for licensing independent practitioners of medicine under the Medical Practice Act—in seeking to remove its mandate to issue certificates to practice podiatric medicine will effectively divest itself of authority and responsibility for licensing of podiatric doctors; doctors who in fact practice as independent practitioners of medicine and surgery and who are subject to the very same provisions of the Medical Practice Act as all other medical doctor licensees.
  - Divesting the Medical Board of California of its legislatively mandated authority and responsibility to license doctors of podiatric medicine will tacitly alter the current organizational scheme and statutory relationship between the Medical and Podiatric boards. It will essentially accomplish an organizational split between the Medical Board of California and Board of Podiatric Medicine without explicitly acknowledging that separation of the agencies will be the outcome or that severance would legally and necessarily be the consequential result.
  - An organizational separation between the boards will essentially result in the Board of Podiatric Medicine fully becoming the third autonomous doctor licensing agency in the state responsible for licensing independent practitioners of medicine and surgery on par with the Medical and Osteopathic Medical boards of California.
  - Changing the statutory locus of authority to issue licenses for doctors of podiatric medicine away from the Medical Board of California has immediate implications for consumers; could conceivably affect various



practice rights for podiatric physicians that hinge on the recognition that certificates to practice podiatric medicine are issued by the Medical Board of California; and perhaps result in other potentially unforeseen consequences based on the 59-year history of association between the boards in the Medical Practice Act that presumes that doctors of podiatric medicine are licensed by no other medical licensing board than the Medical Board of California alone.

## **DISCUSSION**

In reviewing the basic role and purpose for all consumer licensing boards within the Department of Consumer Affairs as defined by section 101.6 B&P, it cannot be ignored that the legislature has specifically assigned the authority and responsibility to issue certificates to practice podiatric medicine to the Medical Board of California. Since doctors of podiatric medicine licensees do in fact practice medicine and perform surgeries, it makes logical and rational sense to situate the Board of Podiatric Medicine within the structure of the larger Medical Board and to have doctors of podiatric medicine licensed directly by the state's medical doctor licensing board. This organizational scheme was intentionally created due to petitions by the profession which believed doctors of podiatric medicine were not appropriately represented without a licensing board of their own. Thus, the close statutory and jurisdictional association between the Board of Podiatric Medicine and the Medical Board of California began in 1957.

Since that time the Board of Podiatric Medicine has been and remains an effective regulatory entity for the State of California's consumers. It has been a national leader that has advanced a number of model consumer protection initiatives that have served not only to maintain standards for podiatric doctors but also to elevate the profession by raising competency standards, reducing medical error and preventing patient harm. Vested with the same enforcement powers as the Medical Board of California under section 2222 B&P, the Board of Podiatric Medicine profits immensely from its jurisdictional association with the larger Medical Board that affords direct use of the Medical Board's central complaint and discipline coordination staffs. The Board of Podiatric Medicine's present organizational structure—situated directly under the umbrella of the Medical Board—has proven itself to be the most effective and efficient regulatory model and has provided immeasurable benefit for consumers. It continues to



make logical and rationale sense to have podiatric doctors licensed directly by the Medical Board given that doctors of podiatric medicine do in fact practice as independent practitioners of medicine and surgery and are subject to the very same provisions of the Medical Practice Act as all other medical doctor licensees of the Medical Board.

The present organizational arrangement between the Medical and Podiatric Boards has demonstrated such tremendous effectiveness and benefit that the jurisdictional oversight model set by the Medical and Podiatric Boards has been exemplified as the archetypal organizational arrangement for affiliated health professions to copy when proposing increases to their scopes of professional practice. While extremely complimentary, the statements are not without their collateral repercussions. Unfortunately, rather than replicate the arrangement for other health professions, there are detractors that would seek to alter the present jurisdictional association between the Medical and Podiatric Boards in order to overcome resistance, lack of support or desire for increases to scope by others. The resulting proposed solution then calls for a separation of the Boards that is ostensibly a remedy for that which is not broken.

As a result, throughout its history, the Board has considered and urged a variety of organizational options over the years. During the late 1990's the Board of Podiatric Medicine's goal was summarized in its first Sunset Review in 1997 as a desire to fully mainline the podiatric profession to hasten the day when it could be fully merged back into the Medical Board of California without concern about professional discrimination. During the 2000's, finding no real interest for merger from any sector, the Board's articulated goal was an intent to continue as a semi-autonomous board for the immediate future. This sentiment remains unchanged evens since the last Sunset Review in 2011 where it was advocated that doctors of podiatric medicine should continue to be regulated by the Board of Podiatric Medicine under the jurisdiction of the Medical Board of California in order to protect the interests of the public.

Regardless, the California Board of Podiatric Medicine has historically always viewed any alternative organizational scheme with the status of the Medical Board and in the context of health care delivery in California's communities. In the present day practice community, doctors of podiatric medicine work interdependently with medical doctors to assure effective and efficient coordination of care. Together, MD's and DPMs work side-by-side to provide



Californian's with the best health outcomes for consumers. The future of medicine will only call on closer and closer association between those that are licensed to practice medicine and surgery whether as doctors of podiatric medicine or as medical doctors.

Comprehensive care of individuals and populations requires a wide range of skills and knowledge in a variety of practice settings. This will continue to call for medical professionals—both MD's and DPMs—to increasing work in interdisciplinary teams. As it stands now, doctors of podiatric medicine work very closely with endocrinologists, vascular surgeons, and internal medicine specialists among many others, with all medical professionals carrying out their roles and responsibilities while conveying mutual respect, trust, support and appreciation of each discipline's unique contribution. It would not make sense to eliminate responsibility of licensure for doctors of podiatric medicine from the Medical Board when these professions are so closely integrated in the practice community and held to the exact same standards.

Additionally, there presently still exists a tremendous and significant administrative role exercised by the Medical Board over the Board of Podiatric Medicine. The Medical Board's jurisdiction is neither limited nor vestigial. It is doubtful that the Board of Podiatric Medicine could operate entirely independently of the Medical Board without experiencing catastrophic increases to bottom-line financial expenditures or jeopardizing administrative efficiencies gained from the association. As stated previously, the Board of Podiatric Medicine benefits immensely from its jurisdictional association with the larger Medical Board. This affords direct use of the Medical Board's central complaint and discipline coordination staffs. There would be absolutely no obligation by the Medical Board to continue to permit use of these services if the Podiatric Board were not directly under its jurisdiction. Again, transferring licensing authority to the Podiatric Board from its present situs in the Medical Board would achieve the Medical Board's staff desired objective to split the boards.

It cannot be doubted that regulation of the profession continues to be in the best interests of Californians. Accordingly, a Board of Podiatric Medicine under the jurisdiction of the Medical Board of California continues to be the most effective body for accomplishing that goal given the potential impact upon the public health, safety and welfare for engaging in the practice of podiatric medicine.



Absent a particular operational justification or specific interest on the part of the licensed medical and podiatric medical professions and given the significant administrative role presently played by the Medical Board over the Board of Podiatric Medicine, the responsibility for licensure of podiatric doctors should likely continue to remain with the Medical Board of California after a recommendation by the Board of Podiatric Medicine.

## **ALTERNATIVES**

Given that Medical Practice Regulation 1301(a) provides that the chief of licensing for the Medical Board may designate an appointee for the purpose of issuing certificates, it may be possible that a delegation of authority to the Executive Officer of the Board of Podiatric Medicine may be drafted and executed by both parties for the limited purpose of issuing certificates to practice podiatric medicine for the Medical Board of California.

This idea is certainly not without precedent between the Medical and Podiatric Board as existing regulations delegate and confer upon the Executive Director or Assistant Executive Director of the Medical Board of California all functions necessary to dispatch the business of the Podiatric Board in absence of its Executive Officer. Such is the nature of statutorily intimate government agencies that share nearly sixty years of close jurisdictional association in both law and fact.

Development of said document would require the cooperation of the Medical Board and assistance of counsel for each respective board to take care that the instrument was legally sound, would not alter the existing statutory or jurisdictional relationship, or be used as a basis to justify the need for future legislation calling for the separation of the boards.

## **NEXT STEPS**

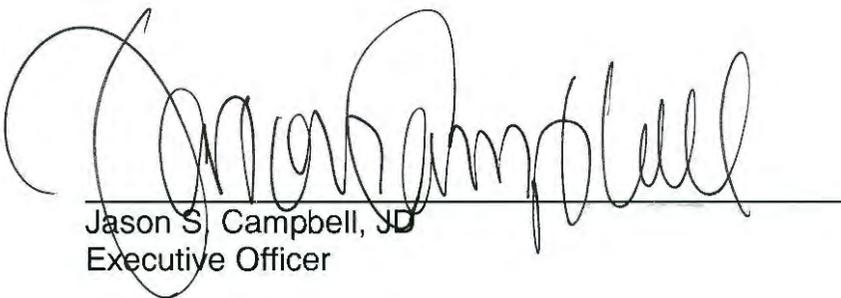
At present time, legislation has not yet been introduced as of the time of this writing. However, the Board should begin to evaluate whether an alternate organizational structure vesting full licensing authority with the Board of Podiatric Medicine and resulting full autonomy likely to occur as a result is in the best interests of the consumers of California, the Board and the profession in order to stake a position for or against the proposed bill if and when introduced.



## ATTACHMENTS

- A. Medical Board of California Quarterly Board Meeting Agenda – January 22, 2016; Board Agenda Materials: Items 8A, 8B & 8C
- B. Medical Board of California - Doctor of Podiatric Medicine License
- C. California Board of Podiatric Medicine – License Recommendation Letter
- D. ED Kirchmeyer email to EO Campbell – January 27, 2016
- E. Medical Board of California Quarterly Board Meeting Agenda – October 29 & 30, 2015; Board Agenda Material: Item 15B

Prepared by: Jason S. Campbell, J.D.



Jason S. Campbell, JD  
Executive Officer



## MEDICAL BOARD OF CALIFORNIA

### QUARTERLY BOARD MEETING AGENDA



#### MEMBERS OF THE BOARD

##### **President**

David Serrano Sewell

##### **Vice President**

Dev GnanaDev, M.D.

##### **Secretary**

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Jamie Wright, Esq.

Barbara Yaroslavsky

Felix Yip, M.D.

Cal Expo Courtyard Marriott  
1782 Tribute Road  
Sacramento, CA 95815  
(916) 929-7900 (Directions Only)  
Room A&B

**Friday, January 22, 2016**  
**8:30 a.m. – 3:00 p.m.**  
(or until the conclusion of business)

Teleconference – See Attached  
Meeting Information

**ORDER OF ITEMS IS SUBJECT TO CHANGE**

Action may be taken  
on any item listed  
on the agenda.

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

Please see Meeting  
Information Section for  
additional information on  
public participation.

#### Friday January 22, 2016

##### **8:30 a.m.**

1. Call to Order/Roll Call
2. Public Comments on Items not on the Agenda  
*Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting.*  
*[Government Code Sections 11125, 11125.7 (a)]*
3. Approval of Minutes from the October 29-30, 2015 Meeting
4. President's Report – Mr. Serrano Sewell
  - A. Swearing In of New Board Member – Ms. Lawson
  - B. Committee Roster Updates
5. Board Member Communications with Interested Parties – Mr. Serrano Sewell
6. Executive Management Reports – Ms. Kirchmeyer
  - A. Administrative Summary
  - B. Enforcement Program Summary
  - C. Licensing Program Summary

- D. Update on the CURES Program
  - E. Update on the Federation of State Medical Boards
  - F. BreZE Update
  - G. Update on Coordination with State Agencies regarding Psychotropic Medications for Foster Children
7. Update from the Department of Consumer Affairs, which may include Updates pertaining to the Department's Administrative Services, Human Resources, Enforcement, Information Technology, Communications and Outreach, as well as Legislative, Regulatory and Policy Matters – Ms. Lally
  8. Discussion and Possible Action on Legislation/Regulations – Ms. Simoes
    - A. 2016 Legislation
 

AB 611	SB 323
AB 890	SB 482
AB 1306	SB 538
SB 22	SB 622
    - B. Other Recently Introduced Bills within Board Purview
    - C. Status of Regulatory Actions
  9. Update, Discussion and Possible Action on Recommendations from the Public Outreach, Education, and Wellness Committee – Dr. Lewis
  10. Update, Discussion and Possible Action on Recommendations from the Patient Notification Task Force – Mr. Serrano Sewell
  11. Update, Discussion and Possible Action of Recommendations from the Enforcement Committee – Dr. Yip
  12. Update from the Attorney General's Office – Ms. Castro
  13. Special Faculty Permit Review Committee Recommendations: Approval of Applicants – Dr. Bholat
  14. Discussion and Possible Action on Universidad Autonoma de Guadalajara Application for Recognition – Dr. Nuovo and Mr. Worden
  15. Update, Discussion and Possible Action of Recommendations from the Midwifery Advisory Council Meeting – Ms. Sparrevohn
  16. Update on the Physician Assistant Board – Dr. Bishop
  17. Update on the Health Professions Education Foundation – Ms. Yaroslavsky and Dr. Yip
  18. Agenda Items for the May 2016 Meeting in the Los Angeles Area
  19. Adjournment

## Meeting Information

This meeting will be available via teleconference. Individuals listening to the meeting will have an opportunity to provide public comment as outlined below.

**The call-in number for teleconference comments is:**

**Friday January 22, 2016 – (844) 248-8038**

Please wait until the operator has introduced you before you make your comments.

To request to make a comment during the public comment period, press \*1; you will hear a tone indicating you are in the queue for comment. If you change your mind and do not want to make a comment, press #. Assistance is available throughout the teleconference meeting. To request a specialist, press \*0.

During Agenda Item 2 – Public Comments on Items Not on the Agenda, the Board has limited the total public comment period via teleconference to 20 minutes. Therefore, after 20 minutes, no further comments will be accepted. Each person will be limited to three minutes per agenda item.

During public comment on any other agenda item, a total of 10 minutes will be allowed for comments via the teleconference line. After 10 minutes, no further comments will be accepted. Each person will be limited to three minutes per agenda item.

Comments for those in attendance at the meeting will have the same time limitations as those identified above for individuals on the teleconference line.

*The mission of the Medical Board of California is to protect health care consumers through the proper licensing and regulation of physicians and surgeons and certain allied health care professions and through the vigorous, objective enforcement of the Medical Practice Act, and to promote access to quality medical care through the Board's licensing and regulatory functions.*

*Meetings of the Medical Board of California are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. The audience will be given appropriate opportunities to comment on any issue presented in open session before the Board, but the President may apportion available time among those who wish to speak.*

*For additional information, call (916) 263-2389.*

*NOTICE: The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Lisa Toof at (916) 263-2389 or [lisa.toof@mbc.ca.gov](mailto:lisa.toof@mbc.ca.gov) or send a written request to Lisa Toof. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.*

# 2016 Legislation

AB 611

AB 890

AB 1306

SB 22

SB 323

SB 482

SB 538

SB 622

AMENDED IN ASSEMBLY APRIL 15, 2015  
AMENDED IN ASSEMBLY APRIL 13, 2015  
AMENDED IN ASSEMBLY MARCH 24, 2015  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 611**

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**Introduced by Assembly Member Dahle**

February 24, 2015

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An act to amend Section 11165.1 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 611, as amended, Dahle. Controlled substances: prescriptions: reporting.

Existing law requires certain health care practitioners and pharmacists to apply to the Department of Justice to obtain approval to access information contained in the Controlled Substance Utilization Review and Evaluation System (CURES) Prescription Drug Monitoring Program (PDMP) regarding the controlled substance history of a patient under his or her care. Existing law requires the Department of Justice, upon approval of an application, to provide the approved health care practitioner or pharmacist the history of controlled substances dispensed to an individual under his or her care. Existing law authorizes an application to be denied, or a subscriber to be suspended, for specified reasons, including, among others, a subscriber accessing information for any reason other than caring for his or her patients.

This bill would also authorize an individual designated to investigate a holder of a professional license to apply to the Department of Justice to obtain approval to access information contained in the CURES PDMP

regarding the controlled substance history of an applicant or a licensee for the purpose of investigating the alleged substance abuse of a licensee. The bill would, upon approval of an application, require the department to provide to the approved individual the history of controlled substances dispensed to the licensee. The bill would clarify that only a subscriber who is a health care practitioner or a pharmacist may have an application denied or be suspended for accessing subscriber information for any reason other than caring for his or her patients. The bill would also specify that an application may be denied, or a subscriber may be suspended, if a subscriber who has been designated to investigate the holder of a professional license accesses information for any reason other than investigating the holder of a professional license.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. Section 11165.1 of the Health and Safety Code  
2 is amended to read:  
3 11165.1. (a) (1) (A) (i) A health care practitioner authorized  
4 to prescribe, order, administer, furnish, or dispense Schedule II,  
5 Schedule III, or Schedule IV controlled substances pursuant to  
6 Section 11150 shall, before January 1, 2016, or upon receipt of a  
7 federal Drug Enforcement Administration (DEA) registration,  
8 whichever occurs later, submit an application developed by the  
9 Department of Justice to obtain approval to access information  
10 online regarding the controlled substance history of a patient that  
11 is stored on the Internet and maintained within the Department of  
12 Justice, and, upon approval, the department shall release to that  
13 practitioner the electronic history of controlled substances  
14 dispensed to an individual under his or her care based on data  
15 contained in the CURES Prescription Drug Monitoring Program  
16 (PDMP).  
17 (ii) A pharmacist shall, before January 1, 2016, or upon  
18 licensure, whichever occurs later, submit an application developed  
19 by the Department of Justice to obtain approval to access  
20 information online regarding the controlled substance history of  
21 a patient that is stored on the Internet and maintained within the  
22 Department of Justice, and, upon approval, the department shall  
23 release to that pharmacist the electronic history of controlled

1 substances dispensed to an individual under his or her care based  
2 on data contained in the CURES PDMP.

3 (iii) (I) An individual designated by a board, bureau, or  
4 program within the Department of Consumer Affairs to investigate  
5 a holder of a professional license may, for the purpose of  
6 investigating the alleged substance abuse of a licensee, submit an  
7 application developed by the Department of Justice to obtain  
8 approval to access information online regarding the controlled  
9 substance history of a licensee that is stored on the Internet and  
10 maintained within the Department of Justice, and, upon approval,  
11 the department shall release to that individual the electronic history  
12 of controlled substances dispensed to the licensee based on data  
13 contained in the CURES PDMP. ~~An application for an individual~~  
14 ~~designated by a board, bureau, or program that does not regulate~~  
15 ~~health care practitioners authorized to prescribe, order, administer,~~  
16 ~~furnish, or dispense Schedule II, Schedule III, or Schedule IV~~  
17 ~~controlled substances pursuant to Section 11150 The application~~  
18 shall contain facts demonstrating the probable cause to believe the  
19 licensee has violated a law governing controlled substances.

20 (II) *This clause does not require an individual designated by a*  
21 *board, bureau, or program within the Department of Consumer*  
22 *Affairs that regulates health care practitioners to submit an*  
23 *application to access the information stored within the CURES*  
24 *PDMP.*

25 (B) An application may be denied, or a subscriber may be  
26 suspended, for reasons which include, but are not limited to, the  
27 following:

- 28 (i) Materially falsifying an application for a subscriber.
- 29 (ii) Failure to maintain effective controls for access to the patient  
30 activity report.
- 31 (iii) Suspended or revoked federal DEA registration.
- 32 (iv) Any subscriber who is arrested for a violation of law  
33 governing controlled substances or any other law for which the  
34 possession or use of a controlled substance is an element of the  
35 crime.
- 36 (v) Any subscriber described in clause (i) or (ii) of subparagraph  
37 (A) accessing information for any other reason than caring for his  
38 or her patients.

- 1 (vi) Any subscriber described in clause (iii) of subparagraph  
2 (A) accessing information for any other reason than investigating  
3 the holder of a professional license.
- 4 (C) Any authorized subscriber shall notify the Department of  
5 Justice within 30 days of any changes to the subscriber account.
- 6 (2) A health care practitioner authorized to prescribe, order,  
7 administer, furnish, or dispense Schedule II, Schedule III, or  
8 Schedule IV controlled substances pursuant to Section 11150 or  
9 a pharmacist shall be deemed to have complied with paragraph  
10 (1) if the licensed health care practitioner or pharmacist has been  
11 approved to access the CURES database through the process  
12 developed pursuant to subdivision (a) of Section 209 of the  
13 Business and Professions Code.
- 14 (b) Any request for, or release of, a controlled substance history  
15 pursuant to this section shall be made in accordance with guidelines  
16 developed by the Department of Justice.
- 17 (c) In order to prevent the inappropriate, improper, or illegal  
18 use of Schedule II, Schedule III, or Schedule IV controlled  
19 substances, the Department of Justice may initiate the referral of  
20 the history of controlled substances dispensed to an individual  
21 based on data contained in CURES to licensed health care  
22 practitioners, pharmacists, or both, providing care or services to  
23 the individual.
- 24 (d) The history of controlled substances dispensed to an  
25 individual based on data contained in CURES that is received by  
26 an authorized subscriber from the Department of Justice pursuant  
27 to this section shall be considered medical information subject to  
28 the provisions of the Confidentiality of Medical Information Act  
29 contained in Part 2.6 (commencing with Section 56) of Division  
30 I of the Civil Code.
- 31 (e) Information concerning a patient's controlled substance  
32 history provided to an authorized subscriber pursuant to this section  
33 shall include prescriptions for controlled substances listed in  
34 Sections 1308.12, 1308.13, and 1308.14 of Title 21 of the Code  
35 of Federal Regulations.

AMENDED IN ASSEMBLY MAY 5, 2015  
AMENDED IN ASSEMBLY APRIL 20, 2015  
AMENDED IN ASSEMBLY MARCH 26, 2015  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 890**

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**Introduced by Assembly Member Ridley-Thomas**

February 26, 2015

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An act to add Chapter 7.75 (commencing with Section 3550) to Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 890, as amended, Ridley-Thomas. Anesthesiologist assistants.

Existing law provides for the licensure and regulation of specified healing arts licensees, including, among others, physicians and surgeons, physician assistants, nurses, and nurse anesthetists.

This bill would enact the Anesthesiologist Assistant Practice Act, which would make it unlawful for any person to hold himself or herself out as an anesthesiologist assistant unless he or she meets specified requirements. The bill would make it an unfair business practice to violate these provisions. The bill would require an anesthesiologist assistant to work under the *direction and* supervision of an anesthesiologist, and would require the anesthesiologist to be physically present on the premises and immediately available ~~if needed~~ to the anesthesiologist assistant when medical services are being rendered and to oversee the activities of, and accept responsibility for, the medical services being rendered by the anesthesiologist assistant. The bill would authorize an anesthesiologist assistant under the supervision of an

anesthesiologist to deliver medical services, including, but not limited to, assist the supervising anesthesiologist in developing and implementing an anesthesia care plan for a patient.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. Chapter 7.75 (commencing with Section 3550)  
2 is added to Division 2 of the Business and Professions Code, to  
3 read:

4

5 CHAPTER 7.75. ANESTHESIOLOGIST ASSISTANT

6

7 3550. This chapter shall be known and may be cited as the  
8 Anesthesiologist Assistant Practice Act.

9 3551. For purposes of this section, the following definitions  
10 shall apply:

11 (a) "Anesthesiologist" means a physician and surgeon who has  
12 successfully completed a training program in anesthesiology  
13 accredited by the Accreditation Council for Graduate Medical  
14 Education or the American Osteopathic Association or equivalent  
15 organizations and is licensed under Chapter 5 (commencing with  
16 Section 2000).

17 (b) "Anesthesiologist assistant" means a person who meets the  
18 requirements of Section 3552.

19 3552. (a) A person shall not hold himself or herself out to be  
20 an anesthesiologist assistant unless he or she meets the following  
21 requirements:

22 (1) Has graduated from an anesthesiologist assistant program  
23 recognized by the Commission on Accreditation of Allied Health  
24 Education Programs or by its successor agency.

25 (2) Holds an active certification by the National Commission  
26 on Certification for Anesthesiologist Assistants.

27 (b) It is an unfair business practice within the meaning of  
28 Chapter 5 (commencing with Section 17200) of Part 2 of Division  
29 7 for any person to use the title "anesthesiologist assistant" or any  
30 other term, including, but not limited to, "certified," "licensed,"  
31 "registered," or "AA," that implies or suggests that the person is

1 certified as an anesthesiologist assistant, if the person does not  
2 meet the requirements of subdivision (a).

3 3553. An anesthesiologist assistant shall work under the  
4 *direction and* supervision of an anesthesiologist. The supervising  
5 anesthesiologist shall do both of the following:

6 (a) Be physically present on the premises and immediately  
7 available ~~if needed~~ to the anesthesiologist assistant when medical  
8 services are being rendered.

9 (b) Oversee the activities of, and accept responsibility for, the  
10 medical services being rendered by the anesthesiologist assistant.

11 3554. Notwithstanding any other law, an anesthesiologist  
12 assistant under the supervision of an anesthesiologist may ~~deliver~~  
13 ~~medical services, including, but not limited to,~~ *assist the*  
14 *supervising anesthesiologist in* developing and implementing an  
15 anesthesia care plan for a patient.

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AMENDED IN SENATE JULY 1, 2015

AMENDED IN ASSEMBLY MAY 28, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1306**

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**Introduced by Assembly Member Burke  
(Coauthor: Assembly Member Mark Stone)**

February 27, 2015

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An act to amend Sections 650.01, 650.02, 2725.1, 2746.2, 2746.5, 2746.51, 2746.52, 4061, 4076, and 4170 of, and to add Section 2746.6 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1306, as amended, Burke. Healing arts: certified nurse-midwives: scope of practice.

(1) Existing law, the Nursing Practice Act, provides for the licensure and regulation of the practice of nursing by the Board of Registered Nursing and authorizes the board to issue a certificate to practice nurse-midwifery to a person who meets educational standards established by the board or the equivalent of those educational standards. The act makes the violation of any of its provisions a misdemeanor punishable upon conviction by imprisonment in the county jail for not less than 10 days nor more than one year, or by a fine of not less than \$20 nor more than \$1,000, or by both that fine and imprisonment.

This bill would additionally require an applicant for a certificate to practice nurse-midwifery to provide evidence of current advanced level national certification by a certifying body that meets standards established and approved by the board. This bill would also require the board to create and appoint a Nurse-Midwifery Advisory Council

consisting of certified nurse-midwives in good standing with experience in hospital and nonhospital practice settings, *alternative birth settings, and home settings*, a nurse-midwife educator, as specified, and a consumer of midwifery care. This bill would require *the council to consist of a majority of certified nurse-midwives and would require the council to make recommendations to the board on all matters related to nurse-midwifery practice, education, disciplinary actions, standards of care, and other matters specified by the board, and would require the council to meet regularly, but at least twice a year.* This bill would ~~also~~ prohibit corporations and other artificial legal entities from having professional rights, privileges, or powers under the act, except as specified. *The bill would authorize specified entities to employ a certified nurse-midwife and charge for professional services rendered by that certified nurse-midwife, as provided.*

(2) The act authorizes a certified nurse-midwife, under the supervision of a licensed physician and surgeon, to attend cases of normal childbirth and to provide prenatal, intrapartum, and postpartum care, including family-planning care, for the mother, and immediate care for the newborn, and provides that the practice of nurse-midwifery constitutes the furthering or undertaking by a certified person, under the supervision of a licensed physician and surgeon who has current practice or training in obstetrics, to assist a woman in childbirth so long as progress meets criteria accepted as normal.

This bill would delete those provisions and would instead authorize a certified nurse-midwife to manage a full range of ~~primary health gynecological and obstetric~~ care services for women from adolescence beyond menopause, ~~including, but not limited to, gynecologic and family planning services.~~ *as provided.* The bill would authorize a certified nurse-midwife to practice in ~~all specified~~ settings, including, but not limited to, a home *setting*. This bill would declare that the practice of nurse-midwifery within a health care system provides for consultation, collaboration, or referral as indicated by the health status of the client and the resources of the medical personnel available in the setting of care, and would provide that the practice of nurse-midwifery emphasizes informed consent, preventive care, and early detection and referral of complications to a physician and surgeon. ~~This bill would authorize a certified nurse-midwife to provide peripartum care in an out-of-hospital setting to low-risk women with uncomplicated singleton-term pregnancies who are expected to have uncomplicated birth.~~

(3) The act authorizes a certified nurse-midwife to furnish and order drugs or devices incidentally to the provision of family planning services, routine health care or perinatal care, and care rendered consistently with the certified nurse-midwife's educational preparation in specified facilities and clinics, and only in accordance with standardized procedures and protocols, as specified.

This bill would delete the requirement that drugs or devices are furnished or ordered in accordance with standardized procedures and protocols. The bill would authorize a certified nurse-midwife to furnish and order drugs or devices in connection with care rendered in a home, and would authorize a certified nurse-midwife to directly procure supplies and devices, to order, obtain, and administer drugs and diagnostic tests, to order laboratory and diagnostic testing, and to receive reports that are necessary to his or her practice as a certified nurse-midwife and that are consistent with nurse-midwifery education preparation.

(4) The act also authorizes a certified nurse-midwife to perform and repair episiotomies and to repair first-degree and 2nd-degree lacerations of the perineum in a licensed acute care hospital and a licensed alternate birth center, if certain requirements are met, including, but not limited to, that episiotomies are performed pursuant to protocols developed and approved by the supervising physician and surgeon.

This bill would also authorize a certified nurse-midwife to perform and repair episiotomies and to repair first-degree and 2nd-degree lacerations of the perineum in a home, and would delete all requirements that those procedures be performed pursuant to protocols developed and approved by the supervising physician and surgeon. The bill would require a certified nurse-midwife to provide emergency care to a patient during times when a physician and surgeon is unavailable.

This bill would provide that a consultative relationship between a certified nurse-midwife and a physician and surgeon by it self is not a basis for finding the physician and surgeon liable for any acts or omissions on the part of the certified nurse-midwife. The bill would also update cross-references as needed.

(5) Because the act makes a violation of any of its provisions a misdemeanor, this bill would expand the scope of an existing crime and therefore this bill would impose a state-mandated local program.

(6) Existing law prohibits a licensee, as defined, from referring a person for laboratory, diagnostic, nuclear medicine, radiation oncology, physical therapy, physical rehabilitation, psychometric testing, home

infusion therapy, or diagnostic imaging goods or services if the licensee or his or her immediate family has a financial interest with the person or entity that receives the referral, and makes a violation of that prohibition punishable as a misdemeanor. Under existing law, the Medical Board of California is required to review the facts and circumstances of any conviction for violating the prohibition, and to take appropriate disciplinary action if the licensee has committed unprofessional conduct. *Existing law provides that, among other exceptions, this prohibition does not apply to a licensee who refers a person to a health facility if specified conditions are met.*

This bill would include a certified nurse-midwife under the definition of a licensee, which would expand the scope of an existing crime and therefore impose a state-mandated local program. The bill would also require the Board of Registered Nursing to review the facts and circumstances of any conviction of a certified nurse-midwife for violating that prohibition, and would require the board to take appropriate disciplinary action if the certified nurse-midwife has committed unprofessional conduct. *The bill would additionally authorize a licensee to refer a person to a licensed alternative birth center, as defined, or a nationally accredited alternative birth center.*

(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 no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

- 1 SECTION 1. Section 650.01 of the Business and Professions
- 2 Code is amended to read:
- 3 650.01. (a) Notwithstanding Section 650, or any other law, it
- 4 is unlawful for a licensee to refer a person for laboratory, diagnostic
- 5 nuclear medicine, radiation oncology, physical therapy, physical
- 6 rehabilitation, psychometric testing, home infusion therapy, or
- 7 diagnostic imaging goods or services if the licensee or his or her
- 8 immediate family has a financial interest with the person or in the
- 9 entity that receives the referral.

1 (b) For purposes of this section and Section 650.02, the  
2 following shall apply:

3 (1) “Diagnostic imaging” includes, but is not limited to, all  
4 X-ray, computed axial tomography, magnetic resonance imaging  
5 nuclear medicine, positron emission tomography, mammography,  
6 and ultrasound goods and services.

7 (2) A “financial interest” includes, but is not limited to, any  
8 type of ownership interest, debt, loan, lease, compensation,  
9 remuneration, discount, rebate, refund, dividend, distribution,  
10 subsidy, or other form of direct or indirect payment, whether in  
11 money or otherwise, between a licensee and a person or entity to  
12 whom the licensee refers a person for a good or service specified  
13 in subdivision (a). A financial interest also exists if there is an  
14 indirect financial relationship between a licensee and the referral  
15 recipient including, but not limited to, an arrangement whereby a  
16 licensee has an ownership interest in an entity that leases property  
17 to the referral recipient. Any financial interest transferred by a  
18 licensee to any person or entity or otherwise established in any  
19 person or entity for the purpose of avoiding the prohibition of this  
20 section shall be deemed a financial interest of the licensee. For  
21 purposes of this paragraph, “direct or indirect payment” shall not  
22 include a royalty or consulting fee received by a physician and  
23 surgeon who has completed a recognized residency training  
24 program in orthopedics from a manufacturer or distributor as a  
25 result of his or her research and development of medical devices  
26 and techniques for that manufacturer or distributor. For purposes  
27 of this paragraph, “consulting fees” means those fees paid by the  
28 manufacturer or distributor to a physician and surgeon who has  
29 completed a recognized residency training program in orthopedics  
30 only for his or her ongoing services in making refinements to his  
31 or her medical devices or techniques marketed or distributed by  
32 the manufacturer or distributor, if the manufacturer or distributor  
33 does not own or control the facility to which the physician is  
34 referring the patient. A “financial interest” shall not include the  
35 receipt of capitation payments or other fixed amounts that are  
36 prepaid in exchange for a promise of a licensee to provide specified  
37 health care services to specified beneficiaries. A “financial interest”  
38 shall not include the receipt of remuneration by a medical director  
39 of a hospice, as defined in Section 1746 of the Health and Safety  
40 Code, for specified services if the arrangement is set out in writing,

1 and specifies all services to be provided by the medical director,  
2 the term of the arrangement is for at least one year, and the  
3 compensation to be paid over the term of the arrangement is set  
4 in advance, does not exceed fair market value, and is not  
5 determined in a manner that takes into account the volume or value  
6 of any referrals or other business generated between parties.

7 (3) For the purposes of this section, “immediate family” includes  
8 the spouse and children of the licensee, the parents of the licensee,  
9 and the spouses of the children of the licensee.

10 (4) “Licensee” means a physician as defined in Section 3209.3  
11 of the Labor Code, and a certified nurse-midwife as defined in  
12 Article 2.5 (commencing with Section 2746) of Chapter 6 of  
13 Division 2 of the Business and Professions Code.

14 (5) “Licensee’s office” means either of the following:

15 (A) An office of a licensee in solo practice.

16 (B) An office in which services or goods are personally provided  
17 by the licensee or by employees in that office, or personally by  
18 independent contractors in that office, in accordance with other  
19 provisions of law. Employees and independent contractors shall  
20 be licensed or certified when licensure or certification is required  
21 by law.

22 (6) “Office of a group practice” means an office or offices in  
23 which two or more licensees are legally organized as a partnership,  
24 professional corporation, or not-for-profit corporation, licensed  
25 pursuant to subdivision (a) of Section 1204 of the Health and Safety  
26 Code, for which all of the following apply:

27 (A) Each licensee who is a member of the group provides  
28 substantially the full range of services that the licensee routinely  
29 provides, including medical care, consultation, diagnosis, or  
30 treatment through the joint use of shared office space, facilities,  
31 equipment, and personnel.

32 (B) Substantially all of the services of the licensees who are  
33 members of the group are provided through the group and are  
34 billed in the name of the group and amounts so received are treated  
35 as receipts of the group, except in the case of a multispecialty  
36 clinic, as defined in subdivision (l) of Section 1206 of the Health  
37 and Safety Code, physician services are billed in the name of the  
38 multispecialty clinic and amounts so received are treated as receipts  
39 of the multispecialty clinic.

1 (C) The overhead expenses of, and the income from, the practice  
2 are distributed in accordance with methods previously determined  
3 by members of the group.

4 (c) It is unlawful for a licensee to enter into an arrangement or  
5 scheme, such as a cross-referral arrangement, that the licensee  
6 knows, or should know, has a principal purpose of ensuring  
7 referrals by the licensee to a particular entity that, if the licensee  
8 directly made referrals to that entity, would be in violation of this  
9 section.

10 (d) No claim for payment shall be presented by an entity to any  
11 individual, third party payer, or other entity for a good or service  
12 furnished pursuant to a referral prohibited under this section.

13 (e) No insurer, self-insurer, or other payer shall pay a charge or  
14 lien for any good or service resulting from a referral in violation  
15 of this section.

16 (f) A licensee who refers a person to, or seeks consultation from,  
17 an organization in which the licensee has a financial interest, other  
18 than as prohibited by subdivision (a), shall disclose the financial  
19 interest to the patient, or the parent or legal guardian of the patient,  
20 in writing, at the time of the referral or request for consultation.

21 (1) If a referral, billing, or other solicitation is between one or  
22 more licensees who contract with a multispecialty clinic pursuant  
23 to subdivision (l) of Section 1206 of the Health and Safety Code  
24 or who conduct their practice as members of the same professional  
25 corporation or partnership, and the services are rendered on the  
26 same physical premises, or under the same professional corporation  
27 or partnership name, the requirements of this subdivision may be  
28 met by posting a conspicuous disclosure statement at the  
29 registration area or by providing a patient with a written disclosure  
30 statement.

31 (2) If a licensee is under contract with the Department of  
32 Corrections or the California Youth Authority, and the patient is  
33 an inmate or parolee of either respective department, the  
34 requirements of this subdivision shall be satisfied by disclosing  
35 financial interests to either the Department of Corrections or the  
36 California Youth Authority.

37 (g) A violation of subdivision (a) shall be a misdemeanor. In  
38 the case of a licensee who is a physician, the Medical Board of  
39 California shall review the facts and circumstances of any  
40 conviction pursuant to subdivision (a) and take appropriate

1 disciplinary action if the licensee has committed unprofessional  
2 conduct. In the case of a licensee who is a certified nurse-midwife,  
3 the Board of Registered Nursing shall review the facts and  
4 circumstances of any conviction pursuant to subdivision (a) and  
5 take appropriate disciplinary action if the licensee has committed  
6 unprofessional conduct. Violations of this section may also be  
7 subject to civil penalties of up to five thousand dollars (\$5,000)  
8 for each offense, which may be enforced by the Insurance  
9 Commissioner, Attorney General, or a district attorney. A violation  
10 of subdivision (c), (d), or (e) is a public offense and is punishable  
11 upon conviction by a fine not exceeding fifteen thousand dollars  
12 (\$15,000) for each violation and appropriate disciplinary action,  
13 including revocation of professional licensure, by the Medical  
14 Board of California, the Board of Registered Nursing, or other  
15 appropriate governmental agency.

16 (h) This section shall not apply to referrals for services that are  
17 described in and covered by Sections 139.3 and 139.31 of the  
18 Labor Code.

19 (i) This section shall become operative on January 1, 1995.

20 *SEC. 2. Section 650.02 of the Business and Professions Code*  
21 *is amended to read:*

22 650.02. The prohibition of Section 650.01 shall not apply to  
23 or restrict any of the following:

24 (a) A licensee may refer a patient for a good or service otherwise  
25 prohibited by subdivision (a) of Section 650.01 if the licensee's  
26 regular practice is located where there is no alternative provider  
27 of the service within either 25 miles or 40 minutes traveling time,  
28 via the shortest route on a paved road. If an alternative provider  
29 commences furnishing the good or service for which a patient was  
30 referred pursuant to this subdivision, the licensee shall cease  
31 referrals under this subdivision within six months of the time at  
32 which the licensee knew or should have known that the alternative  
33 provider is furnishing the good or service. A licensee who refers  
34 to or seeks consultation from an organization in which the licensee  
35 has a financial interest under this subdivision shall disclose this  
36 interest to the patient or the patient's parents or legal guardian in  
37 writing at the time of referral.

38 (b) A licensee, when the licensee or his or her immediate family  
39 has one or more of the following arrangements with another

1 licensee, a person, or an entity, is not prohibited from referring a  
2 patient to the licensee, person, or entity because of the arrangement:

3 (1) A loan between a licensee and the recipient of the referral,  
4 if the loan has commercially reasonable terms, bears interest at  
5 the prime rate or a higher rate that does not constitute usury, is  
6 adequately secured, and the loan terms are not affected by either  
7 party's referral of any person or the volume of services provided  
8 by either party.

9 (2) A lease of space or equipment between a licensee and the  
10 recipient of the referral, if the lease is written, has commercially  
11 reasonable terms, has a fixed periodic rent payment, has a term of  
12 one year or more, and the lease payments are not affected by either  
13 party's referral of any person or the volume of services provided  
14 by either party.

15 (3) Ownership of corporate investment securities, including  
16 shares, bonds, or other debt instruments that may be purchased on  
17 terms generally available to the public and that are traded on a  
18 licensed securities exchange or NASDAQ, do not base profit  
19 distributions or other transfers of value on the licensee's referral  
20 of persons to the corporation, do not have a separate class or  
21 accounting for any persons or for any licensees who may refer  
22 persons to the corporation, and are in a corporation that had, at the  
23 end of the corporation's most recent fiscal year, or on average  
24 during the previous three fiscal years, stockholder equity exceeding  
25 seventy-five million dollars (\$75,000,000).

26 (4) Ownership of shares in a regulated investment company as  
27 defined in Section 851(a) of the federal Internal Revenue Code, if  
28 the company had, at the end of the company's most recent fiscal  
29 year, or on average during the previous three fiscal years, total  
30 assets exceeding seventy-five million dollars (\$75,000,000).

31 (5) A one-time sale or transfer of a practice or property or other  
32 financial interest between a licensee and the recipient of the referral  
33 if the sale or transfer is for commercially reasonable terms and the  
34 consideration is not affected by either party's referral of any person  
35 or the volume of services provided by either party.

36 (6) A personal services arrangement between a licensee or an  
37 immediate family member of the licensee and the recipient of the  
38 referral if the arrangement meets all of the following requirements:

39 (A) It is set out in writing and is signed by the parties.

1 (B) It specifies all of the services to be provided by the licensee  
2 or an immediate family member of the licensee.

3 (C) The aggregate services contracted for do not exceed those  
4 that are reasonable and necessary for the legitimate business  
5 purposes of the arrangement.

6 (D) A person who is referred by a licensee or an immediate  
7 family member of the licensee is informed in writing of the  
8 personal services arrangement that includes information on where  
9 a person may go to file a complaint against the licensee or the  
10 immediate family member of the licensee.

11 (E) The term of the arrangement is for at least one year.

12 (F) The compensation to be paid over the term of the  
13 arrangement is set in advance, does not exceed fair market value,  
14 and is not determined in a manner that takes into account the  
15 volume or value of any referrals or other business generated  
16 between the parties.

17 (G) The services to be performed under the arrangement do not  
18 involve the counseling or promotion of a business arrangement or  
19 other activity that violates any state or federal law.

20 (c) (1) A licensee may refer a person to a health facility, as  
21 defined in Section 1250 of the Health and Safety Code, *a licensed*  
22 *alternative birth center, as defined in paragraph (4) of subdivision*  
23 *(b) of Section 1204 of the Health and Safety Code, or to any*  
24 *facility, or nationally accredited alternative birth center, owned*  
25 *or leased by a health facility, if the recipient of the referral does*  
26 *not compensate the licensee for the patient referral, and any*  
27 *equipment lease arrangement between the licensee and the referral*  
28 *recipient complies with the requirements of paragraph (2) of*  
29 *subdivision (b).*

30 (2) Nothing shall preclude this subdivision from applying to a  
31 licensee solely because the licensee has an ownership or leasehold  
32 interest in an entire health facility or an entity that owns or leases  
33 an entire health facility.

34 (3) A licensee may refer a person to a health facility for any  
35 service classified as an emergency under subdivision (a) or (b) of  
36 Section 1317.1 of the Health and Safety Code.

37 (4) A licensee may refer a person to any organization that owns  
38 or leases a health facility licensed pursuant to subdivision (a), (b),  
39 or (f) of Section 1250 of the Health and Safety Code if the licensee  
40 is not compensated for the patient referral, the licensee does not

1 receive any payment from the recipient of the referral that is based  
2 or determined on the number or value of any patient referrals, and  
3 any equipment lease arrangement between the licensee and the  
4 referral recipient complies with the requirements of paragraph (2)  
5 of subdivision (b). For purposes of this paragraph, the ownership  
6 may be through stock or membership, and may be represented by  
7 a parent holding company that solely owns or controls both the  
8 health facility organization and the affiliated organization.

9 (d) A licensee may refer a person to a nonprofit corporation that  
10 provides physician services pursuant to subdivision (l) of Section  
11 1206 of the Health and Safety Code if the nonprofit corporation  
12 is controlled through membership by one or more health facilities  
13 or health facility systems and the amount of compensation or other  
14 transfer of funds from the health facility or nonprofit corporation  
15 to the licensee is fixed annually, except for adjustments caused by  
16 physicians joining or leaving the groups during the year, and is  
17 not based on the number of persons utilizing goods or services  
18 specified in Section 650.01.

19 (e) A licensee compensated or employed by a university may  
20 refer a person for a physician service, to any facility owned or  
21 operated by the university, or to another licensee employed by the  
22 university, provided that the facility or university does not  
23 compensate the referring licensee for the patient referral. In the  
24 case of a facility that is totally or partially owned by an entity other  
25 than the university, but that is staffed by university physicians,  
26 those physicians may not refer patients to the facility if the facility  
27 compensates the referring physicians for those referrals.

28 (f) The prohibition of Section 650.01 shall not apply to any  
29 service for a specific patient that is performed within, or goods  
30 that are supplied by, a licensee's office, or the office of a group  
31 practice. Further, the provisions of Section 650.01 shall not alter,  
32 limit, or expand a licensee's ability to deliver, or to direct or  
33 supervise the delivery of, in-office goods or services according to  
34 the laws, rules, and regulations governing his or her scope of  
35 practice.

36 (g) The prohibition of Section 650.01 shall not apply to cardiac  
37 rehabilitation services provided by a licensee or by a suitably  
38 trained individual under the direct or general supervision of a  
39 licensee, if the services are provided to patients meeting the criteria  
40 for Medicare reimbursement for the services.

1 (h) The prohibition of Section 650.01 shall not apply if a licensee  
2 is in the office of a group practice and refers a person for services  
3 or goods specified in Section 650.01 to a multispecialty clinic, as  
4 defined in subdivision (l) of Section 1206 of the Health and Safety  
5 Code.

6 (i) The prohibition of Section 650.01 shall not apply to health  
7 care services provided to an enrollee of a health care service plan  
8 licensed pursuant to the Knox-Keene Health Care Service Plan  
9 Act of 1975 (Chapter 2.2 (commencing with Section 1340) of  
10 Division 2 of the Health and Safety Code).

11 (j) The prohibition of Section 650.01 shall not apply to a request  
12 by a pathologist for clinical diagnostic laboratory tests and  
13 pathological examination services, a request by a radiologist for  
14 diagnostic radiology services, or a request by a radiation oncologist  
15 for radiation therapy if those services are furnished by, or under  
16 the supervision of, the pathologist, radiologist, or radiation  
17 oncologist pursuant to a consultation requested by another  
18 physician.

19 (k) This section shall not apply to referrals for services that are  
20 described in and covered by Sections 139.3 and 139.31 of the  
21 Labor Code.

22 (l) This section shall become operative on January 1, 1995.

23 ~~SEC. 2.~~

24 *SEC. 3.* Section 2725.1 of the Business and Professions Code  
25 is amended to read:

26 2725.1. (a) Notwithstanding any other law, a registered nurse  
27 may dispense drugs or devices upon an order by a licensed  
28 physician and surgeon or an order by a certified nurse-midwife,  
29 nurse practitioner, or physician assistant issued pursuant to Section  
30 2746.51, 2836.1, or 3502.1, respectively, if the registered nurse is  
31 functioning within a licensed primary care clinic as defined in  
32 subdivision (a) of Section 1204 of, or within a clinic as defined in  
33 subdivision (b), (c), (h), or (j) of Section 1206 of, the Health and  
34 Safety Code.

35 (b) No clinic shall employ a registered nurse to perform  
36 dispensing duties exclusively. No registered nurse shall dispense  
37 drugs in a pharmacy, keep a pharmacy, open shop, or drugstore  
38 for the retailing of drugs or poisons. No registered nurse shall  
39 compound drugs. Dispensing of drugs by a registered nurse, except  
40 a certified nurse-midwife who functions pursuant to Section

1 2746.51 or a nurse practitioner who functions pursuant to a  
2 standardized procedure described in Section 2836.1, or protocol,  
3 shall not include substances included in the California Uniform  
4 Controlled Substances Act (Division 10 (commencing with Section  
5 11000) of the Health and Safety Code). Nothing in this section  
6 shall exempt a clinic from the provisions of Article 13  
7 (commencing with Section 4180) of Chapter 9.

8 (c) This section shall not be construed to limit any other  
9 authority granted to a certified nurse-midwife pursuant to Article  
10 2.5 (commencing with Section 2746), to a nurse practitioner  
11 pursuant to Article 8 (commencing with Section 2834), or to a  
12 physician assistant pursuant to Chapter 7.7 (commencing with  
13 Section 3500).

14 (d) This section shall not be construed to affect the sites or types  
15 of health care facilities at which drugs or devices are authorized  
16 to be dispensed pursuant to Chapter 9 (commencing with Section  
17 4000).

18 ~~SEC. 3.~~

19 *SEC. 4.* Section 2746.2 of the Business and Professions Code  
20 is amended to read:

21 2746.2. (a) Each applicant shall show by evidence satisfactory  
22 to the board that he or she has met the educational standards  
23 established by the board or has at least the equivalent thereof,  
24 including evidence of current advanced level national certification  
25 by a certifying body that meets standards established and approved  
26 by the board.

27 (b) The board shall create and appoint a Nurse-Midwifery  
28 Advisory Council consisting of certified nurse-midwives in good  
29 standing with experience in hospital ~~and nonhospital practice~~  
30 ~~settings~~, *settings, alternative birth center settings, and home*  
31 *settings*, a nurse-midwife educator who has demonstrated  
32 familiarity with ~~consumer needs, collegial practice and~~  
33 ~~accompanied liability, and related~~ educational standards in the  
34 delivery of maternal-child health care, ~~and a consumer of~~  
35 ~~midwifery care~~: *care, and at least two qualified physicians*  
36 *appointed by the Medical Board of California, including an*  
37 *obstetrician that has experience working with nurse-midwives.*  
38 The council *membership shall consist of a majority of certified*  
39 *nurse-midwives and shall make recommendations to the board on*  
40 all matters related to nurse-midwifery practice, education, and

1 other matters as specified by the board. The council shall meet  
2 regularly, but at least twice a year.

3 (c) Corporations and other artificial legal entities shall have no  
4 professional rights, privileges, or powers. However, the Board of  
5 Registered Nursing may in its discretion, after such investigation  
6 and review of such documentary evidence as it may require, and  
7 under regulations adopted by it, grant approval of the employment  
8 of licensees on a salary basis by licensed charitable institutions,  
9 foundations, or clinics, if no charge for professional services  
10 rendered patients is made by any such institution, foundation, or  
11 clinic.

12 (d) *Notwithstanding subdivision (c), the following entities may*  
13 *employ a certified nurse-midwife and charge for professional*  
14 *services rendered by a certified nurse-midwife; however, the entity*  
15 *shall not interfere with, control, or otherwise direct the*  
16 *professional judgment of a certified nurse-midwife:*

17 (1) *A clinic operated under subdivision (p) of Section 1206 of*  
18 *the Health and Safety Code.*

19 (2) *A hospital owned and operated by a health care district*  
20 *pursuant to Division 23 (commencing with Section 32000) of the*  
21 *Health and Safety Code.*

22 (3) *A clinic operated primarily for the purpose of medical*  
23 *education or nursing education by a public or private nonprofit*  
24 *university medical school, which is approved by the Medical Board*  
25 *or the Osteopathic Medical Board of California, provided the*  
26 *certified nurse-midwife holds an academic appointment on the*  
27 *faculty of the university, including, but not limited to, the University*  
28 *of California medical schools and hospitals.*

29 (4) *A licensed alternative birth center, as defined in paragraph*  
30 *(4) of subdivision (b) of Section 1204 of the Health and Safety*  
31 *Code, or a nationally accredited alternative birth center owned*  
32 *or operated by a nursing corporation, as defined in Section 2775*  
33 *of the Business and Professions Code.*

34 ~~SEC. 4.~~

35 SEC. 5. Section 2746.5 of the Business and Professions Code  
36 is amended to read:

37 2746.5. (a) The certificate to practice nurse-midwifery  
38 authorizes the holder to manage a full range of primary-health  
39 gynecological and obstetric care services for women from  
40 adolescence to beyond ~~menopause.~~ *menopause, consistent with*

1 *the Core Competencies for Basic Midwifery practice promulgated*  
2 *by the American College of Nurse-Midwives, or its successor*  
3 *national professional organization, as approved by the board.*  
4 These services include, but are not limited to, primary health care,  
5 gynecologic and family planning services, preconception care,  
6 care during pregnancy, childbirth, and the postpartum period,  
7 immediate care of the newborn, and treatment of male partners for  
8 sexually transmitted infections. ~~A certified nurse-midwife is~~  
9 ~~authorized to practice in all settings, including, but not limited to,~~  
10 ~~private practice, clinics, hospitals, birth centers, and homes.~~  
11 *infections, utilizing consultation, collaboration, or referral to*  
12 *appropriate levels of health care services, as indicated.*

13 *(b) A certified nurse-midwife may practice in the following*  
14 *settings:*

15 ~~(b)~~

16 *(1) A licensed clinic as described in Chapter 1 (commencing*  
17 *with Section 1200) of Division 2 of the Health and Safety Code.*

18 *(2) A facility as described in Chapter 2 (commencing with*  
19 *Section 1250) of Division 2 of the Health and Safety Code.*

20 *(3) A facility as described in Chapter 2.5 (commencing with*  
21 *Section 1440) of Division 2 of the Health and Safety Code.*

22 *(4) A medical group practice, including a professional medical*  
23 *corporation, a medical partnership, a medical foundation exempt*  
24 *from licensure pursuant to Section 1206 of the Health and Safety*  
25 *Code, or another lawfully organized group of physicians that*  
26 *delivers, furnishes, or otherwise arranges for or provides health*  
27 *care services.*

28 *(5) A licensed alternative birth center, as described in Section*  
29 *1204 of the Health and Safety Code, or nationally accredited birth*  
30 *center.*

31 *(6) A nursing corporation, as defined in Section 2775 of the*  
32 *Business and Professions Code.*

33 *(7) A home setting.*

34 *(A) Except as provided in subparagraph (B) of this paragraph,*  
35 *a certified nurse-midwife shall assist during pregnancy and*  
36 *childbirth in the home setting only when all of the following*  
37 *conditions apply:*

38 *(i) There is the absence of all of the following:*

39 *(I) Any preexisting maternal disease or condition likely to*  
40 *complicate the pregnancy.*

- 1     (ii) Disease arising from the pregnancy likely to cause  
2     significant maternal and/or fetal compromise.
- 3     (III) Prior caesarean delivery.
- 4     (ii) There is a singleton fetus.
- 5     (iii) There is cephalic presentation at the onset of labor.
- 6     (iv) The gestational age of the fetus is greater than 370/7 weeks  
7     and less than 420/7 completed weeks of pregnancy at the onset of  
8     labor.
- 9     (v) Labor is spontaneous or induced in an outpatient setting.
- 10    (B) If a potential certified nurse-midwife client meets the  
11    conditions specified in clauses (ii) to (v), inclusive, of  
12    subparagraph (A), but fails to meet the conditions specified in  
13    clause (i) of subparagraph (A), and the woman still desires to be  
14    a client of the certified nurse-midwife, the certified nurse-midwife  
15    shall consult with a physician and surgeon trained in obstetrics  
16    and gynecology. A certified nurse-midwife may assist the woman  
17    in pregnancy and childbirth only if a physician and surgeon trained  
18    in obstetrics and gynecology is consulted and the physician and  
19    surgeon who performed the consultation determines that the risk  
20    factors presented by her disease or condition are not likely to  
21    significantly affect the course of pregnancy and childbirth.
- 22    (c) As used in this chapter, the practice of nurse-midwifery  
23    within a health care system provides for consultation, collaboration,  
24    or referral as indicated by the health status of the patient and the  
25    resources and medical personnel available in the setting of care.  
26    ~~When providing peripartum care in out-of-hospital settings, the~~  
27    ~~certified nurse-midwife shall only provide care to low-risk women~~  
28    ~~with uncomplicated singleton-term pregnancies who are expected~~  
29    ~~to have an uncomplicated birth.~~ The practice of nurse-midwifery  
30    care emphasizes informed consent, preventive care, and early  
31    detection and referral of complications to physicians and surgeons.  
32    While practicing in a hospital setting, the certified nurse-midwife  
33    shall collaboratively care for women with more complex health  
34    needs.
- 35    (d) A certified nurse-midwife practicing under subdivision (a)  
36    shall be subject to all credentialing and quality standards held by  
37    the facility in which he or she practices. The peer review body  
38    shall include nurse-midwives as part of the peer review body that  
39    reviews nurse-midwives. The peer review body of that facility shall  
40    impose standards that assure quality and patient safety in their

1 *facility. The standards shall be approved by the relevant governing*  
2 *body unless found by a court to be arbitrary and capricious.*

3 (e)

4 (e) *The practice of nurse-midwifery does not include the*  
5 *assisting of childbirth by any forcible, or mechanical means, nor*  
6 *the performance of any version of those means.*

7 (f) A certified nurse-midwife is not authorized to practice  
8 medicine and surgery by the provisions of this chapter.

9 (d)

10 (g) Any regulations promulgated by a state department that  
11 affect the scope of practice of a certified nurse-midwife shall be  
12 developed in consultation with the board *and the Nurse-Midwifery*  
13 *Advisory Council.*

14 ~~SEC. 5.~~

15 *SEC. 6.* Section 2746.51 of the Business and Professions Code  
16 is amended to read:

17 2746.51. (a) Neither this chapter nor any other law shall be  
18 construed to prohibit a certified nurse-midwife from furnishing or  
19 ordering drugs or devices, including controlled substances  
20 classified in Schedule II, III, IV, or V under the California Uniform  
21 Controlled Substances Act (Division 10 (commencing with Section  
22 11000) of the Health and Safety Code), when the drugs or devices  
23 are furnished or ordered related to the provision of any of the  
24 following:

25 (1) Family planning services, as defined in Section 14503 of  
26 the Welfare and Institutions Code.

27 (2) Routine health care or perinatal care, as defined in  
28 subdivision (d) of Section 123485 of the Health and Safety Code.

29 (3) Care rendered, consistent with the certified nurse-midwife's  
30 educational preparation or for which clinical competency has been  
31 established and maintained, to persons within a facility specified  
32 in subdivision (a), (b), (c), (d), (i), or (j) of Section 1206 of the  
33 Health and Safety Code, a clinic as specified in Section 1204 of  
34 the Health and Safety Code, a general acute care hospital as defined  
35 in subdivision (a) of Section 1250 of the Health and Safety Code,  
36 a licensed birth center as defined in Section 1204.3 of the Health  
37 and Safety Code, or a special hospital specified as a maternity  
38 hospital in subdivision (f) of Section 1250 of the Health and Safety  
39 Code.

1 (4) Care rendered in a home pursuant to subdivision (a) of  
2 Section 2746.5.

3 (b) (1) The furnishing or ordering of drugs or devices by a  
4 certified nurse-midwife is conditional on the issuance by the board  
5 of a number to the applicant who has successfully completed the  
6 requirements of paragraph (2). The number shall be included on  
7 all transmittals of orders for drugs or devices by the certified  
8 nurse-midwife. The board shall maintain a list of the certified  
9 nurse-midwives that it has certified pursuant to this paragraph and  
10 the number it has issued to each one. The board shall make the list  
11 available to the California State Board of Pharmacy upon its  
12 request. Every certified nurse-midwife who is authorized pursuant  
13 to this section to furnish or issue a drug order for a controlled  
14 substance shall register with the United States Drug Enforcement  
15 Administration.

16 (2) The board has certified in accordance with paragraph (1)  
17 that the certified nurse-midwife has satisfactorily completed a  
18 course in pharmacology covering the drugs or devices to be  
19 furnished or ordered under this section. The board shall establish  
20 the requirements for satisfactory completion of this paragraph.

21 (3) Certified nurse-midwives who are certified by the board and  
22 hold an active furnishing number, who are currently authorized to  
23 furnish Schedule II controlled substances, and who are registered  
24 with the United States Drug Enforcement Administration shall  
25 provide documentation of continuing education specific to the use  
26 of Schedule II controlled substances in settings other than a hospital  
27 based on standards developed by the board.

28 (c) Drugs or devices furnished or ordered by a certified  
29 nurse-midwife may include Schedule II controlled substances  
30 under the California Uniform Controlled Substances Act (Division  
31 10 (commencing with Section 11000) of the Health and Safety  
32 Code) when the drugs and devices are furnished or ordered in  
33 accordance with requirements referenced in paragraphs (1) to (3),  
34 inclusive, of subdivision (b). *In a nonhospital setting, a Schedule*  
35 *II controlled substance shall be furnished by a certified*  
36 *nurse-midwife only during labor and delivery and only after a*  
37 *consultation with a physician and surgeon.*

38 (d) Furnishing of drugs or devices by a certified nurse-midwife  
39 means the act of making a pharmaceutical agent or agents available  
40 to the patient.

1 (e) “Drug order” or “order” for purposes of this section means  
2 an order for medication or for a drug or device that is dispensed  
3 to or for an ultimate user, issued by a certified nurse-midwife as  
4 an individual practitioner, within the meaning of Section 1306.03  
5 of Title 21 of the Code of Federal Regulations. Notwithstanding  
6 any other law, (1) a drug order issued pursuant to this section shall  
7 be treated in the same manner as a prescription of a physician; (2)  
8 all references to “prescription” in this code and the Health and  
9 Safety Code shall include drug orders issued by certified  
10 nurse-midwives; and (3) the signature of a certified nurse-midwife  
11 on a drug order issued in accordance with this section shall be  
12 deemed to be the signature of a prescriber for purposes of this code  
13 and the Health and Safety Code.

14 (f) A certified nurse-midwife is authorized to directly procure  
15 supplies and devices, to order, obtain, and administer drugs and  
16 diagnostic tests, to order laboratory and diagnostic testing, and to  
17 receive reports that are necessary to his or her practice as a certified  
18 nurse-midwife and consistent with nurse-midwifery education  
19 preparation.

20 ~~SEC. 6.~~

21 *SEC. 7.* Section 2746.52 of the Business and Professions Code  
22 is amended to read:

23 2746.52. (a) Notwithstanding Section 2746.5, the certificate  
24 to practice nurse-midwifery authorizes the holder to perform and  
25 repair episiotomies, and to repair first-degree and second-degree  
26 lacerations of the perineum, in a licensed acute care hospital, as  
27 defined in subdivision (a) of Section 1250 of the Health and Safety  
28 Code, in a licensed alternate birth center, as defined in paragraph  
29 (4) of subdivision (b) of Section 1204 of the Health and Safety  
30 Code, *or a nationally accredited birth center*, and in a home  
31 pursuant to ~~subdivision (a) paragraph (7) of subdivision (b)~~ of  
32 Section 2746.5.

33 (b) The certified nurse-midwife performing and repairing  
34 first-degree and second-degree lacerations of the perineum shall  
35 do both of the following:

36 (1) Ensure that all complications are referred to a physician and  
37 surgeon immediately.

38 (2) Ensure immediate care of patients who are in need of care  
39 beyond the scope of practice of the certified nurse-midwife, or

1 provide emergency care for times when a physician and surgeon  
2 is not available.

3 ~~SEC. 7.~~

4 *SEC. 8.* Section 2746.6 is added to the Business and Professions  
5 Code, to read:

6 2746.6. A consultative relationship between a certified  
7 nurse-midwife and a physician and surgeon shall not, ~~by-it-self,~~  
8 *itself*, provide the basis for finding a physician and surgeon liable  
9 for any act or omission of the certified nurse-midwife.

10 ~~SEC. 8.~~

11 *SEC. 9.* Section 4061 of the Business and Professions Code is  
12 amended to read:

13 4061. (a) A manufacturer's sales representative shall not  
14 distribute any dangerous drug or dangerous device as a  
15 complimentary sample without the written request of a physician,  
16 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
17 pursuant to Section 3640.7. However, a certified nurse-midwife  
18 who functions pursuant to Section 2746.51, a nurse practitioner  
19 who functions pursuant to a standardized procedure described in  
20 Section 2836.1, or protocol, a physician assistant who functions  
21 pursuant to a protocol described in Section 3502.1, or a  
22 naturopathic doctor who functions pursuant to a standardized  
23 procedure or protocol described in Section 3640.5, may sign for  
24 the request and receipt of complimentary samples of a dangerous  
25 drug or dangerous device that has been identified in the  
26 standardized procedure, protocol, or practice agreement.  
27 Standardized procedures, protocols, and practice agreements shall  
28 include specific approval by a physician. A review process,  
29 consistent with the requirements of Section 2725, 3502.1, or  
30 3640.5, of the complimentary samples requested and received by  
31 a nurse practitioner, certified nurse-midwife, physician assistant,  
32 or naturopathic doctor, shall be defined within the standardized  
33 procedure, protocol, or practice agreement.

34 (b) Each written request shall contain the names and addresses  
35 of the supplier and the requester, the name and quantity of the  
36 specific dangerous drug desired, the name of the certified  
37 nurse-midwife, nurse practitioner, physician assistant, or  
38 naturopathic doctor, if applicable, receiving the samples pursuant  
39 to this section, the date of receipt, and the name and quantity of  
40 the dangerous drugs or dangerous devices provided. These records

1 shall be preserved by the supplier with the records required by  
2 Section 4059.

3 (c) Nothing in this section is intended to expand the scope of  
4 practice of a certified nurse-midwife, nurse practitioner, physician  
5 assistant, or naturopathic doctor.

6 ~~SEC. 9.~~

7 *SEC. 10.* Section 4076 of the Business and Professions Code  
8 is amended to read:

9 4076. (a) A pharmacist shall not dispense any prescription  
10 except in a container that meets the requirements of state and  
11 federal law and is correctly labeled with all of the following:

12 (1) Except when the prescriber or the certified nurse-midwife  
13 who functions pursuant to Section 2746.51, the nurse practitioner  
14 who functions pursuant to a standardized procedure described in  
15 Section 2836.1 or protocol, the physician assistant who functions  
16 pursuant to Section 3502.1, the naturopathic doctor who functions  
17 pursuant to a standardized procedure or protocol described in  
18 Section 3640.5, or the pharmacist who functions pursuant to a  
19 policy, procedure, or protocol pursuant to Section 4052.1, 4052.2,  
20 or 4052.6 orders otherwise, either the manufacturer's trade name  
21 of the drug or the generic name and the name of the manufacturer.  
22 Commonly used abbreviations may be used. Preparations  
23 containing two or more active ingredients may be identified by  
24 the manufacturer's trade name or the commonly used name or the  
25 principal active ingredients.

26 (2) The directions for the use of the drug.

27 (3) The name of the patient or patients.

28 (4) The name of the prescriber or, if applicable, the name of the  
29 certified nurse-midwife who functions pursuant to Section 2746.51,  
30 the nurse practitioner who functions pursuant to a standardized  
31 procedure described in Section 2836.1 or protocol, the physician  
32 assistant who functions pursuant to Section 3502.1, the naturopathic  
33 doctor who functions pursuant to a standardized procedure or  
34 protocol described in Section 3640.5, or the pharmacist who  
35 functions pursuant to a policy, procedure, or protocol pursuant to  
36 Section 4052.1, 4052.2, or 4052.6.

37 (5) The date of issue.

38 (6) The name and address of the pharmacy, and prescription  
39 number or other means of identifying the prescription.

40 (7) The strength of the drug or drugs dispensed.

- 1 (8) The quantity of the drug or drugs dispensed.
- 2 (9) The expiration date of the effectiveness of the drug  
3 dispensed.
- 4 (10) The condition or purpose for which the drug was prescribed  
5 if the condition or purpose is indicated on the prescription.
- 6 (11) (A) Commencing January 1, 2006, the physical description  
7 of the dispensed medication, including its color, shape, and any  
8 identification code that appears on the tablets or capsules, except  
9 as follows:
- 10 (i) Prescriptions dispensed by a veterinarian.
- 11 (ii) An exemption from the requirements of this paragraph shall  
12 be granted to a new drug for the first 120 days that the drug is on  
13 the market and for the 90 days during which the national reference  
14 file has no description on file.
- 15 (iii) Dispensed medications for which no physical description  
16 exists in any commercially available database.
- 17 (B) This paragraph applies to outpatient pharmacies only.
- 18 (C) The information required by this paragraph may be printed  
19 on an auxiliary label that is affixed to the prescription container.
- 20 (D) This paragraph shall not become operative if the board,  
21 prior to January 1, 2006, adopts regulations that mandate the same  
22 labeling requirements set forth in this paragraph.
- 23 (b) If a pharmacist dispenses a prescribed drug by means of a  
24 unit dose medication system, as defined by administrative  
25 regulation, for a patient in a skilled nursing, intermediate care, or  
26 other health care facility, the requirements of this section will be  
27 satisfied if the unit dose medication system contains the  
28 aforementioned information or the information is otherwise readily  
29 available at the time of drug administration.
- 30 (c) If a pharmacist dispenses a dangerous drug or device in a  
31 facility licensed pursuant to Section 1250 of the Health and Safety  
32 Code, it is not necessary to include on individual unit dose  
33 containers for a specific patient, the name of the certified  
34 nurse-midwife who functions pursuant to Section 2746.51, the  
35 nurse practitioner who functions pursuant to a standardized  
36 procedure described in Section 2836.1 or protocol, the physician  
37 assistant who functions pursuant to Section 3502.1, the naturopathic  
38 doctor who functions pursuant to a standardized procedure or  
39 protocol described in Section 3640.5, or the pharmacist who

1 functions pursuant to a policy, procedure, or protocol pursuant to  
2 Section 4052.1, 4052.2, or 4052.6.

3 (d) If a pharmacist dispenses a prescription drug for use in a  
4 facility licensed pursuant to Section 1250 of the Health and Safety  
5 Code, it is not necessary to include the information required in  
6 paragraph (11) of subdivision (a) when the prescription drug is  
7 administered to a patient by a person licensed under the Medical  
8 Practice Act (Chapter 5 (commencing with Section 2000)), the  
9 Nursing Practice Act (Chapter 6 (commencing with Section 2700)),  
10 or the Vocational Nursing Practice Act (Chapter 6.5 (commencing  
11 with Section 2840)), who is acting within his or her scope of  
12 practice.

13 ~~SEC. 10.~~

14 *SEC. 11.* Section 4170 of the Business and Professions Code  
15 is amended to read:

16 4170. (a) A prescriber shall not dispense drugs or dangerous  
17 devices to patients in his or her office or place of practice unless  
18 all of the following conditions are met:

19 (1) The dangerous drugs or dangerous devices are dispensed to  
20 the prescriber's own patient, and the drugs or dangerous devices  
21 are not furnished by a nurse or physician attendant.

22 (2) The dangerous drugs or dangerous devices are necessary in  
23 the treatment of the condition for which the prescriber is attending  
24 the patient.

25 (3) The prescriber does not keep a pharmacy, open shop, or  
26 drugstore, advertised or otherwise, for the retailing of dangerous  
27 drugs, dangerous devices, or poisons.

28 (4) The prescriber fulfills all of the labeling requirements  
29 imposed upon pharmacists by Section 4076, all of the  
30 recordkeeping requirements of this chapter, and all of the packaging  
31 requirements of good pharmaceutical practice, including the use  
32 of childproof containers.

33 (5) The prescriber does not use a dispensing device unless he  
34 or she personally owns the device and the contents of the device,  
35 and personally dispenses the dangerous drugs or dangerous devices  
36 to the patient packaged, labeled, and recorded in accordance with  
37 paragraph (4).

38 (6) The prescriber, prior to dispensing, offers to give a written  
39 prescription to the patient that the patient may elect to have filled  
40 by the prescriber or by any pharmacy.

1 (7) The prescriber provides the patient with written disclosure  
2 that the patient has a choice between obtaining the prescription  
3 from the dispensing prescriber or obtaining the prescription at a  
4 pharmacy of the patient's choice.

5 (8) A certified nurse-midwife who functions pursuant to Section  
6 2746.51, a nurse practitioner who functions pursuant to a  
7 standardized procedure described in Section 2836.1, or protocol,  
8 a physician assistant who functions pursuant to Section 3502.1, or  
9 a naturopathic doctor who functions pursuant to Section 3640.5,  
10 may hand to a patient of the supervising physician and surgeon, *if*  
11 *applicable*, a properly labeled prescription drug prepackaged by  
12 a physician and surgeon, a manufacturer as defined in this chapter,  
13 or a pharmacist.

14 (b) The Medical Board of California, the State Board of  
15 Optometry, the Bureau of Naturopathic Medicine, the Dental Board  
16 of California, the Osteopathic Medical Board of California, the  
17 Board of Registered Nursing, the Veterinary Medical Board, and  
18 the Physician Assistant Committee shall have authority with the  
19 California State Board of Pharmacy to ensure compliance with  
20 this section, and those boards are specifically charged with the  
21 enforcement of this chapter with respect to their respective  
22 licensees.

23 (c) "Prescriber," as used in this section, means a person, who  
24 holds a physician's and surgeon's certificate, a license to practice  
25 optometry, a license to practice naturopathic medicine, a license  
26 to practice dentistry, a license to practice veterinary medicine, or  
27 a certificate to practice podiatry, and who is duly registered by the  
28 Medical Board of California, the State Board of Optometry, the  
29 Bureau of Naturopathic Medicine, the Dental Board of California,  
30 the Veterinary Medical Board, or the Board of Osteopathic  
31 Examiners of this state.

32 ~~SEC. 11.~~

33 *SEC. 12.* No reimbursement is required by this act pursuant to  
34 Section 6 of Article XIII B of the California Constitution because  
35 the only costs that may be incurred by a local agency or school  
36 district will be incurred because this act creates a new crime or  
37 infraction, eliminates a crime or infraction, or changes the penalty  
38 for a crime or infraction, within the meaning of Section 17556 of  
39 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

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AMENDED IN SENATE JUNE 4, 2015

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE MAY 5, 2015

AMENDED IN SENATE APRIL 21, 2015

**SENATE BILL**

**No. 22**

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**Introduced by Senator Roth**

December 1, 2014

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An act to add Chapter 6 (commencing with Section 128590) to Part 3 of Division 107 of the Health and Safety Code, relating to health care, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 22, as amended, Roth. Residency training.

Existing law, the Song-Brown Health Care Workforce Training Act, declares the intent of the Legislature to increase the number of students and residents receiving quality education and training in the specialty of family practice and as primary care physician's assistants and primary care nurse practitioners. Existing law establishes, for this purpose, a state medical contract program with accredited medical schools, programs that train primary care physician's assistants, programs that train primary care nurse practitioners, registered nurses, hospitals, and other health care delivery systems.

Existing law establishes the California Healthcare Workforce Policy Commission and requires the commission, among other things, to identify specific areas of the state where unmet priority needs for primary care family physicians and registered nurses exist, establish standards for family practice training programs, family practice residency programs, primary care physician assistants programs, and

programs that train primary care nurse practitioners, and review and make recommendations to the Director of Statewide Health Planning and Development concerning the funding of those programs that are submitted to the Healthcare Workforce Development Division for participation in the state medical contract program.

This bill would require the Office of Statewide Health Planning and Development to establish a nonprofit public benefit corporation, to be known as the California Medical Residency Training Foundation, to be governed by a board of trustees consisting of a total of 13 members, to be appointed as specified.

The bill would create the Medical Residency Training Fund in the State Treasury, a continuously appropriated fund, and would require the foundation to solicit and accept funds from business, industry, foundations, and other private or public sources for the purpose of establishing and funding new graduate medical residency training programs in specified areas of the state, including medically underserved areas. By creating a continuously appropriated fund, the bill would make an appropriation. The bill would require the Office of Statewide Health Planning and Development, among other responsibilities, to provide technical support and financial management for the foundation, and to enter into contracts with public and private sector institutions and other health agencies and organizations in order to fund and establish residency positions. *The bill would authorize the Governor to include in the annual budget proposal an amount, as he or she deems reasonable, to be appropriated for this purpose. The bill, if the Legislature appropriates money for this purpose, would require the office to hold the funds and distribute them into the fund, upon request of the foundation, in an amount matching the amount deposited into the fund by the foundation. The bill would require money that was appropriated, but that has not been distributed to the fund at the end of each fiscal year, to be returned to the General Fund.*

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. Chapter 6 (commencing with Section 128590)  
2 is added to Part 3 of Division 107 of the Health and Safety Code,  
3 to read:

4

5 CHAPTER 6. CALIFORNIA MEDICAL RESIDENCY TRAINING  
6 FOUNDATION

7

8 128590. As used in this chapter:

9 (a) “Board” means the Board of Trustees of the California  
10 Medical Residency Training Foundation.

11 (b) “Commission” means the California Healthcare Workforce  
12 Policy Commission.

13 (c) “Director” means the Director of Statewide Health Planning  
14 and Development.

15 (d) “Foundation” means the California Medical Residency  
16 Training Foundation.

17 (e) “Fund” means the Medical Residency Training Fund.

18 (f) “Office” means the Office of Statewide Health Planning and  
19 Development.

20 (g) “Primary care” means the medical practice areas of family  
21 medicine, general surgery, internal medicine, obstetrics and  
22 gynecology, pediatrics, psychiatry, and related specialties and  
23 subspecialties as the office deems appropriate.

24 (h) “Residency position” means a graduate medical education  
25 residency position in the field of primary care.

26 128591. (a) (1) The office shall establish a nonprofit public  
27 benefit corporation to be known as the California Medical  
28 Residency Training Foundation.

29 (2) The foundation shall be governed by a board of trustees  
30 consisting of a total of 13 members. Seven members shall be  
31 appointed by the Governor, one member shall be appointed by the  
32 Speaker of the Assembly, one member shall be appointed by the  
33 Senate Committee on Rules, two members of the Medical Board  
34 of California shall be appointed by the Medical Board of California,  
35 and two members of the Osteopathic Medical Board of California  
36 shall be appointed by the Osteopathic Medical Board of California.

37 (3) The members of the foundation board appointed by the  
38 Governor, the Speaker of the Assembly, and the Senate Committee

1 on Rules shall consist of representatives of designated and  
2 nondesignated public hospitals, private hospitals, community  
3 clinics, public and private health insurance providers, the  
4 pharmaceutical industry, associations of health care practitioners,  
5 and other appropriate members of health or related professions.

6 (4) All persons considered for appointment shall have an interest  
7 in increasing the number of medical residencies in the state, an  
8 interest in increasing access to health care in underserved areas of  
9 California, and the ability and desire to solicit funds for the  
10 purposes of this chapter, as determined by the appointing power.

11 (5) The chairperson of the commission shall also be a nonvoting,  
12 ex officio member of the board.

13 (b) The Governor shall appoint the president of the board from  
14 among those members appointed by the Governor, the Speaker of  
15 the Assembly, the Senate Committee on Rules, the Medical Board  
16 of California, and the Osteopathic Medical Board of California.

17 (c) Of the members of the board first appointed by the Governor,  
18 three members shall be appointed to serve a one-year term, three  
19 members shall be appointed to serve a two-year term, and one  
20 member shall be appointed to serve a three-year term.

21 (d) Of the members of the board first appointed by the Speaker  
22 of the Assembly and the Senate Committee on Rules, each member  
23 shall be appointed to serve a three-year term.

24 (e) The members appointed by the Medical Board of California  
25 and the Osteopathic Medical Board of California shall be appointed  
26 to serve a four-year term.

27 (f) Upon the expiration of the initial appointments to the board  
28 by the Governor, the Speaker of the Assembly, the Senate  
29 Committee on Rules, the Medical Board of California, and the  
30 Osteopathic Medical Board of California, each member shall be  
31 appointed to serve a four-year term.

32 (g) The director, after consultation with the president of the  
33 board, may appoint a council of advisers comprised of up to nine  
34 members. The council shall advise the director and the board on  
35 technical matters and programmatic issues related to the  
36 foundation.

37 (h) (1) Members of the board appointed by the Governor, the  
38 Speaker of the Assembly, and the Senate Committee on Rules,  
39 and members of the council shall serve without compensation, but  
40 shall be reimbursed for any actual and necessary expenses incurred

1 in connection with his or her duties as a member of the board or  
2 the council.

3 (2) The members appointed by the Medical Board of California  
4 and the Osteopathic Medical Board of California shall serve  
5 without compensation, but shall be reimbursed by the Medical  
6 Board of California and the Osteopathic Medical Board of  
7 California, respectively, for any actual and necessary expenses  
8 incurred in connection with his or her duties as a member of the  
9 foundation board.

10 (i) Notwithstanding any law relating to incompatible activities,  
11 no member of the foundation board shall be considered to be  
12 engaged in activities inconsistent and incompatible with his or her  
13 duties solely as a result of membership on the Medical Board of  
14 California or the Osteopathic Medical Board of California.

15 (j) The foundation shall be subject to the Nonprofit Public  
16 Benefit Corporation Law (Part 2 (commencing with Section 5110)  
17 of Division 2 of Title 2 of the Corporations Code), except that if  
18 there is a conflict with this chapter and the Nonprofit Public Benefit  
19 Corporation Law (Part 2 (commencing with Section 5110) of  
20 Division 2 of Title 2 of the Corporations Code), this chapter shall  
21 prevail.

22 128592. The foundation shall do the following:

23 (a) Solicit and accept funds from business, industry, foundations,  
24 and other private or public sources for the purpose of establishing  
25 and funding new residency positions in areas of the state described  
26 in subdivision (c).

27 (b) Encourage public and private sector institutions, including  
28 hospitals, colleges, universities, community clinics, and other  
29 health agencies and organizations to identify and provide locations  
30 for the establishment of new residency positions in areas of the  
31 state described in subdivision (c). The foundation shall solicit  
32 proposals for medical residency programs, as described in  
33 subdivision (c), and provide the office a copy of all proposals it  
34 receives.

35 (c) Upon the sufficient solicitation of funds and at the  
36 foundation's discretion, approve proposals and recommend to the  
37 office the establishment of new residency positions. A  
38 recommendation shall include all pertinent information necessary  
39 for the office to enter into the necessary contracts to establish the  
40 residency positions. The foundation shall only approve and

- 1 recommend to the office proposals that would establish residency  
2 positions that will serve *in any of* the following medical service  
3 areas:
- 4 (1) A service area that is designated as a primary care shortage  
5 area by the office.
  - 6 (2) A service area that is designated as a health professional  
7 shortage area for primary care, by either population or geographic  
8 designation, by the Health Resources and Services Administration  
9 of the United States Department of Health and Human Services.
  - 10 (3) A service area that is designated as a medically underserved  
11 area or medically underserved population by the Health Resources  
12 and Services Administration of the United States Department of  
13 Health and Human Services.
- 14 (d) Upon office approval of a recommendation, deposit into the  
15 fund necessary moneys as required to establish and fund the  
16 residency position.
- 17 (e) Recommend to the director that a portion of the funds  
18 solicited from the private sector be used for the administrative  
19 requirements of the foundation.
- 20 (f) Prepare and submit an annual report to the Legislature  
21 documenting the amount of money solicited, the amount of money  
22 deposited from the foundation into the fund, the recommendations  
23 for the location and fields of practice of residency positions, total  
24 expenditures for the year, and prospective fundraising goals.
- 25 128593. The office shall do all of the following:
- 26 (a) Provide technical and staff support to the foundation in  
27 meeting all of its responsibilities.
  - 28 (b) Provide financial management for the foundation.
  - 29 (c) Upon receipt of a recommendation made by the foundation  
30 pursuant to subdivision (c) of Section 128592, approve the  
31 recommendation if the recommendation fulfills the requirements  
32 of subdivision (c) of Section 128592 and the recommendation  
33 fulfills the goals of this chapter. Upon sufficient funds being  
34 available, an approval shall signal the office's intent to establish  
35 the residency position.
  - 36 (d) Establish a uniform process by which the foundation may  
37 solicit proposals from public and private sector institutions,  
38 including hospitals, colleges, universities, community clinics, and  
39 other health agencies and organizations that train primary care  
40 residents. The office shall require that these proposals contain all

1 necessary and pertinent information, including, but not limited to,  
2 all of the following:

- 3 (1) The location of the proposed residency position.
- 4 (2) The medical practice area of the proposed residency position.
- 5 (3) Information that demonstrates the area's need for the  
6 proposed residency position and for additional primary care  
7 practitioners.
- 8 (4) The amount of funding required to establish and operate the  
9 residency position.

10 (e) Enter into contracts with public and private sector  
11 institutions, including hospitals, colleges, universities, community  
12 clinics, and other health agencies and organizations in order to  
13 fund and establish residency positions at, or in association with,  
14 these institutions.

15 (f) Ensure that the residency position has been, or will be,  
16 approved by the Accreditation Council for Graduate Medical  
17 Education.

18 (g) Provide all of the following information to the board:

19 (1) The areas of the state that are deficient in primary care  
20 services.

21 (2) The areas of the state that have the highest number of  
22 Medi-Cal enrollees and persons eligible to enroll in Medi-Cal, by  
23 proportion of population.

24 (3) Other information that the office or board finds relevant to  
25 assist the board in making its recommendations on possible  
26 locations for new residency positions.

27 (h) Monitor the residencies established pursuant to this chapter.

28 (i) (1) Prepare and submit an annual report to the foundation  
29 and the Legislature documenting the amount of money contributed  
30 to the fund by the foundation, the amount of money expended from  
31 the fund, the purposes of those expenditures, the number and  
32 location of residency positions established and funded, and  
33 recommendations for the location of future residency positions.

34 (2) The report pursuant to paragraph (1) shall be made to the  
35 Legislature pursuant to Section 9795 of the Government Code.

36 128594. (a) The Medical Residency Training Fund is hereby  
37 created within the State Treasury.

38 (b) The primary purpose of the fund is to allocate funding for  
39 new residency positions throughout the state. Money in the fund  
40 shall also be used to pay for the cost of administering the goals of

1 the foundation, and for any other purpose authorized by this  
2 chapter.

3 (c) The level of expenditure by the office for the administrative  
4 support of the foundation is subject to review and approval annually  
5 through the ~~State Budget~~ *state budget* process.

6 (d) The office and foundation may solicit and accept public and  
7 private donations to be deposited into the fund. All money in the  
8 fund is continuously appropriated to the office for the purposes of  
9 this chapter. The office shall manage this fund prudently in  
10 accordance with applicable laws.

11 128595. Any regulations the office adopts to implement this  
12 chapter shall be adopted as emergency regulations in accordance  
13 with Section 11346.1 of the Government Code, except that the  
14 regulations shall be exempt from the requirements of subdivisions  
15 (e), (f), and (g) of that section. The regulations shall be deemed to  
16 be emergency regulations for the purposes of Section 11346.1 of  
17 the Government Code.

18 128596. Notwithstanding any other law, the office may exempt  
19 from public disclosure any document in the possession of the office  
20 that pertains to a donation made pursuant to this chapter if the  
21 donor has requested anonymity.

22 128597. (a) *The Governor may include in the annual budget*  
23 *proposal an amount, as he or she deems reasonable, to be*  
24 *appropriated to the office to be used as provided in this chapter.*

25 (b) *If the Legislature appropriates money for purposes of this*  
26 *chapter, the money shall be appropriated to the office, which shall*  
27 *hold the money for distribution to the fund.*

28 (c) *Funds appropriated to the office shall be paid into the fund,*  
29 *upon request of the foundation, in an amount matching the amount*  
30 *deposited into the fund by the foundation for the purposes of this*  
31 *chapter. Any money that was appropriated to the office and that*  
32 *has not been distributed to the fund at the end of each fiscal year*  
33 *shall be returned to the General Fund.*

34 SEC. 2. The Legislature finds and declares that Section 1 of  
35 this act, which adds Chapter 6 (commencing with Section 128590)  
36 to Part 3 of Division 107 of the Health and Safety Code, imposes  
37 a limitation on the public's right of access to the meetings of public  
38 bodies or the writings of public officials and agencies within the  
39 meaning of Section 3 of Article I of the California Constitution.  
40 Pursuant to that constitutional provision, the Legislature makes

1 the following findings to demonstrate the interest protected by this  
2 limitation and the need for protecting that interest:  
3 The need to protect individual privacy of donations made by a  
4 donor to fund new residency positions in underserved areas of the  
5 state outweighs the interest in the public disclosure of that  
6 information.

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AMENDED IN ASSEMBLY JULY 9, 2015  
AMENDED IN ASSEMBLY JULY 7, 2015  
AMENDED IN ASSEMBLY JUNE 23, 2015  
AMENDED IN SENATE APRIL 22, 2015  
AMENDED IN SENATE MARCH 26, 2015

**SENATE BILL**

**No. 323**

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**Introduced by Senator Hernandez**  
(Principal coauthor: Assembly Member Eggman)  
(Coauthor: Assembly Member Mark Stone)

February 23, 2015

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An act to amend Sections 650.01 and 805 of, to amend and renumber Section 2837 of, and to add Section 2837 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 323, as amended, Hernandez. Nurse practitioners: scope of practice.

The Nursing Practice Act provides for the licensure and regulation of nurse practitioners by the Board of Registered Nursing. The act authorizes the implementation of standardized procedures that authorize a nurse practitioner to perform certain acts, including ordering durable medical equipment in accordance with standardized procedures, certifying disability for purposes of unemployment insurance after physical examination and collaboration with a physician and surgeon, and, for an individual receiving home health services or personal care services, approving, signing, modifying, or adding to a plan of treatment

or plan of care after consultation with a physician and surgeon. A violation of those provisions is a crime.

This bill would authorize a nurse practitioner who holds a national certification from a national certifying body recognized by the board to practice without the supervision of a physician and surgeon, if the nurse practitioner meets existing requirements for nurse practitioners and practices in one of certain specified settings. The bill would prohibit entities described in those specified settings from interfering with, controlling, or otherwise directing the professional judgment of such a nurse practitioner, as specified, and would authorize such a nurse practitioner, in addition to any other practice authorized in statute or regulation, to perform specified acts, including the acts described above, without reference to standardized procedures or the specific need for the supervision of a physician and surgeon. The bill, instead, would require a nurse practitioner to refer a patient to a physician and surgeon or other licensed health care provider if a situation or condition of the patient is beyond the scope of the nurse practitioner's education and training. The bill would require a nurse practitioner practicing under these provisions to maintain professional liability insurance appropriate for the practice setting. By imposing new requirements on nurse practitioners, the violation of which would be a crime, this bill would impose a state-mandated local program.

Existing law prohibits a licensee, as defined, from referring a person for laboratory, diagnostic, nuclear medicine, radiation oncology, physical therapy, physical rehabilitation, psychometric testing, home infusion therapy, or diagnostic imaging goods or services if the licensee or his or her immediate family has a financial interest with the person or entity that receives the referral, and makes a violation of that prohibition punishable as a misdemeanor. Under existing law, the Medical Board of California is required to review the facts and circumstances of any conviction for violating the prohibition, and to take appropriate disciplinary action if the licensee has committed unprofessional conduct.

This bill would include a nurse practitioner, as specified, under the definition of a licensee, which would expand the scope of an existing crime and therefore impose a state-mandated local program. The bill would also require the Board of Registered Nursing to review the facts and circumstances of any conviction of a nurse practitioner, as specified, for violating that prohibition, and would require the board to take appropriate disciplinary action if the nurse practitioner has committed unprofessional conduct.

Existing law provides for the professional review of specified healing arts licentiates through a peer review process. Existing law defines the term “licentiate” for those purposes to include, among others, a physician and surgeon.

This bill would include a nurse practitioner, as specified, under the definition of licentiate, and would require the Board of Registered Nursing to disclose reports, as specified.

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

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) Nurse practitioners are a longstanding, vital, safe, effective,  
4 and important part of the state’s health care delivery system. They  
5 are especially important given California’s shortage of physicians,  
6 with just 16 of 58 counties having the federally recommended ratio  
7 of physicians to residents.

8 (b) Nurse practitioners will play an especially important part in  
9 the implementation of the federal Patient Protection and Affordable  
10 Care Act (Public Law 111-148), which will bring an estimated  
11 five million more Californians into the health care delivery system,  
12 because they will provide for greater access to primary care  
13 services in all areas of the state. This is particularly true for patients  
14 in medically underserved urban and rural communities.

15 (c) *In the interest of providing patients with comprehensive care*  
16 *and consistent with the spirit of the federal Patient Protection and*  
17 *Affordable Care Act, this measure is supportive of the national*  
18 *health care movement towards integrated and team-based health*  
19 *care models.*

20 (e)

21 (d) Due to the excellent safety and efficacy record that nurse  
22 practitioners have earned, the Institute of Medicine of the National  
23 Academies has recommended full practice authority for nurse

1 practitioners. Currently, 20 states allow nurse practitioners to  
2 practice to the full extent of their training and education.

3 (d)

4 (e) Furthermore, nurse practitioners will assist in addressing the  
5 primary care provider shortage by removing delays in the provision  
6 of care that are created when dated regulations require a physician's  
7 signature or protocol before a patient can initiate treatment or  
8 obtain diagnostic tests that are ordered by a nurse practitioner.

9 SEC. 2. Section 650.01 of the Business and Professions Code  
10 is amended to read:

11 650.01. (a) Notwithstanding Section 650, or any other  
12 provision of law, it is unlawful for a licensee to refer a person for  
13 laboratory, diagnostic nuclear medicine, radiation oncology,  
14 physical therapy, physical rehabilitation, psychometric testing,  
15 home infusion therapy, or diagnostic imaging goods or services if  
16 the licensee or his or her immediate family has a financial interest  
17 with the person or in the entity that receives the referral.

18 (b) For purposes of this section and Section 650.02, the  
19 following shall apply:

20 (1) "Diagnostic imaging" includes, but is not limited to, all  
21 X-ray, computed axial tomography, magnetic resonance imaging  
22 nuclear medicine, positron emission tomography, mammography,  
23 and ultrasound goods and services.

24 (2) A "financial interest" includes, but is not limited to, any  
25 type of ownership interest, debt, loan, lease, compensation,  
26 remuneration, discount, rebate, refund, dividend, distribution,  
27 subsidy, or other form of direct or indirect payment, whether in  
28 money or otherwise, between a licensee and a person or entity to  
29 whom the licensee refers a person for a good or service specified  
30 in subdivision (a). A financial interest also exists if there is an  
31 indirect financial relationship between a licensee and the referral  
32 recipient including, but not limited to, an arrangement whereby a  
33 licensee has an ownership interest in an entity that leases property  
34 to the referral recipient. Any financial interest transferred by a  
35 licensee to any person or entity or otherwise established in any  
36 person or entity for the purpose of avoiding the prohibition of this  
37 section shall be deemed a financial interest of the licensee. For  
38 purposes of this paragraph, "direct or indirect payment" shall not  
39 include a royalty or consulting fee received by a physician and  
40 surgeon who has completed a recognized residency training

1 program in orthopedics from a manufacturer or distributor as a  
2 result of his or her research and development of medical devices  
3 and techniques for that manufacturer or distributor. For purposes  
4 of this paragraph, “consulting fees” means those fees paid by the  
5 manufacturer or distributor to a physician and surgeon who has  
6 completed a recognized residency training program in orthopedics  
7 only for his or her ongoing services in making refinements to his  
8 or her medical devices or techniques marketed or distributed by  
9 the manufacturer or distributor, if the manufacturer or distributor  
10 does not own or control the facility to which the physician is  
11 referring the patient. A “financial interest” shall not include the  
12 receipt of capitation payments or other fixed amounts that are  
13 prepaid in exchange for a promise of a licensee to provide specified  
14 health care services to specified beneficiaries. A “financial interest”  
15 shall not include the receipt of remuneration by a medical director  
16 of a hospice, as defined in Section 1746 of the Health and Safety  
17 Code, for specified services if the arrangement is set out in writing,  
18 and specifies all services to be provided by the medical director,  
19 the term of the arrangement is for at least one year, and the  
20 compensation to be paid over the term of the arrangement is set  
21 in advance, does not exceed fair market value, and is not  
22 determined in a manner that takes into account the volume or value  
23 of any referrals or other business generated between parties.

24 (3) For the purposes of this section, “immediate family” includes  
25 the spouse and children of the licensee, the parents of the licensee,  
26 and the spouses of the children of the licensee.

27 (4) “Licensee” means a physician as defined in Section 3209.3  
28 of the Labor Code, and a nurse practitioner practicing pursuant to  
29 Section 2837.

30 (5) “Licensee’s office” means either of the following:

31 (A) An office of a licensee in solo practice.

32 (B) An office in which services or goods are personally provided  
33 by the licensee or by employees in that office, or personally by  
34 independent contractors in that office, in accordance with other  
35 provisions of law. Employees and independent contractors shall  
36 be licensed or certified when licensure or certification is required  
37 by law.

38 (6) “Office of a group practice” means an office or offices in  
39 which two or more licensees are legally organized as a partnership,  
40 professional corporation, or not-for-profit corporation, licensed

1 pursuant to subdivision (a) of Section 1204 of the Health and Safety  
2 Code, for which all of the following apply:

3 (A) Each licensee who is a member of the group provides  
4 substantially the full range of services that the licensee routinely  
5 provides, including medical care, consultation, diagnosis, or  
6 treatment through the joint use of shared office space, facilities,  
7 equipment, and personnel.

8 (B) Substantially all of the services of the licensees who are  
9 members of the group are provided through the group and are  
10 billed in the name of the group and amounts so received are treated  
11 as receipts of the group, except in the case of a multispecialty  
12 clinic, as defined in subdivision (I) of Section 1206 of the Health  
13 and Safety Code, physician services are billed in the name of the  
14 multispecialty clinic and amounts so received are treated as receipts  
15 of the multispecialty clinic.

16 (C) The overhead expenses of, and the income from, the practice  
17 are distributed in accordance with methods previously determined  
18 by members of the group.

19 (c) It is unlawful for a licensee to enter into an arrangement or  
20 scheme, such as a cross-referral arrangement, that the licensee  
21 knows, or should know, has a principal purpose of ensuring  
22 referrals by the licensee to a particular entity that, if the licensee  
23 directly made referrals to that entity, would be in violation of this  
24 section.

25 (d) No claim for payment shall be presented by an entity to any  
26 individual, third party payer, or other entity for a good or service  
27 furnished pursuant to a referral prohibited under this section.

28 (e) No insurer, self-insurer, or other payer shall pay a charge or  
29 lien for any good or service resulting from a referral in violation  
30 of this section.

31 (f) A licensee who refers a person to, or seeks consultation from,  
32 an organization in which the licensee has a financial interest, other  
33 than as prohibited by subdivision (a), shall disclose the financial  
34 interest to the patient, or the parent or legal guardian of the patient,  
35 in writing, at the time of the referral or request for consultation.

36 (1) If a referral, billing, or other solicitation is between one or  
37 more licensees who contract with a multispecialty clinic pursuant  
38 to subdivision (I) of Section 1206 of the Health and Safety Code  
39 or who conduct their practice as members of the same professional  
40 corporation or partnership, and the services are rendered on the

1 same physical premises, or under the same professional corporation  
2 or partnership name, the requirements of this subdivision may be  
3 met by posting a conspicuous disclosure statement at the  
4 registration area or by providing a patient with a written disclosure  
5 statement.

6 (2) If a licensee is under contract with the Department of  
7 Corrections or the California Youth Authority, and the patient is  
8 an inmate or parolee of either respective department, the  
9 requirements of this subdivision shall be satisfied by disclosing  
10 financial interests to either the Department of Corrections or the  
11 California Youth Authority.

12 (g) A violation of subdivision (a) shall be a misdemeanor. In  
13 the case of a licensee who is a physician, the Medical Board of  
14 California shall review the facts and circumstances of any  
15 conviction pursuant to subdivision (a) and take appropriate  
16 disciplinary action if the licensee has committed unprofessional  
17 conduct. In the case of a licensee who is a nurse practitioner  
18 functioning pursuant to Section 2837, the Board of Registered  
19 Nursing shall review the facts and circumstances of any conviction  
20 pursuant to subdivision (a) and take appropriate disciplinary action  
21 if the licensee has committed unprofessional conduct. Violations  
22 of this section may also be subject to civil penalties of up to five  
23 thousand dollars (\$5,000) for each offense, which may be enforced  
24 by the Insurance Commissioner, Attorney General, or a district  
25 attorney. A violation of subdivision (c), (d), or (e) is a public  
26 offense and is punishable upon conviction by a fine not exceeding  
27 fifteen thousand dollars (\$15,000) for each violation and  
28 appropriate disciplinary action, including revocation of professional  
29 licensure, by the Medical Board of California, the Board of  
30 Registered Nursing, or other appropriate governmental agency.

31 (h) This section shall not apply to referrals for services that are  
32 described in and covered by Sections 139.3 and 139.31 of the  
33 Labor Code.

34 (i) This section shall become operative on January 1, 1995.

35 SEC. 3. Section 805 of the Business and Professions Code is  
36 amended to read:

37 805. (a) As used in this section, the following terms have the  
38 following definitions:

39 (1) (A) "Peer review" means both of the following:

- 1 (i) A process in which a peer review body reviews the basic  
2 qualifications, staff privileges, employment, medical outcomes,  
3 or professional conduct of licentiates to make recommendations  
4 for quality improvement and education, if necessary, in order to  
5 do either or both of the following:
- 6 (I) Determine whether a licentiate may practice or continue to  
7 practice in a health care facility, clinic, or other setting providing  
8 medical services, and, if so, to determine the parameters of that  
9 practice.
- 10 (II) Assess and improve the quality of care rendered in a health  
11 care facility, clinic, or other setting providing medical services.
- 12 (ii) Any other activities of a peer review body as specified in  
13 subparagraph (B).
- 14 (B) “Peer review body” includes:
- 15 (i) A medical or professional staff of any health care facility or  
16 clinic licensed under Division 2 (commencing with Section 1200)  
17 of the Health and Safety Code or of a facility certified to participate  
18 in the federal Medicare program as an ambulatory surgical center.
- 19 (ii) A health care service plan licensed under Chapter 2.2  
20 (commencing with Section 1340) of Division 2 of the Health and  
21 Safety Code or a disability insurer that contracts with licentiates  
22 to provide services at alternative rates of payment pursuant to  
23 Section 10133 of the Insurance Code.
- 24 (iii) Any medical, psychological, marriage and family therapy,  
25 social work, professional clinical counselor, dental, or podiatric  
26 professional society having as members at least 25 percent of the  
27 eligible licentiates in the area in which it functions (which must  
28 include at least one county), which is not organized for profit and  
29 which has been determined to be exempt from taxes pursuant to  
30 Section 23701 of the Revenue and Taxation Code.
- 31 (iv) A committee organized by any entity consisting of or  
32 employing more than 25 licentiates of the same class that functions  
33 for the purpose of reviewing the quality of professional care  
34 provided by members or employees of that entity.
- 35 (2) “Licentiate” means a physician and surgeon, doctor of  
36 podiatric medicine, clinical psychologist, marriage and family  
37 therapist, clinical social worker, professional clinical counselor,  
38 dentist, physician assistant, or nurse practitioner practicing pursuant  
39 to Section 2837. “Licentiate” also includes a person authorized to  
40 practice medicine pursuant to Section 2113 or 2168.

1 (3) “Agency” means the relevant state licensing agency having  
2 regulatory jurisdiction over the licentiates listed in paragraph (2).

3 (4) “Staff privileges” means any arrangement under which a  
4 licentiate is allowed to practice in or provide care for patients in  
5 a health facility. Those arrangements shall include, but are not  
6 limited to, full staff privileges, active staff privileges, limited staff  
7 privileges, auxiliary staff privileges, provisional staff privileges,  
8 temporary staff privileges, courtesy staff privileges, locum tenens  
9 arrangements, and contractual arrangements to provide professional  
10 services, including, but not limited to, arrangements to provide  
11 outpatient services.

12 (5) “Denial or termination of staff privileges, membership, or  
13 employment” includes failure or refusal to renew a contract or to  
14 renew, extend, or reestablish any staff privileges, if the action is  
15 based on medical disciplinary cause or reason.

16 (6) “Medical disciplinary cause or reason” means that aspect  
17 of a licentiate’s competence or professional conduct that is  
18 reasonably likely to be detrimental to patient safety or to the  
19 delivery of patient care.

20 (7) “805 report” means the written report required under  
21 subdivision (b).

22 (b) The chief of staff of a medical or professional staff or other  
23 chief executive officer, medical director, or administrator of any  
24 peer review body and the chief executive officer or administrator  
25 of any licensed health care facility or clinic shall file an 805 report  
26 with the relevant agency within 15 days after the effective date on  
27 which any of the following occur as a result of an action of a peer  
28 review body:

29 (1) A licentiate’s application for staff privileges or membership  
30 is denied or rejected for a medical disciplinary cause or reason.

31 (2) A licentiate’s membership, staff privileges, or employment  
32 is terminated or revoked for a medical disciplinary cause or reason.

33 (3) Restrictions are imposed, or voluntarily accepted, on staff  
34 privileges, membership, or employment for a cumulative total of  
35 30 days or more for any 12-month period, for a medical disciplinary  
36 cause or reason.

37 (c) If a licentiate takes any action listed in paragraph (1), (2),  
38 or (3) after receiving notice of a pending investigation initiated  
39 for a medical disciplinary cause or reason or after receiving notice  
40 that his or her application for membership or staff privileges is

1 denied or will be denied for a medical disciplinary cause or reason,  
2 the chief of staff of a medical or professional staff or other chief  
3 executive officer, medical director, or administrator of any peer  
4 review body and the chief executive officer or administrator of  
5 any licensed health care facility or clinic where the licentiate is  
6 employed or has staff privileges or membership or where the  
7 licentiate applied for staff privileges or membership, or sought the  
8 renewal thereof, shall file an 805 report with the relevant agency  
9 within 15 days after the licentiate takes the action.

10 (1) Resigns or takes a leave of absence from membership, staff  
11 privileges, or employment.

12 (2) Withdraws or abandons his or her application for staff  
13 privileges or membership.

14 (3) Withdraws or abandons his or her request for renewal of  
15 staff privileges or membership.

16 (d) For purposes of filing an 805 report, the signature of at least  
17 one of the individuals indicated in subdivision (b) or (c) on the  
18 completed form shall constitute compliance with the requirement  
19 to file the report.

20 (e) An 805 report shall also be filed within 15 days following  
21 the imposition of summary suspension of staff privileges,  
22 membership, or employment, if the summary suspension remains  
23 in effect for a period in excess of 14 days.

24 (f) A copy of the 805 report, and a notice advising the licentiate  
25 of his or her right to submit additional statements or other  
26 information, electronically or otherwise, pursuant to Section 800,  
27 shall be sent by the peer review body to the licentiate named in  
28 the report. The notice shall also advise the licentiate that  
29 information submitted electronically will be publicly disclosed to  
30 those who request the information.

31 The information to be reported in an 805 report shall include the  
32 name and license number of the licentiate involved, a description  
33 of the facts and circumstances of the medical disciplinary cause  
34 or reason, and any other relevant information deemed appropriate  
35 by the reporter.

36 A supplemental report shall also be made within 30 days  
37 following the date the licentiate is deemed to have satisfied any  
38 terms, conditions, or sanctions imposed as disciplinary action by  
39 the reporting peer review body. In performing its dissemination  
40 functions required by Section 805.5, the agency shall include a

1 copy of a supplemental report, if any, whenever it furnishes a copy  
2 of the original 805 report.

3 If another peer review body is required to file an 805 report, a  
4 health care service plan is not required to file a separate report  
5 with respect to action attributable to the same medical disciplinary  
6 cause or reason. If the Medical Board of California, the Board of  
7 Registered Nursing, or a licensing agency of another state revokes  
8 or suspends, without a stay, the license of a physician and surgeon,  
9 a peer review body is not required to file an 805 report when it  
10 takes an action as a result of the revocation or suspension.

11 (g) The reporting required by this section shall not act as a  
12 waiver of confidentiality of medical records and committee reports.  
13 The information reported or disclosed shall be kept confidential  
14 except as provided in subdivision (c) of Section 800 and Sections  
15 803.1 and 2027, provided that a copy of the report containing the  
16 information required by this section may be disclosed as required  
17 by Section 805.5 with respect to reports received on or after  
18 January 1, 1976.

19 (h) The Medical Board of California, the Osteopathic Medical  
20 Board of California, the Board of Registered Nursing, and the  
21 Dental Board of California shall disclose reports as required by  
22 Section 805.5.

23 (i) An 805 report shall be maintained electronically by an agency  
24 for dissemination purposes for a period of three years after receipt.

25 (j) No person shall incur any civil or criminal liability as the  
26 result of making any report required by this section.

27 (k) A willful failure to file an 805 report by any person who is  
28 designated or otherwise required by law to file an 805 report is  
29 punishable by a fine not to exceed one hundred thousand dollars  
30 (\$100,000) per violation. The fine may be imposed in any civil or  
31 administrative action or proceeding brought by or on behalf of any  
32 agency having regulatory jurisdiction over the person regarding  
33 whom the report was or should have been filed. If the person who  
34 is designated or otherwise required to file an 805 report is a  
35 licensed physician and surgeon, the action or proceeding shall be  
36 brought by the Medical Board of California. The fine shall be paid  
37 to that agency but not expended until appropriated by the  
38 Legislature. A violation of this subdivision may constitute  
39 unprofessional conduct by the licentiate. A person who is alleged  
40 to have violated this subdivision may assert any defense available

1 at law. As used in this subdivision, “willful” means a voluntary  
2 and intentional violation of a known legal duty.

3 (l) Except as otherwise provided in subdivision (k), any failure  
4 by the administrator of any peer review body, the chief executive  
5 officer or administrator of any health care facility, or any person  
6 who is designated or otherwise required by law to file an 805  
7 report, shall be punishable by a fine that under no circumstances  
8 shall exceed fifty thousand dollars (\$50,000) per violation. The  
9 fine may be imposed in any civil or administrative action or  
10 proceeding brought by or on behalf of any agency having  
11 regulatory jurisdiction over the person regarding whom the report  
12 was or should have been filed. If the person who is designated or  
13 otherwise required to file an 805 report is a licensed physician and  
14 surgeon, the action or proceeding shall be brought by the Medical  
15 Board of California. The fine shall be paid to that agency but not  
16 expended until appropriated by the Legislature. The amount of the  
17 fine imposed, not exceeding fifty thousand dollars (\$50,000) per  
18 violation, shall be proportional to the severity of the failure to  
19 report and shall differ based upon written findings, including  
20 whether the failure to file caused harm to a patient or created a  
21 risk to patient safety; whether the administrator of any peer review  
22 body, the chief executive officer or administrator of any health  
23 care facility, or any person who is designated or otherwise required  
24 by law to file an 805 report exercised due diligence despite the  
25 failure to file or whether they knew or should have known that an  
26 805 report would not be filed; and whether there has been a prior  
27 failure to file an 805 report. The amount of the fine imposed may  
28 also differ based on whether a health care facility is a small or  
29 rural hospital as defined in Section 124840 of the Health and Safety  
30 Code.

31 (m) A health care service plan licensed under Chapter 2.2  
32 (commencing with Section 1340) of Division 2 of the Health and  
33 Safety Code or a disability insurer that negotiates and enters into  
34 a contract with licentiates to provide services at alternative rates  
35 of payment pursuant to Section 10133 of the Insurance Code, when  
36 determining participation with the plan or insurer, shall evaluate,  
37 on a case-by-case basis, licentiates who are the subject of an 805  
38 report, and not automatically exclude or deselect these licentiates.

39 SEC. 4. Section 2837 of the Business and Professions Code is  
40 amended and renumbered to read:

1 2837.5. Nothing in this article shall be construed to limit the  
2 current scope of practice of a registered nurse authorized pursuant  
3 to this chapter.

4 SEC. 5. Section 2837 is added to the Business and Professions  
5 Code, to read:

6 2837. (a) Notwithstanding any other law, a nurse practitioner  
7 who holds a national certification from a national certifying body  
8 recognized by the board may practice under this section without  
9 supervision of a physician and surgeon, if the nurse practitioner  
10 meets all the requirements of this article and practices in one of  
11 the following:

12 (1) A clinic as described in Chapter 1 (commencing with Section  
13 1200) of Division 2 of the Health and Safety Code.

14 (2) A facility as described in Chapter 2 (commencing with  
15 Section 1250) of Division 2 of the Health and Safety Code.

16 (3) A facility as described in Chapter 2.5 (commencing with  
17 Section 1440) of Division 2 of the Health and Safety Code.

18 (4) An accountable care organization, as defined in Section  
19 3022 of the federal Patient Protection and Affordable Care Act  
20 (Public Law 111-148).

21 (5) A group practice, including a professional medical  
22 corporation, as defined in Section 2406, another form of  
23 corporation controlled by physicians and surgeons, a medical  
24 partnership, a medical foundation exempt from licensure, or another  
25 lawfully organized group of physicians that delivers, furnishes, or  
26 otherwise arranges for or provides health care services.

27 (6) A medical group, independent practice association, or any  
28 similar association.

29 (b) An entity described in subdivision (a) shall not interfere  
30 with, control, or otherwise direct the professional judgment of a  
31 nurse practitioner functioning pursuant to this section in a manner  
32 prohibited by Section 2400 or any other law.

33 (c) Notwithstanding any other law, in addition to any other  
34 practice authorized in statute or regulation, a nurse practitioner  
35 who meets the qualifications of subdivision (a) may do any of the  
36 following without physician and surgeon supervision:

37 (1) Order durable medical equipment. Notwithstanding that  
38 authority, this paragraph shall not operate to limit the ability of a  
39 third-party payer to require prior approval.

1 (2) After performance of a physical examination by the nurse  
2 practitioner and collaboration, if necessary, with a physician and  
3 surgeon, certify disability pursuant to Section 2708 of the  
4 Unemployment Insurance Code.

5 (3) For individuals receiving home health services or personal  
6 care services, after consultation, if necessary, with the treating  
7 physician and surgeon, approve, sign, modify, or add to a plan of  
8 treatment or plan of care.

9 (4) Assess patients, synthesize and analyze data, and apply  
10 principles of health care.

11 (5) Manage the physical and psychosocial health status of  
12 patients.

13 (6) Analyze multiple sources of data, identify a differential  
14 diagnosis, and select, implement, and evaluate appropriate  
15 treatment.

16 (7) Establish a diagnosis by client history, physical examination,  
17 and other criteria, consistent with this section, for a plan of care.

18 (8) Order, furnish, prescribe, or procure drugs or devices.

19 (9) Delegate tasks to a medical assistant pursuant to Sections  
20 1206.5, 2069, 2070, and 2071, and Article 2 of Chapter 3 of  
21 Division 13 of Title 16 of the California Code of Regulations.

22 (10) Order hospice care, as appropriate.

23 (11) Order diagnostic procedures and utilize the findings or  
24 results in treating the patient.

25 (12) Perform additional acts that require education and training  
26 and that are recognized by the nursing profession as appropriate  
27 to be performed by a nurse practitioner.

28 (d) A nurse practitioner shall refer a patient to a physician and  
29 surgeon or other licensed health care provider if a situation or  
30 condition of the patient is beyond the scope of the education and  
31 training of the nurse practitioner.

32 (e) A nurse practitioner practicing under this section shall  
33 maintain professional liability insurance appropriate for the practice  
34 setting.

35 SEC. 6. No reimbursement is required by this act pursuant to  
36 Section 6 of Article XIII B of the California Constitution because  
37 the only costs that may be incurred by a local agency or school  
38 district will be incurred because this act creates a new crime or  
39 infraction, eliminates a crime or infraction, or changes the penalty  
40 for a crime or infraction, within the meaning of Section 17556 of

1 the Government Code, or changes the definition of a crime within  
2 the meaning of Section 6 of Article XIII B of the California  
3 Constitution.

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AMENDED IN SENATE APRIL 30, 2015

AMENDED IN SENATE APRIL 16, 2015

**SENATE BILL**

**No. 482**

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**Introduced by Senator Lara**

February 26, 2015

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An act to add Section 11165.4 to the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 482, as amended, Lara. Controlled substances: CURES database.

Existing law classifies certain controlled substances into designated schedules. Existing law requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances. Existing law requires dispensing pharmacies and clinics to report specified information for each prescription of a Schedule II, Schedule III, or Schedule IV controlled substance to the department.

This bill would require all prescribers, as defined, prescribing a Schedule II or Schedule III controlled substance, ~~and all dispensers, as defined, dispensing a Schedule II or Schedule III controlled substance,~~ to consult a patient's electronic history in the CURES database before prescribing ~~or dispensing~~ the controlled substance to the patient for the first time. The bill would also require the prescriber to consult the CURES database at least annually when the prescribed controlled substance remains part of the patient's treatment. The bill would prohibit prescribing an additional Schedule II or Schedule III controlled

substance to a patient with an existing prescription until the prescriber determines that there is a legitimate need for the controlled substance.

The bill would make the failure to consult a patient’s electronic history in the CURES database a cause for disciplinary action by the prescriber’s or dispenser’s licensing board and would require the respective licensing boards *licensing boards* to notify all licensees *prescribers* authorized to prescribe or dispense controlled substances of these requirements. The bill would provide that a prescriber or dispenser is not in violation of these requirements during any time that the CURES database is suspended or not accessible, or during any time that the Internet is not operational. The bill would make its provisions operative upon the Department of Justice’s certification that the CURES database is ready for statewide use.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

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

- 1 SECTION 1. Section 11165.4 is added to the Health and Safety
- 2 Code, to read:
- 3 11165.4. (a) A prescriber shall access and consult the CURES
- 4 database for the electronic history of controlled substances
- 5 dispensed to a patient under his or her care before prescribing a
- 6 Schedule II or Schedule III controlled substance for the first time
- 7 to that patient and at least annually when that prescribed controlled
- 8 substance remains part of his or her treatment. If the patient has
- 9 an existing prescription for a Schedule II or Schedule III controlled
- 10 substance, the prescriber shall not prescribe an additional controlled
- 11 substance until the prescriber determines that there is a legitimate
- 12 need for that controlled substance.
- 13 ~~(b) A dispenser shall access and consult the CURES database~~
- 14 ~~for the electronic history of controlled substances dispensed to a~~
- 15 ~~patient under his or her care before dispensing a Schedule II or~~
- 16 ~~Schedule III controlled substance for the first time to that patient.~~
- 17 ~~If the patient has an existing prescription for a Schedule II or~~
- 18 ~~Schedule III controlled substance, the dispenser shall not dispense~~
- 19 ~~an additional controlled substance until the dispenser checks the~~
- 20 ~~CURES database.~~
- 21 (c)

1 (b) Failure to consult a patient's electronic history as required  
2 by subdivision (a) ~~or (b)~~ is cause for disciplinary action by the  
3 ~~respective licensing board of the prescriber or dispenser~~  
4 *prescriber's licensing board*. The licensing boards of all prescribers  
5 ~~and dispensers~~ authorized to write or issue prescriptions for  
6 controlled substances shall notify these licensees of the  
7 requirements of this section.

8 (d)

9 (c) Notwithstanding any other law, a prescriber ~~or dispenser~~ is  
10 not in violation of this section during any period of time in which  
11 the CURES database is suspended or not accessible or any period  
12 of time in which the Internet is not operational.

13 (e)

14 (d) This section shall not become operative until the Department  
15 of Justice certifies that the CURES database is ready for statewide  
16 use.

17 (f)

18 (e) For purposes of this section, ~~the following terms shall have~~  
19 ~~the following meanings:~~ "prescriber" means a health care  
20 practitioner who is authorized to write or issue prescriptions under  
21 Section 11150, excluding veterinarians.

22 (1) "Dispenser" means a person who is authorized to dispense  
23 a controlled substance under Section 11011.

24 (2) "Prescriber" means a health care practitioner who is  
25 authorized to write or issue prescriptions under Section 11150;  
26 excluding veterinarians.

27 (g)

28 (f) A violation of this section shall not be subject to the  
29 provisions of Section 11374.

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JULY 7, 2015

AMENDED IN SENATE APRIL 16, 2015

AMENDED IN SENATE APRIL 6, 2015

**SENATE BILL**

**No. 538**

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**Introduced by Senator Block**  
**(Coauthor: Senator Hueso)**  
*(Coauthor: Assembly Member Nazarian)*

February 26, 2015

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An act to amend Sections 3640 and 3640.5 of the Business and Professions Code, relating to naturopathic doctors.

LEGISLATIVE COUNSEL'S DIGEST

SB 538, as amended, Block. Naturopathic doctors.

(1) Existing law, the Naturopathic Doctors Act, provides for the licensure and regulation of naturopathic doctors by the Naturopathic Medicine Committee in the Osteopathic Medical Board of California. Existing law authorizes a naturopathic doctor to perform certain tasks, including physical and laboratory examinations for diagnostic purposes and to order diagnostic imaging studies, consistent with naturopathic training as determined by the committee. Under the act, a naturopathic doctor is authorized to dispense, administer, order, prescribe, furnish, or perform certain things, including health education and health counseling.

This bill would, instead, authorize a naturopathic doctor to perform certain tasks, consistent with the practice of naturopathic medicine, and would additionally authorize a naturopathic doctor to dispense, administer, order, prescribe, provide, or ~~furnish~~, *furnish* devices and

durable medical equipment consistent with the naturopathic training as determined by the committee.

(2) Existing law, the California Uniform Controlled Substances Act, classifies controlled substances into 5 designated schedules, with the most restrictive limitations generally placed on controlled substances classified in Schedule I, and the least restrictive limitation generally placed on controlled substances classified in Schedule V.

Existing law states that nothing in the Naturopathic Doctors Act or any other law shall be construed to prohibit a naturopathic doctor from furnishing or ordering drugs when, among other requirements, the naturopathic doctor is functioning pursuant to standardized procedure, as defined, or protocol developed and approved, as specified, and the Naturopathic Medicine Committee has certified that the naturopathic doctor has satisfactorily completed adequate coursework in pharmacology covering the drugs to be furnished or ordered. Existing law requires that the furnishing or ordering of drugs by a naturopathic doctor occur under the supervision of a physician and surgeon. Existing law also authorizes a naturopathic doctor to furnish or order controlled substances classified in Schedule III, IV, or V of the California Uniform Controlled Substances Act, but limits this authorization to those drugs agreed upon by the naturopathic doctor and physician and surgeon as specified in the standardized procedure. Existing law further requires that drugs classified in Schedule III be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician.

This bill would instead provide that, except as specified, nothing in the provisions governing naturopathic doctors or any other law shall be construed to prohibit a naturopathic doctor from administering, furnishing, ordering, or prescribing drugs and would make a conforming change to the scope of the certification duties of the Naturopathic Medicine Committee. The bill would delete certain provisions described above restricting the authority of naturopathic doctors to furnish or order drugs, including the requirements that the naturopathic doctor function pursuant to a standardized procedure, or furnish or order drugs under the supervision of a physician and surgeon for Schedule V controlled substances and for any drug approved by the federal Food and Drug Administration and labeled “for prescription only,” except chemotherapeutics, that is not classified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. Section 3640 of the Business and Professions  
2 Code is amended to read:

3 3640. (a) A naturopathic doctor may order and perform  
4 physical and laboratory examinations for diagnostic purposes,  
5 including, but not limited to, phlebotomy, clinical laboratory tests,  
6 speculum examinations, orificial examinations, and physiological  
7 function tests.

8 (b) A naturopathic doctor may order diagnostic imaging studies,  
9 including X-ray, ultrasound, mammogram, bone densitometry,  
10 and others, consistent with the practice of naturopathic medicine,  
11 but shall refer the studies to an appropriately licensed health care  
12 professional to conduct the study and interpret the results.

13 (c) A naturopathic doctor may dispense, administer, order,  
14 prescribe, provide, furnish, or perform the following:

15 (1) Food, extracts of food, nutraceuticals, vitamins, amino acids,  
16 minerals, enzymes, botanicals and their extracts, botanical  
17 medicines, homeopathic medicines, all dietary supplements and  
18 nonprescription drugs as defined by the Federal Food, Drug, and  
19 Cosmetic Act, consistent with the routes of administration  
20 identified in subdivision (d).

21 (2) Hot or cold hydrotherapy; naturopathic physical medicine  
22 inclusive of the manual use of massage, stretching, resistance, or  
23 joint play examination but exclusive of small amplitude movement  
24 at or beyond the end range of normal joint motion; electromagnetic  
25 energy; colon hydrotherapy; and therapeutic exercise.

26 (3) Devices, including, but not limited to, therapeutic devices,  
27 barrier contraception, and durable medical equipment consistent  
28 with the naturopathic training as determined by the committee.

29 (4) Health education and health counseling.

30 (5) Repair and care incidental to superficial lacerations and  
31 abrasions, except suturing.

32 (6) Removal of foreign bodies located in the superficial tissues.

33 (d) A naturopathic doctor may utilize routes of administration  
34 that include oral, nasal, auricular, ocular, rectal, vaginal,  
35 transdermal, intradermal, subcutaneous, intravenous, and  
36 intramuscular.

1 (e) The committee may establish regulations regarding ocular  
2 or intravenous routes of administration that are consistent with the  
3 education and training of a naturopathic doctor.

4 (f) ~~Nothing in this~~ This section shall *not* exempt a naturopathic  
5 doctor from meeting applicable licensure requirements for the  
6 performance of clinical laboratory tests, including the requirements  
7 imposed under Chapter 3 (commencing with Section 1200).

8 SEC. 2. Section 3640.5 of the Business and Professions Code  
9 is amended to read:

10 3640.5. (a) Except as set forth in this section, nothing in this  
11 chapter or any other provision of law shall be construed to prohibit  
12 a naturopathic doctor from administering, furnishing, ordering, or  
13 prescribing drugs when functioning pursuant to this section.

14 (b) Schedule III and Schedule IV controlled substances under  
15 the California Uniform Controlled Substances Act (Division 10  
16 (commencing with Section 11000) of the Health and Safety Code)  
17 shall be administered, furnished, ordered, and prescribed by a  
18 naturopathic doctor in accordance with standardized procedures  
19 or protocols developed by the naturopathic doctor and his or her  
20 supervising physician and surgeon.

21 (c) The naturopathic doctor shall function pursuant to a  
22 standardized procedure, as defined by paragraphs (1) and (2) of  
23 subdivision (c) of Section 2725, or protocol. The standardized  
24 procedure or protocol shall be developed and approved by the  
25 supervising physician and surgeon, the naturopathic doctor, and,  
26 where applicable, the facility administrator or his or her designee.

27 (d) The standardized procedure or protocol covering the  
28 administering, furnishing, ordering, or prescribing of Schedule III  
29 and Schedule IV drugs shall specify which naturopathic doctors  
30 may administer, furnish, order, or prescribe Schedule III and  
31 Schedule IV drugs, which Schedule III through Schedule IV drugs  
32 may be administered, furnished, ordered, or prescribed and under  
33 what circumstances, the extent of physician and surgeon  
34 supervision, the method of periodic review of the naturopathic  
35 doctor's competence, including peer review, which shall be subject  
36 to the reporting requirement in Section 805, and review of the  
37 provisions of the standardized procedure.

38 (e) The administering, furnishing, ordering, or prescribing of  
39 Schedule III and Schedule IV drugs by a naturopathic doctor shall  
40 occur under physician and surgeon supervision. Physician and

1 surgeon supervision shall not be construed to require the physical  
2 presence of the physician, but does include all of the following:

3 (1) Collaboration on the development of the standardized  
4 procedure.

5 (2) Approval of the standardized procedure.

6 (3) Availability by telephonic contact at the time of patient  
7 examination by the naturopathic doctor.

8 (f) When Schedule III controlled substances, as defined in  
9 Section 11056 of the Health and Safety Code, are administered,  
10 furnished, ordered, or prescribed by a naturopathic doctor, the  
11 controlled substances shall be administered, furnished, ordered,  
12 or prescribed in accordance with a patient-specific protocol  
13 approved by the treating or supervising physician. A copy of the  
14 section of the naturopathic doctor's standardized procedure or  
15 protocol relating to controlled substances shall be provided, upon  
16 request, to a licensed pharmacist who dispenses drugs when there  
17 is uncertainty about the naturopathic doctor furnishing the order.

18 (g) For purposes of this section, a physician and surgeon shall  
19 not supervise more than four naturopathic doctors at one time.

20 (h) Notwithstanding subdivision (c), drugs administered,  
21 furnished, ordered, or prescribed by a naturopathic doctor without  
22 the supervision of a physician and surgeon shall include Schedule  
23 V controlled substances under the California Uniform Controlled  
24 Substances Act (Division 10 (commencing with Section 11000)  
25 of the Health and Safety Code) and any drug approved by the  
26 federal Food and Drug Administration and labeled "for prescription  
27 only" or words of similar import, except chemotherapeutics, that  
28 is not classified.

29 (i) The committee shall certify that the naturopathic doctor has  
30 satisfactorily completed adequate coursework in pharmacology  
31 covering the drugs to be administered, furnished, ordered, or  
32 prescribed under this section. The committee shall establish the  
33 requirements for satisfactory completion of this subdivision.

34 (j) Use of the term "furnishing" in this section, in health facilities  
35 defined in subdivisions (b), (c), (d), (e), and (i) of Section 1250 of  
36 the Health and Safety Code, shall include both of the following  
37 for Schedule III through Schedule IV controlled substances.

38 (1) Ordering a drug in accordance with the standardized  
39 procedure.

1 (2) Transmitting an order of a supervising physician and  
2 surgeon.

3 (k) For purposes of this section, “drug order” or “order” means  
4 an order for medication which is dispensed to or for an ultimate  
5 user, issued by a naturopathic doctor as an individual practitioner,  
6 within the meaning of Section 1306.02 of Title 21 of the Code of  
7 Federal Regulations.

8 (l) Notwithstanding any other law, all of the following shall  
9 apply:

10 (1) A Schedule III through Schedule IV drug order issued  
11 pursuant to this section shall be treated in the same manner as a  
12 prescription of the supervising physician.

13 (2) All references to prescription in this code and the Health  
14 and Safety Code shall include drug orders issued by naturopathic  
15 doctors.

16 (3) The signature of a naturopathic doctor on a drug order issued  
17 in accordance with this section shall be deemed to be the signature  
18 of a prescriber for purposes of this code and the Health and Safety  
19 Code.

AMENDED IN SENATE MAY 4, 2015

AMENDED IN SENATE APRIL 9, 2015

**SENATE BILL**

**No. 622**

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**Introduced by Senator Hernandez**

February 27, 2015

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An act to amend ~~Section~~ *Sections* 3041 and 3110 of, to add Sections 3041.4, 3041.5, 3041.6, 3041.7, and 3041.8 to, and to repeal and add Sections 3041.1, 3041.2, and 3041.3 of, the Business and Professions Code, relating to optometry, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 622, as amended, Hernandez. Optometry.

The Optometry Practice Act provides for the licensure and regulation of the practice of optometry by the State Board of Optometry, and defines the practice of optometry to include, among other things, the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services, and doing certain things, including, but not limited to, the examination of the human eyes, the determination of the powers or range of human vision, and the prescribing of contact and spectacle lenses. Existing law authorizes an optometrist certified to use therapeutic pharmaceutical agents to diagnose and treat specified conditions, use specified pharmaceutical agents, and order specified diagnostic tests. The act requires optometrists treating or diagnosing eye disease, as specified, to be held to the same standard of care to which physicians and surgeons and osteopathic physician and surgeons are held. *The act requires an optometrist, in certain circumstances, to refer a patient to an ophthalmologist or a physician and surgeon,*

*including when a patient has been diagnosed with a central corneal ulcer and the central corneal ulcer has not improved within 48 hours of the diagnosis.* The act makes a violation of any of its provisions a crime. All moneys collected pursuant to the act, except where otherwise provided, are deposited in the Optometry Fund and continuously appropriated to the board to carry out the act.

This bill would revise and recast those provisions. *The bill would delete certain requirements that an optometrist refer a patient to an ophthalmologist or a physician and surgeon, including when a patient has been diagnosed with a central corneal ulcer and the central corneal ulcer has not improved within 48 hours of the diagnosis.* The bill would additionally define the practice of optometry as the provision of habilitative optometric services, and would authorize the board to allow optometrists to use nonsurgical technology to treat any authorized condition under the act. The bill would *additionally* authorize an optometrist *certified* to use ~~diagnostic therapeutic~~ pharmaceutical agents, as specified, including, but not limited to, oral and topical diagnostic ~~pharmaceutical agents that are not controlled substances.~~ *agents to collect a blood specimen by finger prick method, to perform skin tests, as specified, to diagnose ocular allergies, and to use mechanical lipid extraction of meibomian glands and nonsurgical techniques.* The bill would ~~authorize an optometrist to independently initiate and administer vaccines, as specified, for a person 3 years of age and older, if the optometrist meets certain requirements, including, but not limited to, require the board to grant an optometrist certified to treat glaucoma a certificate for the use of specified immunizations if certain conditions are met, including, among others, that he or she the optometrist is certified in basic life support for health care professionals.~~ *support.* The bill would additionally authorize an optometrist certified to use therapeutic pharmaceutical agents to, among other things, be certified to use anterior segment lasers, as specified, and to be certified to perform specified minor procedures, as specified, if certain requirements are met.

The bill would require the board to charge a fee of not more than \$150 to cover the reasonable regulatory cost of certifying an optometrist to use anterior segment ~~lasers.~~ *lasers, a fee of not more than \$150 to cover the reasonable regulatory cost of certifying an optometrist to use minor procedures, and a fee of not more than \$100 to cover the reasonable regulatory cost of certifying an optometrist to use*

*immunizations.* Because this bill would increase those moneys deposited in a continuously appropriated fund, it would make an appropriation.

*Existing law establishes the Office of Statewide Health Planning and Development, which is vested with all the duties, powers, responsibilities, and jurisdiction of the State Department of Public Health relating to health planning and research development.*

*This bill would declare the intent of the Legislature that the Office of Statewide Health Planning designate a pilot project to test, demonstrate, and evaluate expanded roles for optometrists in the performance of management and treatment of diabetes mellitus, hypertension, and hypercholesterolemia.*

Because a violation of the act is a crime, this bill would expand the scope of an existing crime and would, therefore, result in 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.

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

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

1 SECTION 1. Section 3041 of the Business and Professions  
2 Code is amended to read:

3 3041. (a) The practice of optometry includes the prevention  
4 and diagnosis of disorders and dysfunctions of the visual system,  
5 and the treatment and management of certain disorders and  
6 dysfunctions of the visual system, as well as the provision of  
7 habilitative or rehabilitative optometric services, and is the doing  
8 of any or all of the following:

9 (1) The examination of the human eye or eyes, or its or their  
10 appendages, and the analysis of the human vision system, either  
11 subjectively or objectively.

12 (2) The determination of the powers or range of human vision  
13 and the accommodative and refractive states of the human eye or  
14 eyes, including the scope of its or their functions and general  
15 condition.

1 (3) The prescribing or directing the use of, or using, any optical  
2 device in connection with ocular exercises, visual training, vision  
3 training, or orthoptics.

4 (4) The prescribing of contact and spectacle lenses for, or the  
5 fitting or adaptation of contact and spectacle lenses to, the human  
6 eye, including lenses that may be classified as drugs or devices by  
7 any law of the United States or of this state.

8 (5) The use of topical pharmaceutical agents for the purpose of  
9 the examination of the human eye or eyes for any disease or  
10 pathological condition.

11 (b) The State Board of Optometry shall, by regulation, establish  
12 educational and examination requirements for licensure to ensure  
13 the competence of optometrists to practice pursuant to this ~~chapter.~~  
14 *chapter, except as specified in Section 3041.3 related to the use*  
15 *of anterior segment lasers and in Section 3041.4 related to minor*  
16 *procedures.* Satisfactory completion of the required educational  
17 and examination requirements shall be a condition for the issuance  
18 of an original optometrist license or required certifications pursuant  
19 to this chapter.

20 (c) The board may ~~authorize~~ *promulgate regulations authorizing*  
21 *optometrists to use noninvasive, nonsurgical technology to treat a*  
22 *condition authorized by this chapter. The board shall require a*  
23 *licensee to take a minimum of four hours of education courses on*  
24 *the new technology and perform an appropriate number of*  
25 *complete clinical procedures on live human patients to qualify to*  
26 *use each new technology authorized by the board pursuant to this*  
27 *subdivision.*

28 SEC. 2. Section 3041.1 of the Business and Professions Code  
29 is repealed.

30 SEC. 3. Section 3041.1 is added to the Business and Professions  
31 Code, to read:

32 3041.1. (a) (1) An optometrist who is certified to use  
33 therapeutic pharmaceutical agents pursuant to this section may  
34 also diagnose and treat the human eye or eyes, or any of its or their  
35 appendages, for all of the following conditions:

36 (A) Through medical treatment, infections of the anterior  
37 segment and adnexa.

38 (B) Ocular allergies of the anterior segment and adnexa.

39 ~~(C) Ocular inflammation that is nonsurgical in cause, except~~  
40 ~~when comanaged with the treating physician and surgeon.~~

1 (C) Ocular inflammation, nonsurgical in cause except when  
2 comanaged with the treating physician and surgeon, limited to  
3 inflammation resulting from traumatic iritis, peripheral corneal  
4 inflammatory keratitis, episcleritis, and unilateral nonrecurrent  
5 nongranulomatous idiopathic iritis in patients over 18 years of  
6 age.

7 (D) Traumatic or recurrent conjunctival or corneal abrasions  
8 and erosions.

9 (E) Corneal and conjunctival surface disease and dry eyes  
10 disease.

11 (F) Ocular pain that is nonsurgical in cause, except when  
12 comanaged with the treating physician and surgeon.

13 (G) Eyelid disorders, including, but not limited to, hypotrichosis  
14 and blepharitis. *Hypotrichosis and blepharitis.*

15 (2) For purposes of this section, “treat” means the use of  
16 therapeutic pharmaceutical agents, as described in subdivision (b),  
17 and the procedures described in subdivision (c).

18 (3) For purposes of this chapter, “adnexa” means ocular adnexa.

19 (b) In diagnosing and treating the conditions listed in subdivision  
20 (a), an optometrist certified to use therapeutic pharmaceutical  
21 agents pursuant to this section may use all of the following  
22 diagnostic and therapeutic pharmaceutical agents:

23 ~~(1) Oral and topical diagnostic and therapeutic pharmaceutical~~  
24 ~~agents that are not controlled substances. The use of pharmaceutical~~  
25 ~~agents shall be limited to the use for which the drug has been~~  
26 ~~approved for marketing by the federal Food and Drug~~  
27 ~~Administration (FDA):~~

28 ~~(2) Notwithstanding paragraph (1), an optometrist certified to~~  
29 ~~use therapeutic pharmaceutical agents may use a drug in a way for~~  
30 ~~which the drug has not been approved for marketing by the FDA~~  
31 ~~if all of the following requirements are met:~~

32 ~~(A) The drug is approved by the FDA.~~

33 ~~(B) The drug has been recognized for treatment of the condition~~  
34 ~~by either of the following:~~

35 ~~(i) The American Hospital Formulary Service’s Drug~~  
36 ~~Information.~~

37 ~~(ii) Two articles from major peer reviewed medical journals~~  
38 ~~that present data supporting the proposed off-label use or uses as~~  
39 ~~generally safe and effective, unless there is clear and convincing~~

1 contradictory evidence presented in a major peer reviewed medical  
2 journal:

3 ~~(3) Notwithstanding paragraph (1), codeine with compounds~~  
4 ~~and hydrocodone with compounds as listed in the California~~  
5 ~~Uniform Controlled Substances Act (Division 10 (commencing~~  
6 ~~with Section 11000) of the Health and Safety Code) and the federal~~  
7 ~~Controlled Substances Act (21 U.S.C. Sec. 801, et seq.) may be~~  
8 ~~used. The use of these controlled substances shall be limited to~~  
9 ~~five days.~~

10 *(1) Topical pharmaceutical agents for the purpose of the*  
11 *examination of the human eye or eyes for any disease or*  
12 *pathological condition, including, but not limited to, topical*  
13 *miotics.*

14 *(2) Topical lubricants.*

15 *(3) Antiallergy agents. In using topical steroid medication for*  
16 *the treatment of ocular allergies, an optometrist shall consult with*  
17 *an ophthalmologist if the patient's condition worsens 21 days after*  
18 *diagnosis.*

19 *(4) Topical and oral anti-inflammatories.*

20 *(5) Topical antibiotic agents.*

21 *(6) Topical hyperosmotics.*

22 *(7) Topical and oral antiglaucoma agents pursuant to the*  
23 *certification process defined in Section 3041.2.*

24 *(8) Nonprescription medications used for the rational treatment*  
25 *of an ocular disorder.*

26 *(9) Oral antihistamines.*

27 *(10) Prescription oral nonsteroidal anti-inflammatory agents.*

28 *(11) Oral antibiotics for medical treatment of ocular disease.*

29 *(12) Topical and oral antiviral medication for the medical*  
30 *treatment of herpes simplex viral keratitis, herpes simplex viral*  
31 *conjunctivitis, periocular herpes simplex viral dermatitis, varicella*  
32 *zoster viral keratitis, varicella zoster viral conjunctivitis, and*  
33 *periocular varicella zoster viral dermatitis.*

34 *(13) Oral analgesics that are not controlled substances.*

35 *(14) Codeine with compounds and hydrocodone with compounds*  
36 *as listed in the California Uniform Controlled Substances Act*  
37 *(Division 10 (commencing with Section 11000) of the Health and*  
38 *Safety Code) and the United States Uniform Controlled Substances*  
39 *Act (21 U.S.C. Sec. 801 et seq.). The use of these agents shall be*

1 *limited to five days, with a referral to an ophthalmologist if the*  
2 *pain persists.*

3 (c) An optometrist who is certified to use therapeutic  
4 pharmaceutical agents pursuant to this section may also perform  
5 all of the following:

6 (1) Corneal scraping with cultures.

7 (2) Debridement of corneal epithelia.

8 (3) Mechanical epilation.

9 (4) Collection of a blood specimen by finger prick method or  
10 venipuncture for testing patients suspected of having diabetes.

11 (5) Suture removal, with prior consultation with the treating  
12 health care provider.

13 (6) Treatment or removal of sebaceous cysts by expression.

14 (7) Administration of oral fluorescein to patients suspected as  
15 having diabetic retinopathy.

16 (8) Use of an auto-injector to counter anaphylaxis.

17 ~~(9) Ordering of clinical laboratory and imaging tests related to~~  
18 ~~the practice of optometry.~~

19 ~~(10) A clinical laboratory test or examination classified as~~  
20 ~~waived under CLIA and related to the practice of optometry.~~

21 (9) *Ordering of smears, cultures, sensitivities, complete blood*  
22 *count, mycobacterial culture, acid fast stain, urinalysis, tear fluid*  
23 *analysis, and X-rays necessary for the diagnosis of conditions or*  
24 *diseases of the eye or adnexa. An optometrist may order other*  
25 *types of images subject to prior consultation with the appropriate*  
26 *physician and surgeon.*

27 (10) *A clinical laboratory test or examination classified as*  
28 *waived under the Clinical Laboratory Improvement Amendments*  
29 *of 1988 (CLIA)(42 U.S.C. Sec. 263a; Public Law 100-578) or any*  
30 *regulations adopted pursuant to CLIA, and that are necessary for*  
31 *the diagnosis of conditions and diseases of the eye or adnexa, or*  
32 *if otherwise specifically authorized by this chapter.*

33 (11) Skin test to diagnose ocular allergies. Skin tests shall be  
34 limited to the superficial layer of the skin.

35 (12) Punctal occlusion by plugs, excluding laser, diathermy,  
36 cryotherapy, or other means constituting surgery as defined in this  
37 chapter.

38 (13) The prescription of therapeutic contact lenses, diagnostic  
39 contact lenses, or biological or technological corneal devices.

1 *devices that diagnose or treat a condition authorized under this*  
2 *chapter.*

3 (14) Removal of foreign bodies from the cornea, eyelid, and  
4 conjunctiva with any appropriate instrument other than a ~~scalpel~~  
5 ~~or needle~~. *scalpel*. Corneal foreign bodies shall be nonperforating,  
6 be no deeper than the midstroma, and require no surgical repair  
7 upon removal.

8 (15) For patients over 12 years of age, lacrimal irrigation and  
9 dilation, excluding probing of the nasal lacrimal tract. The board  
10 shall certify any optometrist who graduated from an accredited  
11 school of optometry before May 1, 2000, to perform this procedure  
12 after submitting proof of satisfactory completion and confirmation  
13 of 10 procedures under the supervision of an ophthalmologist or  
14 optometrist who is certified in lacrimal irrigation and dilation. Any  
15 optometrist who graduated from an accredited school of optometry  
16 on or after May 1, 2000, shall be exempt from the certification  
17 requirement contained in this paragraph.

18 (16) Use of mechanical lipid extraction of meibomian glands  
19 and nonsurgical techniques.

20 ~~(17) Notwithstanding subdivision (b), administration of~~  
21 ~~injections for the diagnoses or treatment of conditions of the eye~~  
22 ~~and adnexa, excluding intraorbital injections and injections~~  
23 ~~administered for cosmetic effect, provided that the optometrist has~~  
24 ~~satisfactorily received four hours of continuing education on~~  
25 ~~performing all injections authorized by this paragraph.~~

26 (d) In order to be certified to use therapeutic pharmaceutical  
27 agents and authorized to diagnose and treat the conditions listed  
28 in this section, an optometrist shall apply for a certificate from the  
29 board and meet all requirements imposed by the board.

30 (c) The board shall grant a certificate to use therapeutic  
31 pharmaceutical agents to any applicant who graduated from a  
32 California accredited school of optometry prior to January 1, 1996,  
33 is licensed as an optometrist in California, and meets all of the  
34 following requirements:

35 (1) Satisfactorily completes a didactic course of no less than 80  
36 classroom hours in the diagnosis, pharmacological, and other  
37 treatment and management of ocular disease provided by either  
38 an accredited school of optometry in California or a recognized  
39 residency review committee in ophthalmology in California.

1 (2) Completes a preceptorship of no less than 65 hours, during  
2 a period of not less than two months nor more than one year, in  
3 either an ophthalmologist's office or an optometric clinic. The  
4 training received during the preceptorship shall be on the diagnosis,  
5 treatment, and management of ocular, systemic disease. The  
6 preceptor shall certify completion of the preceptorship.  
7 Authorization for the ophthalmologist to serve as a preceptor shall  
8 be provided by an accredited school of optometry in California,  
9 or by a recognized residency review committee in ophthalmology,  
10 and the preceptor shall be licensed as an ophthalmologist in  
11 California, board certified in ophthalmology, and in good standing  
12 with the Medical Board of California. The individual serving as  
13 the preceptor shall schedule no more than three optometrist  
14 applicants for each of the required 65 hours of the preceptorship  
15 program. This paragraph shall not be construed to limit the total  
16 number of optometrist applicants for whom an individual may  
17 serve as a preceptor, and is intended only to ensure the quality of  
18 the preceptorship by requiring that the ophthalmologist preceptor  
19 schedule the training so that each applicant optometrist completes  
20 each of the 65 hours of the preceptorship while scheduled with no  
21 more than two other optometrist applicants.

22 (3) Successfully completes a minimum of 20 hours of  
23 self-directed education.

24 (4) Passes the National Board of Examiners in Optometry's  
25 "Treatment and Management of Ocular Disease" examination or,  
26 in the event this examination is no longer offered, its equivalent,  
27 as determined by the State Board of Optometry.

28 (5) Passes the examination issued upon completion of the  
29 80-hour didactic course required under paragraph (1) and provided  
30 by the accredited school of optometry or residency program in  
31 ophthalmology.

32 (6) When any or all of the requirements contained in paragraph  
33 (1), (4), or (5) have been satisfied on or after July 1, 1992, and  
34 before January 1, 1996, an optometrist shall not be required to  
35 fulfill the satisfied requirements in order to obtain certification to  
36 use therapeutic pharmaceutical agents. In order for this paragraph  
37 to apply to the requirement contained in paragraph (5), the didactic  
38 examination that the applicant successfully completed shall meet  
39 equivalency standards, as determined by the board.

1 (7) Any optometrist who graduated from an accredited school  
2 of optometry on or after January 1, 1992, and before January 1,  
3 1996, shall not be required to fulfill the requirements contained in  
4 paragraphs (1), (4), and (5).

5 (f) The board shall grant a certificate to use therapeutic  
6 pharmaceutical agents to any applicant who graduated from a  
7 California accredited school of optometry on or after January 1,  
8 1996, who is licensed as an optometrist in California, and who  
9 meets all of the following requirements:

10 (1) Passes the National Board of Examiners in Optometry's  
11 national board examination, or its equivalent, as determined by  
12 the State Board of Optometry.

13 (2) Of the total clinical training required by a school of  
14 optometry's curriculum, successfully completed at least 65 of those  
15 hours on the diagnosis, treatment, and management of ocular,  
16 systemic disease.

17 (3) Is certified by an accredited school of optometry as  
18 competent in the diagnosis, treatment, and management of ocular,  
19 systemic disease to the extent authorized by this section.

20 (4) Is certified by an accredited school of optometry as having  
21 completed at least 10 hours of experience with a board-certified  
22 ophthalmologist.

23 (g) The board shall grant a certificate to use therapeutic  
24 pharmaceutical agents to any applicant who is an optometrist who  
25 obtained his or her license outside of California if he or she meets  
26 all of the requirements for an optometrist licensed in California to  
27 be certified to use therapeutic pharmaceutical agents.

28 (1) In order to obtain a certificate to use therapeutic  
29 pharmaceutical agents, any optometrist who obtained his or her  
30 license outside of California and graduated from an accredited  
31 school of optometry prior to January 1, 1996, shall be required to  
32 fulfill the requirements set forth in subdivision (e). In order for the  
33 applicant to be eligible for the certificate to use therapeutic  
34 pharmaceutical agents, the education he or she received at the  
35 accredited out-of-state school of optometry shall be equivalent to  
36 the education provided by any accredited school of optometry in  
37 California for persons who graduated before January 1, 1996. For  
38 those out-of-state applicants who request that any of the  
39 requirements contained in subdivision (e) be waived based on  
40 fulfillment of the requirement in another state, if the board

1 determines that the completed requirement was equivalent to that  
2 required in California, the requirement shall be waived.

3 (2) In order to obtain a certificate to use therapeutic  
4 pharmaceutical agents, any optometrist who obtained his or her  
5 license outside of California and who graduated from an accredited  
6 school of optometry on or after January 1, 1996, shall be required  
7 to fulfill the requirements set forth in subdivision (f). In order for  
8 the applicant to be eligible for the certificate to use therapeutic  
9 pharmaceutical agents, the education he or she received by the  
10 accredited out-of-state school of optometry shall be equivalent to  
11 the education provided by any accredited school of optometry for  
12 persons who graduated on or after January 1, 1996. For those  
13 out-of-state applicants who request that any of the requirements  
14 contained in subdivision (f) be waived based on fulfillment of the  
15 requirement in another state, if the board determines that the  
16 completed requirement was equivalent to that required in  
17 California, the requirement shall be waived.

18 (3) The State Board of Optometry shall decide all issues relating  
19 to the equivalency of an optometrist's education or training under  
20 this subdivision.

21 (h) Other than for prescription ophthalmic devices described in  
22 subdivision (b) of Section 2541, any dispensing of a therapeutic  
23 pharmaceutical agent by an optometrist shall be without charge.

24 (i) Except as authorized by this chapter, the practice of  
25 optometry does not include performing surgery. "Surgery" means  
26 any procedure in which human tissue is cut, altered, or otherwise  
27 infiltrated by mechanical or laser means. "Surgery" does not  
28 include those procedures specified in subdivision (c). This section  
29 does not limit an optometrist's authority to utilize diagnostic laser  
30 and ultrasound technology within his or her scope of practice.

31 (j) In an emergency, an optometrist shall stabilize, if possible,  
32 and immediately refer any patient who has an acute attack of angle  
33 closure to an ophthalmologist.

34 SEC. 4. Section 3041.2 of the Business and Professions Code  
35 is repealed.

36 SEC. 5. Section 3041.2 is added to the Business and Professions  
37 Code, to read:

38 3041.2. (a) For purposes of this chapter, "glaucoma" means  
39 any of the following:

40 (1) All primary open-angle glaucoma.

1 (2) Exfoliation and pigmentary glaucoma.

2 (3) Increase in intraocular pressure caused by steroid medication:  
3 *medication prescribed by the optometrist.*

4 (4) *Increase in intraocular pressure caused by steroid*  
5 *medication not prescribed by the optometrist, after consultation*  
6 *and treatment approval by the prescribing physician.*

7 (b) An optometrist certified pursuant to Section 3041.1 shall be  
8 certified for the treatment of glaucoma, as described in subdivision  
9 (a), in patients over 18 years of age after the optometrist meets the  
10 following applicable requirements:

11 (1) For licensees who graduated from an accredited school of  
12 optometry on or after May 1, 2008, submission of proof of  
13 graduation from that institution.

14 (2) For licensees who were certified to treat glaucoma under  
15 this section prior to January 1, 2009, submission of proof of  
16 completion of that certification program.

17 (3) For licensees who completed a didactic course of not less  
18 than 24 hours in the diagnosis, pharmacological, and other  
19 treatment and management of glaucoma, submission of proof of  
20 satisfactory completion of the case management requirements for  
21 certification established by the board.

22 (4) For licensees who graduated from an accredited school of  
23 optometry on or before May 1, 2008, and are not described in  
24 paragraph (2) or (3), submission of proof of satisfactory completion  
25 of the requirements for certification established by the board.

26 SEC. 6. Section 3041.3 of the Business and Professions Code  
27 is repealed.

28 SEC. 7. Section 3041.3 is added to the Business and Professions  
29 Code, to read:

30 3041.3. (a) For the purposes of this chapter, “anterior segment  
31 laser” means any of the following:

32 (1) Therapeutic lasers appropriate for treatment of glaucoma.

33 (2) Notwithstanding subdivision (a) of Section 3041.2,  
34 peripheral iridotomy for the prophylactic treatment of angle closure  
35 glaucoma.

36 (3) Therapeutic lasers used for posterior capsulotomy secondary  
37 to cataract surgery.

38 (b) An optometrist certified to treat glaucoma pursuant to  
39 Section 3041.2 shall be additionally certified for the use of anterior  
40 segment lasers after submitting proof of satisfactory completion

1 of a course that is approved by the board, provided by an accredited  
2 school of optometry, and developed in consultation with an  
3 ophthalmologist who has experience educating optometric students.  
4 *The board shall issue a certificate pursuant to this section only to*  
5 *an optometrist that has graduated from an approved school of*  
6 *optometry.*

7 (1) The board-approved course shall be ~~a minimum of 16~~ *at*  
8 *least 25* hours in length, and include a test for competency of the  
9 following:

- 10 (A) Laser physics, hazards, and safety.
- 11 (B) Biophysics of laser.
- 12 (C) Laser application in clinical optometry.
- 13 (D) Laser tissue interactions.
- 14 (E) Laser indications, contraindications, and potential  
15 complications.
- 16 (F) Gonioscopy.
- 17 (G) Laser therapy for open-angle glaucoma.
- 18 (H) Laser therapy for angle closure glaucoma.
- 19 (I) Posterior capsulotomy.
- 20 (J) Common complications of the lids, lashes, and lacrimal  
21 system.
- 22 (K) Medicolegal aspects of anterior segment procedures.
- 23 (L) Peripheral iridotomy.
- 24 (M) Laser trabeculoplasty.

25 (2) The school of optometry shall require each applicant for  
26 certification to perform a sufficient number of *complete* anterior  
27 segment laser procedures to verify that the applicant has  
28 demonstrated competency to practice independently. At a  
29 minimum, each applicant shall complete ~~14~~ *24* anterior segment  
30 laser procedures on live ~~humans~~ *humans as follows*:

- 31 (A) *Eight YAG capsulotomy procedures.*
- 32 (B) *Eight laser trabeculoplasty procedures.*
- 33 (C) *Eight peripheral iridotomy procedures.*
- 34 (c) The board, by regulation, shall set the fee for issuance and  
35 renewal of a certificate authorizing the use of anterior segment  
36 lasers at an amount no higher than the reasonable cost of regulating  
37 anterior segment laser certified optometrists pursuant to this  
38 section. The fee shall not exceed one hundred fifty dollars (\$150).
- 39 (d) *An optometrist certified to use anterior segment lasers*  
40 *pursuant to this section shall complete four hours of continuing*

1 *education on anterior segment lasers as part of the required 50*  
2 *hours of continuing education required to be completed every two*  
3 *years on the diagnosis, treatment, and management of glaucoma.*

4 SEC. 8. Section 3041.4 is added to the Business and Professions  
5 Code, to read:

6 3041.4. (a) For the purposes of this chapter, “minor procedure”  
7 means either of the following:

8 (1) Removal, destruction, or drainage of lesions of the eyelid  
9 and adnexa clinically evaluated by the optometrist to be  
10 noncancerous, not involving the eyelid margin, lacrimal supply or  
11 drainage systems, no deeper than the orbicularis muscle, and  
12 smaller than five millimeters in diameter.

13 (2) Closure of a wound resulting from a procedure described in  
14 paragraph (1).

15 (3) *Administration of injections for the diagnoses or treatment*  
16 *of conditions of the eye and adnexa authorized by this chapter,*  
17 *excluding intraorbital injections and injections administered for*  
18 *cosmetic effect.*

19 (4) *“Minor procedures” does not include blepharoplasty or*  
20 *other cosmetic surgery procedures that reshape normal structures*  
21 *of the body in order to improve appearance and self-esteem.*

22 (b) An optometrist certified to treat glaucoma pursuant to  
23 Section 3041.2 shall be additionally certified to perform minor  
24 procedures after submitting proof of satisfactory completion of a  
25 course that is approved by the board, provided by an accredited  
26 school of optometry, and developed in consultation with an  
27 ophthalmologist who has experience teaching optometric students.  
28 *The board shall issue a certificate pursuant to this section only to*  
29 *an optometrist that has graduated from an approved school of*  
30 *optometry.*

31 (1) The board-approved course shall be ~~a minimum of 32 hours~~  
32 *at least 25 hours* in length and include a test for competency of  
33 the following:

34 (A) Minor surgical procedures.

35 (B) Overview of surgical instruments, asepsis, and the state and  
36 federal Occupational Safety and Health Administrations.

37 (C) Surgical anatomy of the eyelids.

38 (D) Emergency surgical procedures.

39 (E) Chalazion management.

40 (F) Epiluminescence microscopy.

- 1 (G) Suture techniques.
- 2 (H) Local anesthesia techniques and complications.
- 3 (I) Anaphylaxis and other office emergencies.
- 4 (J) Radiofrequency surgery.
- 5 (K) Postoperative wound care.
- 6 (L) *Injection techniques.*

7 (2) The school of optometry shall require each applicant for  
8 certification to perform a sufficient number of minor procedures  
9 to verify that the applicant has demonstrated competency to  
10 practice independently. At a minimum, each applicant shall *perform*  
11 32 complete five minor procedures on live humans.

12 *(c) The board, by regulation, shall set the fee for issuance and*  
13 *renewal of a certificate authorizing the use of minor procedures*  
14 *at an amount no greater than the reasonable cost of regulating*  
15 *minor procedure certified optometrists pursuant to this section.*  
16 *The fee shall not exceed one hundred fifty dollars (\$150).*

17 *(d) An optometrist certified to perform minor procedures*  
18 *pursuant to Section 3041.1 shall complete five hours of continuing*  
19 *education on the diagnosis, treatment, and management of lesions*  
20 *of the eyelid and adnexa as part of the 50 hours of continuing*  
21 *education required every two years in Section 3059.*

22 ~~SEC. 9.—Section 3041.5 is added to the Business and Professions~~  
23 ~~Code, to read:~~

24 ~~3041.5.—(a) An optometrist may independently initiate and~~  
25 ~~administer vaccines listed on the routine immunization schedules~~  
26 ~~recommended by the federal Advisory Committee on Immunization~~  
27 ~~Practices (ACIP), in compliance with individual ACIP vaccine~~  
28 ~~recommendations, and published by the federal Centers for Disease~~  
29 ~~Control and Prevention (CDC) for persons three years of age and~~  
30 ~~older.~~

31 ~~(b) In order to initiate and administer an immunization described~~  
32 ~~in subdivision (a), an optometrist shall do all of the following:~~

33 ~~(1) Complete an immunization training program endorsed by~~  
34 ~~the CDC or the Accreditation Council for Pharmacy Education~~  
35 ~~that, at a minimum, includes hands-on injection technique, clinical~~  
36 ~~evaluation of indications and contraindications of vaccines, and~~  
37 ~~the recognition and treatment of emergency reactions to vaccines;~~  
38 ~~and shall maintain that training.~~

39 ~~(2) Be certified in basic life support for health care professionals.~~

1 ~~(3) Comply with all state and federal recordkeeping and~~  
2 ~~reporting requirements, including providing documentation to the~~  
3 ~~patient's primary care provider and entering information in the~~  
4 ~~appropriate immunization registry designated by the immunization~~  
5 ~~branch of the State Department of Public Health.~~

6 SEC. 9. Section 3041.5 is added to the Business and Professions  
7 Code, to read:

8 3041.5. (a) The board shall grant to an optometrist a  
9 certificate for the use of immunizations described in subdivision  
10 (b), if the optometrist is certified pursuant to Section 3041.2 and  
11 after the optometrist meets all of the following requirements:

12 (1) Completes an immunization training program endorsed by  
13 the federal Centers for Disease Control (CDC) that, at a minimum,  
14 includes hands-on injection technique, clinical evaluation of  
15 indications and contraindications of vaccines, and the recognition  
16 and treatment of emergency reactions to vaccines, and maintains  
17 that training.

18 (2) Is certified in basic life support.

19 (3) Complies with all state and federal recordkeeping and  
20 reporting requirements, including providing documentation to the  
21 patient's primary care provider and entering information in the  
22 appropriate immunization registry designated by the immunization  
23 branch of the State Department of Public Health.

24 (b) For the purposes of this section, "immunization" means the  
25 administration of immunizations for influenza, herpes zoster virus,  
26 and pneumococcus in compliance with individual Advisory  
27 Committee on Immunization Practices (ACIP) vaccine  
28 recommendations published by the CDC for persons 18 years of  
29 age or older.

30 (c) The board, by regulation, shall set the fee for issuance and  
31 renewal of a certificate for the use of immunizations at the  
32 reasonable cost of regulating immunization certified optometrists  
33 pursuant to this section. The fee shall not exceed one hundred  
34 dollars (\$100).

35 SEC. 10. Section 3041.6 is added to the Business and  
36 Professions Code, to read:

37 3041.6. An optometrist licensed under this chapter is subject  
38 to the provisions of Section 2290.5 for purposes of practicing  
39 telehealth.

1 SEC. 11. Section 3041.7 is added to the Business and  
2 Professions Code, to read:

3 3041.7. Optometrists diagnosing or treating eye disease shall  
4 be held to the same standard of care to which physicians and  
5 surgeons and osteopathic physicians and surgeons are held. An  
6 optometrist shall consult with and, if necessary, refer to a physician  
7 and surgeon or other appropriate health care provider when a  
8 situation or condition occurs that is beyond the optometrist's scope  
9 of practice.

10 SEC. 12. Section 3041.8 is added to the Business and  
11 Professions Code, to read:

12 3041.8. It is the intent of the Legislature that the Office of  
13 Statewide Health Planning and Development, under the Health  
14 Workforce Pilot Projects Program, designate a pilot project to test,  
15 demonstrate, and evaluate expanded roles for optometrists in the  
16 performance of management and treatment of diabetes mellitus,  
17 hypertension, and hypercholesterolemia.

18 *SEC. 13. Section 3110 of the Business and Professions Code*  
19 *is amended to read:*

20 3110. The board may take action against any licensee who is  
21 charged with unprofessional conduct, and may deny an application  
22 for a license if the applicant has committed unprofessional conduct.  
23 In addition to other provisions of this article, unprofessional  
24 conduct includes, but is not limited to, the following:

25 (a) Violating or attempting to violate, directly or indirectly  
26 assisting in or abetting the violation of, or conspiring to violate  
27 any provision of this chapter or any of the rules and regulations  
28 adopted by the board pursuant to this chapter.

29 (b) Gross negligence.

30 (c) Repeated negligent acts. To be repeated, there must be two  
31 or more negligent acts or omissions.

32 (d) Incompetence.

33 (e) The commission of fraud, misrepresentation, or any act  
34 involving dishonesty or corruption, that is substantially related to  
35 the qualifications, functions, or duties of an optometrist.

36 (f) Any action or conduct that would have warranted the denial  
37 of a license.

38 (g) The use of advertising relating to optometry that violates  
39 Section 651 or 17500.

1 (h) Denial of licensure, revocation, suspension, restriction, or  
2 any other disciplinary action against a health care professional  
3 license by another state or territory of the United States, by any  
4 other governmental agency, or by another California health care  
5 professional licensing board. A certified copy of the decision or  
6 judgment shall be conclusive evidence of that action.

7 (i) Procuring his or her license by fraud, misrepresentation, or  
8 mistake.

9 (j) Making or giving any false statement or information in  
10 connection with the application for issuance of a license.

11 (k) Conviction of a felony or of any offense substantially related  
12 to the qualifications, functions, and duties of an optometrist, in  
13 which event the record of the conviction shall be conclusive  
14 evidence thereof.

15 (l) Administering to himself or herself any controlled substance  
16 or using any of the dangerous drugs specified in Section 4022, or  
17 using alcoholic beverages to the extent, or in a manner, as to be  
18 dangerous or injurious to the person applying for a license or  
19 holding a license under this chapter, or to any other person, or to  
20 the public, or, to the extent that the use impairs the ability of the  
21 person applying for or holding a license to conduct with safety to  
22 the public the practice authorized by the license, or the conviction  
23 of a misdemeanor or felony involving the use, consumption, or  
24 self-administration of any of the substances referred to in this  
25 subdivision, or any combination thereof.

26 (m) (1) Committing or soliciting an act punishable as a sexually  
27 related crime, if that act or solicitation is substantially related to  
28 the qualifications, functions, or duties of an optometrist.

29 (2) Committing any act of sexual abuse, misconduct, or relations  
30 with a patient. The commission of and conviction for any act of  
31 sexual abuse, sexual misconduct, or attempted sexual misconduct,  
32 whether or not with a patient, shall be considered a crime  
33 substantially related to the qualifications, functions, or duties of a  
34 licensee. This paragraph shall not apply to sexual contact between  
35 any person licensed under this chapter and his or her spouse or  
36 person in an equivalent domestic relationship when that licensee  
37 provides optometry treatment to his or her spouse or person in an  
38 equivalent domestic relationship.

39 (3) Conviction of a crime that requires the person to register as  
40 a sex offender pursuant to Chapter 5.5 (commencing with Section

1 290) of Title 9 of Part 1 of the Penal Code. A conviction within  
2 the meaning of this paragraph means a plea or verdict of guilty or  
3 a conviction following a plea of nolo contendere. A conviction  
4 described in this paragraph shall be considered a crime substantially  
5 related to the qualifications, functions, or duties of a licensee.

6 (n) Repeated acts of excessive prescribing, furnishing, or  
7 administering of controlled substances or dangerous drugs specified  
8 in Section 4022, or repeated acts of excessive treatment.

9 (o) Repeated acts of excessive use of diagnostic or therapeutic  
10 procedures, or repeated acts of excessive use of diagnostic or  
11 treatment facilities.

12 (p) The prescribing, furnishing, or administering of controlled  
13 substances or drugs specified in Section 4022, or treatment without  
14 a good faith prior examination of the patient and optometric reason.

15 (q) The failure to maintain adequate and accurate records  
16 relating to the provision of services to his or her patients.

17 (r) Performing, or holding oneself out as being able to perform,  
18 or offering to perform, any professional services beyond the scope  
19 of the license authorized by this chapter.

20 (s) The practice of optometry without a valid, unrevoked,  
21 unexpired license.

22 (t) The employing, directly or indirectly, of any suspended or  
23 unlicensed optometrist to perform any work for which an optometry  
24 license is required.

25 (u) Permitting another person to use the licensee's optometry  
26 license for any purpose.

27 (v) Altering with fraudulent intent a license issued by the board,  
28 or using a fraudulently altered license, permit certification or any  
29 registration issued by the board.

30 (w) Except for good cause, the knowing failure to protect  
31 patients by failing to follow infection control guidelines of the  
32 board, thereby risking transmission of bloodborne infectious  
33 diseases from optometrist to patient, from patient to patient, or  
34 from patient to optometrist. In administering this subdivision, the  
35 board shall consider the standards, regulations, and guidelines of  
36 the State Department of Public Health developed pursuant to  
37 Section 1250.11 of the Health and Safety Code and the standards,  
38 guidelines, and regulations pursuant to the California Occupational  
39 Safety and Health Act of 1973 (Part 1 (commencing with Section  
40 6300) of Division 5 of the Labor Code) for preventing the

1 transmission of HIV, hepatitis B, and other bloodborne pathogens  
2 in health care settings. As necessary, the board may consult with  
3 the Medical Board of California, the Board of Podiatric Medicine,  
4 the Board of Registered Nursing, and the Board of Vocational  
5 Nursing and Psychiatric Technicians, to encourage appropriate  
6 consistency in the implementation of this subdivision.

7 (x) Failure or refusal to comply with a request for the clinical  
8 records of a patient, that is accompanied by that patient's written  
9 authorization for release of records to the board, within 15 days  
10 of receiving the request and authorization, unless the licensee is  
11 unable to provide the documents within this time period for good  
12 cause.

13 (y) Failure to refer a patient to an appropriate physician in either  
14 of the following circumstances:

15 ~~(1) Where~~ *physician* if an examination of the eyes indicates a  
16 substantial likelihood of any pathology that requires the attention  
17 of that physician.

18 ~~(2) As required by subdivision (c) of Section 3041.~~

19 ~~SEC. 13.~~

20 *SEC. 14.* No reimbursement is required by this act pursuant to  
21 Section 6 of Article XIII B of the California Constitution because  
22 the only costs that may be incurred by a local agency or school  
23 district will be incurred because this act creates a new crime or  
24 infraction, eliminates a crime or infraction, or changes the penalty  
25 for a crime or infraction, within the meaning of Section 17556 of  
26 the Government Code, or changes the definition of a crime within  
27 the meaning of Section 6 of Article XIII B of the California  
28 Constitution.

**2016 LEGISLATIVE CALENDAR**  
 (See S.C.R. 37, Chapter 48, Statutes of 2015)  
 COMPILED BY THE OFFICE OF THE ASSEMBLY CHIEF CLERK  
 Revised 10-7-15

**DEADLINES**

JANUARY							
	S	M	T	W	TH	F	S
Interim Recess						1	2
Wk. 1	3	4	5	6	7	8	9
Wk. 2	10	11	12	13	14	15	16
Wk. 3	17	18	19	20	21	22	23
Wk. 4	24	25	26	27	28	29	30
Wk. 1	31						

- Jan. 1** Statutes take effect (Art. IV, Sec. 8(c)).
- Jan. 4** Legislature reconvenes (J.R. 51(a)(4)).
- Jan. 10** Budget Bill must be submitted by Governor (Art. IV, Sec. 12(a)).
- Jan. 15** Last day for **policy committees** to hear and report to **fiscal committees** fiscal bills introduced in their house in the odd-numbered year. (J.R. 61(b)(1)).
- Jan. 18** Martin Luther King, Jr. Day observed.
- Jan. 22** Last day for any committee to hear and report to the **Floor** bills introduced in their house in 2015 (J.R. 61(b)(2)). Last day to submit **bill requests** to the Office of Legislative Counsel.
- Jan. 31** Last day for each house to pass **bills** introduced in that house in the odd-numbered year (J.R. 61(b)(3)), (Art. IV, Sec. 10(c)).

FEBRUARY							
	S	M	T	W	TH	F	S
Wk. 1		1	2	3	4	5	6
Wk. 2	7	8	9	10	11	12	13
Wk. 3	14	15	16	17	18	19	20
Wk. 4	21	22	23	24	25	26	27
Wk. 1	28	29					

- Feb. 15** Presidents' Day observed.
- Feb. 19** Last day for bills to be **introduced** (J.R. 61(b)(4), J.R. 54(a)).

MARCH							
	S	M	T	W	TH	F	S
Wk. 1			1	2	3	4	5
Wk. 2	6	7	8	9	10	11	12
Wk. 3	13	14	15	16	17	18	19
Spring Recess	20	21	22	23	24	25	26
Wk. 4	27	28	29	30	31		

- Mar. 17** **Spring Recess** begins upon adjournment (J.R. 51(b)(1)).
- Mar. 28** Legislature reconvenes from Spring Recess (J.R. 51(b)(1)).

APRIL							
	S	M	T	W	TH	F	S
Wk. 4						1	2
Wk. 1	3	4	5	6	7	8	9
Wk. 2	10	11	12	13	14	15	16
Wk. 3	17	18	19	20	21	22	23
Wk. 4	24	25	26	27	28	29	30

- Apr. 1** Cesar Chavez Day observed.
- Apr. 22** Last day for **policy committees** to hear and report to **fiscal committees** fiscal bills introduced in their house (J.R. 61(b)(5)).

MAY							
	S	M	T	W	TH	F	S
Wk. 1	1	2	3	4	5	6	7
Wk. 2	8	9	10	11	12	13	14
Wk. 3	15	16	17	18	19	20	21
Wk. 4	22	23	24	25	26	27	28
No Hrgs.	29	30	31				

- May 6** Last day for **policy committees** to hear and report to the Floor **nonfiscal** bills introduced in their house (J.R. 61(b)(6)).
- May 13** Last day for **policy committees** to meet prior to June 6 (J.R. 61(b)(7)).
- May 27** Last day for **fiscal committees** to hear and report to the Floor bills introduced in their house (J.R. 61(b)(8)). Last day for **fiscal committees** to meet prior to June 6 (J.R. 61(b)(9)).
- May 30** Memorial Day observed.
- May 31 - June 3** **Floor Session only.** No committee may meet for any purpose except Rules Committee, bills referred pursuant to Assembly Rule 77.2, and Conference Committees (J.R. 61(b)(10), J.R. 61(h)).

\*Holiday schedule subject to final approval by Rules Committee.

**2016 LEGISLATIVE CALENDAR**  
 (See S.C.R. 37, Chapter 48, Statutes of 2015)  
 COMPILED BY THE OFFICE OF THE ASSEMBLY CHIEF CLERK  
 Revised 10-7-15

JUNE							
	S	M	T	W	TH	F	S
No Hrgs.				1	2	3	4
Wk. 1	5	6	7	8	9	10	11
Wk. 2	12	13	14	15	16	17	18
Wk. 3	19	20	21	22	23	24	25
Wk. 4	26	27	28	29	30		

- June 3** Last day for each house to pass bills introduced in that house (J.R. 61(b)(11)).
- June 6** Committee meetings may resume (J.R. 61(b)(12)).
- June 15** Budget Bill must be passed by midnight (Art. IV, Sec. 12(c)(3)).
- June 30** Last day for a legislative measure to qualify for the Nov. 8 General Election ballot (Elections Code Section 9040).

JULY							
	S	M	T	W	TH	F	S
Wk. 4						1	2
Summer Recess	3	4	5	6	7	8	9
Summer Recess	10	11	12	13	14	15	16
Summer Recess	17	18	19	20	21	22	23
Summer Recess	24	25	26	27	28	29	30
Wk. 1	31						

- July 1** Last day for **policy committees** to meet and report bills (J.R. 61(b)(13)). **Summer Recess** begins upon adjournment, provided Budget Bill has been passed (J.R. 51(b)(2)).
- July 4** Independence Day observed.

AUGUST							
	S	M	T	W	TH	F	S
Wk. 1		1	2	3	4	5	6
Wk. 2	7	8	9	10	11	12	13
No Hrgs.	14	15	16	17	18	19	20
No Hrgs.	21	22	23	24	25	26	27
No Hrgs.	28	29	30	31			

- Aug. 1** Legislature reconvenes from Summer Recess (J.R. 51(b)(2)).
- Aug. 12** Last day for **fiscal committees** to meet and report bills (J.R. 61(b)(14)).
- Aug. 15 - 31** **Floor Session only.** No committee may meet for any purpose except Rules Committee, bills referred pursuant to Assembly Rule 77.2, and Conference Committees (J.R. 61(b)(15), J.R. 61(b)).
- Aug. 19** Last day to **amend** on the Floor (J.R. 61(b)(16)).
- Aug. 31** Last day for each house to pass bills, except bills that take effect immediately or bills in Extraordinary Session (Art. IV, Sec. 10(c), J.R. 61(b)(17)). **Final Recess** begins upon adjournment (J.R. 51(b)(3)).

**IMPORTANT DATES OCCURRING DURING FINAL RECESS**

- 2016**
- Sept. 30 Last day for Governor to sign or veto bills passed by the Legislature before Sept. 1 and in the Governor's possession on or after Sept. 1 (Art. IV, Sec. 10(b)(2)).
- Oct. 2 Bills enacted on or before this date take effect January 1, 2017 (Art. IV, Sec. 8(c)).
- Nov. 8 General Election.
- Nov. 30 Adjournment *sine die* at midnight (Art. IV, Sec. 3(a)).
- Dec. 5 2017-18 Regular Session convenes for Organizational Session at 12 noon (Art. IV, Sec. 3(a)).
- 2017**
- Jan. 1 Statutes take effect (Art. IV, Sec. 8(c)).

\*Holiday schedule subject to final approval by Rules Committee.

**MEDICAL BOARD OF CALIFORNIA - 2016 TRACKER LIST**  
**January 13, 2016**

<b>BILL</b>	<b>AUTHOR</b>	<b>TITLE</b>	<b>STATUS</b>	<b>POSITION</b>	<b>AMENDED</b>
<b>AB 611</b>	Dahle	Controlled Substances: Prescriptions: Reporting	Asm. B&P		4/15/15
<b>AB 890</b>	Ridley-Thomas	Anesthesiologist Assistants	Asm. Approps	Support if Amended	5/5/15
<b>AB 1306</b>	Burke	Healing Arts: Certified Nurse-Midwives: Scope of Practice	Sen. B&P	Oppose Unless Amended	7/1/15
<b>SB 22</b>	Roth	Residency Training	Inactive File	Support	6/4/15
<b>SB 323</b>	Hernandez	Nurse Practitioners	Asm. B&P	Oppose	7/9/15
<b>SB 482</b>	Lara	Controlled Substances: CURES Database	Assembly	Support	4/30/15
<b>SB 538</b>	Block	Naturopathic Doctors	Asm. Approps	Oppose	8/17/15
<b>SB 563</b>	Pan	Worker's Compensation: Utilization Review	Sen. Labor & Industrial Relations	Reco: Support	1/4/16
<b>SB 622</b>	Hernandez	Optometry	Asm. B&P	Oppose Unless Amended	5/4/15

Orange – For Discussion, Blue – No Discussion Needed (Bills not moving)

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** SB 563  
**Author:** Pan  
**Bill Date:** January 4, 2016, Amended  
**Subject:** Workers' Compensation: Utilization Review  
**Sponsor:** California Medical Association (CMA)

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill would ensure that physicians involved in authorizing injured worker medical care on behalf of the employer and/or payor are not being inappropriately incentivized to modify, delay, or deny requests for medically necessary services.

**BACKGROUND**

In California's workers' compensation system, an employer or insurer cannot deny treatment. When an employer or insurer receives a request for medical treatment, the employer or insurer can either approve the treatment or, if the employer or insurer believes that a physician's request for treatment is medically unnecessary or harmful, the employer or insurer must send the request to utilization review (UR). UR is the process used by employers or claims administrators to review medical treatment requested for the injured worker, to determine if the proposed treatment is medically necessary. UR is used to decide whether or not to approve medical treatment recommended by a treating physician. In California, the Department of Industrial Relations, Division of Workers' Compensation, does not require physicians performing UR to be licensed in California.

In April 2013, the Medical Board of California (Board) reaffirmed that engaging in UR is the practice of medicine and that the Board will not automatically deem UR complaints as non-jurisdictional; the Board will review UR complaints against California-licensed physicians to determine if a quality of care issue is present, and if so, the complaint will undergo the normal complaint review process.

**ANALYSIS**

This bill would prohibit an employer, or any entity conducting UR on behalf of an employer, from providing any financial incentive or consideration to a physician based on the number of modifications, delays, or denials made by the physician. This bill would give the administrative director the authority to review any compensation agreement, payment schedule, or contract between the employer, or any entity conducting UR on behalf of the employer, and the UR physician.

According to the sponsor, this bill would increase transparency and accountability within the workers' compensation UR process. There is currently no explicit prohibition in law related to UR to ensure that a physician's judgment for medical necessity is not compromised by financial incentives. This bill will promote the Board's mission of consumer protection and staff recommends that the Board take a support position on this bill.

**FISCAL:** None to the Board

**SUPPORT:** California Medical Association (sponsor)  
California Labor Federation, AFL-CIO  
California Orthopedic Association

**OPPOSITION:** None on file

**POSITION:** Recommendation: Support

AMENDED IN SENATE JANUARY 4, 2016

AMENDED IN SENATE APRIL 30, 2015

AMENDED IN SENATE APRIL 13, 2015

**SENATE BILL**

**No. 563**

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**Introduced by Senator Pan**

February 26, 2015

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An act to amend Section 4610 of, and to add Section 4610.2 to, of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 563, as amended, Pan. Workers' compensation: utilization review.

Existing law requires every employer, for purposes of workers' compensation, to establish a utilization review process to prospectively, retrospectively, or concurrently review requests by physicians for authorization to provide recommended medical treatment to injured employees. Existing law establishes timeframes for an employer to make a determination regarding a physician's request. Existing law requires the utilization review process to be governed by written policies and procedures, and requires that these policies and procedures be filed with the Administrative Director of the Division of Workers' Compensation and disclosed by the employer to employees, physicians, and the public upon request.

This bill would require that the method of compensation, and any incentive payments contingent upon the approval, modification, or denial of a claim, for an individual or entity providing services pursuant to the utilization review process, as specified, be filed with the administrative director and disclosed by the employer to employees, physicians, and the public upon request. The bill would exempt a request

for medical treatment by a physician to cure or relieve an injured worker from the effect of an industrial injury from these requirements if the request meets specified conditions, including that a final award of permanent disability made by the appeals board specifies the provision of future medical treatment and that the request for medical treatment is for medical treatment that is specified by the award. The bill would also include a statement of legislative intent: *prohibit the employer, or any entity conducting utilization review on behalf of the employer, from offering or providing any financial incentive or consideration to a physician based on the number of modifications, delays, or denials made by the physician. The bill would grant the administrative director authority pursuant to this provision to review any compensation agreement, payment schedule, or contract between the employer, or any entity conducting utilization review on behalf of the employer, and the utilization review physician.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

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

- 1     SECTION 1. Section 4610 of the Labor Code is amended to
- 2     read:
- 3     4610. (a) For purposes of this section, “utilization review”
- 4     means utilization review or utilization management functions that
- 5     prospectively, retrospectively, or concurrently review and approve,
- 6     modify, delay, or deny, based in whole or in part on medical
- 7     necessity to cure and relieve, treatment recommendations by
- 8     physicians, as defined in Section 3209.3, prior to, retrospectively,
- 9     or concurrent with the provision of medical treatment services
- 10    pursuant to Section 4600.
- 11    (b) Every employer shall establish a utilization review process
- 12    in compliance with this section, either directly or through its insurer
- 13    or an entity with which an employer or insurer contracts for these
- 14    services.
- 15    (c) Each utilization review process shall be governed by written
- 16    policies and procedures. These policies and procedures shall ensure
- 17    that decisions based on the medical necessity to cure and relieve
- 18    of proposed medical treatment services are consistent with the
- 19    schedule for medical treatment utilization adopted pursuant to
- 20    Section 5307.27. These policies and procedures, and a description

1 of the utilization process, shall be filed with the administrative  
2 director and shall be disclosed by the employer to employees,  
3 physicians, and the public upon request.

4 (d) If an employer, insurer, or other entity subject to this section  
5 requests medical information from a physician in order to  
6 determine whether to approve, modify, delay, or deny requests for  
7 authorization, the employer shall request only the information  
8 reasonably necessary to make the determination. The employer,  
9 insurer, or other entity shall employ or designate a medical director  
10 who holds an unrestricted license to practice medicine in this state  
11 issued pursuant to Section 2050 or Section 2450 of the Business  
12 and Professions Code. The medical director shall ensure that the  
13 process by which the employer or other entity reviews and  
14 approves, modifies, delays, or denies requests by physicians prior  
15 to, retrospectively, or concurrent with the provision of medical  
16 treatment services, complies with the requirements of this section.  
17 Nothing in this section shall be construed as restricting the existing  
18 authority of the Medical Board of California.

19 (e) No person other than a licensed physician who is competent  
20 to evaluate the specific clinical issues involved in the medical  
21 treatment services, and where these services are within the scope  
22 of the physician's practice, requested by the physician may modify,  
23 delay, or deny requests for authorization of medical treatment for  
24 reasons of medical necessity to cure and relieve. *The employer, or*  
25 *any entity conducting utilization review on behalf of the employer,*  
26 *shall neither offer nor provide any financial incentive or*  
27 *consideration to a physician based on the number of modifications,*  
28 *delays, or denials made by the physician under this section. The*  
29 *administrative director has authority pursuant to this section to*  
30 *review any compensation agreement, payment schedule, or contract*  
31 *between the employer, or any entity conducting utilization review*  
32 *on behalf of the employer, and the utilization review physician.*

33 (f) The criteria or guidelines used in the utilization review  
34 process to determine whether to approve, modify, delay, or deny  
35 medical treatment services shall be all of the following:

36 (1) Developed with involvement from actively practicing  
37 physicians.

38 (2) Consistent with the schedule for medical treatment utilization  
39 adopted pursuant to Section 5307.27.

40 (3) Evaluated at least annually, and updated if necessary.

1 (4) Disclosed to the physician and the employee, if used as the  
2 basis of a decision to modify, delay, or deny services in a specified  
3 case under review.

4 (5) Available to the public upon request. An employer shall  
5 only be required to disclose the criteria or guidelines for the  
6 specific procedures or conditions requested. An employer may  
7 charge members of the public reasonable copying and postage  
8 expenses related to disclosing criteria or guidelines pursuant to  
9 this paragraph. Criteria or guidelines may also be made available  
10 through electronic means. No charge shall be required for an  
11 employee whose physician's request for medical treatment services  
12 is under review.

13 (g) In determining whether to approve, modify, delay, or deny  
14 requests by physicians prior to, retrospectively, or concurrent with  
15 the provisions of medical treatment services to employees all of  
16 the following requirements shall be met:

17 (1) Prospective or concurrent decisions shall be made in a timely  
18 fashion that is appropriate for the nature of the employee's  
19 condition, not to exceed five working days from the receipt of the  
20 information reasonably necessary to make the determination, but  
21 in no event more than 14 days from the date of the medical  
22 treatment recommendation by the physician. In cases where the  
23 review is retrospective, a decision resulting in denial of all or part  
24 of the medical treatment service shall be communicated to the  
25 individual who received services, or to the individual's designee,  
26 within 30 days of receipt of information that is reasonably  
27 necessary to make this determination. If payment for a medical  
28 treatment service is made within the time prescribed by Section  
29 4603.2, a retrospective decision to approve the service need not  
30 otherwise be communicated.

31 (2) When the employee's condition is such that the employee  
32 faces an imminent and serious threat to his or her health, including,  
33 but not limited to, the potential loss of life, limb, or other major  
34 bodily function, or the normal timeframe for the decisionmaking  
35 process, as described in paragraph (1), would be detrimental to the  
36 employee's life or health or could jeopardize the employee's ability  
37 to regain maximum function, decisions to approve, modify, delay,  
38 or deny requests by physicians prior to, or concurrent with, the  
39 provision of medical treatment services to employees shall be made  
40 in a timely fashion that is appropriate for the nature of the

1 employee's condition, but not to exceed 72 hours after the receipt  
2 of the information reasonably necessary to make the determination.

3 (3) (A) Decisions to approve, modify, delay, or deny requests  
4 by physicians for authorization prior to, or concurrent with, the  
5 provision of medical treatment services to employees shall be  
6 communicated to the requesting physician within 24 hours of the  
7 decision. Decisions resulting in modification, delay, or denial of  
8 all or part of the requested health care service shall be  
9 communicated to physicians initially by telephone or facsimile,  
10 and to the physician and employee in writing within 24 hours for  
11 concurrent review, or within two business days of the decision for  
12 prospective review, as prescribed by the administrative director.  
13 If the request is not approved in full, disputes shall be resolved in  
14 accordance with Section 4610.5, if applicable, or otherwise in  
15 accordance with Section 4062.

16 (B) In the case of concurrent review, medical care shall not be  
17 discontinued until the employee's physician has been notified of  
18 the decision and a care plan has been agreed upon by the physician  
19 that is appropriate for the medical needs of the employee. Medical  
20 care provided during a concurrent review shall be care that is  
21 medically necessary to cure and relieve, and an insurer or  
22 self-insured employer shall only be liable for those services  
23 determined medically necessary to cure and relieve. If the insurer  
24 or self-insured employer disputes whether or not one or more  
25 services offered concurrently with a utilization review were  
26 medically necessary to cure and relieve, the dispute shall be  
27 resolved pursuant to Section 4610.5, if applicable, or otherwise  
28 pursuant to Section 4062. Any compromise between the parties  
29 that an insurer or self-insured employer believes may result in  
30 payment for services that were not medically necessary to cure  
31 and relieve shall be reported by the insurer or the self-insured  
32 employer to the licensing board of the provider or providers who  
33 received the payments, in a manner set forth by the respective  
34 board and in such a way as to minimize reporting costs both to the  
35 board and to the insurer or self-insured employer, for evaluation  
36 as to possible violations of the statutes governing appropriate  
37 professional practices. No fees shall be levied upon insurers or  
38 self-insured employers making reports required by this section.

39 (4) Communications regarding decisions to approve requests  
40 by physicians shall specify the specific medical treatment service

1 approved. Responses regarding decisions to modify, delay, or deny  
2 medical treatment services requested by physicians shall include  
3 a clear and concise explanation of the reasons for the employer's  
4 decision, a description of the criteria or guidelines used, and the  
5 clinical reasons for the decisions regarding medical necessity. If  
6 a utilization review decision to deny or delay a medical service is  
7 due to incomplete or insufficient information, the decision shall  
8 specify the reason for the decision and specify the information that  
9 is needed.

10 (5) If the employer, insurer, or other entity cannot make a  
11 decision within the timeframes specified in paragraph (1) or (2)  
12 because the employer or other entity is not in receipt of all of the  
13 information reasonably necessary and requested, because the  
14 employer requires consultation by an expert reviewer, or because  
15 the employer has asked that an additional examination or test be  
16 performed upon the employee that is reasonable and consistent  
17 with good medical practice, the employer shall immediately notify  
18 the physician and the employee, in writing, that the employer  
19 cannot make a decision within the required timeframe, and specify  
20 the information requested but not received, the expert reviewer to  
21 be consulted, or the additional examinations or tests required. The  
22 employer shall also notify the physician and employee of the  
23 anticipated date on which a decision may be rendered. Upon receipt  
24 of all information reasonably necessary and requested by the  
25 employer, the employer shall approve, modify, or deny the request  
26 for authorization within the timeframes specified in paragraph (1)  
27 or (2).

28 (6) A utilization review decision to modify, delay, or deny a  
29 treatment recommendation shall remain effective for 12 months  
30 from the date of the decision without further action by the employer  
31 with regard to any further recommendation by the same physician  
32 for the same treatment unless the further recommendation is  
33 supported by a documented change in the facts material to the  
34 basis of the utilization review decision.

35 (7) Utilization review of a treatment recommendation shall not  
36 be required while the employer is disputing liability for injury or  
37 treatment of the condition for which treatment is recommended  
38 pursuant to Section 4062.

39 (8) If utilization review is deferred pursuant to paragraph (7),  
40 and it is finally determined that the employer is liable for treatment

1 of the condition for which treatment is recommended, the time for  
 2 the employer to conduct retrospective utilization review in  
 3 accordance with paragraph (1) shall begin on the date the  
 4 determination of the employer’s liability becomes final, and the  
 5 time for the employer to conduct prospective utilization review  
 6 shall commence from the date of the employer’s receipt of a  
 7 treatment recommendation after the determination of the  
 8 employer’s liability.

9 (h) Every employer, insurer, or other entity subject to this section  
 10 shall maintain telephone access for physicians to request  
 11 authorization for health care services.

12 (i) If the administrative director determines that the employer,  
 13 insurer, or other entity subject to this section has failed to meet  
 14 any of the timeframes in this section, or has failed to meet any  
 15 other requirement of this section, the administrative director may  
 16 assess, by order, administrative penalties for each failure. A  
 17 proceeding for the issuance of an order assessing administrative  
 18 penalties shall be subject to appropriate notice to, and an  
 19 opportunity for a hearing with regard to, the person affected. The  
 20 administrative penalties shall not be deemed to be an exclusive  
 21 remedy for the administrative director. These penalties shall be  
 22 deposited in the Workers’ Compensation Administration Revolving  
 23 Fund.

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**All matter omitted in this version of the bill  
 appears in the bill as amended in the  
 Senate, April 30, 2015. (JR11)**

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**MBC TRACKER II BILLS**  
**1/13/2016**

Agenda Item 8B

<b>BILL</b>	<b>AUTHOR</b>	<b>TITLE</b>	<b>STATUS</b>	<b>AMENDED</b>
AB 11	Gonzalez	Employment: Paid Sick Days: In-Home Supportive Services	Asm. Approps	03/11/15
AB 12	Cooley	State Government: Administrative Regulations: Review	Sen. Approps	08/19/15
AB 19	Chang	GO BIZ: Small Business: Regulations	Asm. Approps	05/06/15
AB 26	Jones-Sawyer	Medical Cannabis	Asm. B&P	01/04/16
AB 41	Chau	Health Care Coverage: Discrimination	Asm. Approps	
AB 59	Waldron	Mental Health Services: Assisted Outpatient Treatment	Asm. Judiciary	01/06/16
AB 70	Waldron	Emergency Medical Services: Reporting	Asm. Health	03/26/15
AB 73	Waldron	Patient Access to Prescribed Antiretroviral Drugs for HIV/AIDS	Asm. Approps	01/05/16
AB 83	Gatto	Personal Data	Sen. Inactive File	07/15/15
AB 170	Gatto	Newborn Screening: Genetic Diseases: Blood Samples	Sen. Health	07/08/15
AB 174	Gray	UC: Medical Education	Sen. Approps	06/01/15
AB 259	Dababneh	Personal Information: Privacy	Sen. Approps	
AB 322	Waldron	Privacy: Social Security Numbers	Asm. P&CP	03/26/15
AB 330	Chang	State Government	Assembly	
AB 344	Chavez	Medi-Cal	Asm. Approps	
AB 351	Jones-Sawyer	Public Contracts: Small Business Participation	Asm. Approps	
AB 366	Bonta	Medi-Cal: Annual Access Monitoring Report	Sen. Approps	07/07/15
AB 383	Gipson	Public Health: Hepatitis C	Asm. Approps	04/30/15
AB 411	Lackey	Public Contracts	Assembly	
AB 419	Kim	Go BIZ: Regulations	Sen. B&P	05/04/15
AB 463	Chiu	Pharmaceutical Cost Transparency Act of 2016	Asm. Health	01/04/16
AB 466	McCarty	State Civil Service: Employment Procedures	Sen. Inactive File	07/06/15
AB 507	Olsen	DCA: BreEZe System: Annual Report	Sen. B&P	07/09/15
AB 508	Garcia, C.	Public Health: Maternal Care	Asm. Health	01/04/16
AB 513	Jones-Sawyer	Professions and Vocations	Assembly	

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Agenda Item 8B

<b>BILL</b>	<b>AUTHOR</b>	<b>TITLE</b>	<b>STATUS</b>	<b>AMENDED</b>
AB 533	Bonta	Health Care Coverage: Out-of-Network Coverage	Assembly	09/04/15
AB 537	Allen, T.	Public Employees' Benefits	Asm. PER&SS	
AB 570	Allen, T.	Cardiovascular Disease: High Blood Pressure	Assembly	
AB 572	Gaines	California Diabetes Program	Sen. Approps	07/02/15
AB 574	Patterson	General Acute Care Hospitals: Cardiovascular Surgical Teams	Asm. Health	03/26/15
AB 584	Cooley	Public Employee Retirement Systems	Assembly	04/06/15
AB 595	Alejo	Forfeiture	Asm. Public Safety	01/04/16
AB 618	Maienschein	Parole: Primary Mental Health Clinicians	Asm. Approps	
AB 623	Wood	Abuse-Deterrent Opioid Analgesic Drug Products	Asm. Approps	05/04/15
AB 635	Atkins	Medical Interpretation Services	Sen. Inactive File	
AB 649	Patterson	Medical Waste: Law Enforcement Drug Take back Programs	Sen. Approps	06/24/15
AB 714	Melendez	State Employees: Health Benefits	Asm. PER&SS	
AB 741	Williams	Mental Health: Community Care Facilities	Sen. Human Svcs	05/04/15
AB 750	Low	Business and Professions: Retired License Category	Asm. Approps	04/16/15
AB 756	Chang	Small Businesses: Civil Fines and Penalties	Asm. Rev. & Tax	04/13/15
AB 766	Ridley-Thomas	Public School Health Center Support Program	Sen. Approps	04/27/15
AB 769	Jones-Sawyer	State Employees: Disciplinary Action	Sen. PE&R	
AB 788	Chu	Prescriptions	Asm. Health	03/26/15
AB 789	Calderon	Contact Lens Sellers: Prohibited Practices: Fines	Asm. B&P	04/22/15
AB 791	Cooley	Electronic Health Records	Asm. Health	
AB 796	Nazarian	Health Care Coverage: Autism and Pervasive Dev. Disorders	Asm. B&P	01/04/16
AB 840	Ridley-Thomas	Nurses and Certified Nurse Assistants	Sen. PE&R	
AB 843	Hadley	Controller: Internet Web Site	Asm. A&AR	03/26/15
AB 845	Cooley	Health Care Coverage: Vision Care	Asm. Approps	04/21/15
AB 859	Medina	Medi-Cal: Obesity Treatment Plans	Asm. Approps	04/30/15

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Agenda Item 8B

<b>BILL</b>	<b>AUTHOR</b>	<b>TITLE</b>	<b>STATUS</b>	<b>AMENDED</b>
AB 911	Brough	Hospitals: Closures	Asm. Health	04/14/15
AB 923	Steinorth	Respiratory Care Practitioners	Asm. B&P	01/04/16
AB 972	Jones	Ken Maddy California Cancer Registry	Asm. Health	
AB 981	Mayes	Eyeglasses	Assembly	
AB 993	Comm. P.E.R.S	State Employees: MOU	Asm. Inactive File	
AB 994	Comm. P.E.R.S	State Employees: MOU	Asm. PER&SS	
AB 1001	Gatto	Child Abuse: Reporting	Asm. Human Svcs	01/04/16
AB 1027	Gatto	Health Care Coverage: Contracted Rates	Asm. Health	03/26/15
AB 1033	Garcia, E.	Economic Impact Analysis: Small Business Definition	Asm. J, ED & E	01/04/16
AB 1046	Dababneh	Hospitals: Community Benefits	Asm. Health	04/07/15
AB 1067	Gipson	Foster Children: Rights	Asm. Human Svcs	01/04/16
AB 1069	Gordon	Prescription Drugs: Collection and Distribution Program	Sen. Approps	07/01/15
AB 1092	Mullin	Magnetic Resonance Imaging Technologists	Asm. Approps	05/04/15
AB 1102	Santiago	Health Care Coverage: Medi-Cal Access Program	Sen. Inactive File	07/09/15
AB 1117	Garcia, C.	Medi-Cal: Vaccination Rates	Sen. Approps	06/01/15
AB 1125	Weber	State Agency Contracts: Small Business	Asm. Approps	05/04/15
AB 1133	Achadjian	School-Based Early Mental Health Intervention and Prevention	Asm. Approps	04/15/15
AB 1174	Bonilla	Healing Arts: Licensee Records	Asm. B&P	1/41/16
AB 1215	Ting	California Open Data Standard	Asm. Approps	03/26/15
AB 1219	Baker	California Cancer Task Force	Asm. Health	
AB 1254	Grove	Health Care Service Plans: Abortion Coverage	Asm. Approps	04/06/15
AB 1281	Wilk	Regulations: Legislative Review	Asm. A&AR	03/26/15
AB 1294	Holden	State Government: Prompt Payment of Claims	Asm. A&AR	03/26/15
AB 1299	Ridley-Thomas	Medi-Cal: Specialty Mental Health Services: Foster Children	Sen. Approps	07/16/15
AB 1302	Brown	Public Contracts: Disabled Veterans	Asm. J, ED & E	

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Agenda Item 8B

<b>BILL</b>	<b>AUTHOR</b>	<b>TITLE</b>	<b>STATUS</b>	<b>AMENDED</b>
AB 1357	Bloom	Children and Family Health Promotion Program	Asm. Health	04/29/15
AB 1386	Low	Emergency Medical Care: Epinephrine Auto-Injectors	Asm. B&P	01/05/16
AB 1396	Bonta	Public Health Finance	Asm. B&P	06/03/15
AB 1434	McCarty	Health Insurance: Prohibition on Health Insurance Sales	Asm. Rev. & Tax	04/20/15
AB 1445	Brown	Public Contracts: Small Business Contracts	Asm. Approps	
AB 1460	Thurmond	Hospitals: Community Benefit Plans	Assembly	
AB 1485	Patterson	Medi-Cal: Radiology	Asm. Approps	05/05/15
AB 1566	Wilk	Reports	Assembly	
AB 1575	Bonta	Medical Marijuana	Assembly	
AB 1639	Maienschein	Pupil Health: Sudden Cardiac Arrest Prevention Act	Assembly	
AB 1648	Wilk	Public Records	Assembly	
ABX2 12	Patterson	Cadaveric Fetal Tissue	Assembly	
ABX2 13	Gipson	Medi-Cal: AIDS Medi-Cal Waiver Program	Assembly	
ACA 3	Gallagher	Public Employees' Retirement	Asm. PER&SS	
SB 3	Leno	Minimum Wage: Adjustment	Asm. Approps	03/11/15
SB 10	Lara	Health Care Coverage: Immigration Status	Senate	09/09/15
SB 26	Hernandez	California Health Care Cost and Quality Database	Sen. Approps	05/05/15
SB 52	Walters	Regulatory Boards: Healing Arts	Senate	
SB 58	Knight	Public Employees' Retirement System	Senate	
SB 131	Cannella	UC: Medical Education	Sen. Approps	05/12/15
SB 139	Galgiani	Controlled Substances	Assembly	08/18/15
SB 190	Beall	Health Care Coverage: Acquired Brain Injury	Sen. Health	04/06/15
SB 201	Wieckowski	California Public Records Act	Sen. Judiciary	
SB 202	Hernandez	Controlled Substances: Synthetic Cannabinoids	Sen. B&P	01/04/16
SB 214	Berryhill	Foster Care Services	Senate	

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Agenda Item 8B

<b>BILL</b>	<b>AUTHOR</b>	<b>TITLE</b>	<b>STATUS</b>	<b>AMENDED</b>
SB 243	Hernandez	Medi-Cal: Reimbursement: Provider Rates	Sen. Approps	05/12/15
SB 253	Monning	Juveniles: Psychotropic Medication	Asm. Inactive File	08/31/15
SB 275	Hernandez	Health Facility Data	Asm. Health	
SB 280	Stone, J	Public Employees: Compensation	Sen. PE&R	04/15/15
SB 289	Mitchell	Telephonic and Electronic Patient Management Services	Sen. Approps	05/04/15
SB 293	Pan	Public Employees: Retirement	Senate	
SB 296	Cannella	Medi-Cal: Specialty Mental Health Services: Documentation	Sen. Inactive File	08/28/15
SB 315	Monning	Health Care Access Demonstration Project Grants	Asm. Inactive File	08/31/15
SB 346	Wieckowski	Health Facilities: Community Benefits	Sen. Health	04/23/15
SB 349	Bates	Optometry: Mobile Optometric Facilities	Sen. B&P	04/06/15
SB 368	Berryhill	Employment: Work Hours	S L& IR	01/04/16
SB 370	Wolk	Immunizations: Disclosure of Information: TB Screening	Sen. Health	
SB 375	Berryhill	Public Employees' Retirement	Senate	
SB 402	Mitchell	Pupil Health: Vision Examinations	Sen. Approps	05/04/15
SB 435	Pan	Medical Home: Health Care Delivery Model	Asm. Inactive File	07/07/15
SB 447	Allen	Medi-Cal: Clinics: Enrollment Applications	Asm. Approps	08/24/15
SB 459	Liu	State Government: Data	Senate	
SB 492	Liu	Coordinate Care Initiative: Consumer Ed. & Info. Guide	Senate	06/25/15
SB 547	Liu	Aging and Long-Term Care Services, Supports and Program. Coord.	Sen. Health	01/04/16
SB 571	Liu	Long-Term Care: CalCareNet	Sen. Approps	04/21/15
SB 573	Pan	Statewide Open Data Portal	Asm. Approps	07/09/15
SB 609	Stone, J	Controlled Substances: Narcotic Replacement Treatment	Sen. Health	04/21/15
SB 614	Leno	Medi-Cal: Mental Health Services	Asm. Inactive File	08/31/15
SB 729	Wieckowski	Consumer Complaints	Senate	
SB 744	Huff	Pupil Health: Epinephrine Auto-Injectors	Senate	

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Agenda Item 8B

<b>BILL</b>	<b>AUTHOR</b>	<b>TITLE</b>	<b>STATUS</b>	<b>AMENDED</b>
SB 779	Hall	Skilled Nursing Facilities: Certified Nurse Assistants	Sen. Approps	05/04/15
SB 780	Mendoza	Psychiatric Technicians and Assistants	Sen. Approps	

MEDICAL BOARD OF CALIFORNIA Status of Pending Regulations								
Subject	Current Status	Date Approved by Board	Date Notice Published by OAL	Date of Public Hearing	Date of Final Adoption by Board	Date to DCA (and other control agencies) for Final Review *	Date to OAL for Review **	Date to Sec. of State***
CME Requirements	Board voted to withdraw this rulemaking 10/30/15	10/24/14	3/6/15	5/8/2015				
Physician and Surgeon Licensing Examinations Minimum Passing Scores	Staff working to finish the file to submit to DCA for final approval and submission to OAL	5/8/15	6/5/15	7/31/15	7/31/15			
Outpatient Surgery Setting Accreditation Agency Standards	Staff working to finish the file to submit to DCA for final approval and submission to OAL	5/8/15	6/5/15	7/31/15	7/31/15			
Disclaimers and Explanatory Information Applicable to Internet Postings	15-day notice for amended language released, public comment period closed 12/30/15; no comments received so staff will finalize the file and submit to DCA for final approval and submission to OAL	5/8/15	6/5/15	7/31/15	10/30/15			
Disciplinary Guidelines	15-day notice for amended language released, public comment period closed 12/30/15; no comments received so staff will finalize the file and submit to DCA for final approval and submission to OAL	7/25/14 7/31/15	9/4/15	10/30/15	10/30/15			

Prepared by Kevin A. Schunke  
Updated on December 31, 2015  
For questions, call (916) 263-2368

\* DCA is allowed 30 calendar days for review.  
\*\* OAL is allowed 30 working days for review.  
\*\*\* Rulemakings become effective on a quarterly basis, unless otherwise specified.

# The Medical Board of California

certifies that

**COPY**

[Redacted Name]

a graduate of

## **CALIFORNIA SCHOOL OF PODIATRIC MEDICINE AT SAMUEL MERRITT UNIVERSITY**

possesses the qualifications, education and training prescribed by law and is hereby granted a license as a

### ***Doctor of Podiatric Medicine***

entitled to practice the profession of podiatric medicine in the State of California. Given under our

hands and the seal of the Medical Board of California this 17th day of December, 2015.

*David Senard Sewell*

President

*Alison Paris*

Secretary

**No. E** [Redacted]



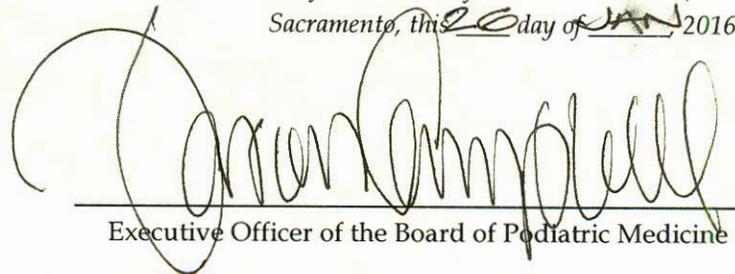
# *Board of Podiatric Medicine of the Medical Board of California*

## *Recommendation for Podiatric Licensure in the State of California*

*Pursuant to section 2479 of Article 22 of the Medical Practice Act, the California Board of Podiatric Medicine ("board"), by and through its Executive Officer, conferred and delegated with authority to administer all functions necessary to dispatch the business of the board, having fully investigated and evaluated the applicant for a certificate to practice podiatric medicine pursuant to the authority granted to the board by the Legislature of this State under section 2480 of the Medical Practice Act, and having determined that the applicant has satisfactorily met the applicable requirements for podiatric medical licensure as set forth in Articles 4 and 22 of the Medical Practice Act, now therefore recommends to the Division of Licensing of the Medical Board of California, that applicant, \_\_\_\_\_ be hereby issued forthwith a certificate to practice podiatric medicine by the Medical Board of California with all speed and alacrity in compliance with its mandate and mission to implement and promote access to quality medical care through administration of the Medical Board's licensing function.*



*In testimony whereof, I have hereunto set  
my hand and affixed the Seal of the  
California Board of Podiatric Medicine, at  
Sacramento, this 20 day of JAN, 2016.*

  
Executive Officer of the Board of Podiatric Medicine

**Campbell, Jason@DCA**

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**From:** Kirchmeyer, Kimberly@MBC  
**Sent:** Wednesday, January 27, 2016 6:20 PM  
**To:** Campbell, Jason@DCA  
**Cc:** [REDACTED]@DCA; [REDACTED]@DCA; Worden, Curt@MBC; [REDACTED]@MBC; [REDACTED]@MBC  
**Subject:** FW: MBC Issuance of Certificate to practice Podiatric Medicine  
**Attachments:** [REDACTED] - BPM Recommendation packet - signed 1 26 2016.pdf  
**Importance:** High

Mr. Campbell,

The Medical Board of California will not be issuing these licenses at this time.

Please follow the licensure procedures you have been following for the past two decades or more.

Sincerely,

Kimberly Kirchmeyer  
 Executive Director  
 Medical Board of California  
 2005 Evergreen Street, Suite 1200  
 Sacramento, CA 95815  
 916-263-2389

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**From:** Zamora, Kia-Maria@DCA  
**Sent:** Wednesday, January 27, 2016 2:50 PM  
**To:** Worden, Curt@MBC  
**Cc:** Campbell, Jason@DCA  
**Subject:** FW: MBC Issuance of Certificate to practice Podiatric Medicine  
**Importance:** High

Hi Curt,

Please issue this license per BPM recommendations right away. I will follow up further with a phone call.

If you need anything else, please let me know right away.

Thank you.

*Kia-Maria Zamora*  
 Board of Podiatric Medicine  
 916.263.2649

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**From:** Zamora, Kia-Maria@DCA  
**Sent:** Wednesday, January 27, 2016 11:07 AM  
**To:** Worden, Curt@MBC

**Subject:** FW: MBC Issuance of Certificate to practice Podiatric Medicine  
**Importance:** High

Hi Curt,

Please advise of the status of this as it is imperative that licenses be issued as soon as possible.

Should you need anything from me, please let me know.

Thank you in advance for your prompt response.

*Kia-Maria Zamora*  
Board of Podiatric Medicine  
916.263.2649

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**From:** Zamora, Kia-Maria@DCA  
**Sent:** Tuesday, January 26, 2016 1:40 PM  
**To:** Worden, Curt@MBC  
**Subject:** MBC Issuance of Certificate to practice Podiatric Medicine  
**Importance:** High

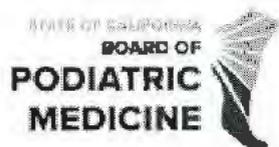
Hello Curt,

Attached please find in PDF format a certification of qualification and an official board recommendation for DPM licensure. Hard copies of the docs have been sent via interoffice mail. The applicant has met all the licensing requirements. Kindly please issue the license as required by section 2479 and 2486 of the Medical Practice Act. The pertinent applicant information is provided below for your convenience.

Applicant: [REDACTED]  
Entity #: [REDACTED]  
Application #: [REDACTED]  
Transaction: 5002-1020

As you probably know the applicant awaits their license and a quick turnaround before COB today is greatly appreciated.

*Thank you.*



*Kia-Maria Zamora*  
Licensing Coordinator  
916.263.2649 p | 916.263.2651 f



## MEDICAL BOARD OF CALIFORNIA

### QUARTERLY BOARD MEETING AGENDA



#### MEMBERS OF THE BOARD

##### **President**

David Serrano Sewell

##### **Vice President**

Dev GnanaDev, M.D.

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Gerrie Schipske, R.N.P, J.D.

Jamie Wright, Esq.

Barbara Yaroslavsky

Felix Yip, M.D.

The Westin San Diego

400 West Broadway

San Diego, CA 92101

619-239-4500 (directions only)

Diamond 1 Room

#### **Thursday October 29, 2015**

**12:00 p.m. – 1:15 p.m.**

**4:00 p.m. – 6:00 p.m.**

(or until the conclusion of business)

#### **Friday, October 30, 2015**

**9:00 a.m. – 3:00 p.m.**

(or until the conclusion of business)

Teleconference – See Attached

Meeting Information

Action may be taken on any item listed on the agenda.

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

Please see Meeting Information Section for additional information on public participation.

#### **ORDER OF ITEMS IS SUBJECT TO CHANGE**

#### **Thursday, October 29, 2015**

##### **12:00 p.m.**

1. Call to Order

Luncheon Presentation – Physician Burnout – Christina Maslach, Ph.D., Professor of Psychology, University of California, Berkeley

##### **4:00 p.m.**

2. Call to Order/Roll Call

3. Public Comments on Items not on the Agenda

*Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting.*

*[Government Code Sections 11125, 11125.7 (a)]*

4. Approval of Minutes from the July 30-31, 2015 Meeting

5. Board Member Communications with Interested Parties – Mr. Serrano Sewell

6. Update, Discussion and Possible Action on Recommendations from the Public Outreach, Education, and Wellness Committee – Dr. Lewis

7. President's Report – Mr. Serrano Sewell

A. Committee Roster Updates

8. Executive Management Reports – Ms. Kirchmeyer
  - A. Approval of Orders Following Completion of Probation and Orders for License Surrender During Probation
  - B. Administrative Summary
  - C. Enforcement Program Summary
  - D. Licensing Program Summary
  - E. Update on the CURES Program
  - F. Update on the Federation of State Medical Boards
9. Update on the Physician Assistant Board – Dr. Bishop
10. Update on the Health Professions Education Foundation – Ms. Yaroslavsky and Dr. Yip

<b>Friday, October 30, 2015</b>
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11. Call to Order/Roll Call
12. Public Comments on Items not on the Agenda  
*Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections 11125, 11125.7 (a)]*
13. 9:00 a.m. REGULATIONS – PUBLIC HEARING  
 Manual of Model Disciplinary Orders and Disciplinary Guidelines (Disciplinary Guidelines). Amendment to Section 1361 of Title 16, California Code of Regulations. This proposal would amend the Disciplinary Guidelines to make amendments to conform to changes that have occurred in the educational and probationary environments, clarify some conditions of probation, and strengthen consumer protection.
14. Petition to Promulgate Regulations Pursuant to Government Code Section 11340.6 Concerning a Requirement for a Physician on Probation to Provide Patient Notification
15. Discussion and Possible Action on Legislation/Regulations – Ms. Simoes
  - A. 2015 Legislation Update and Implementation
 

AB 159	ABX2 15	SB 337	SB 643
AB 637	ACR 29	SB 396	SB 738
AB 679	SB 19	SB 408	SJR 7
AB 684	SB 277	SB 464	
  - B. 2016 Legislative Proposals
  - C. Status of Regulatory Actions
    1. Discussion and Possible Action of the Regulations Relating to Continuing Medical Education
    2. Discussion Possible Action of Regulations to Amend Disclaimers and Explanatory Information Applicable to Internet Postings – Ms. Webb
16. Update from the Department of Consumer Affairs – Ms. Lally

17. Presentation and Discussion on the *North Carolina State Board of Dental Examiners v. Federal Trade Commission* Decision and Attorney General's Opinion – Ms. Dobbs and Ms. Webb
18. Update on the BreEZe System
  - A. Medical Board of California Update – Mr. Eichelkraut and Ms. Lowe
  - B. Department of Consumer Affairs Update – Mr. Piccone
19. Discussion and Possible Action on Universidad Iberoamericana (UNIBE) Medical School Application for Recognition – Mr. Worden
20. Update, Discussion and Possible Action of Recommendations from the Midwifery Advisory Council Meeting – Ms. Sparrevohn
21. Update, Discussion and Possible Action of Recommendations from the Enforcement Committee – Dr. Yip
22. Update and Discussion Regarding the Interim Suspension Order (ISO) Study - Ms. Kirchmeyer, Ms. Delp, Ms. Castro, and Mr. Gomez
23. Investigation and Vertical Enforcement Program Report
  - A. Program Update from the Department of Consumer Affairs – Mr. Gomez
  - B. Program Update from the Health Quality Enforcement Section – Ms. Castro
24. Update from the Attorney General's Office – Ms. Castro
25. Agenda Items for the January 2016 Meeting in the Sacramento Area
26. Adjournment

## Meeting Information

This meeting will be available via teleconference. Individuals listening to the meeting will have an opportunity to provide public comment as outlined below.

**The call-in number for teleconference comments is:**

**Thursday October 29, 2015 - (888) 220-8450**

**Friday October 30, 2015 - (888) 221-3915**

Please wait until the operator has introduced you before you make your comments.

To request to make a comment during the public comment period, press \*1; you will hear a tone indicating you are in the queue for comment. If you change your mind and do not want to make a comment, press #. Assistance is available throughout the teleconference meeting. To request a specialist, press \*0.

During Agenda Item 3 and 13 – Public Comments on Items Not on the Agenda, the Board has limited the total public comment period via teleconference to 20 minutes. Therefore, after 20 minutes, no further comments will be accepted. Each person will be limited to three minutes per agenda item.

During public comment on any other agenda item, a total of 10 minutes will be allowed for comments via the teleconference line. After 10 minutes, no further comments will be accepted. Each person will be limited to three minutes per agenda item.

Comments for those in attendance at the meeting will have the same time limitations as those identified above for individuals on the teleconference line.

*The mission of the Medical Board of California is to protect health care consumers through the proper licensing and regulation of physicians and surgeons and certain allied health care professions and through the vigorous, objective enforcement of the Medical Practice Act, and to promote access to quality medical care through the Board's licensing and regulatory functions.*

*Meetings of the Medical Board of California are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. The audience will be given appropriate opportunities to comment on any issue presented in open session before the Board, but the President may apportion available time among those who wish to speak.*

*For additional information, call (916) 263-2389.*

**NOTICE:** *The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Lisa Toof at (916) 263-2389 or [lisa.toof@mbc.ca.gov](mailto:lisa.toof@mbc.ca.gov) or send a written request to Lisa Toof. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.*

## LEGISLATIVE PROPOSALS 2016

### **Verify a Physician's License Campaign**

Board staff is working on launching an outreach campaign to encourage all patients to verify their physician's license on the Medical Board's website. Part of the plan for this campaign is to focus outreach efforts in March. Board staff is suggesting that the Board pursue a legislative resolution to proclaim March of every year, "Verify a Physician's License Month". This is another tool to enhance the outreach campaign efforts to improve the Board's visibility, and increase awareness of the Board's website and the physician profile information it offers to consumers.

### **Resignation of License Option for Discipline**

Board staff has become aware of a growing number of cases that result in discipline because a licensee has some type of disability that impairs his or her practice, but the licensee does not apply for a disabled license. Many times these cases result in a patient care incident and related discipline. Board staff is also seeing the same issue for older physicians who continue to practice although they may face some cognitive issues due to age. Many of these physicians have had long, distinguished careers, which unfortunately have to end in discipline. Both of these types of cases are difficult cases to settle. Many of these physicians have not had prior discipline, and do not want to surrender their licenses. For physicians in this situation who are facing an accusation that would result in more than a public letter of reprimand, but less than revocation, the Board is suggesting a new option for discipline, resignation of a license. The resignation option would allow a physician to voluntarily resign, but not allow the physician to reinstate his or her license. A resignation option might be more desirable for the disabled or older physician, and would ensure patient protection by taking that physician out of practice in California. It would merely be an option for the Board to consider for discipline, and it would be up to the Board to decide if that particular option is appropriate for each particular case.

### **Allied Health Licensee Clean up**

Board staff is suggesting that law be amended to clarify the Board's authority in licensing and regulating allied health licensees (Licensed Midwives, Research Psychoanalysts and Polysomnographic Technologists and Trainees). There are many provisions that apply to physicians and surgeons that the Board also applies to allied health licensees, and the Board wishes to clarify its authority in law to do so. The Board tried to include some of these provisions in last year's omnibus bill, but they were removed because legislative staff thought they were too substantive for omnibus legislation. The Board would like clear authority to take disciplinary action against allied health licensees for excessive use of drugs or alcohol (Business and Professions Code (BPC) Section 2239), to revoke or deny a license for registered sex offenders (BPC Section 2232), to allow allied health licensees to petition for license reinstatement (BPC Section 2307), to allow the Board to use probation as a disciplinary option for allied health licensees (BPC Section 2228), and to obtain payment for the costs of probation monitoring.

### Major Clean up Items

There are also several areas that need clean up where the changes may be too substantive for omnibus. Board staff would like to run a bill that would include the allied health clean up and the other major clean up items.

- Board staff would like to clean up the provisions in the Medical Practice Act that include the Board of Podiatric Medicine (BPM). As legislation was going through last session, it became clear that existing law does not accurately portray the Board's relationship with the BPM. In existing law it appears that the Board oversees and houses the BPM, when that is not the case. Board staff would like to clean up all sections that reference Board oversight over the BPM and move or amend the appropriate sections of the Medical Practice Act and the laws that regulate the BPM, in Article 22 of the BPC.
- Existing law (BPC Section 2221) lists the reasons a physician's license application can be denied. The Board also has the responsibility to deny or approve a postgraduate training authorization letter (PTAL) for international graduates. Although the Board currently uses the same reasons to deny a PTAL as it does for denying a license, this authority needs to be clarified in statute by including PTALs in BPC Section 2221.
- The Board currently has a limited practice license that applicants or disabled status licensees may apply for if they are otherwise eligible for licensure, but unable to practice all aspects of medicine safely due to a disability. The way the law is written now, only new licensees or disabled status licensees can apply for a limited practice license. Board staff believes that all licensees should be able to apply for a limited practice license at any time. Board staff would like to make it clear in law that the limited practice license is an option for all licensees.
- Currently when a physician is on probation, all related discipline documents are available on the Board's website for as long as those documents are public. However, if the Board issues a probationary license to an applicant (BPC Section 2221), it is not specified in law how long that information should be made available to the public. Board staff believes this information should follow the law related to physicians placed on probation, and that documents related to probationary licenses should be disclosed to an inquiring member of the public and posted on the Board's website.
- Existing law related to investigations that involve the death of a patient (BPC Section 2225(c)(1)) allows the Board to inspect and copy the medical records of the deceased patient without the authorization of the next of kin of the deceased patient or court order, solely for the purpose of determining the extent to which the death was result of the physician's conduct in violation of the Medical Practice Act. The Board must provide a written request to the physician that owns the records, which includes a declaration that the Board has been unsuccessful in locating or contacting the patient's next of kin after reasonable efforts. Sometimes the physician is no longer practicing at the facility where the care of the deceased patient occurred or where the records are located. Board staff would like to amend this section to allow the Board to send a written request to the facility where the care occurred or where the records are located, in an attempt to secure the patient records and allow the Board to move forward with its investigation.

**Omnibus**

- Delete BPC Section 852 related to the Task Force on Culturally and Linguistically Competent Physicians and Dentists, as this task force no longer exists.
- Delete BPC Sections 2380 – 2392, as the Bureau of Medical Statistics does not exist in the Board.
- Delete BPC Section 2029 related to retention of complaints, as this section is not relevant. The Board has its own records retention schedule and BPC Section 2227.5 also specifies how long the Board retains complaints. In addition, the Board’s statute of limitations (BPC Section 2230.5) already applies.
- BPC Section 2441 is related to limited practice licenses. This section requires the applicant/licensee to sign an agreement in which the applicant/licensee agrees to limit his or her practice in the manner prescribed to by the reviewing physician. This subdivision (b) needs to be amended to clarify that the Board must also agree to the practice limitation that the reviewing physician is suggesting for the applicant/licensee.