



NOTICE OF ACUPUNCTURE BOARD MEETING

June 10, 2016

Agenda

JUNIPERO SERRA STATE BLDG.
CARMEL ROOM, FIRST FLOOR
320 WEST FOURTH STREET
LOS ANGELES, CA 90013

The Board plans to webcast this meeting at <https://thedcpage.wordpress.com/webcasts/>. Webcast availability cannot, however, be guaranteed due to limitations on resources or other technical difficulties that may arise. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location.

<https://thedcpage.wordpress.com/webcasts/>

AGENDA

FULL BOARD MEETING - 9:00 a.m.

1. Call to Order, Roll Call and Establishment of a Quorum
2. Reports
 - a. Executive Officer's Report (Bodea)
 - i) Sunset Review Hearing: Update
 - ii) ACAOM update
 - iii) BPPE Update
 - iv) Budget Update
 - v) March 16, 2016 Exam Statistics
 - vi) Sale of Needles – Regulated by Board of Pharmacy
 - vii) Future Stakeholder Meetings
 - b. Enforcement: Performance Measures (Brothers)
 - c. Legislative and Regulatory Update (Johnson)
 - i) Discussion and possible action on legislation: (List each bill)
 - a. AB 1992 (Jones) Pupil Health: physical exams
 - b. AB 2190 (Asm. B&P Comte) Acupuncture Board: Executive Officer
 - c. AB 2701 (Jones) DCA: board: training requirements
 - d. AB 2744 (Gordon) Healing Arts: referrals

Acupuncture Board Members

Hildegarde Aguinaldo, President, Public Member
Jamie Zamora, Vice President, Public Member
Kitman Chan, Public Member
Dr. Michael Corradino, DAOM, MTOM, L.Ac,
Licensed Member
Francisco Hsieh, Public Member
Jeannie Kang, L.Ac, Licensed Member
Vacancy

- e. **AB 2859 (Low) Professions and Vocations: retired category: licenses**
- f. **SB 1033 (Hill) Professionals: Probation**
- g. **SB 1155 (Morrell) Professions and Vocations: licenses: military service**
- h. **SB 1195 (Hill) Professions and Vocations: Board Actions: competitive impact**
- i. **SB 1348 (Cannella) License Applications: military experience**

ii) Update on regulations:

- a. **Title 16, CCR, Section 1399.469 – Uniform Standards Related to Substance Abuse and Recommended Guidelines for Disciplinary Orders and Conditions of Probation (SB 1441)**
- b. **Title 16, CCR, Sections 1399.433, 1399.434, 1399.436, 1399.437-Standards for the Approval of Educational Training and Clinical Experience Received Outside the United States; Curriculum Standards for Board Approval of Curriculum; Requirements for Board Approval of Curriculum (SB 1246)**
- c. **Title 16, CCR, Sections 1399.480, 1400.1, 1400.2 , 1400.3- Sponsored Free Health-Care Events (AB 2699)**
- d. **Title 16, CCR, Section 1399.463.3- Display of Licensure by Acupuncture Board (BPC 138)**
- e. **Title 16, CCR, Section 1399.455- Advertising Guidelines – Display of License number in Advertising**
- f. **Title 16, CCR, Section 1399.450(b)- Prostitution enforcement and Condition of Office**
- g. **Title 16, CCR, Section 1399.482.2- Continuing Education Ethics Requirement**
- h. **Title 16, CCR, Section 1399.451(a)-Hand Hygiene Requirements**

3. Approval of Board Meeting Minutes for:

- **February 26, 2016**
- **March 10, 2016**

4. Committee Assignments (Aguinaldo)

5. Review and Possible Action to adopt Executive Officer Duty Statement (Aguinaldo)

6. Consideration and Possible Action Related to Results of the Audit of the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) exam (OPES/NCCAOM)

CLOSED SESSION

7. Pursuant to Government Code section 11126(c)(1), the Board will meet in closed session to discuss the responses the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) provided regarding the NCCAOM examination audit with staff of the Office of Professional Examination Services.

OPEN SESSION

8. **Presentation on Ethical Decision Making and Communication relating to Board activities (Pruden)**
9. **Presentation on North Carolina Dental Board Examiners v Federal Trade Commission (Pruden)**
10. **Public Comment for items not on Agenda (Aguinaldo)**

The Board may not discuss or take any action on any item 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))

11. Future Agenda Items

12. Adjournment

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

**THE AGENDA, AS WELL AS BOARD MEETING MINUTES, CAN BE FOUND ON THE
ACUPUNCTURE BOARD'S WEBSITE AT**

www.acupuncture.ca.gov

Please Note: Board meetings are open to the public and are held in barrier free facilities that are accessible to those with physical disabilities in accordance with the Americans with Disabilities Act (ADA). If you need additional reasonable accommodations, please make your request no later than five (5) business days before this meeting. Please direct any questions regarding this meeting to the Board Liaison, Tammy Graver at (916) 515-5204; FAX (916) 928-2204.

ACUPUNCTURE BOARD - 0108
BUDGET REPORT
FY 2015-16 EXPENDITURES
Apr-2016

FISCAL MONTH 10

OBJECT DESCRIPTION	FY 2014-15		FY 2015-16				
	ACTUAL EXPENDITURES	PRIOR YEAR EXPENDITURES	BUDGET ACT	CURRENT YEAR EXPENDITURES	PERCENT SPENT	Budget Office's PROJECTIONS	UNENCUMBERED
	(MONTH 13)	4/30/2015	2015-16	4/30/2016	(%)	TO YEAR END	BALANCE
PERSONNEL SERVICES							
Salary & Wages (Staff)	410,694	336,518	526,000	421,227	78%	508,712	17,288
Statutory Exempt (EO)	85,860	71,550	80,000	72,205	107%	72,205	7,795
Temp Help Reg (Seasonals)	42,019	30,789	19,000	47,872	221%	56,402	-37,402
Bl 12-03 Blanket	0	0	0	0	0%	0	0
Temp Help (Exam Proctors)	0	0	0	0	0%	0	0
Board Member Per Diem	14,600	10,000	7,000	11,700	209%	13,500	-6,500
Committee Members	0	0	0	0	0%	0	0
Overtime	10,939	9,515	5,000	1,615	0%	1,938	3,062
Staff Benefits	245,071	200,581	344,000	235,879	71%	271,255	72,745
TOTALS, PERSONNEL SVC	809,184	658,953	981,000	790,498	82%	924,012	56,988
OPERATING EXPENSE AND EQUIPMENT							
General Expense	66,215	51,877	57,000	41,844	116%	50,213	6,787
Fingerprint Reports	1,813	1,666	20,000	417	9%	500	19,500
Minor Equipment	0	0	5,000	0	0%	0	5,000
Printing	19,235	17,544	17,000	13,564	113%	14,871	2,129
Communication	8,700	4,757	17,000	6,041	51%	11,048	5,952
Postage	38,916	27,378	27,000	19,900	144%	21,100	5,900
Insurance	0	0	0	0	0%	0	0
Travel In State	49,170	40,321	32,000	31,763	154%	38,811	-6,811
Travel, Out-of-State	2,177	0	0	1,100	0%	1,100	-1,100
Training	0	0	3,000	0	0%	0	3,000
Facilities Operations	113,693	112,856	65,000	109,330	175%	114,000	-49,000
Utilities	0	0	0	0	0%	0	0
C & P Services - Interdept.	0	0	9,000	0	0%	0	9,000
C & P Services - External	0	0	4,000	3	0%	3	3,997
DEPARTMENTAL SERVICES:							
OIS Pro Rata	135,055	135,669	135,000	101,250	100%	135,000	0
Admin/Exec	91,854	91,854	134,000	100,500	69%	134,000	0
Interagency Services	0	0	0	0	0%	0	0
IA w/ OPES	297,131	427,765	334,000	191,190	89%	305,652	28,348
DOI-ProRata Internal	2,682	3,108	4,000	3,000	67%	4,000	0
Public Affairs Office	3,120	3,120	161,000	120,750	2%	161,000	0
PPRD Pro Rata	101,023	104,210	0	0	0%	0	0
INTERAGENCY SERVICES:							
Consolidated Data Center	626	421	3,000	747	21%	896	2,104
Information Technology	0	0	5,000	449	0%	539	4,461
Central Admin Svc-ProRata	141,674	106,256	139,000	104,048	102%	139,000	0
EXAM EXPENSES:							
Exam Supplies	0	0	0	0	0%	0	0
Exam Freight	0	0	0	0	0%	0	0
Exam Site Rental	0	0	0	0	0%	0	0
C/P Svcs-External Expert Administrative	343,491	343,491	287,000	305,491	120%	305,491	-18,491
C/P Svcs-External Expert Examiners	58,612	44,843	84,000	0	70%	0	84,000
C/P Svcs-External Subject Matter	2,170	443	0	32,610	0%	70,261	-70,261
ENFORCEMENT:							
Attorney General	216,501	147,128	379,000	287,752	57%	345,302	33,698
Office Admin. Hearings	29,820	21,111	107,000	72,938	28%	87,525	19,475
Court Reporters	1,204	554	0	2,710	0%	3,252	-3,252
Evidence/Witness Fees	55,360	39,076	11,000	58,730	503%	70,476	-59,476
DOI - Investigations	394,578	405,408	509,000	381,750	78%	458,100	50,900
Major Equipment	0	0	0	0	0%	0	0
Special Items of Expense	0	0	0	0	0%	11,500	-11,500
Other (Vehicle Operations)	0	0	3,000	0	0%	0	3,000
TOTALS, OE&E	2,174,821	2,130,856	2,551,000	1,987,876	85%	2,483,641	67,359
TOTAL EXPENSE	2,984,005	2,789,809	3,532,000	2,778,374	168%	3,407,652	124,348
Sched. Reimb.	0	0	0	0	0%	0	0
Sched. Reimb. - Fingerprints	-1,421	-1,372	-22,000	-294	6%	-22,000	0
Sched. Reimb. - External/Private	-2,585	-2,585	-1,000	-940	0%	-1,000	0
Unsched. Reimb. - Other	-56,769	-41,462	0	-103,901	0%	0	0
NET APPROPRIATION	2,923,230	2,744,390	3,509,000	2,674,473	83%	3,384,652	124,348
SURPLUS/(DEFICIT):							3.5%

0108 - Acupuncture Analysis of Fund Condition

(Dollars in Thousands)

2016-17 Governor's Budget

	ACTUAL 2014-15	Budget Act CY 2015-16	Governor's Budget BY 2016-17
BEGINNING BALANCE	\$ 2,127	\$ 1,921	\$ 1,630
Prior Year Adjustment	\$ 86	\$ -	\$ -
Adjusted Beginning Balance	<u>\$ 2,213</u>	<u>\$ 1,921</u>	<u>\$ 1,630</u>
REVENUES AND TRANSFERS			
Revenues:			
125600 Other regulatory fees	\$ 53	\$ 48	\$ 55
125700 Other regulatory licenses and permits	\$ 684	\$ 1,086	\$ 1,088
125800 Renewal fees	\$ 1,869	\$ 2,073	\$ 2,073
125900 Delinquent fees	\$ 16	\$ 13	\$ 16
141200 Sales of documents	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ 5	\$ -	\$ -
150300 Income from surplus money investments	\$ 5	\$ 3	\$ 13
150500 Interest Income From Interfund Loans	\$ -	\$ -	\$ -
160400 Sale of fixed assets	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 2	\$ -	\$ -
161400 Miscellaneous revenues	\$ -	\$ -	\$ -
Totals, Revenues	<u>\$ 2,634</u>	<u>\$ 3,223</u>	<u>\$ 3,245</u>
Transfers from Other Funds			
Proposed GF Loan Repayment, 1110-011-0108 Budget Act of 2011			\$ 4,000
Totals, Revenues and Transfers	<u>\$ 2,634</u>	<u>\$ 3,223</u>	<u>\$ 7,245</u>
Totals, Resources	<u>\$ 4,847</u>	<u>\$ 5,144</u>	<u>\$ 8,875</u>
EXPENDITURES			
Disbursements:			
1110 - Program Expenditures (State Operations)	\$ 2,923	\$ 3,509	\$ -
1111 - Department of Consumer Affairs (State Operations)	\$ -	\$ -	\$ 4,307
8880 - Financial Information System for California	\$ 2	\$ 5	\$ 4
Total Disbursements	<u>\$ 2,925</u>	<u>\$ 3,514</u>	<u>\$ 4,311</u>
FUND BALANCE			
Reserve for economic uncertainties	\$ 1,921	\$ 1,630	\$ 4,564
Months in Reserve	6.6	4.5	12.5

NOTES: A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.
 B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING BY+1.
 C. ASSUMES INTEREST RATE AT 0.3%



ACUPUNCTURE BOARD

1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
(916) 515-5200 FAX (916) 928-2204 www.acupuncture.ca.gov

Professional Acupuncture Association Information

Please fax to the CA Acupuncture Board at 916-928-2204
or scan and email to acupuncture@dca.ca.gov

Association Name: _____

Phone Number(s): _____

Email(s): _____

Address(es): _____

Website: _____

Contact Name and info: _____

What membership types are offered (L.Ac's, Students, Schools, Vendors) and what are their numbers?

What services do you provide to Acupuncturists? _____

Does your organization offer Continuing Education to Licensees? _____

Does your organization offer any outreach materials (booklets, newsletters or web links, blogs)? _____

Please list examples: _____

What other state or national Acupuncture organizations does your organization maintain contact with?

What does your organization feel are the top issues (in the order of importance) for the Practice of Acupuncture in California today? _____

Comments or suggestions: _____

This form has been filled out by: _____



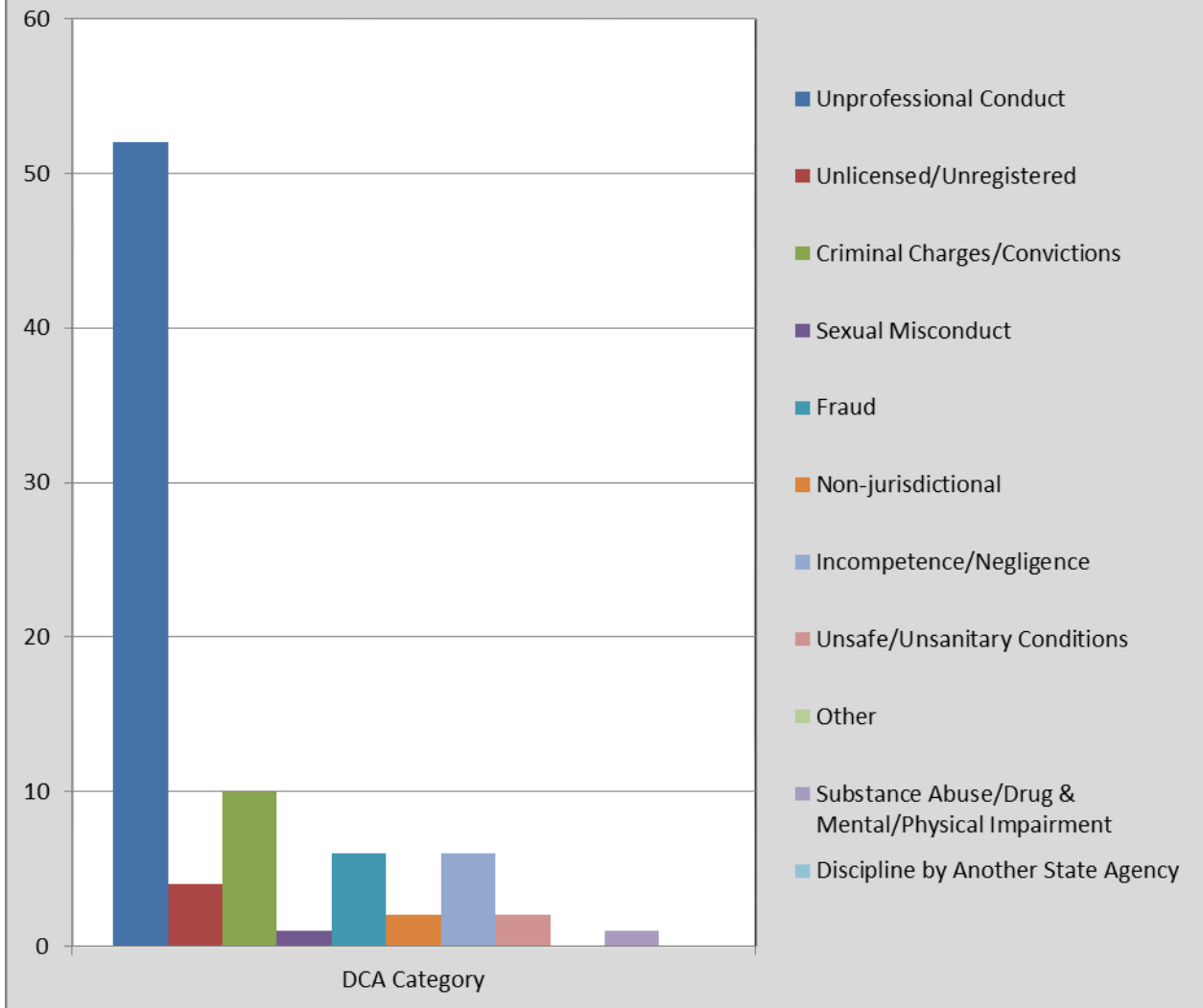
DATE	June 10, 2016
TO	All Board Members
FROM	Kristine Brothers Enforcement Coordinator
SUBJECT	Enforcement Update for Quarter (Q3) FY 2015/2016: January 1, 2016 to March 31, 2016

COMPLAINTS/CONVICTIONS & ARRESTS

DCA Category	Received	Closed/Referred to Investigation
Unprofessional Conduct	52	52
Unlicensed/Unregistered	4	3
Criminal Charges/Convictions*	10	10
Sexual Misconduct	1	1
Fraud	6	6
Non-jurisdictional	2	2
Incompetence/Negligence	6	6
Unsafe/Unsanitary Conditions	2	2
Other	0	0
Substance Abuse/Drug & Mental/Physical Impairment	1	1
Discipline by Another State Agency	0	0
Total	84	83
Average Intake Time: 3 days		

*Of the 10 Criminal Charges/Convictions, 5 were received on Applicants and 5 were received on Licensees.

Complaint Volume from Q3 FY 15/16

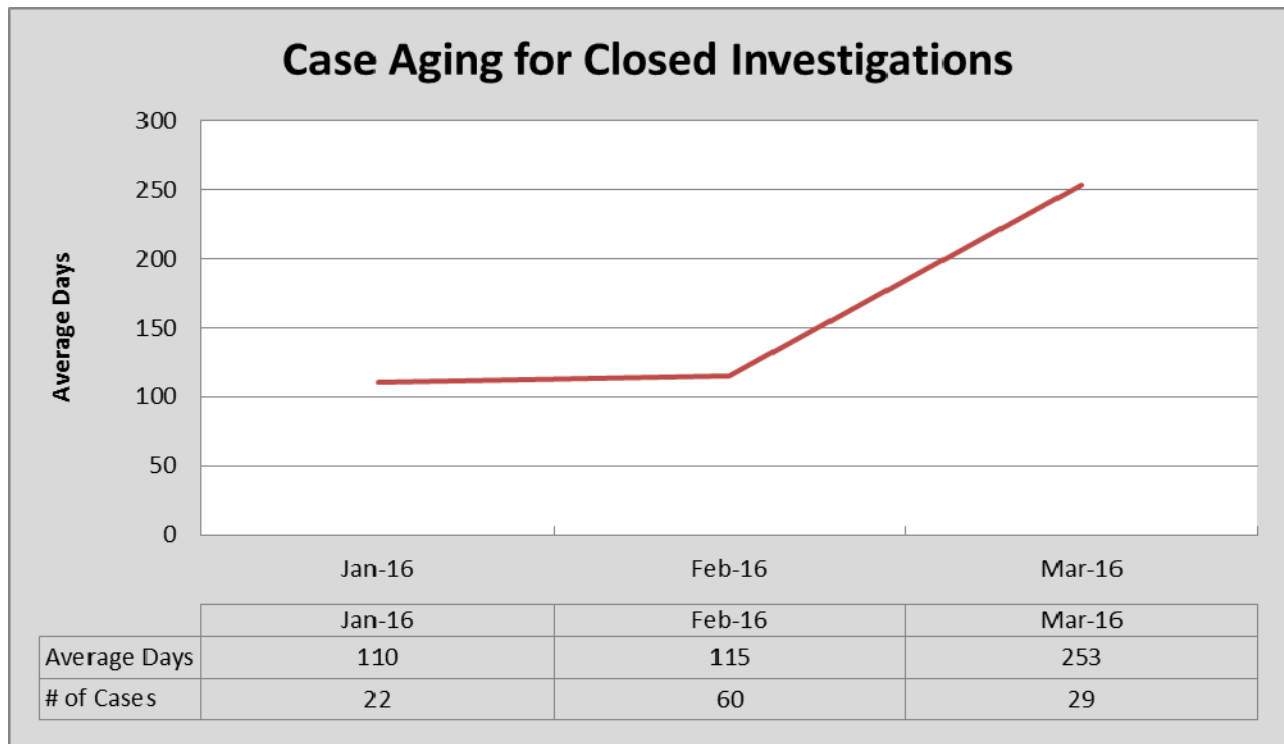


The bar graph above shows the number of complaints received by complaint type for this fiscal year. When each complaint is logged into the database it is assigned a complaint type based upon the primary violation.

*INVESTIGATIONS

DCA Category	Initiated	Pending	Closed
Unprofessional Conduct	51	38	66
Unlicensed/Unregistered	3	15	6
Criminal Charges/Convictions (includes pre-licensure)	9	39	23
Sexual Misconduct	1	4	3
Fraud	7	22	7
Non-jurisdictional	1	0	1
Incompetence/Negligence	6	22	4
Unsafe/Unsanitary Conditions	2	6	0
Other	0	0	0
Substance Abuse/Drug & Mental/Physical Impairment	1	1	0
Discipline by Another State Agency	0	0	1
Total	81	147	111
Average days			150

*Includes formal investigations conducted by DOI and desk investigations conducted by staff



The graph above shows the number of investigations closed out each month of this fiscal year. The line illustrates the average number of days the case was open from receipt of complaint to the date the investigative phase was closed. After the investigation is closed the case is either referred for disciplinary action, issued a citation, or closed due to insufficient evidence or no violation. The time it takes during the discipline phase is not captured in these averages. The overall average process time for cases that resulted in disciplinary action this fiscal year is shown below.

DISCIPLINARY ACTIONS

Requested	8
Pending	27
Accusation/SOI Filed	7
Decisions	5
• Revoked	1
• Voluntary Surrender	1
• Probation	2
• License Denied	0
• Public Reprimand	1
Avg. Overall Process Time	488 days*
Citations Issued	26
Open Probation Cases	26

*Only applies to cases that result in formal discipline through a Decision and Order, not all case closures.

QUARTER 3 FY 15/16 TREND ANALYSIS

Complaint Trends

To understand what this quarter's data means, let's compare it to last year's quarter 3 (Q3). This quarter had an increase in complaints compared to this time last year from 55 to 84. This is a 53% increase in volume. Specifically, the Board has only seen an increase in unprofessional conduct complaints from 10 this quarter to 52 last year. However, this is predominately attributed to the opening of a large volume of continuing education audits that failed and were referred to Enforcement for review. In contrast, there has actually been a slight decline in complaint volume in the other complaint categories. Additionally, staff has dropped the average complaint intake time from 16 days to 3 days this quarter, which is an 81% decrease. This demonstrates that increased staff has made a difference in speeding up the initial review and logging of all incoming complaints.

Investigation Trends

Along with the increased complaint volume, this quarter also had an 88% increase in investigations initiated compared to last year: 81 this quarter compared to 43 last year. There were 223 pending investigations at the close of last year's quarter and 147 pending investigations this quarter, reflecting a 34% decrease. This demonstrates that the staff's hard work has resulted in a significant drop in the number of pending investigations compared to last year. It also shows that the bulk of the backlog has been worked through. Total investigations closed this quarter is 111 compared to last year's 72, which is an increase of 54%. The exact work that leads to case closures includes completion of desk investigations, reviewing and analyzing DOI investigation reports and other evidence, and making determinations for case closures or referrals on a high volume of cases.

Furthermore, the average investigation time to complete investigations has gone down from 390 days last year to 150 days for this year's quarter, representing a significant 62% decrease. The Board is well under its 200 day target for the performance measure on the average number of days to complete an investigation.

Formal Discipline Trends

As backlog complaints are closed out and transmitted to the Attorney General's Office for discipline, the Board will continue to see an increase in complaints referred to the Attorney General, Accusations filed, and Decisions that become effective. This quarter shows a 167% increase in complaints referred to the Attorney General with 3 complaints referred last year compared to 8 this year. A total of 9 Accusations and Statement of Issues were filed this quarter compared to 3 Accusations and Statement of Issues filed last year, which is a 133% increase. Another trend is slightly more decisions that became effective this quarter compared with the same time last year. Last year, there were 2 final disciplinary decisions, compared to 5 final disciplinary decisions this quarter. This is a significant increase of 150% in decisions that became effective. There is a notable 20% decrease in the average overall process time for cases that resulted in discipline: 607 days last year this time to 488 days this quarter. It should be noted that the total days for discipline only measures cases that go to hearing or stipulated settlement for final board decision; it does not measure cases that do not go to final discipline which are the vast majority of the cases. A noteworthy achievement this quarter is the Board being well under its performance measure target of 540 days from complaint receipt to the final decision date.

Agenda Item #2

c. Legislative and Regulatory Update

Legislative Update

ACUPUNCTURE BOARD - LEGISLATION
updated 6/2/2016

Bill	Author	Subject	Purpose of Bill	Status	notes
AB 1992	Jones	Pupil Health: physical exams	<i>As Introduced:</i> This bill would additionally authorize a doctor of chiropractic, naturopathic doctor, or nurse practitioner practicing in compliance with the respective laws governing their profession, to conduct physical exams for interscholastic athletic programs, as defined.	Failed passage out of Asm. B&P cmte.	Dead bill.
AB 2190	Asm. B&P Cmte	Acupuncture Board : Executive Officer	<i>As Amended 4/5/16:</i> The bill would extend the operation of the board and the board's authority to appoint an executive officer exempt from civil service until January 1, 2019.	In Sen. Rules cmte for assignment	CAB Sunset Bill
AB 2701	Jones	DCA: board: training requirements	<i>As Introduced:</i> This bill would have required all newly appointed members of programs within the Department of Consumer Affairs to complete training that includes information about the Bagley-Keene Open Meeting Act, the Administrative Procedure Act, the Office of Administrative Law and the Department's Conflict of Interest Code.	Not heard in Asm. B&P cmte.	Dead bill.
AB 2744	Gordon	Healing Arts: referrals	<i>As Amended 4/11/16:</i> This bill would provide that the payment or receipt of consideration for advertising, wherein a licensed healing arts practitioner offers or sells services on an internet platform, does not constitute a referral of patients.	In Sen. B,P&ED cmte. Set for hearing 6/6/16	
AB 2859	Low	Professions and Vocations: retired category: licenses	<i>As introduced:</i> This bill would additionally authorize any of the boards, bureaus, commissions, or programs within the department to establish by regulation a system for a retired category of license for persons who are not actively engaged in the practice of their profession or vocation, and would prohibit the holder of a retired license from engaging in any activity for which a license is required, unless regulation specifies the criteria for a retired licensee to practice his or her profession. The bill would authorize a board upon its own determination, and would require a board upon receipt of a complaint from any person, to investigate the actions of any licensee, including, among others, a person with a license that is retired or inactive.	In Sen B,P & ED cmte. Set for hearing 6/13/16.	
SB 1033	Hill	Professionals: Probation	<i>As Amended 5/31/16:</i> This bill, on and after January 1, 2018, would require regulatory entities including <u>the Acupuncture Board</u> to require a licensee on probation pursuant to a probationary order made after January 1, 2017, to disclose their probationary status on a standardized document to patients prior to a medical appointment or visit. This bill would require the licensee to obtain verification that patients were notified of the licensee's probationary status. Finally, this bill would exempt a licensee from this requirement if the patient is unable to comprehend the disclosure or sign an acknowledgement of receipt when a guardian or health care surrogate is unavailable.	On Senate floor	

ACUPUNCTURE BOARD - LEGISLATION
updated 6/2/2016

SB 1155	Morrell	Professions and Vocations: licenses: military service	<i>As Amended 5/31/16:</i> This bill would require every Board within the Department of Consumer Affairs to grant a one-time fee waiver for the application for and the issuance of an initial license to an individual who is an honorably discharged veteran, as specified.	On Senate floor	
SB 1195	Hill	Professions and Vocations: board actions: competitive impact	<i>As Amended 6/1/16:</i> This bill makes various changes that are intended to improve the effectiveness of the Veterinary Medical Board (VMB), extends the VMB's sunset dates. This bill also authorizes the Director of the Department of Consumer Affairs (DCA) to review, veto, or modify actions and decisions of DCA boards to ensure such actions or decisions conform with public policy; and prohibits any board executive officer (EO) from being an actively licensed member of the profession the board regulates.	On Senate floor	
SB 1348	Cannella	License Applications: military experience	This bill would require each Board, with a governing law authorizing veterans to apply military experience and training towards licensure requirements, to post information on the board's Internet Web site about the ability of veteran applicants to apply their military experience and training towards licensure requirements.	On Senate floor	

Agenda Item #2

c. Legislative and Regulatory Update

AB 1992 (Jones)

**Pupil Health: physical
exams**

ASSEMBLY BILL

No. 1992

Introduced by Assembly Member Jones

February 16, 2016

An act to amend Section 49458 of the Education Code, relating to pupil health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1992, as introduced, Jones. Pupil health: physical examinations.

Existing law authorizes a physician and surgeon or physician assistant to perform a physical examination that is required for participation in an interscholastic athletic program, as specified.

This bill would additionally authorize a doctor of chiropractic, naturopathic doctor, or nurse practitioner practicing in compliance with the respective laws governing their profession.

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

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

1 SECTION 1. Section 49458 of the Education Code is amended
2 to read:
3 49458. When a school district or a county superintendent of
4 schools requires a physical examination as a condition of
5 participation in an interscholastic athletic program, the physical
6 examination may be performed by a physician and ~~surgeon or~~
7 *surgeon*, physician assistant practicing in compliance with Chapter
8 7.7 (commencing with Section 3500) of Division 2 of the Business
9 and Professions ~~Code~~. *Code, doctor of chiropractic practicing in*

1 *compliance with Chapter 2 (commencing with Section 1000) of*
2 *Division 2 of the Business and Professions Code, naturopathic*
3 *doctor practicing in compliance with Chapter 8.2 (commencing*
4 *with Section 3610) of Division 2 of the Business and Professions*
5 *Code, or nurse practitioner practicing in compliance with Article*
6 *8 (commencing with Section 2834) of Chapter 6 of Division 2 of*
7 *the Business and Professions Code.*

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Agenda Item #2

c. Legislative and Regulatory Update

AB 2190

(Asm. B&P Committee)

Acupuncture Board:

Executive Officer

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2190

Introduced by ~~Committee on Business and Professions (Assembly Members Bonilla (Chair), Jones (Vice Chair), Baker, Bloom, Campos, Chang, Dodd, Mullin, Wilk, and Wood)~~ Assembly Member Salas

(Principal coauthor: Senator Hill)

February 18, 2016

An act to amend Sections 4928 and 4934 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2190, as amended, ~~Committee on Business and Professions~~ *Salas*. Acupuncture Board: executive officer.

Existing law, the Acupuncture Licensure Act, provides for the licensure and regulation of the practice of acupuncture by the Acupuncture Board, within the Department of Consumer Affairs. Existing law authorizes the board, with the approval of the Director of Consumer Affairs, to employ personnel necessary to administer the Acupuncture Licensure Act, including an executive officer who is exempt from civil service. Existing law repeals the provisions establishing the board and authority for it to employ personnel on January 1, 2017.

The bill would extend the operation of the board and the board's authority to appoint an executive officer exempt from civil service until January 1, 2019.

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 4928 of the Business and Professions
- 2 Code is amended to read:
- 3 4928. (a) The Acupuncture Board, which consists of seven
- 4 members, shall enforce and administer this chapter.
- 5 (b) This section shall remain in effect only until January 1, 2019,
- 6 and as of that date is repealed.
- 7 (c) Notwithstanding any other law, the repeal of this section
- 8 renders the board subject to review by the appropriate policy
- 9 committees of the Legislature.
- 10 SEC. 2. Section 4934 of the Business and Professions Code is
- 11 amended to read:
- 12 4934. (a) The board, by and with the approval of the director,
- 13 may appoint an executive officer who is exempt from the State
- 14 Civil Service Act (Part 2 (commencing with Section 18500) of
- 15 Division 5 of Title 2 of the Government Code).
- 16 (b) This section shall remain in effect only until January 1, 2019,
- 17 and as of that date is repealed.

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ASSEMBLY THIRD READING BILL ANALYSIS

AB 2190 (Salas)
As Amended April 5, 2016

Majority vote

Committee	Votes	Ayes	Noes
Business & Professions	16-0	Salas, Brough, Baker, Bloom, Campos, Chávez, Dahle, Dodd, Eggman, Gatto, Gomez, Holden, Jones, Mullin, Ting, Wood	
Appropriations	20-0	Gonzalez, Bigelow, Bloom, Bonilla, Bonta, Calderon, Chang, Daly, Eggman, Gallagher, Eduardo Garcia, Roger Hernández, Holden, Jones, Obernolte, Quirk, Santiago, Wagner, Weber, Wood	

SUMMARY: Extends the operation of the California Acupuncture Board (CAB) and the CAB's authority to appoint an executive officer until January 1, 2019.

FISCAL EFFECT: According to the Assembly Appropriations Committee, cost of approximately \$3.5 million per year, for calendar years 2017 and 2018, to continue the operation of the CAB beyond the current January 1, 2017 sunset (Acupuncture Fund).

COMMENTS:

Purpose. Unless legislation is carried this year to extend the sunset date for the CAB, it will be repealed on January 1, 2017. Because the CAB has shown improvement during its sunset review hearing held on March 14, 2016, this bill will extend the CAB's sunset date and authority to appoint an executive officer.

Background. The CAB regulates the practice of acupuncture and Asian medicine in California. According to the CAB's most recent sunset review report, it regulates 17,801 acupuncturists, 11,644 of which are actively practicing in the state.

The primary responsibility of the CAB is to protect California consumers from incompetent, and/or fraudulent practice through the enforcement of the Acupuncture Licensure Act and the CAB's regulations. Its responsibilities include setting licensure requirements for acupuncturists, developing and administering the licensure exam, issuing and renewing licenses, overseeing the investigation of complaints against licensees or allegations of unlicensed activity, overseeing the continuing education (CE) program and monitoring probationer acupuncturists.

Continued Regulation of Acupuncturists by the CAB. While the CAB has had issues in the past, the current CAB is newly formed and committee staff has observed improvements in the CAB's operations since its last sunset review in 2014. The CAB has responded to the request to promulgate consumer protection regulations, has improved in processing time for applications, has made strides to improve CE oversight, and has made changes to staff and management. Therefore, this bill will extend the CAB's sunset date to January 1, 2019.

Agenda Item #2

c. Legislative and Regulatory Update

AB 2701 (Jones)

DCA: board: training

Requirements

ASSEMBLY BILL

No. 2701

Introduced by Assembly Member Jones

February 19, 2016

An act to amend Section 453 of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2701, as introduced, Jones. Department of Consumer Affairs: boards: training requirements.

Existing law provides for the licensure and regulation of various professions and vocations by various boards, as defined, within the Department of Consumer Affairs, and provides for the membership of those various boards. Existing law requires newly appointed board members, within one year of assuming office, to complete a training and orientation offered by the department regarding, among other things, the obligations of the board member. Existing law requires the department to adopt regulations necessary to establish the training and orientation program and its contents.

The Bagley-Keene Open Meeting Act (Bagley-Keene Act) generally requires, with specified exceptions for authorized closed sessions, that the meetings of state bodies be open and public and that all persons be permitted to attend. The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies, and for the review of those regulatory actions by the Office of Administrative Law. Existing law requires every agency to adopt and promulgate a Conflict of Interest Code that contains, among other requirements, the circumstances under which designated employees or categories of designated employees must disqualify

themselves from making, participating in the making, or using their official position to influence the making of, any decision.

This bill would additionally require the training of new board members to include, but not be limited to, information regarding the requirements of the Bagley-Keene Act, the Administrative Procedure Act, the Office of Administrative Law, and the department’s Conflict of Interest Code.

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 453 of the Business and Professions Code
2 is amended to read:
3 453. Every newly appointed board member shall, within one
4 year of assuming office, complete a training and orientation
5 program offered by the department regarding, among other things,
6 his or her functions, responsibilities, and obligations as a member
7 of a board. *This training shall include, but is not limited to,*
8 *information about the Bagley-Keene Open Meeting Act (Article 9*
9 *(commencing with Section 11120) of Chapter 1 of Part 1 of*
10 *Division 3 of Title 2 of the Government Code), the Administrative*
11 *Procedure Act (Chapter 3.5 (commencing with Section 11340) of*
12 *Part 1 of Division 3 of Title 2 of the Government Code), the Office*
13 *of Administrative Law, and the department’s Conflict of Interest*
14 *Code, as required pursuant to Section 87300 of the Government*
15 *Code.* The department shall adopt regulations necessary to establish
16 this training and orientation program and its content.

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Agenda Item #2

c. Legislative and Regulatory Update

AB 2744 (Gordon)

Healing Arts: Referrals

AMENDED IN ASSEMBLY APRIL 11, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2744

Introduced by Assembly Member Gordon
(Coauthor: Senator Hill)

February 19, 2016

An act to amend Section 650 of the Business and Professions Code, relating to the healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2744, as amended, Gordon. Healing arts: referrals.

Existing law provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs. Under existing law, it is unlawful for licensed healing arts practitioners, except as specified, to offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person. Existing law makes a violation of this provision a public offense punishable upon a first conviction by imprisonment, as specified, or a fine not exceeding \$50,000, or by imprisonment and that fine.

This bill would provide that the payment or receipt of consideration for advertising, wherein a licensed healing arts practitioner offers or sells ~~prepaid services~~, *services on an Internet platform*, does not constitute a referral of ~~services~~ *patients*. *The bill would require the purchaser of the service to receive a refund of the full purchase price if the licensee determines, after consultation with the purchaser, that the service is not appropriate for the purchaser. The bill would specify*

that these provisions do not apply to basic health care services or essential health benefits, as defined. The bill would also provide that the entity that provides advertising is required to be able to demonstrate that the licensee consented in writing to these provisions.

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 650 of the Business and Professions Code
2 is amended to read:
3 650. (a) Except as provided in Chapter 2.3 (commencing with
4 Section 1400) of Division 2 of the Health and Safety Code, the
5 offer, delivery, receipt, or acceptance by any person licensed under
6 this division or the Chiropractic Initiative Act of any rebate, refund,
7 commission, preference, patronage dividend, discount, or other
8 consideration, whether in the form of money or otherwise, as
9 compensation or inducement for referring patients, clients, or
10 customers to any person, irrespective of any membership,
11 proprietary interest, or coownership in or with any person to whom
12 these patients, clients, or customers are referred is unlawful.
13 (b) The payment or receipt of consideration for services other
14 than the referral of patients which is based on a percentage of gross
15 revenue or similar type of contractual arrangement shall not be
16 unlawful if the consideration is commensurate with the value of
17 the services furnished or with the fair rental value of any premises
18 or equipment leased or provided by the recipient to the payer.
19 (c) The offer, delivery, receipt, or acceptance of any
20 consideration between a federally qualified health center, as defined
21 in Section 1396d(l)(2)(B) of Title 42 of the United States Code,
22 and any individual or entity providing goods, items, services,
23 donations, loans, or a combination thereof to the health center
24 entity pursuant to a contract, lease, grant, loan, or other agreement,
25 if that agreement contributes to the ability of the health center
26 entity to maintain or increase the availability, or enhance the
27 quality, of services provided to a medically underserved population
28 served by the health center, shall be permitted only to the extent
29 sanctioned or permitted by federal law.
30 (d) Except as provided in Chapter 2.3 (commencing with Section
31 1400) of Division 2 of the Health and Safety Code and in Sections

1 654.1 and 654.2 of this code, it shall not be unlawful for any person
2 licensed under this division to refer a person to any laboratory,
3 pharmacy, clinic (including entities exempt from licensure pursuant
4 to Section 1206 of the Health and Safety Code), or health care
5 facility solely because the licensee has a proprietary interest or
6 coownership in the laboratory, pharmacy, clinic, or health care
7 facility, provided, however, that the licensee's return on investment
8 for that proprietary interest or coownership shall be based upon
9 the amount of the capital investment or proportional ownership of
10 the licensee which ownership interest is not based on the number
11 or value of any patients referred. Any referral excepted under this
12 section shall be unlawful if the prosecutor proves that there was
13 no valid medical need for the referral.

14 (e) Except as provided in Chapter 2.3 (commencing with Section
15 1400) of Division 2 of the Health and Safety Code and in Sections
16 654.1 and 654.2 of this code, it shall not be unlawful to provide
17 nonmonetary remuneration, in the form of hardware, software, or
18 information technology and training services, as described in
19 subsections (x) and (y) of Section 1001.952 of Title 42 of the Code
20 of Federal Regulations, as amended October 4, 2007, as published
21 in the Federal Register (72 Fed. Reg. 56632 and 56644), and
22 subsequently amended versions.

23 (f) "Health care facility" means a general acute care hospital,
24 acute psychiatric hospital, skilled nursing facility, intermediate
25 care facility, and any other health facility licensed by the State
26 Department of Public Health under Chapter 2 (commencing with
27 Section 1250) of Division 2 of the Health and Safety Code.

28 (g) The payment or receipt of consideration for advertising,
29 wherein a licensee offers or sells ~~prepaid services~~, *services on an*
30 *Internet platform*, shall not constitute a referral of patients. To the
31 extent the licensee determines, after consultation with the purchaser
32 of the ~~prepaid~~ service, that a ~~prepaid~~ *the* service is not appropriate
33 for the purchaser, the licensee shall provide the purchaser *shall*
34 *receive* a refund of the full purchase price. *This subdivision shall*
35 *not apply to basic health care services, as defined in subdivision*
36 *(b) of Section 1345 of the Health and Safety Code, or essential*
37 *health benefits, as defined in Section 1367.005 of the Health and*
38 *Safety Code and Section 10112.27 of the Insurance Code. The*
39 *entity that provides the advertising shall be able to demonstrate*

1 *that the licensee consented in writing to the requirements of this*
2 *subdivision.*

3 (h) A violation of this section is a public offense and is
4 punishable upon a first conviction by imprisonment in a county
5 jail for not more than one year, or by imprisonment pursuant to
6 subdivision (h) of Section 1170 of the Penal Code, or by a fine not
7 exceeding fifty thousand dollars (\$50,000), or by both that
8 imprisonment and fine. A second or subsequent conviction is
9 punishable by imprisonment pursuant to subdivision (h) of Section
10 1170 of the Penal Code, or by that imprisonment and a fine of fifty
11 thousand dollars (\$50,000).

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BILL ANALYSIS

Date of Hearing: May 4, 2016

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 2744 (Gordon) - As Amended April 11, 2016

Policy	Business and Professions	Vote: 16 - 0	
Committee:			
-----+	-----+	-----+	-----+

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill provides that payment or receipt of consideration for advertising for prepaid services offered by a licensed healing arts practitioner, subject to certain exclusions, does not constitute a referral of those services, and specifies that if the prepaid service is not appropriate for the purchaser, the licensee must provide a full price refund to the purchaser, as specified.

FISCAL EFFECT:

Any costs to healing arts boards within the Department of Consumer Affairs are expected to be minor and absorbable.

COMMENTS:

1)Purpose.

This bill seeks to clarify that the purchase of professional services from licensed healing arts professionals through an online advertising website (like LivingSocial or Groupon) does not constitute an impermissible referral for those services from the online advertisement originator. This bill is sponsored by the Internet Association and has no opposition.

2)Background.

Under existing law, BPC Section 650(a), a licensed healing arts professional may not accept any type of compensation for referring an individual to any other person for services. This prohibition on the payment of a healthcare provider for a referral of services was intended to protect patients and consumers from providers receiving payments or "kickbacks" for sending patients to certain providers. Anti-kickback laws were enacted to help ensure that healthcare decisions are made in the best interest of the consumer. In California, a violation of the no-referral laws by a licensee is unprofessional conduct and cause for disciplinary action.

Examples of advertised healthcare-related services commonly purchased through an Internet platform include laser toenail fungus removal, nonsurgical facelifts, spider vein treatments, counseling, and integrative manual therapy sessions. There is a pending Attorney General (AG) opinion on the question of whether a healthcare professional may offer online discounts for their services through a third-party internet marketer. The opinion request, 13-1203, is currently pending completion in the AG's office. This bill is intended to clarify the practice of offering services through third-party internet marketer is not a patient referral.

Analysis Prepared by:Lisa Murawski / APPR. / (916)
319-2081

Agenda Item #2

c. Legislative and Regulatory Update

AB 2859 (Low)

**Professions and
Vocations: retired
category: Licenses**

ASSEMBLY BILL

No. 2859

Introduced by Assembly Member Low

February 19, 2016

An act to add Section 463 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2859, as introduced, Low. Professions and vocations: retired category: licenses.

Existing law provides for numerous boards, bureaus, commissions, or programs within the Department of Consumer Affairs that administer the licensing and regulation of various businesses and professions. Existing law authorizes any of the boards, bureaus, commissions, or programs within the department, except as specified, to establish by regulation a system for an inactive category of license for persons who are not actively engaged in the practice of their profession or vocation. Under existing law, the holder of an inactive license is prohibited from engaging in any activity for which a license is required. Existing law defines “board” for these purposes to include, unless expressly provided otherwise, a bureau, commission, committee, department, division, examining committee, program, and agency.

This bill would additionally authorize any of the boards, bureaus, commissions, or programs within the department to establish by regulation a system for a retired category of license for persons who are not actively engaged in the practice of their profession or vocation, and would prohibit the holder of a retired license from engaging in any activity for which a license is required, unless regulation specifies the criteria for a retired licensee to practice his or her profession. The bill

would authorize a board upon its own determination, and would require a board upon receipt of a complaint from any person, to investigate the actions of any licensee, including, among others, a person with a license that is retired or inactive.

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 463 is added to the Business and
2 Professions Code, to read:

3 463. (a) Any of the boards, bureaus, commissions, or programs
4 within the department may establish, by regulation, a system for
5 a retired category of licensure for persons who are not actively
6 engaged in the practice of their profession or vocation.

7 (b) The regulation shall contain the following:

8 (1) The holder of a retired license issued pursuant to this section
9 shall not engage in any activity for which a license is required,
10 unless the board, by regulation, specifies the criteria for a retired
11 licensee to practice his or her profession or vocation.

12 (2) The holder of a retired license shall not be required to renew
13 that license.

14 (3) In order for the holder of a retired license issued pursuant
15 to this section to restore his or her license to an active status, the
16 holder of that license shall meet all the following:

17 (A) Pay a fee established by statute or regulation.

18 (B) Certify, in a manner satisfactory to the board, that he or she
19 has not committed an act or crime constituting grounds for denial
20 of licensure.

21 (C) Comply with the fingerprint submission requirements
22 established by regulation.

23 (D) If the board requires completion of continuing education
24 for renewal of an active license, complete continuing education
25 equivalent to that required for renewal of an active license, unless
26 a different requirement is specified by the board.

27 (E) Complete any other requirements as specified by the board
28 by regulation.

29 (c) A board may upon its own determination, and shall upon
30 receipt of a complaint from any person, investigate the actions of
31 any licensee, including a person with a license that either restricts

- 1 or prohibits the practice of that person in his or her profession or
- 2 vocation, including, but not limited to, a license that is retired,
- 3 inactive, canceled, revoked, or suspended.

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BILL ANALYSIS
AB 2859

Date of Hearing: April 27, 2016

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez, Chair

AB 2859 (Low) - As Introduced February 19, 2016

Policy	Business and Professions	Vote: 16 - 0
Committee:		

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill authorizes any of the boards, bureaus, commissions, or programs (boards) within the Department of Consumer Affairs (DCA) to establish, by regulation, a system for a retired category of licensure for persons who are not actively engaged in the practice of their profession or vocation.

FISCAL EFFECT:

- 1) Minor and absorbable costs to the Department of Consumer Affairs (DCA) to update regulations, add license status designations, and update applications.
- 2) Minor and absorbable costs to DCA for one-time workload increases associated with IT/BreEZe modifications.

COMMENTS:

- 1) Purpose. According to the author, "An occupational license can be sent to 'inactive' for various reasons, including violations and non-renewal. The same is done for those individuals who decided to retire - a troublesome label, as an 'inactive' status holds negative connotations and does not appropriately illustrate the decades of service from the license holder. Some licensees disfavor the inactive license designation and would prefer a retired license designation." Because existing law only provides for a system of inactive licenses, many boards have sought legislation that would permit them to also create a retired license category. By

allowing any of the boards, bureaus, commissions, or programs within DCA to establish a system for a retired category of licensure, this bill seeks to provide uniformity to licensing designation at the DCA.

2)Background. Existing law permits the boards under the DCA to adopt regulations for issuing inactive licenses. The law requires that the regulations cover fees, renewal, restoration to active status, and practice restrictions. In addition, there are 13 boards with the authority to issue retired licenses. This bill would provide the remaining boards with the authority to establish a system for retired category of licensure.

3)BreEZe. In 2009, DCA proposed the BreEZe information technology system and the California Department of Technology (CalTech) approved the proposal. BreEZe was envisioned to replace DCA's out of date Legacy technology system and would provide needed applicant tracking of licensing, renewal, enforcement monitoring and cashiering support for 37 of the 40 boards, bureaus, committees and one commission housed within DCA. The project began in 2011, and BreEZe was launched for ten of the regulatory entities (Release 1) in 2013. Release 2 of BreEZe was launched for eight additional entities on January 19, 2016. At this time there are no formal plans to expand BreEZe to the 19 boards in Release 3. Instead, DCA intends to conduct a cost-benefit analysis for Release 3 boards after Release 2 is completed this year.

DCA indicates there is a maintenance backlog of almost 600 items for boards in Release 1 and no current timeline for completion of these system fixes. Maintenance demands are expected to double following Release 2.

DCA further indicates that the poor adaptability of BreEZe to respond to new system demands has resulted in the implementation delay of 11 new substantive policy changes passed by the Legislature as far back as 2013. These changes have not been incorporated into the current BreEZe system and are currently awaiting workarounds or new builds into the system. Some of this new legislation involves boards in Release 1 which have been waiting for Release 2 to go live before changes can be made to the system to address new requirements.

4) Prior Legislation.

- a) AB 750 (Low, 2015) was substantially similar to this bill. It was held on this Committee's Suspense file.
- b) AB 1253 (Steinorth) Chapter, 125, Statutes of 2015, established educational and training requirements for an optometrist seeking a license with retired volunteer service designation (volunteer license) who has not held an active license in more than three years.
- c) AB 2024 (Bonilla), Chapter 336, Statutes of 2014, authorized the Professional Fiduciaries Bureau to establish, by regulation, a system for a retired category of licensure.
- d) AB 404 (Eggman), Chapter 339, Statutes of 2013, clarified who qualifies for a retired license by specifying that a license must be either active or inactive, and reduces the timeline to restore a retired license from retired to active status from five to three years.
- e) SB 1215 (Emmerson), Chapter 359, Statutes of 2012, established a retired license status and a retired license with a volunteer service designation for optometrists.
- f) AB 431 (Ma), Chapter 395, Statutes of 2011, authorized the California Board of Accountancy to establish, by regulation, a system for a retired category of licensure.
- g) SB 2191 (Emmerson), Chapter 548, Statutes of 2010, authorized the Board of Behavioral Sciences to issue a retired license as a marriage and family therapist, educational psychologist, clinical social worker or professional clinical counselor to an applicant who holds a current license or a license eligible for renewal, and established a \$40 fee for a retired license.

Analysis Prepared by: Jennifer Swenson / APPR. / (916)
319-2081

Agenda Item #2

c. Legislative and Regulatory Update

SB 1033 (Hill)

Professionals: Probation

AMENDED IN SENATE MAY 31, 2016
AMENDED IN SENATE MAY 10, 2016
AMENDED IN SENATE MARCH 17, 2016

SENATE BILL

No. 1033

Introduced by Senator Hill

February 12, 2016

An act to amend Sections 125.3, 803.1, 2027, 2221, 2221.05, 2228, and 3663 of, and to add Sections 1006 and 4962 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1033, as amended, Hill. Medical professionals: probation.

(1) Existing law, the Medical Practice Act, establishes the Medical Board of California for the licensing, regulation, and discipline of physicians and surgeons. Existing law establishes the California Board of Podiatric Medicine within the Medical Board of California for the licensing, regulation, and discipline of podiatrists. Existing law, the Osteopathic Act, enacted by an initiative measure, establishes the Osteopathic Medical Board of California for the licensing and regulation of osteopathic physicians and surgeons and requires the Osteopathic Medical Board of California to enforce the Medical Practice Act with respect to its licensees. Existing law, the Naturopathic Doctors Act, establishes the Naturopathic Medicine Committee in the Osteopathic Medical Board of California for the licensing and regulation of naturopathic doctors. Existing law, the Chiropractic Act, enacted by an initiative measure, establishes the State Board of Chiropractic Examiners for the licensing and regulation of chiropractors. Existing law, the Acupuncture Licensure Act, establishes the Acupuncture Board for the

licensing and regulation of acupuncturists. Existing law authorizes each of these regulatory entities to discipline its licensee by placing her or him on probation, as specified.

This bill, on and after January 1, 2018, would require these regulatory entities to require a licensee *on probation pursuant to a probationary order made after January 1, 2017*, to disclose on a separate document her or his probationary status, certain information related to his or her probation, the address of his or her ~~BreEze BreEZe~~ profile Internet Web page or a specified Internet Web site, and the regulatory entity's telephone number to a patient, the patient's guardian, or the health care surrogate prior to the patient's first visit following the probationary order while the licensee is on probation under specified circumstances, including an accusation alleging, a statement of issues indicating, or an administrative law judge's legal conclusion finding the licensee committed gross negligence or the licensee having been on probation more than once, among others. The bill would require the licensee to obtain from the patient a signed receipt containing specified information following the disclosure. The bill would exempt a licensee, except for a licensed chiropractor, from that disclosure requirement if the patient is unable to comprehend the disclosure and sign an acknowledgment and a guardian or health care surrogate is unavailable. The bill would require in that instance that the doctor disclose his or her status as soon as either the patient can comprehend and sign the receipt or a guardian or health care surrogate is available to comprehend the disclosure and sign the receipt. The bill would also exempt a licensee from that disclosure requirement if the visit occurs in an emergency room and the licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(2) Existing law requires the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine to disclose to an inquiring member of the public and to post on their Internet Web sites specified information concerning each licensee including revocations, suspensions, probations, or limitations on practice.

This bill would require the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, the Naturopathic Medicine Committee, and the Acupuncture Board by January 1, 2018, to develop a standardized format for listing specified information related to the probation and to provide that information to

an inquiring member of the public, on any documents informing the public of probation orders, and on a specified profile Internet Web page of each licensee subject to probation, or an Internet Web site, as specified.

(3) Existing law, in any order issued in resolution of a disciplinary proceeding before any board within the Department of Consumer Affairs or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding unless the entity is the Medical Board of California, authorizes the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, as specified.

This bill would authorize the Medical Board of California to request and obtain from a physician and surgeon the investigation and prosecution costs for a disciplinary proceeding in which the physician and surgeon’s license is placed on probation.

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 125.3 of the Business and Professions
2 Code is amended to read:

3 125.3. (a) Except as otherwise provided by law, in any order
4 issued in resolution of a disciplinary proceeding before any board
5 within the department or before the Osteopathic Medical Board,
6 upon request of the entity bringing the proceeding, the
7 administrative law judge may direct a licentiate found to have
8 committed a violation or violations of the licensing act to pay a
9 sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case.

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

14 (c) A certified copy of the actual costs, or a good faith estimate
15 of costs where actual costs are not available, signed by the entity
16 bringing the proceeding or its designated representative shall be
17 prima facie evidence of reasonable costs of investigation and
18 prosecution of the case. The costs shall include the amount of
19 investigative and enforcement costs up to the date of the hearing,

1 including, but not limited to, charges imposed by the Attorney
2 General.

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

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

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

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

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

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

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

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

38 (k) Notwithstanding the provisions of this section, the Medical
39 Board of California shall not request nor obtain from a physician
40 and surgeon investigation and prosecution costs for a disciplinary

1 proceeding against the licentiate, except for a disciplinary
2 proceeding in which the licentiate's license is placed on probation.
3 The board shall ensure that this subdivision is revenue neutral with
4 regard to it and that any loss of revenue or increase in costs
5 resulting from this subdivision is offset by an increase in the
6 amount of the initial license fee and the biennial renewal fee, as
7 provided in subdivision (e) of Section 2435.

8 SEC. 2. Section 803.1 of the Business and Professions Code
9 is amended to read:

10 803.1. (a) Notwithstanding any other law, the Medical Board
11 of California, the Osteopathic Medical Board of California, the
12 California Board of Podiatric Medicine, and the Physician Assistant
13 Board shall disclose to an inquiring member of the public
14 information regarding any enforcement actions taken against a
15 licensee, including a former licensee, by the board or by another
16 state or jurisdiction, including all of the following:

- 17 (1) Temporary restraining orders issued.
- 18 (2) Interim suspension orders issued.
- 19 (3) Revocations, suspensions, probations, or limitations on
20 practice ordered by the board, including those made part of a
21 probationary order or stipulated agreement.
- 22 (4) Public letters of reprimand issued.
- 23 (5) Infractions, citations, or fines imposed.

24 (b) Notwithstanding any other law, in addition to the information
25 provided in subdivision (a), the Medical Board of California, the
26 Osteopathic Medical Board of California, the California Board of
27 Podiatric Medicine, and the Physician Assistant Board shall
28 disclose to an inquiring member of the public all of the following:

- 29 (1) Civil judgments in any amount, whether or not vacated by
30 a settlement after entry of the judgment, that were not reversed on
31 appeal and arbitration awards in any amount of a claim or action
32 for damages for death or personal injury caused by the physician
33 and surgeon's negligence, error, or omission in practice, or by his
34 or her rendering of unauthorized professional services.

- 35 (2) (A) All settlements in the possession, custody, or control
36 of the board shall be disclosed for a licensee in the low-risk
37 category if there are three or more settlements for that licensee
38 within the last 10 years, except for settlements by a licensee
39 regardless of the amount paid where (i) the settlement is made as
40 a part of the settlement of a class claim, (ii) the licensee paid in

1 settlement of the class claim the same amount as the other licensees
2 in the same class or similarly situated licensees in the same class,
3 and (iii) the settlement was paid in the context of a case where the
4 complaint that alleged class liability on behalf of the licensee also
5 alleged a products liability class action cause of action. All
6 settlements in the possession, custody, or control of the board shall
7 be disclosed for a licensee in the high-risk category if there are
8 four or more settlements for that licensee within the last 10 years
9 except for settlements by a licensee regardless of the amount paid
10 where (i) the settlement is made as a part of the settlement of a
11 class claim, (ii) the licensee paid in settlement of the class claim
12 the same amount as the other licensees in the same class or
13 similarly situated licensees in the same class, and (iii) the
14 settlement was paid in the context of a case where the complaint
15 that alleged class liability on behalf of the licensee also alleged a
16 products liability class action cause of action. Classification of a
17 licensee in either a “high-risk category” or a “low-risk category”
18 depends upon the specialty or subspecialty practiced by the licensee
19 and the designation assigned to that specialty or subspecialty by
20 the Medical Board of California, as described in subdivision (f).
21 For the purposes of this paragraph, “settlement” means a settlement
22 of an action described in paragraph (1) entered into by the licensee
23 on or after January 1, 2003, in an amount of thirty thousand dollars
24 (\$30,000) or more.

25 (B) The board shall not disclose the actual dollar amount of a
26 settlement but shall put the number and amount of the settlement
27 in context by doing the following:

28 (i) Comparing the settlement amount to the experience of other
29 licensees within the same specialty or subspecialty, indicating if
30 it is below average, average, or above average for the most recent
31 10-year period.

32 (ii) Reporting the number of years the licensee has been in
33 practice.

34 (iii) Reporting the total number of licensees in that specialty or
35 subspecialty, the number of those who have entered into a
36 settlement agreement, and the percentage that number represents
37 of the total number of licensees in the specialty or subspecialty.

38 (3) Current American Board of Medical Specialties certification
39 or board equivalent as certified by the Medical Board of California,

1 the Osteopathic Medical Board of California, or the California
2 Board of Podiatric Medicine.

3 (4) Approved postgraduate training.

4 (5) Status of the license of a licensee. By January 1, 2004, the
5 Medical Board of California, the Osteopathic Medical Board of
6 California, and the California Board of Podiatric Medicine shall
7 adopt regulations defining the status of a licensee. The board shall
8 employ this definition when disclosing the status of a licensee
9 pursuant to Section 2027. By January 1, 2018, the Medical Board
10 of California, the Osteopathic Medical Board of California, and
11 the California Board of Podiatric Medicine shall include the
12 information described in subdivision (f) of Section 2228.

13 (6) Any summaries of hospital disciplinary actions that result
14 in the termination or revocation of a licensee’s staff privileges for
15 medical disciplinary cause or reason, unless a court finds, in a final
16 judgment, that the peer review resulting in the disciplinary action
17 was conducted in bad faith and the licensee notifies the board of
18 that finding. In addition, any exculpatory or explanatory statements
19 submitted by the licentiate electronically pursuant to subdivision
20 (f) of that section shall be disclosed. For purposes of this paragraph,
21 “peer review” has the same meaning as defined in Section 805.

22 (c) Notwithstanding any other law, the Medical Board of
23 California, the Osteopathic Medical Board of California, the
24 California Board of Podiatric Medicine, and the Physician Assistant
25 Board shall disclose to an inquiring member of the public
26 information received regarding felony convictions of a physician
27 and surgeon or doctor of podiatric medicine.

28 (d) The Medical Board of California, the Osteopathic Medical
29 Board of California, the California Board of Podiatric Medicine,
30 and the Physician Assistant Board may formulate appropriate
31 disclaimers or explanatory statements to be included with any
32 information released, and may by regulation establish categories
33 of information that need not be disclosed to an inquiring member
34 of the public because that information is unreliable or not
35 sufficiently related to the licensee’s professional practice. The
36 Medical Board of California, the Osteopathic Medical Board of
37 California, the California Board of Podiatric Medicine, and the
38 Physician Assistant Board shall include the following statement
39 when disclosing information concerning a settlement:

40

1 “Some studies have shown that there is no significant correlation
2 between malpractice history and a doctor’s competence. At the
3 same time, the State of California believes that consumers should
4 have access to malpractice information. In these profiles, the State
5 of California has given you information about both the malpractice
6 settlement history for the doctor’s specialty and the doctor’s history
7 of settlement payments only if in the last 10 years, the doctor, if
8 in a low-risk specialty, has three or more settlements or the doctor,
9 if in a high-risk specialty, has four or more settlements. The State
10 of California has excluded some class action lawsuits because
11 those cases are commonly related to systems issues such as product
12 liability, rather than questions of individual professional
13 competence and because they are brought on a class basis where
14 the economic incentive for settlement is great. The State of
15 California has placed payment amounts into three statistical
16 categories: below average, average, and above average compared
17 to others in the doctor’s specialty. To make the best health care
18 decisions, you should view this information in perspective. You
19 could miss an opportunity for high-quality care by selecting a
20 doctor based solely on malpractice history.

21 When considering malpractice data, please keep in mind:

22 Malpractice histories tend to vary by specialty. Some specialties
23 are more likely than others to be the subject of litigation. This
24 report compares doctors only to the members of their specialty,
25 not to all doctors, in order to make an individual doctor’s history
26 more meaningful.

27 This report reflects data only for settlements made on or after
28 January 1, 2003. Moreover, it includes information concerning
29 those settlements for a 10-year period only. Therefore, you should
30 know that a doctor may have made settlements in the 10 years
31 immediately preceding January 1, 2003, that are not included in
32 this report. After January 1, 2013, for doctors practicing less than
33 10 years, the data covers their total years of practice. You should
34 take into account the effective date of settlement disclosure as well
35 as how long the doctor has been in practice when considering
36 malpractice averages.

37 The incident causing the malpractice claim may have happened
38 years before a payment is finally made. Sometimes, it takes a long
39 time for a malpractice lawsuit to settle. Some doctors work
40 primarily with high-risk patients. These doctors may have

1 malpractice settlement histories that are higher than average
2 because they specialize in cases or patients who are at very high
3 risk for problems.

4 Settlement of a claim may occur for a variety of reasons that do
5 not necessarily reflect negatively on the professional competence
6 or conduct of the doctor. A payment in settlement of a medical
7 malpractice action or claim should not be construed as creating a
8 presumption that medical malpractice has occurred.

9 You may wish to discuss information in this report and the
10 general issue of malpractice with your doctor.”

11
12 (e) The Medical Board of California, the Osteopathic Medical
13 Board of California, the California Board of Podiatric Medicine,
14 and the Physician Assistant Board shall, by regulation, develop
15 standard terminology that accurately describes the different types
16 of disciplinary filings and actions to take against a licensee as
17 described in paragraphs (1) to (5), inclusive, of subdivision (a). In
18 providing the public with information about a licensee via the
19 Internet pursuant to Section 2027, the Medical Board of California,
20 the Osteopathic Medical Board of California, the California Board
21 of Podiatric Medicine, and the Physician Assistant Board shall not
22 use the terms “enforcement,” “discipline,” or similar language
23 implying a sanction unless the physician and surgeon has been the
24 subject of one of the actions described in paragraphs (1) to (5),
25 inclusive, of subdivision (a).

26 (f) The Medical Board of California shall adopt regulations no
27 later than July 1, 2003, designating each specialty and subspecialty
28 practice area as either high risk or low risk. In promulgating these
29 regulations, the board shall consult with commercial underwriters
30 of medical malpractice insurance companies, health care systems
31 that self-insure physicians and surgeons, and representatives of
32 the California medical specialty societies. The board shall utilize
33 the carriers’ statewide data to establish the two risk categories and
34 the averages required by subparagraph (B) of paragraph (2) of
35 subdivision (b). Prior to issuing regulations, the board shall
36 convene public meetings with the medical malpractice carriers,
37 self-insurers, and specialty representatives.

38 (g) The Medical Board of California, the Osteopathic Medical
39 Board of California, the California Board of Podiatric Medicine,
40 and the Physician Assistant Board shall provide each licensee,

1 including a former licensee under subdivision (a), with a copy of
2 the text of any proposed public disclosure authorized by this section
3 prior to release of the disclosure to the public. The licensee shall
4 have 10 working days from the date the board provides the copy
5 of the proposed public disclosure to propose corrections of factual
6 inaccuracies. Nothing in this section shall prevent the board from
7 disclosing information to the public prior to the expiration of the
8 10-day period.

9 (h) Pursuant to subparagraph (A) of paragraph (2) of subdivision
10 (b), the specialty or subspecialty information required by this
11 section shall group physicians by specialty board recognized
12 pursuant to paragraph (5) of subdivision (h) of Section 651 unless
13 a different grouping would be more valid and the board, in its
14 statement of reasons for its regulations, explains why the validity
15 of the grouping would be more valid.

16 (i) By January 1, 2018, the Medical Board of California, the
17 Osteopathic Medical Board of California, and the California Board
18 of Podiatric Medicine shall include the information listed in
19 subdivision (f) of Section 2228 on any board documents informing
20 the public of probation orders and probationary licenses, including,
21 but not limited to, newsletters.

22 SEC. 3. Section 1006 is added to the Business and Professions
23 Code, to read:

24 1006. (a) On and after January 1, 2018, except as provided by
25 subdivision (c), the State Board of Chiropractic Examiners shall
26 require a licensee to disclose on a separate document her or his
27 probationary status, all of the information described in subdivision
28 (d), the address of the board's Internet Web site, and the board's
29 telephone number to a patient, the patient's guardian, or health
30 care surrogate prior to the patient's first visit following the
31 probationary order while the licensee is on probation *pursuant to*
32 *a probationary order made after January 1, 2017*, in any of the
33 following circumstances:

34 (1) The accusation alleges, the statement of issues indicates, or
35 the legal conclusions of an administrative law judge find that the
36 licensee is implicated in any of the following:

37 (A) Gross negligence.

38 (B) Repeated negligent acts involving a departure from the
39 standard of care with multiple patients.

- 1 (C) Drug or alcohol abuse that threatens to impair a licensee's
2 ability to practice chiropractic safely, including practicing under
3 the influence of drugs or alcohol.
- 4 (D) Felony conviction arising from or occurring during patient
5 care or treatment.
- 6 (E) Mental illness or other cognitive impairment that impedes
7 a licensee's ability to safely practice chiropractic.
- 8 (2) The board ordered any of the following in conjunction with
9 placing the licensee on probation:
- 10 (A) That a third-party chaperone be present when the licensee
11 examines patients as a result of sexual misconduct.
- 12 (B) That the licensee submit to drug testing as a result of drug
13 or alcohol abuse.
- 14 (C) That the licensee have a monitor.
- 15 (3) The licensee has not successfully completed a training
16 program or any associated examinations required by the board as
17 a condition of probation.
- 18 (4) The licensee has been on probation more than once.
- 19 (b) The licensee shall obtain from each patient a signed receipt
20 following the disclosure that includes a written explanation of how
21 the patient can find further information on the licensee's probation
22 on the board's Internet Web site.
- 23 (c) The licensee shall not be required to provide the disclosure
24 prior to the visit as required by subdivision (a) if the visit occurs
25 in an emergency room and the licensee who will be treating the
26 patient during the visit is not known to the patient until immediately
27 prior to the start of the visit.
- 28 (d) By January 1, 2018, the board shall develop a standardized
29 format for listing the following information pursuant to subdivision
30 (e):
- 31 (1) The listing of the causes for probation alleged in the
32 accusation, the statement of issues, or the legal conclusions of an
33 administrative law judge.
- 34 (2) The length of the probation and the end date.
- 35 (3) All practice restrictions placed on the licensee by the board.
- 36 (e) By January 1, 2018, the board shall provide the information
37 listed in subdivision (d) as follows:
- 38 (1) To an inquiring member of the public.

1 (2) On any board documents informing the public of probation
2 orders and probationary licenses, including, but not limited to,
3 newsletters.

4 (3) On the board's Internet Web site.

5 SEC. 4. Section 2027 of the Business and Professions Code is
6 amended to read:

7 2027. (a) The board shall post on its Internet Web site the
8 following information on the current status of the license for all
9 current and former licensees:

10 (1) Whether or not the licensee is presently in good standing.

11 (2) Current American Board of Medical Specialties certification
12 or board equivalent as certified by the board.

13 (3) Any of the following enforcement actions or proceedings
14 to which the licensee is actively subjected:

15 (A) Temporary restraining orders.

16 (B) Interim suspension orders.

17 (C) (i) Revocations, suspensions, probations, or limitations on
18 practice ordered by the board or the board of another state or
19 jurisdiction, including those made part of a probationary order or
20 stipulated agreement.

21 (ii) By January 1, 2018, the board, the Osteopathic Medical
22 Board of California, and the California Board of Podiatric Medicine
23 shall include, in plain view on the BreEZe profile Internet Web
24 page of each licensee subject to probation or a probationary license,
25 the information described in subdivision (f) of Section 2228. For
26 purposes of this subparagraph, a BreEZe profile Internet Web page
27 is a profile Internet Web page on the BreEZe system pursuant to
28 Section 210.

29 (D) Current accusations filed by the Attorney General, including
30 those accusations that are on appeal. For purposes of this paragraph,
31 "current accusation" means an accusation that has not been
32 dismissed, withdrawn, or settled, and has not been finally decided
33 upon by an administrative law judge and the board unless an appeal
34 of that decision is pending.

35 (E) Citations issued that have not been resolved or appealed
36 within 30 days.

37 (b) The board shall post on its Internet Web site all of the
38 following historical information in its possession, custody, or
39 control regarding all current and former licensees:

40 (1) Approved postgraduate training.

1 (2) Any final revocations and suspensions, or other equivalent
2 actions, taken against the licensee by the board or the board of
3 another state or jurisdiction or the surrender of a license by the
4 licensee in relation to a disciplinary action or investigation,
5 including the operative accusation resulting in the license surrender
6 or discipline by the board.

7 (3) Probation or other equivalent action ordered by the board,
8 or the board of another state or jurisdiction, completed or
9 terminated, including the operative accusation resulting in the
10 discipline by the board.

11 (4) Any felony convictions. Upon receipt of a certified copy of
12 an expungement order granted pursuant to Section 1203.4 of the
13 Penal Code from a licensee, the board shall, within six months of
14 receipt of the expungement order, post notification of the
15 expungement order and the date thereof on its Internet Web site.

16 (5) Misdemeanor convictions resulting in a disciplinary action
17 or accusation that is not subsequently withdrawn or dismissed.
18 Upon receipt of a certified copy of an expungement order granted
19 pursuant to Section 1203.4 of the Penal Code from a licensee, the
20 board shall, within six months of receipt of the expungement order,
21 post notification of the expungement order and the date thereof on
22 its Internet Web site.

23 (6) Civil judgments issued in any amount, whether or not
24 vacated by a settlement after entry of the judgment, that were not
25 reversed on appeal, and arbitration awards issued in any amount,
26 for a claim or action for damages for death or personal injury
27 caused by the physician and surgeon's negligence, error, or
28 omission in practice, or by his or her rendering of unauthorized
29 professional services.

30 (7) Except as provided in subparagraphs (A) and (B), a summary
31 of any final hospital disciplinary actions that resulted in the
32 termination or revocation of a licensee's hospital staff privileges
33 for a medical disciplinary cause or reason. The posting shall
34 provide any additional explanatory or exculpatory information
35 submitted by the licensee pursuant to subdivision (f) of Section
36 805. The board shall also post on its Internet Web site a factsheet
37 that explains and provides information on the reporting
38 requirements under Section 805.

39 (A) If a licensee's hospital staff privileges are restored and the
40 licensee notifies the board of the restoration, the information

1 pertaining to the termination or revocation of those privileges shall
2 remain posted on the Internet Web site for a period of 10 years
3 from the restoration date of the privileges, and at the end of that
4 period shall be removed.

5 (B) If a court finds, in a final judgment, that peer review
6 resulting in a hospital disciplinary action was conducted in bad
7 faith and the licensee notifies the board of that finding, the
8 information concerning that hospital disciplinary action posted on
9 the Internet Web site shall be immediately removed. For purposes
10 of this subparagraph, “peer review” has the same meaning as
11 defined in Section 805.

12 (8) Public letters of reprimand issued within the past 10 years
13 by the board or the board of another state or jurisdiction, including
14 the operative accusation, if any, resulting in discipline by the board.

15 (9) Citations issued within the last three years that have been
16 resolved by payment of the administrative fine or compliance with
17 the order of abatement.

18 (10) All settlements within the last five years in the possession,
19 custody, or control of the board shall be disclosed for a licensee
20 in the low-risk category if there are three or more settlements for
21 that licensee within the last five years, and for a licensee in the
22 high-risk category if there are four or more settlements for that
23 licensee within the last five years. Classification of a licensee in
24 either a “high-risk category” or a “low-risk” category depends
25 upon the specialty or subspecialty practiced by the licensee and
26 the designation assigned to that specialty or subspecialty by the
27 board pursuant to subdivision (f) of Section 803.1.

28 (A) For the purposes of this paragraph, “settlement” means a
29 settlement in an amount of thirty thousand dollars (\$30,000) or
30 more of any claim or action for damages for death or personal
31 injury caused by the physician and surgeon’s negligence, error, or
32 omission in practice, or by his or her rendering of unauthorized
33 professional services.

34 (B) For the purposes of this paragraph, “settlement” does not
35 include a settlement by a licensee, regardless of the amount paid,
36 when (i) the settlement is made as a part of the settlement of a
37 class claim, (ii) the amount paid in settlement of the class claim
38 is the same amount paid by the other licensees in the same class
39 or similarly situated licensees in the same class, and (iii) the
40 settlement was paid in the context of a case for which the complaint

1 that alleged class liability on behalf of the licensee also alleged a
2 products liability class action cause of action.

3 (C) The board shall not disclose the actual dollar amount of a
4 settlement, but shall disclose settlement information in the same
5 manner and with the same disclosures required under subparagraph
6 (B) of paragraph (2) of subdivision (b) of Section 803.1.

7 (11) Appropriate disclaimers and explanatory statements to
8 accompany the information described in paragraphs (1) to (10),
9 inclusive, including an explanation of what types of information
10 are not disclosed. These disclaimers and statements shall be
11 developed by the board and shall be adopted by regulation.

12 (c) The board shall provide links to other Internet Web sites
13 that provide information on board certifications that meet the
14 requirements of subdivision (h) of Section 651. The board may
15 also provide links to any other Internet Web sites that provide
16 information on the affiliations of licensed physicians and surgeons.
17 The board may provide links to other Internet Web sites on the
18 Internet that provide information on health care service plans,
19 health insurers, hospitals, or other facilities.

20 SEC. 5. Section 2221 of the Business and Professions Code is
21 amended to read:

22 2221. (a) The board may deny a physician's and surgeon's
23 certificate to an applicant guilty of unprofessional conduct or of
24 any cause that would subject a licensee to revocation or suspension
25 of his or her license.

26 (b) The board in its sole discretion, may issue a probationary
27 physician's and surgeon's certificate to an applicant subject to
28 terms and conditions, including, but not limited to, any of the
29 following conditions of probation:

30 (1) Practice limited to a supervised, structured environment
31 where the licensee's activities shall be supervised by another
32 physician and surgeon.

33 (2) Total or partial restrictions on drug prescribing privileges
34 for controlled substances.

35 (3) Continuing medical or psychiatric treatment.

36 (4) Ongoing participation in a specified rehabilitation program.

37 (5) Enrollment and successful completion of a clinical training
38 program.

39 (6) Abstention from the use of alcohol or drugs.

1 (7) Restrictions against engaging in certain types of medical
2 practice.

3 (8) Compliance with all provisions of this chapter.

4 (9) Payment of the cost of probation monitoring.

5 (10) Disclosing probationary license status to patients, pursuant
6 to subdivision (b) of Section 2228.

7 (c) The board may modify or terminate the terms and conditions
8 imposed on the probationary certificate upon receipt of a petition
9 from the licensee; however, the provisions of subdivision (b) of
10 Section 2228 are mandatory with any probationary licensee. The
11 board may assign the petition to an administrative law judge
12 designated in Section 11371 of the Government Code. After a
13 hearing on the petition, the administrative law judge shall provide
14 a proposed decision to the board.

15 (d) The board shall deny a physician’s and surgeon’s certificate
16 to an applicant who is required to register pursuant to Section 290
17 of the Penal Code. This subdivision does not apply to an applicant
18 who is required to register as a sex offender pursuant to Section
19 290 of the Penal Code solely because of a misdemeanor conviction
20 under Section 314 of the Penal Code.

21 (e) An applicant shall not be eligible to reapply for a physician’s
22 and surgeon’s certificate for a minimum of three years from the
23 effective date of the denial of his or her application, except that
24 the board may, in its discretion and for good cause demonstrated,
25 permit reapplication after not less than one year has elapsed from
26 the effective date of the denial.

27 SEC. 6. Section 2221.05 of the Business and Professions Code
28 is amended to read:

29 2221.05. (a) Notwithstanding subdivisions (a) and (b) of
30 Section 2221, the board may issue a physician’s and surgeon’s
31 certificate to an applicant who has committed minor violations
32 that the board deems, in its discretion, do not merit the denial of
33 a certificate or require probationary status under Section 2221, and
34 may concurrently issue a public letter of reprimand.

35 (b) A public letter of reprimand issued concurrently with a
36 physician’s and surgeon’s certificate shall be purged three years
37 from the date of issuance.

38 (c) A public letter of reprimand issued pursuant to this section
39 shall be disclosed to an inquiring member of the public and shall
40 be posted on the board’s Internet Web site.

1 (d) Nothing in this section shall be construed to affect the
2 board's authority to issue an unrestricted license.

3 SEC. 7. Section 2228 of the Business and Professions Code is
4 amended to read:

5 2228. (a) The authority of the board or the California Board
6 of Podiatric Medicine to discipline a licensee by placing him or
7 her on probation includes, but is not limited to, the following:

8 (1) Requiring the licensee to obtain additional professional
9 training and to pass an examination upon the completion of the
10 training. The examination may be written or oral, or both, and may
11 be a practical or clinical examination, or both, at the option of the
12 board or the administrative law judge.

13 (2) Requiring the licensee to submit to a complete diagnostic
14 examination by one or more physicians and surgeons appointed
15 by the board. If an examination is ordered, the board shall receive
16 and consider any other report of a complete diagnostic examination
17 given by one or more physicians and surgeons of the licensee's
18 choice.

19 (3) Restricting or limiting the extent, scope, or type of practice
20 of the licensee, including requiring notice to applicable patients
21 that the licensee is unable to perform the indicated treatment, where
22 appropriate.

23 (4) Providing the option of alternative community service in
24 cases other than violations relating to quality of care.

25 (b) On and after January 1, 2018, except as provided by
26 subdivision (d), the board or the California Board of Podiatric
27 Medicine shall require a licensee to disclose on a separate
28 document her or his probationary status, all of the information
29 described in subdivision (f), the address of his or her BreZE
30 profile Internet Web page, and the telephone number of the board,
31 if the probation was imposed by the board, or the California Board
32 of Podiatric Medicine, if the probation was imposed by the
33 California Board of Podiatric Medicine, to a patient, the patient's
34 guardian, or health care surrogate prior to the patient's first visit
35 following the probationary order while the licensee is on probation
36 *pursuant to a probationary order made after January 1, 2017*, in
37 any of the following circumstances:

38 (1) The accusation alleges, the statement of issues indicates, or
39 the legal conclusions of an administrative law judge find that the
40 licensee is implicated in any of the following:

- 1 (A) Gross negligence.
- 2 (B) Repeated negligent acts involving a departure from the
3 standard of care with multiple patients.
- 4 (C) Repeated acts of inappropriate and excessive prescribing
5 of controlled substances, including, but not limited to, prescribing
6 controlled substances without appropriate prior examination or
7 without medical reason documented in medical records.
- 8 (D) Drug or alcohol abuse that threatens to impair a licensee's
9 ability to practice medicine safely, including practicing under the
10 influence of drugs or alcohol.
- 11 (E) Felony conviction arising from or occurring during patient
12 care or treatment.
- 13 (F) Mental illness or other cognitive impairment that impedes
14 a licensee's ability to safely practice medicine.
- 15 (2) The board ordered any of the following in conjunction with
16 placing the licensee on probation:
- 17 (A) That a third-party chaperone be present when the licensee
18 examines patients as a result of sexual misconduct.
- 19 (B) That the licensee submit to drug testing as a result of drug
20 or alcohol abuse.
- 21 (C) That the licensee have a monitor.
- 22 (D) Restricting the licensee totally or partially from prescribing
23 controlled substances.
- 24 (3) The licensee has not successfully completed a training
25 program or any associated examinations required by the board as
26 a condition of probation.
- 27 (4) The licensee has been on probation more than once.
- 28 (c) The licensee shall obtain from each patient a signed receipt
29 following the disclosure that includes a written explanation of how
30 the patient can find further information on the licensee's probation
31 on the board's Internet Web site.
- 32 (d) The licensee shall not be required to provide the disclosure
33 prior to the visit as required by subdivision (b) if either of the
34 following applies:
- 35 (1) The patient is unconscious or otherwise unable to
36 comprehend the disclosure and sign the receipt pursuant to
37 subdivision (c) and a guardian or health care surrogate is
38 unavailable to comprehend the disclosure and sign the receipt. In
39 that instance, the licensee shall disclose her or his status as soon
40 as either the patient can comprehend the disclosure and sign the

1 receipt or a guardian or health care surrogate is available to
2 comprehend the disclosure and sign the receipt.

3 (2) The visit occurs in an emergency room and the licensee who
4 will be treating the patient during the visit is not known to the
5 patient until immediately prior to the start of the visit.

6 (e) Section 2314 shall not apply to subdivision (b), (c), or (d).

7 (f) By January 1, 2018, the board shall develop a standardized
8 format for listing the following information pursuant to paragraph
9 (5) of subdivision (b) of Section 803.1, subdivision (i) of Section
10 803.1, and clause (ii) of subparagraph (C) of paragraph (1) of
11 subdivision (a) of Section 2027:

12 (1) The listing of the causes for probation alleged in the
13 accusation, the statement of issues, or the legal conclusions of an
14 administrative law judge.

15 (2) The length of the probation and the end date.

16 (3) All practice restrictions placed on the licensee by the board.

17 SEC. 8. Section 3663 of the Business and Professions Code is
18 amended to read:

19 3663. (a) The committee shall have the responsibility for
20 reviewing the quality of the practice of naturopathic medicine
21 carried out by persons licensed as naturopathic doctors pursuant
22 to this chapter.

23 (b) The committee may discipline a naturopathic doctor for
24 unprofessional conduct. After a hearing conducted in accordance
25 with the Administrative Procedure Act (Chapter 5 (commencing
26 with Section 11500) of Part 1 of Division 3 of Title 2 of the
27 Government Code), the committee may deny, suspend, revoke, or
28 place on probation the license of, or reprimand, censure, or
29 otherwise discipline a naturopathic doctor in accordance with
30 Division 1.5 (commencing with Section 475).

31 (c) On and after January 1, 2018, except as provided by
32 subdivision (e), the committee shall require a naturopathic doctor
33 to disclose on a separate document her or his probationary status,
34 all of the information described in subdivision (f), the address of
35 his or her BreEZe profile Internet Web page, and the committee's
36 telephone number to a patient, the patient's guardian, or health
37 care surrogate prior to the patient's first visit following the
38 probationary order while the naturopathic doctor is on probation
39 *pursuant to a probationary order made after January 1, 2017*, in
40 any of the following circumstances:

- 1 (1) The accusation alleges, the statement of issues indicates, or
2 the legal conclusions of an administrative law judge find that the
3 naturopathic doctor is implicated in any of the following:
- 4 (A) Gross negligence.
 - 5 (B) Repeated negligent acts involving a departure from the
6 standard of care with multiple patients.
 - 7 (C) Repeated acts of inappropriate and excessive prescribing
8 of controlled substances, including, but not limited to, prescribing
9 controlled substances without appropriate prior examination or
10 without medical reason documented in medical records.
 - 11 (D) Drug or alcohol abuse that threatens to impair a naturopathic
12 doctor's ability to practice medicine safely, including practicing
13 under the influence of drugs or alcohol.
 - 14 (E) Felony conviction arising from or occurring during patient
15 care or treatment.
 - 16 (F) Mental illness or other cognitive impairment that impedes
17 a naturopathic doctor's ability to safely practice medicine.
- 18 (2) The committee ordered any of the following in conjunction
19 with placing the naturopathic doctor on probation:
- 20 (A) That a third-party chaperone be present when the
21 naturopathic doctor examines patients as a result of sexual
22 misconduct.
 - 23 (B) That the naturopathic doctor submit to drug testing as a
24 result of drug or alcohol abuse.
 - 25 (C) That the naturopathic doctor have a monitor.
 - 26 (D) Restricting the naturopathic doctor totally or partially from
27 prescribing controlled substances.
- 28 (3) The naturopathic doctor has not successfully completed a
29 training program or any associated examinations required by the
30 committee as a condition of probation.
- 31 (4) The naturopathic doctor has been on probation more than
32 once.
- 33 (d) The naturopathic doctor shall obtain from each patient a
34 signed receipt following the disclosure that includes a written
35 explanation of how the patient can find further information on the
36 naturopathic doctor's probation on the committee's Internet Web
37 site.
- 38 (e) The naturopathic doctor shall not be required to provide the
39 disclosure prior to the visit as required by subdivision (c) if either
40 of the following applies:

1 (1) The patient is unconscious or otherwise unable to
2 comprehend the disclosure and sign the receipt pursuant to
3 subdivision (d) and a guardian or health care surrogate is
4 unavailable to comprehend the disclosure and sign the receipt. In
5 that instance, the naturopathic doctor shall disclose her or his status
6 as soon as either the patient can comprehend the disclosure and
7 sign the receipt or a guardian or health care surrogate is available
8 to comprehend the disclosure and sign the receipt.

9 (2) The visit occurs in an emergency room and the naturopathic
10 doctor who will be treating the patient during the visit is not known
11 to the patient until immediately prior to the start of the visit.

12 (f) By January 1, 2018, the committee shall develop a
13 standardized format for listing the following information pursuant
14 to subdivision (g):

15 (1) The listing of the causes for probation alleged in the
16 accusation, the statement of issues, or the legal conclusions of an
17 administrative law judge.

18 (2) The length of the probation and the end date.

19 (3) All practice restrictions placed on the naturopathic doctor
20 by the committee.

21 (g) By January 1, 2018, the committee shall provide the
22 information listed in subdivision (f) as follows:

23 (1) To an inquiring member of the public.

24 (2) On any committee documents informing the public of
25 probation orders and probationary licenses, including, but not
26 limited to, newsletters.

27 (3) In plain view on the BreEZe profile Internet Web page of a
28 naturopathic doctor subject to probation or a probationary license.

29 SEC. 9. Section 4962 is added to the Business and Professions
30 Code, to read:

31 4962. (a) On and after January 1, 2018, except as provided by
32 subdivision (c), the board shall require a licensee to disclose on a
33 separate document her or his probationary status, all of the
34 information described in subdivision (e), the address of his or her
35 BreEZe profile Internet Web page, and the board's telephone
36 number to a patient, the patient's guardian, or health care surrogate
37 prior to the patient's first visit following the probationary order
38 while the licensee is on probation *pursuant to a probationary order*
39 *made after January 1, 2017*, in any of the following circumstances:

- 1 (1) The accusation alleges, the statement of issues indicates, or
- 2 the legal conclusions of an administrative law judge find that the
- 3 licensee is implicated in any of the following:
 - 4 (A) Gross negligence.
 - 5 (B) Repeated negligent acts involving a departure from the
 - 6 standard of care with multiple patients.
 - 7 (C) Drug or alcohol abuse that threatens to impair a licensee’s
 - 8 ability to practice acupuncture safely, including practicing under
 - 9 the influence of drugs or alcohol.
 - 10 (D) Felony conviction arising from or occurring during patient
 - 11 care or treatment.
 - 12 (E) Mental illness or other cognitive impairment that impedes
 - 13 a licensee’s ability to safely practice acupuncture.
- 14 (2) The board ordered any of the following in conjunction with
- 15 placing the licensee on probation:
 - 16 (A) That a third-party chaperone be present when the licensee
 - 17 examines patients as a result of sexual misconduct.
 - 18 (B) That the licensee submit to drug testing as a result of drug
 - 19 or alcohol abuse.
 - 20 (C) That the licensee have a monitor.
- 21 (3) The licensee has not successfully completed a training
- 22 program or any associated examinations required by the board as
- 23 a condition of probation.
 - 24 (4) The licensee has been on probation more than once.
 - 25 (b) The licensee shall obtain from each patient a signed receipt
 - 26 following the disclosure that includes a written explanation of how
 - 27 the patient can find further information on the licensee’s probation
 - 28 on the board’s Internet Web site.
 - 29 (c) The licensee shall not be required to provide the disclosure
 - 30 prior to the visit as required by subdivision (a) if either of the
 - 31 following applies:
 - 32 (1) The patient is unconscious or otherwise unable to
 - 33 comprehend the disclosure and sign the receipt pursuant to
 - 34 subdivision (b) and a guardian or health care surrogate is
 - 35 unavailable to comprehend the disclosure and sign the receipt. In
 - 36 that instance, the licensee shall disclose her or his status as soon
 - 37 as either the patient can comprehend the disclosure and sign the
 - 38 receipt or a guardian or health care surrogate is available to
 - 39 comprehend the disclosure and sign the receipt.

1 (2) The visit occurs in an emergency room and the licensee who
2 will be treating the patient during the visit is not known to the
3 patient until immediately prior to the start of the visit.

4 (d) Section 4935 shall not apply to subdivision (a), (b), or (c).

5 (e) By January 1, 2018, the board shall develop a standardized
6 format for listing the following information pursuant to subdivision

7 (f):

8 (1) The listing of the causes for probation alleged in the
9 accusation, the statement of issues, or the legal conclusions of an
10 administrative law judge.

11 (2) The length of the probation and the end date.

12 (3) All practice restrictions placed on the licensee by the board.

13 (f) By January 1, 2018, the board shall provide the information
14 listed in subdivision (e) as follows:

15 (1) To an inquiring member of the public.

16 (2) On any board documents informing the public of probation
17 orders and probationary licenses, including, but not limited to,
18 newsletters.

19 (3) Upon availability of a licensee's BreEZe profile Internet
20 Web page on the BreEZe system pursuant to Section 210, in plain
21 view on the BreEZe profile Internet Web page of a licensee subject
22 to probation or a probationary license.

SENATE RULES COMMITTEE		SB 1033
Office of Senate Floor Analyses		
(916) 651-1520 Fax: (916)		
327-4478		

Bill No: SB 1033
Author: Hill (D)
Amended: 5/31/16
Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 7-0, 4/11/16
AYES: Hill, Block, Galgiani, Hernandez, Jackson, Mendoza,
Wieckowski
NO VOTE RECORDED: Bates, Berryhill

SENATE APPROPRIATIONS COMMITTEE: 5-0, 5/27/16
AYES: Lara, Beall, Hill, McGuire, Mendoza
NO VOTE RECORDED: Bates, Nielsen

SUBJECT: Medical professionals: probation

SOURCE: Author

DIGEST: This bill requires physicians and surgeons, osteopathic physicians and surgeons, podiatrists, acupuncturists, chiropractors and naturopathic doctors to notify patients of their probationary status before visits take place.

ANALYSIS:

Existing law:

- 1)Requires health care licensing boards to create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority. Requires the central file to be created and maintained to provide an individual historical record for each licensee and must include specified information including the following: any conviction of a crime, any judgment or settlement in excess of \$3,000, any public complaints as specified, and any disciplinary information, as specified. States that the content of the central file that is not public record under any other provision of law is confidential. Allows a licensee to submit any exculpatory or explanatory statements or other information to be included in the central file. (Business and Professions Code (BPC) § 800)
- 2)Requires the Medical Board of California (MBC) to disclose on the Internet specified information in its

possession, custody, or control regarding licensed physicians and surgeons, including: any felony convictions reported to the MBC after January 3, 1991; or, any misdemeanor conviction that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed. (BPC § 2027)

3) Requires MBC to prioritize its investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. (BPC §2220.05)

4) Sets forth what the MBC may do in disciplining a physician (e.g., revoke or suspend a license, place a physician on probation, etc); further states that a licensee can "Have any other action taken in relation to discipline as part of an order as the board or administrative law judge may deem proper." (BPC § 2227)

This bill:

1) Requires MBC, Osteopathic Medical Board of California (OMBC), Board of Podiatric Medicine (BPM), Acupuncture Board (CAB), Board of Chiropractic Examiners (BCE) and the Naturopathic Medicine Committee (NMC) by January 1, 2018, to include a standardized, single paragraph, plain-language summary that contains the listing of causes that led to a licensee's probation, the length of the probation and the end date, and all practice restrictions placed on the licensee in a disclosure regarding the status of a licensee's license made to an inquiring member of the public as well as on any documents informing the public of probation orders and probation licenses, including but not limited to newsletters. Requires the summary to be posted on the BreEZe profile Web site of each licensee subject to probation.

2) Requires licensees of the MBC, OMBC, BPM, CAB, BCE and NMC to disclose their probationary status and the address of his or BreEZe profile or licensing boards' Web site and phone number to patients or their guardians or health care surrogates prior to the patient's first visit while the licensee is on probation.

3) Provides an exemption to this requirement if the patient is unconscious or otherwise unable to comprehend the disclosure and sign the receipt of disclosure and if a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the receipt of disclosure and if the visit occurs in an emergency room and the licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit. Specifies that

the licensee shall disclose his or her status as soon as either the patient or a guardian or health care surrogate is available to comprehend and sign the disclosure.

- 4) Requires boards to develop a standardized format for the summary in #1 above.
- 5) Authorizes MBC to request investigation and prosecution costs for a disciplinary proceeding against a licensee in which the licensee's license is placed on probation.
- 6) Specifies that the provisions of this bill apply to probationary orders made after January 1, 2017.

Background

The Author is the Sponsor of this bill and notes that SB 1033 will only require additional disclosure for patients served by 500 - 600 licensed physicians in the state. According to the Author, patients deserve to be proactively informed if their doctor has been placed on probation by the boards in this bill for serious offenses such as sexual misconduct, substance abuse, gross negligence, or a felony conviction related to patient care and treatment. The Author notes that physicians, osteopathic physicians and podiatrists are already required to inform hospitals and malpractice insurers of their probation status, but their patients have to seek out the information for themselves on the state's licensee database. The Author adds that while California licensing boards post information on their Web sites related to licensee discipline, patients may not know about this resource or have the ability to check the databases.

Probation. According to information provided by the Author and in a petition filed before the MBC by Consumers' Union Safe Patient Project calling on MBC to amend its Manual of Model Disciplinary Orders and Disciplinary Guidelines and require physicians on probation to inform their patients of this, physicians are routinely placed on probation by MBC for multiple years. Generally, while on probation these physicians are allowed to continue practicing medicine, often with limitations and requirements, but most commonly they are not required to provide any information to their patients regarding their MBC discipline. As of September 29, 2015, according to information provided by MBC, nearly 500 California physicians - among 102,000 California physicians in active practice - were on probation. Physicians are placed on probation following the Attorney General making an accusation for a variety of reasons, for example, gross negligence/incompetence (the most common reason for probation), substance abuse, inappropriate prescribing, sexual misconduct, conviction of a felony or other miscellaneous violations.

A November 2008 report issued by The California Research Bureau (CRB), Physician Misconduct and Public Disclosure Practices at the Medical Board of California, reported that physicians who have received serious sanctions in the past are far more likely to receive additional sanctions in the future. According to the CRB report, "These findings strongly imply that disciplinary histories provide patients with important information about the likely qualities of different physicians." MBC data from a 2013 Enforcement Committee meeting also showed that in FY 2011-2012 and FY 2012-2013, 17 percent of 444 actively-practicing California physicians on probation (77 doctors total) either required subsequent discipline or surrendered their licenses while on probation.

Disclosures. When the MBC places physicians on probation, generally they continue to practice medicine and see patients under restricted conditions. The MBC posts information regarding probation on its Web site and distributes the information to its email list which includes media and interested persons who have signed up to receive it. In October, 2012 MBC staff made a proposal to the MBC to require physicians to inform their patients when the physician is on probation and required to have a monitor. In its recommendation staff said, "This would insure the public has the ability to make informed decisions regarding their healthcare provider." The Board did not approve the staff proposal.

According to the Senate Committee on Appropriations analysis dated May 27, 2016, this bill will result in ongoing costs of about \$1 million per year for additional disciplinary hearings for physicians licensed by MBC, ongoing costs in the tens of thousands per year, on average, for additional disciplinary hearings by the OMBC, ongoing costs in the low tens thousands per year, on average, for additional disciplinary hearings by the BPM, ongoing costs in the tens of thousands per year, on average, for additional disciplinary hearings by the BCE and minor average annual costs for additional disciplinary hearings by the NMC.

SUPPORT: (Verified 5/31/16)

California Board of Chiropractic Examiners
California Chiropractic Association
California Public Interest Research Group
Californians for Patients Rights
Center for Public Interest Law
Consumer Attorneys of California
Consumer Federation of California
Consumers Union
Consumer Watchdog

OPPOSITION: (Verified5/31/16)

California Academy of Family Physicians
California Chapter of the American College of Cardiology
California Dental Association
California Medical Association
California Psychiatric Association
California Society of Plastic Surgeons

ARGUMENTS IN SUPPORT: Supporters cite examples of patients who were harmed by or died under the care of physicians on probation as need for this bill. Supporters believe that this is important legislation that will improve physician accountability, transparency and public participation. Supporters believe that patients deserve to know critical information such as if their doctor is practicing while on probation and that when a physician is on probation for serious offenses, patients are typically unaware of conditions licensees must follow or the fact that their doctor is on probation at all. The Consumers Union's Safe Patient Project believes this legislation is necessary because MBC declined to require notification to patients, a fact the organization believes is particularly necessary as physicians on probation are allowed to continue practicing medicine. Supporters note that information from published research and the MBC's own data that show physicians who receive serious sanctions like probation are more likely to receive additional sanctions. Supporters also believe that the requirements in this bill for direct reporting to patients are essential in light of the varied availability of the internet in California and potential inability for health care consumers to easily obtain this information.

ARGUMENTS IN OPPOSITION: Opponents state that this bill will have grave impact on a physician's practice by cutting into time in which patient care can be provided and that the impact of this bill is similar to suspension. Opponents note that this bill will discourage stipulated settlement and encourage more physicians to pursue a hearing on their case, slowing down the disciplinary process for all cases.

The California Dental Association believes this legislation sets a problematic precedent for all healing arts licensees and their patients and that while well intentioned, the provisions in this bill interfere with a licensing board's authority and responsibility to protect consumers.

The California Medical Association states that the broad manner in which the notification requirement may be imposed as a condition of probation is unfair and is concerned that this bill is inconsistently applied to licensees who may be interacting

with the same patients a physician would see.

Prepared by: Sarah Mason / B., P. & E.D. / (916) 651-4104
5/31/16 20:45:49

**** END ****

Agenda Item #2

c. Legislative and Regulatory Update

SB 1155 (Morrell)

**Professions and
Vocations: licenses:
military service**

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1155

Introduced by Senator Morrell

February 18, 2016

An act to add Section 114.6 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1155, as amended, Morrell. Professions and vocations: licenses: military service.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes any licensee whose license expired while he or she was on active duty as a member of the California National Guard or the United States Armed Forces to reinstate his or her license without examination or penalty if certain requirements are met. Existing law also requires the boards to waive the renewal fees, continuing education requirements, and other renewal requirements, if applicable, of any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard, if certain requirements are met. Existing law requires each board to inquire in every application if the individual applying for licensure is serving in, or has previously served in, the military. Existing law, on and after July 1, 2016, requires a board within the Department of Consumer Affairs to expedite, and authorizes a board to assist, the initial licensure process for an applicant who has served as an active duty member of the United States Armed Forces and was honorably discharged.

This ~~bill~~ *bill, on and after January 1, 2018, would require every board within the Department of Consumer Affairs to grant a fee waiver for the application for and the issuance of an initial license to an individual who is an honorably discharged ~~veteran, as specified:~~ veteran. The bill would require that a veteran be granted only one fee waiver, except as specified.*

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 114.6 is added to the Business and
 2 Professions Code, to read:
 3 114.6. Notwithstanding any other provision of law, every board
 4 within the department shall grant a fee waiver for the application
 5 for and issuance of ~~a~~ *an initial* license to an individual who is an
 6 honorably discharged veteran who served as an active duty member
 7 of the California National Guard or the United States Armed
 8 Forces. Under this program, all of the following apply:
 9 (a) A veteran shall be granted only one fee ~~waiver:~~ *waiver,*
 10 *except as specified in subdivision (b). After a fee waiver has been*
 11 *issued by any board within the department pursuant to this section,*
 12 *the veteran is no longer eligible for a waiver.*
 13 (b) *If a board charges a fee for the application for a license and*
 14 *another fee for the issuance of a license, the veteran shall be*
 15 *granted fee waivers for both the application for and issuance of*
 16 *a license.*
 17 ~~(b)~~
 18 (c) The fee waiver shall apply only to an application of and a
 19 license issued to an individual veteran and not to an application
 20 of or a license issued to *an individual veteran on behalf of a*
 21 *business or other entity.*
 22 ~~(c)~~
 23 (d) A waiver shall not be issued for ~~a renewal of a license or~~
 24 ~~for the application for and issuance of a license other than one~~
 25 ~~initial license.~~ *any of the following:*
 26 (1) *Renewal of a license.*
 27 (2) *The application for and issuance of an additional license,*
 28 *a certificate, a registration, or a permit associated with the initial*
 29 *license.*

- 1 (3) *The application for an examination.*
- 2 (e) *This section shall become operative on January 1, 2018.*

O

SENATE RULES COMMITTEE	SB 1155
Office of Senate Floor Analyses	
(916) 651-1520 Fax: (916)	
327-4478	

THIRD READING

Bill No: SB 1155
Author: Morrell (R)
Amended: 5/31/16
Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 9-0, 4/4/16
AYES: Hill, Bates, Berryhill, Block, Galgiani, Hernandez,
Jackson, Mendoza, Wieckowski

SENATE VETERANS AFFAIRS COMMITTEE: 5-0, 4/12/16
AYES: Nielsen, Hueso, Allen, Nguyen, Roth

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/27/16
AYES: Lara, Bates, Beall, Hill, McGuire, Mendoza, Nielsen

SUBJECT: Professions and vocations: licenses: military
service

SOURCE: Author

DIGEST: This bill requires every board within the Department of Consumer Affairs (Department) to grant a waiver for the application and initial licensing fee to an honorably discharged veteran, except as otherwise specified, as of January 1, 2018.

ANALYSIS:

Existing law:

- 1)Provides for the licensure, registration and regulation of various professions and vocations by the boards, bureaus, committees, programs and commission (board(s)) within the Department.
- 2)Specifies that it is the policy of this state that persons with the skills, knowledge, and experiences obtained in the armed services should be permitted to apply this learning and contribute to the employment needs of this state at the maximum level of responsibility and skill for which they are qualified, and that to this end, that the rules and regulations of boards shall provide a method of evaluating education, training and experience obtained in the armed

services and determine how it may be used to meet the licensure requirements for the particular business, or occupation, or profession regulated. (Business and Professions Code (BPC) § 35)

3)Provides that every board within the Department shall waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board, if they are applicable, for any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard if certain specified requirements are met.

(BPC § 114.3)

4)Requires each board to inquire in every application if the individual applying for licensure is serving in, or has previously served in, the military.

(BPC § 114.5)

5)Requires after July 1, 2016, that a board within the Department expedite, and may assist, the initial licensure process for an applicant who supplies satisfactory evidence to the board that the applicant has served as an active duty member of the Armed Forces of the United States and was honorably discharged and provides that the board may adopt regulations necessary to implement this requirement. (BPC § 115.4)

6)Authorizes the State Bar of California to waive the membership fees of any member who is good standing with the State Bar at the time the member enters into military service and for the period for which the service member is in military service. (Military and Veterans Code § 825)

This bill:

1)Requires as of January 1, 2018, that every board within the Department to grant a fee waiver for the application for and issuance of initial license to an individual who is an honorably discharged veteran who served as an active duty member of the California National Guard or the United State Armed Forces.

2)Requires under this program, that the following shall apply:

a) The veteran shall be granted only one fee waiver, except as otherwise specified. After a fee waiver has been issued by any board within the department pursuant to these provisions, the veteran is no longer eligible for a waiver.

b) If a board charges a fee for the application for a

license and another fee for the issuance of a license, the veteran shall be granted fee waivers for both the application for and issuance of a license.

- c) The fee waiver shall apply only to an application of and a license issued to an individual veteran and not to an application of or a license issued to an individual veteran on behalf of a business or other entity.
- d) A waiver shall not be issued for any of the following:
 - i) Renewal of a license.
 - ii) The application for and issuance of an additional license, a certificate, a registration, or a permit associated with the initial license.
 - iii) The application for an examination.

Background

The Department currently oversees 39 licensing programs that issue more than two million licenses, registrations and certifications in nearly 200 professional categories. These licensing boards are charged with regulating a particular profession through licensure and enforcement programs. Each of these entities is responsible for enforcing the minimum qualifications for licensure that are established by statute and regulation. Licensure requirements vary in their specificity and flexibility. In many cases, the stated qualifications are specific and provide the regulating entity with little or no discretion over what experience or education can be accepted. Professional and occupational licensure requirements range from completing a form and paying a licensing fee to satisfying significant experience, education and exam requirements.

Consideration of Military Experience and Education. In 2012, the Department provided a report to the Legislature regarding the licensing programs that have statutes or regulations that allow for the use of military experience and education to meet licensing requirements for the various boards under the Department. Titled, "Report to the California State Legislature: Acceptance of Military Experience & Education Towards Licensure," it outlined administrative solutions that the Department's programs were instituting to assist military applicants with the licensure process. It provided a breakdown of all licensing programs under the Department that allowed for members of the military to apply experience, education, or training towards licensure and those that did not.

In 2015, the Department provided an update to its 2012 report and focused on boards providing acceptance of military experience towards licensure pursuant to BPC § 35, which

requires that rules and regulations of boards shall provide for methods of evaluating education, training and experience obtained in the armed services. It was found that none of the licensing programs have regulations based on BPC § 35, but that many of the Department's programs have either specific or broad authority to review and apply military education, experience, or training towards licensure. For example, the Bureau of Security and Investigative Services (BSIS) worked with over 5,000 military applicants to guide them through the application process in the last two years. The Contractors' State License Board (CSLB) has also created a formal program to assist former military members with properly applying their education and experience and completing the licensing process.

Impact on Board Licensing Revenue Minimal. A survey of several licensing boards found that the impact on their overall revenue received from licensing fees would be minimal. The CSLB has expedited 45 applications for veterans for the last year out of about 18,000 applications received. For BSIS, they receive about 3,700 new applications from veterans on an annual basis out of about 71,000 applications received per year. The Bureau of Automotive Repair and the Board of Barbering and Cosmetology receives about 5 applications from veterans per year.

Other States Granting Licensing Fee Waivers for Veterans. Florida, Texas and Wisconsin have granted licensing fee waivers for the initial issuance of occupational licenses to honorably discharged veterans. Ohio is in the process of passing a similar law.

FISCAL EFFECT: Appropriation: No Fiscal Com.:
YesLocal: No

According to the Senate Appropriations Committee analysis dated May 27, 2016, this bill will result in Department-wide revenue loss of \$1.1 million to waive applicable fees for honorably discharged veterans. The bill will also result in additional workload for each board and bureau to establish the fee waiver in regulations prior to implementation which could drive potentially significant costs. The analysis notes that although most boards and bureaus indicate that the loss of revenue and any associated workload stemming from this bill would be minor, several special funds' fiscal issues could be exacerbated. This bill will also result in additional absorbable workload to the Department to make necessary changes to the Department's online licensing and enforcement system, BreEZe as well as additional minor costs for updating websites related to applications.

SUPPORT: (Verified 5/31/16)
California Association of Licensed Investigators, Inc.
Goodwill Southern California

Veterans of Foreign Wars of California (San Diego County,
Southern Imperial County)

OPPOSITION: (Verified 5/31/16)

None received

ARGUMENTS IN SUPPORT: The Veterans of Foreign Wars of California (San Diego County and Southern Imperial County) and Goodwill Southern California are in support of this bill and indicate that initial application and occupational license fees can act as a barrier for entry to the workforce for the 240,000 to 360,000 veterans who separate from the military each year. Many either already reside in or intend to make California their home, adding to the 1.9 million veterans residing in the state. Proponents state that veterans often gain valuable job skills during military service which can be used upon entering the civilian workforce. Despite this fact, young male veterans, as of 2014, have an unemployment rate of 16.2 percent. California also has upwards of 11,000 veterans living on the streets, the most of any state. The proponents believe that eliminating these fees will bring more veterans into the workforce, growing the skilled labor market in California, and taking a step to alleviate the growing problem of veteran homelessness.

The California Association of Licensed Investigators, Inc. is also in support of this bill and believes that the provisions of this bill will remove an obstacle for veterans who desire to work in our state and will facilitate their entrance into the civilian workforce by waiving the application and initial license fees that are paid by applicants to obtain occupational license.

Prepared by: Bill Gage / B., P. & E.D. / (916) 651-4104
5/31/16 20:45:36

Agenda Item #2

c. Legislative and Regulatory Update

SB 1195 (Hill)

Professions and

Vocations: Board Actions

AMENDED IN SENATE JUNE 1, 2016

AMENDED IN SENATE APRIL 6, 2016

SENATE BILL

No. 1195

Introduced by Senator Hill

February 18, 2016

An act to amend Sections 109, 116, 153, 307, 313.1, 2708, 4800, 4804.5, ~~4825.1~~, 4830, ~~and 4846.5~~ 4846.5, 4904, and 4905 of, and to add Sections ~~4826.3, 4826.5, 4826.7,~~ 109.5, 4826.5, 4848.1, and 4853.7 to, the Business and Professions Code, and to amend Sections ~~825, 11346.5, 11349, and 11349.1~~ 825 and 11346.5 of the Government Code, relating to professional regulation, and making an appropriation therefor: *regulations.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1195, as amended, Hill. Professions and vocations: board ~~actions:~~ ~~competitive impact.~~ *actions.*

(1) Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, and authorizes those boards to adopt regulations to enforce the laws pertaining to the profession and vocation for which they have jurisdiction. Existing law makes decisions of any board within the department pertaining to setting standards, conducting examinations, passing candidates, and revoking licenses final, except as specified, and provides that those decisions are not subject to review by the Director of Consumer Affairs. Existing law authorizes the director to audit and review certain inquiries and complaints regarding licensees, including the dismissal of a disciplinary case. Existing law requires the director to annually report to the chairpersons of certain committees of the Legislature information regarding findings from any audit, review, or

monitoring and evaluation. Existing law authorizes the director to contract for services of experts and consultants where necessary. Existing law requires regulations, except those pertaining to examinations and qualifications for licensure and fee changes proposed or promulgated by a board within the department, to comply with certain requirements before the regulation or fee change can take effect, including that the director is required to be notified of the rule or regulation and given 30 days to disapprove the regulation. Existing law prohibits a rule or regulation that is disapproved by the director from having any force or effect, unless the director's disapproval is overridden by a unanimous vote of the members of the board, as specified.

This bill would instead authorize the director, upon his or her own initiative, and require the director, upon the request of ~~a consumer or licensee~~, *the board making the decision or the Legislature*, to review ~~a~~ *any nonministerial market-sensitive* decision or other action, except as specified, of a board within the department to determine whether it ~~unreasonably restrains trade furthers state law~~ and to approve, disapprove, *request further information*, or modify the board decision or action, as specified. The bill would require the director to *issue and* post on the department's Internet Web site his or her final written decision and the reasons for the decision within 90 days from receipt of the ~~request of a consumer or licensee~~ *request for review or the director's decision to review the board decision*. *The bill would prohibit the executive officer of any board, committee, or commission within the department from being an active licensee of any profession that board, committee, or commission regulates.* The bill would, commencing on March 1, 2017, require the director to annually report to the chairs of specified committees of the Legislature information regarding the director's disapprovals, modifications, or findings from any audit, review, or monitoring and evaluation. The bill would authorize the director to seek, designate, employ, or contract for the services of independent antitrust experts for purposes of reviewing board actions for unreasonable restraints on trade. The bill would also require the director to review and approve any regulation promulgated by a board within the department, as specified. ~~The bill would authorize the director to modify any regulation as a condition of approval, and to disapprove a regulation because it would have an impermissible anticompetitive effect.~~ *The bill would authorize the director, for a specified period of time, to approve, disapprove, or require modification of a proposed rule or regulation on the ground that it does not further state law.* The

bill would prohibit any rule or regulation from having any force or effect if the director does not approve the ~~regulation because it has an impermissible anticompetitive effect.~~ *rule or regulation and prohibits any rule or regulation that is not approved by the director from being submitted to the Office of Administrative Law.*

(2) Existing law, until January 1, 2018, provides for the licensure and regulation of registered nurses by the Board of Registered Nursing, which is within the Department of Consumer Affairs, and requires the board to appoint an executive officer who is a nurse currently licensed by the board.

This bill would instead prohibit the executive officer from being a licensee of the board.

(3) The Veterinary Medicine Practice Act provides for the licensure and registration of veterinarians and registered veterinary technicians and the regulation of the practice of veterinary medicine by the Veterinary Medical Board, which is within the Department of Consumer Affairs, and authorizes the board to appoint an executive officer, as specified. Existing law repeals the provisions establishing the board and authorizing the board to appoint an executive officer as of January 1, 2017. That act exempts certain persons from the requirements of the act, including a veterinarian employed by the University of California or the Western University of Health Sciences while engaged in the performance of specified duties. That act requires all premises where veterinary medicine, dentistry, and surgery is being practiced to register with the board. That act requires all fees collected on behalf of the board to be deposited into the Veterinary Medical Board Contingent Fund, which continuously appropriates fees deposited into the fund. That act makes a violation of any provision of the act punishable as a misdemeanor.

This bill would extend the operation of the board and the authorization of the board to appoint an executive officer to January 1, 2021. The bill would authorize a veterinarian ~~and or~~ registered veterinary technician who is under the direct supervision of a *licensed* veterinarian ~~with a current and active license~~ to compound a drug for ~~anesthesia, the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal in a premises currently and actively registered with the board, as specified.~~ *animal use pursuant to federal law and regulations promulgated by the board and would require those regulations to, at*

a minimum, address the storage of drugs, the level and type of supervision required for compounding drugs by a registered veterinary technician, and the equipment necessary for safe compounding of drugs. The bill would instead require veterinarians engaged in the practice of veterinary medicine employed by the University of California or by the Western University of Health Sciences—~~while and~~ engaged in the performance of specified duties to be licensed as a veterinarian in the state or ~~hold be issued a university license issued by the board. license,~~ *as specified.* The bill would ~~require an applicant~~ *authorize an individual to apply for and be issued a university license to meet if he or she meets* certain requirements, including ~~that the applicant passes a specified exam. paying an application and license fee.~~ *The bill would require a university license, among other things, to automatically cease to be valid upon termination or cessation of employment by the University of California or the Western University of Health Sciences.* The bill would also prohibit a premise registration that is not renewed within 5 years after its expiration from being renewed, restored, reissued, or reinstated; however, the bill would authorize a new premise registration to be issued to an applicant if no fact, circumstance, or condition exists that would justify the revocation or suspension of the registration if the registration was issued and if specified fees are paid. ~~By requiring additional persons to be licensed and pay certain fees that would go into a continuously appropriated fund, this bill would make an appropriation.~~ *This bill would provide that the Veterinary Medical Board Contingent Fund is available for expenditure only upon an appropriation by the Legislature.* By requiring additional persons to be licensed under the act that were previously exempt, this bill would expand the definition of an existing crime and would, therefore, result in a state-mandated local program.

(4) ~~Existing law, The Government Claims Act,~~ except as provided, requires a public entity to pay any judgment or any compromise or settlement of a claim or action against an employee or former employee of the public entity if the employee or former employee requests the public entity to defend him or her against any claim or action against him or her for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity, the request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action. *That act prohibits*

the payment of punitive or exemplary damages by a public entity, except as specified.

This bill would require a public entity to pay a judgment or settlement for treble damage antitrust awards against a member of a regulatory board for an act or omission occurring within the scope of his or her employment as a member of a regulatory board. *The bill would specify that treble damages awarded pursuant to a specified federal law for violation of another federal law are not punitive or exemplary damages within the Government Claims Act.*

(5) The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. ~~That act requires the review by the office to follow certain standards, including, among others, necessity, as defined. That act requires an agency proposing to adopt, amend, or repeal a regulation to prepare a notice to the public that includes specified information, including reference to the authority under which the regulation is proposed.~~

~~This bill would add competitive impact, as defined, as an additional standard for the office to follow when reviewing regulatory actions of a state board on which a controlling number of decisionmakers are active market participants in the market that the board regulates, and requires the office to, among other things, consider whether the anticompetitive effects of the proposed regulation are clearly outweighed by the public policy merits. The bill would authorize the office to designate, employ, or contract for the services of independent antitrust or applicable economic experts when reviewing proposed regulations for competitive impact. The bill would require state boards on which a controlling number of decisionmakers are active market participants in the market that the board regulates, when preparing the public notice, to additionally include a statement that the agency has evaluated the impact of the regulation on competition and that the effect of the regulation is within a clearly articulated and affirmatively expressed state law or policy. also require a board within the Department of Consumer Affairs to submit a statement to the office that the Director of Consumer Affairs has reviewed the proposed regulation and determined that the proposed regulation furthers state law.~~

(6) 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~~-no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 109 of the Business and Professions Code
2 is amended to read:

3 109. (a) ~~The director~~ *decisions of any of the boards comprising*
4 *the department with respect to passing candidates and revoking*
5 *or otherwise imposing discipline on licenses shall not be subject*
6 *to review by the director and are final within the limits provided*
7 *by this code that are applicable to the particular board.*

8 (b) *The director may initiate an investigation of any allegations*
9 *of misconduct in the preparation, administration, or scoring of an*
10 *examination which is administered by a board, or in the review of*
11 *qualifications which are a part of the licensing process of any*
12 *board. A request for investigation shall be made by the director to*
13 *the Division of Investigation through the chief of the division or*
14 *to any law enforcement agency in the jurisdiction where the alleged*
15 *misconduct occurred.*

16 ~~(b)(1)~~

17 (1) *The director may intervene in any matter of any board where*
18 *an investigation by the Division of Investigation discloses probable*
19 *cause to believe that the conduct or activity of a board, or its*
20 *members or ~~employees~~ employees, constitutes a violation of*
21 *criminal law.*

22 (2) *The term “intervene,” as used in paragraph (1) of this section*
23 *may include, but is not limited to, an application for a restraining*
24 *order or injunctive relief as specified in Section 123.5, or a referral*
25 *or request for criminal prosecution. For purposes of this section,*
26 *the director shall be deemed to have standing under Section 123.5*
27 *and shall seek representation of the Attorney General, or other*
28 *appropriate counsel in the event of a conflict in pursuing that*
29 *action.*

30 (c) *The director may, upon his or her own initiative, and shall,*
31 *upon request by ~~a consumer or licensee~~, the board making the*
32 *decision or the Legislature, review any nonministerial*
33 *market-sensitive board action or decision ~~or other action to~~*

1 ~~determine whether it unreasonably restrains trade. Such a review~~
2 ~~shall proceed as follows: by the board to determine whether it~~
3 ~~further state law. Market-sensitive actions or decisions are those~~
4 ~~that create barriers to market participation and restrict competition~~
5 ~~including, but not limited to, examination passage scores,~~
6 ~~advertising restrictions, price regulation, enlarging or restricting~~
7 ~~scope of practice qualifications for licensure, and a pattern or~~
8 ~~program of disciplinary actions affecting multiple individuals that~~
9 ~~creates barriers to market participation. If the board action or~~
10 ~~decision is determined to be a market-sensitive action or decision,~~
11 ~~the director shall review the board action or decision to determine~~
12 ~~whether that action or decision furthers a clearly articulated and~~
13 ~~affirmatively expressed state policy. Review under this subdivision~~
14 ~~shall serve to cease implementation of the market-sensitive action~~
15 ~~or decision until the review is finalized and the action or decision~~
16 ~~is found to further state law.~~

17 ~~(1) The director shall assess whether the action or decision~~
18 ~~reflects a clearly articulated and affirmatively expressed state law.~~
19 ~~If the director determines that the action or decision does not reflect~~
20 ~~a clearly articulated and affirmatively expressed state law, the~~
21 ~~director shall disapprove the board action or decision and it shall~~
22 ~~not go into effect.~~

23 ~~(2) If the action or decision is a reflection of clearly articulated~~
24 ~~and affirmatively expressed state law, the director shall assess~~
25 ~~whether the action or decision was the result of the board's exercise~~
26 ~~of ministerial or discretionary judgment. If the director finds no~~
27 ~~exercise of discretionary judgment, but merely the direct~~
28 ~~application of statutory or constitutional provisions, the director~~
29 ~~shall close the investigation and review of the board action or~~
30 ~~decision.~~

31 ~~(3) If the director concludes under paragraph (2) that the board~~
32 ~~exercised discretionary judgment, the director shall review the~~
33 ~~board action or decision as follows:~~

34 ~~(A) The~~

35 ~~(1) Any review by the director under this subdivision shall~~
36 ~~conduct include a full substantive review of the board action or~~
37 ~~decision using based upon all the relevant facts, data, market~~
38 ~~conditions, facts in the record provided by the board and any~~
39 ~~additional information provided by the director, which may include~~
40 ~~data, public comment, studies, or other documentary evidence~~

1 pertaining to the market impacted by the board's action or decision
2 and determine whether the anticompetitive effects of the action or
3 decision are clearly outweighed by the benefit to the public. The
4 director may seek, designate, employ, or contract for the services
5 of independent antitrust or economic experts pursuant to Section
6 307. These experts shall not be active participants in the market
7 affected by the board action or decision. *decision.*

8 (B) If the board action or decision was not previously subject
9 to a public comment period, the director shall release the subject
10 matter of his or her investigation for a 30-day public comment
11 period and shall consider all comments received.

12 (C) If the director determines that the action or decision furthers
13 the public protection mission of the board and the impact on
14 competition is justified, the director may approve the action or
15 decision.

16 (D) If the director determines that the action furthers the public
17 protection mission of the board and the impact on competition is
18 justified, the director may approve the action or decision. If the
19 director finds the action or decision does not further the public
20 protection mission of the board or finds that the action or decision
21 is not justified, the director shall either refuse to approve it or shall
22 modify the action or decision to ensure that any restraints of trade
23 are related to, and advance, clearly articulated state law or public
24 policy.

25 (2) *The director shall take one of the following actions:*

26 (A) *Approve the action or decision upon determination that it*
27 *further state law.*

28 (B) *Disapprove the action or decision if it does not further state*
29 *law. If the director disapproves the board action or decision, the*
30 *director may recommend modifications to the board action or*
31 *decision, which, if adopted, shall not become effective until final*
32 *approval by the director pursuant to this subdivision.*

33 (C) *Modify the action or decision to ensure that it furthers state*
34 *law.*

35 (D) *Request further information from the board if the record*
36 *provided is insufficient to make a determination that the action or*
37 *decision furthers state law. Upon submission of further information*
38 *from the board and any information provided by the director, the*
39 *director shall make a final determination to approve, disapprove,*
40 *or modify the board's action or decision.*

1 ~~(4)~~
 2 (d) The director shall issue, and post on the department’s Internet
 3 Web site, his or her final written decision ~~approving, modifying,~~
 4 ~~or disapproving~~ on the *board* action or decision with an explanation
 5 of the reasons *that action or decision does or does not further state*
 6 *law and the rationale behind the director’s decision* within 90 days
 7 from receipt of the ~~request from a consumer or licensee.~~ *board’s*
 8 *or Legislature’s request for review or the director’s decision to*
 9 *review the board action or decision.* Notwithstanding any other
 10 law, the decision of the director shall be final, except if the state
 11 or federal constitution requires an appeal of the director’s decision.

12 ~~(d)~~
 13 (e) The review set forth in ~~paragraph (3)~~ of subdivision (c) shall
 14 not apply ~~when an individual seeks to the~~ review of *any*
 15 *disciplinary action or other action pertaining solely to that*
 16 ~~individual.~~ *any other sanction or citation imposed by a board upon*
 17 *a licensee.*

18 ~~(e)~~
 19 (f) The director shall report to the Chairs of the Senate Business,
 20 Professions, and Economic Development Committee and the
 21 Assembly Business and Professions Committee annually,
 22 commencing March 1, 2017, regarding his or her disapprovals,
 23 modifications, or findings from any audit, review, or monitoring
 24 and evaluation conducted pursuant to this section. That report shall
 25 be submitted in compliance with Section 9795 of the Government
 26 Code.

27 ~~(f) If the director has already reviewed a board action or decision~~
 28 ~~pursuant to this section or Section 313.1, the director shall not~~
 29 ~~review that action or decision again.~~

30 (g) This section shall not be construed to affect, impede, or
 31 delay any disciplinary actions of any board.

32 SEC. 2. Section 109.5 is added to the Business and Professions
 33 Code, to read:

34 109.5. *The executive officer of any board, committee, or*
 35 *commission within the department shall not be an active licensee*
 36 *of any profession that board, committee, or commission regulates.*

37 ~~SEC. 2.~~

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

1 116. (a) The director may audit and review, upon his or her
2 own initiative, or upon the request of a consumer or licensee,
3 inquiries and complaints regarding licensees, dismissals of
4 disciplinary cases, the opening, conduct, or closure of
5 investigations, informal conferences, and discipline short of formal
6 accusation by any board or bureau within the department.

7 (b) The director shall report to the Chairs of the Senate Business,
8 Professions, and Economic Development Committee and the
9 Assembly Business and Professions Committee annually,
10 commencing March 1, 2017, regarding his or her findings from
11 any audit, review, or monitoring and evaluation conducted pursuant
12 to this section. This report shall be submitted in compliance with
13 Section 9795 of the Government Code.

14 ~~SEC. 3.~~

15 *SEC. 4.* Section 153 of the Business and Professions Code is
16 amended to read:

17 153. The director may investigate the work of the several
18 boards in his *or her* department and may obtain a copy of all
19 records and full and complete data in all official matters in
20 possession of the boards, their members, officers, or employees.

21 ~~SEC. 4.~~

22 *SEC. 5.* Section 307 of the Business and Professions Code is
23 amended to read:

24 307. The director may contract for the services of experts and
25 consultants where necessary to carry out this chapter and may
26 provide compensation and reimbursement of expenses for those
27 experts and consultants in accordance with state law.

28 ~~SEC. 5.~~

29 *SEC. 6.* Section 313.1 of the Business and Professions Code
30 is amended to read:

31 313.1. (a) Notwithstanding any other law to the contrary, no
32 rule or regulation and no fee change proposed or promulgated by
33 any of the boards, commissions, or committees within the
34 department, shall take effect pending compliance with this section.

35 (b) The director shall be formally notified of and shall review,
36 in accordance with the requirements of Article 5 (commencing
37 with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title
38 2 of the Government Code, the requirements in subdivision (c) of
39 Section 109, and this section, all of the following:

1 (1) All notices of proposed action, any modifications and
2 supplements thereto, and the text of proposed regulations.

3 (2) Any notices of sufficiently related changes to regulations
4 previously noticed to the public, and the text of proposed
5 regulations showing modifications to the text.

6 (3) Final rulemaking records.

7 (4) All relevant ~~facts~~, *facts in the rulemaking record, which may*
8 *include* data, public comments, ~~market conditions, studies,~~ or other
9 documentary evidence pertaining to the ~~market impacted by the~~
10 ~~proposed regulation. This information shall be included in the~~
11 ~~written decision of the director required under paragraph (4) of~~
12 ~~subdivision (c) of Section 109. proposed regulation to determine~~
13 *whether it furthers state law. If the regulation does not further*
14 *state law, it shall not be approved.*

15 (c) The submission of all notices and final rulemaking records
16 to the director and the director's approval, as authorized by this
17 section, shall be a precondition to the filing of any rule or
18 regulation with the Office of Administrative Law. The Office of
19 Administrative Law shall have no jurisdiction to review a rule or
20 regulation subject to this section until after the director's review
21 and approval. The filing of any document with the Office of
22 Administrative Law shall be accompanied by a certification that
23 the board, commission, or committee has complied with the
24 requirements of this section.

25 (d) Following the receipt of any final rulemaking record subject
26 to subdivision (a), the director shall have the authority for a period
27 of 30 days to ~~approve~~ *approve, disapprove, or require modification*
28 *of* a proposed rule or regulation ~~or disapprove a proposed rule or~~
29 ~~regulation~~ on the ground that it is injurious to the public health,
30 safety, or ~~welfare~~, *welfare* or ~~has an impermissible anticompetitive~~
31 ~~effect. The director may modify a rule or regulation as a condition~~
32 ~~of approval. Any modifications to regulations by the director shall~~
33 ~~be subject to a 30-day public comment period before the director~~
34 ~~issues a final decision regarding the modified regulation. If the~~
35 ~~director does not approve the rule or regulation within the 30-day~~
36 ~~period, the rule or regulation shall not be submitted to the Office~~
37 ~~of Administrative Law and the rule or regulation shall have no~~
38 ~~effect. does not further state law. If the director does not approve~~
39 *the rule or regulation within the 30-day period, the rule or*

1 *regulation shall not be submitted to the Office of Administrative*
2 *Law and the rule or regulation shall have no effect.*

3 (e) Final rulemaking records shall be filed with the director
4 within the one-year notice period specified in Section 11346.4 of
5 the Government Code. If necessary for compliance with this
6 section, the one-year notice period may be extended, as specified
7 by this subdivision.

8 (1) In the event that the one-year notice period lapses during
9 the director's 30-day review period, or within 60 days following
10 the notice of the director's disapproval, it may be extended for a
11 maximum of 90 days.

12 (2) If the director approves the final rulemaking record, the
13 board, commission, or committee shall have five days from the
14 receipt of the record from the director within which to file it with
15 the Office of Administrative Law.

16 (3) If the director disapproves a rule or regulation, it shall have
17 no force or effect unless, within 60 days of the notice of
18 disapproval, (A) the disapproval is overridden by a unanimous
19 vote of the members of the board, commission, or committee, and
20 (B) the board, commission, or committee files the final rulemaking
21 record with the Office of Administrative Law in compliance with
22 this section and the procedures required by Chapter 3.5
23 (commencing with Section 11340) of Part 1 of Division 3 of Title
24 2 of the Government Code. This paragraph shall not apply to any
25 decision disapproved by the director under subdivision (e) of
26 Section 109: *effect.*

27 (f) This section shall not be construed to prohibit the director
28 from affirmatively approving a proposed rule, regulation, or fee
29 change at any time within the 30-day period after it has been
30 submitted to him or her, in which event it shall become effective
31 upon compliance with this section and the procedures required by
32 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
33 3 of Title 2 of the Government Code.

34 ~~SEC. 6.~~

35 *SEC. 7.* Section 2708 of the Business and Professions Code is
36 amended to read:

37 2708. (a) The board shall appoint an executive officer who
38 shall perform the duties delegated by the board and who shall be
39 responsible to it for the accomplishment of those duties.

1 (b) The executive officer shall not be a licensee under this
2 chapter and shall possess other qualifications as determined by the
3 board.

4 (c) The executive officer shall not be a member of the board.

5 (d) This section shall remain in effect only until January 1, 2018,
6 and as of that date is repealed, unless a later enacted statute, that
7 is enacted before January 1, 2018, deletes or extends that date.

8 ~~SEC. 7:~~

9 *SEC. 8.* Section 4800 of the Business and Professions Code is
10 amended to read:

11 4800. (a) There is in the Department of Consumer Affairs a
12 Veterinary Medical Board in which the administration of this
13 chapter is vested. The board consists of the following members:

14 (1) Four licensed veterinarians.

15 (2) One registered veterinary technician.

16 (3) Three public members.

17 (b) This section shall remain in effect only until January 1, 2021,
18 and as of that date is repealed.

19 (c) Notwithstanding any other law, the repeal of this section
20 renders the board subject to review by the appropriate policy
21 committees of the Legislature. However, the review of the board
22 shall be limited to those issues identified by the appropriate policy
23 committees of the Legislature and shall not involve the preparation
24 or submission of a sunset review document or evaluative
25 questionnaire.

26 ~~SEC. 8:~~

27 *SEC. 9.* Section 4804.5 of the Business and Professions Code
28 is amended to read:

29 4804.5. (a) The board may appoint a person exempt from civil
30 service who shall be designated as an executive officer and who
31 shall exercise the powers and perform the duties delegated by the
32 board and vested in him or her by this chapter.

33 (b) This section shall remain in effect only until January 1, 2021,
34 and as of that date is repealed.

35 ~~SEC. 9. Section 4825.1 of the Business and Professions Code~~
36 ~~is amended to read:~~

37 ~~4825.1. These definitions shall govern the construction of this~~
38 ~~chapter as it applies to veterinary medicine.~~

1 (a) “Diagnosis” means the act or process of identifying or
2 determining the health status of an animal through examination
3 and the opinion derived from that examination.

4 (b) “Animal” means any member of the animal kingdom other
5 than humans, and includes fowl, fish, and reptiles, wild or
6 domestic, whether living or dead.

7 (c) “Food animal” means any animal that is raised for the
8 production of an edible product intended for consumption by
9 humans. The edible product includes, but is not limited to, milk,
10 meat, and eggs. Food animal includes, but is not limited to, cattle
11 (beef or dairy), swine, sheep, poultry, fish, and amphibian species.

12 (d) “Livestock” includes all animals, poultry, aquatic and
13 amphibian species that are raised, kept, or used for profit. It does
14 not include those species that are usually kept as pets such as dogs,
15 cats, and pet birds, or companion animals, including equines.

16 (e) “Compounding,” for the purposes of veterinary medicine,
17 shall have the same meaning given in Section 1735 of Title 16 of
18 the California Code of Regulations, except that every reference
19 therein to “pharmacy” and “pharmacist” shall be replaced with
20 “veterinary premises” and “veterinarian,” and except that only a
21 licensed veterinarian or a licensed registered veterinarian technician
22 under direct supervision of a veterinarian may perform
23 compounding and shall not delegate to or supervise any part of
24 the performance of compounding by any other person.

25 SEC. 10. Section 4826.3 is added to the Business and
26 Professions Code, to read:

27 4826.3. (a) Notwithstanding Section 4051, a veterinarian or
28 registered veterinarian technician under the direct supervision of
29 a veterinarian with a current and active license may compound a
30 drug for anesthesia, the prevention, cure, or relief of a wound,
31 fracture, bodily injury, or disease of an animal in a premises
32 currently and actively registered with the board and only under
33 the following conditions:

34 (1) Where there is no FDA-approved animal or human drug that
35 can be used as labeled or in an appropriate extralabel manner to
36 properly treat the disease, symptom, or condition for which the
37 drug is being prescribed.

38 (2) Where the compounded drug is not available from a
39 compounding pharmacy, outsourcing facility, or other
40 compounding supplier in a dosage form and concentration to

1 appropriately treat the disease, symptom, or condition for which
2 the drug is being prescribed.

3 ~~(3) Where the need and prescription for the compounded
4 medication has arisen within an established
5 veterinarian-client-patient relationship as a means to treat a specific
6 occurrence of a disease, symptom, or condition observed and
7 diagnosed by the veterinarian in a specific animal that threatens
8 the health of the animal or will cause suffering or death if left
9 untreated.~~

10 ~~(4) Where the quantity compounded does not exceed a quantity
11 demonstrably needed to treat a patient with which the veterinarian
12 has a current veterinarian-client-patient relationship.~~

13 ~~(5) Except as specified in subdivision (c), where the compound
14 is prepared only with commercially available FDA-approved
15 animal or human drugs as active ingredients.~~

16 ~~(b) A compounded veterinary drug may be prepared from an
17 FDA-approved animal or human drug for extralabel use only when
18 there is no approved animal or human drug that, when used as
19 labeled or in an appropriate extralabel manner will, in the available
20 dosage form and concentration, treat the disease, symptom, or
21 condition. Compounding from an approved human drug for use
22 in food-producing animals is not permitted if an approved animal
23 drug can be used for compounding.~~

24 ~~(c) A compounded veterinary drug may be prepared from bulk
25 drug substances only when:~~

26 ~~(1) The drug is compounded and dispensed by the veterinarian
27 to treat an individually identified animal patient under his or her
28 care.~~

29 ~~(2) The drug is not intended for use in food-producing animals.~~

30 ~~(3) If the drug contains a bulk drug substance that is a
31 component of any marketed FDA-approved animal or human drug,
32 there is a change between the compounded drug and the
33 comparable marketed drug made for an individually identified
34 animal patient that produces a clinical difference for that
35 individually identified animal patient, as determined by the
36 veterinarian prescribing the compounded drug for his or her patient.~~

37 ~~(4) There are no FDA-approved animal or human drugs that
38 can be used as labeled or in an appropriate extralabel manner to
39 properly treat the disease, symptom, or condition for which the
40 drug is being prescribed.~~

1 ~~(5) All bulk drug substances used in compounding are~~
2 ~~manufactured by an establishment registered under Section 360~~
3 ~~of Title 21 of the United States Code and are accompanied by a~~
4 ~~valid certificate of analysis.~~

5 ~~(6) The drug is not sold or transferred by the veterinarian~~
6 ~~compounding the drug, except that the veterinarian shall be~~
7 ~~permitted to administer the drug to a patient under his or her care~~
8 ~~or dispense it to the owner or caretaker of an animal under his or~~
9 ~~her care.~~

10 ~~(7) Within 15 days of becoming aware of any product defect or~~
11 ~~serious adverse event associated with any drug compounded by~~
12 ~~the veterinarian from bulk drug substances, the veterinarian shall~~
13 ~~report it to the federal Food and Drug Administration on Form~~
14 ~~FDA 1932a.~~

15 ~~(8) In addition to any other requirements, the label of any~~
16 ~~veterinary drug compounded from bulk drug substances shall~~
17 ~~indicate the species of the intended animal patient, the name of~~
18 ~~the animal patient, and the name of the owner or caretaker of the~~
19 ~~patient.~~

20 ~~(d) Each compounded veterinary drug preparation shall meet~~
21 ~~the labeling requirements of Section 4076 and Sections 1707.5~~
22 ~~and 1735.4 of Title 16 of the California Code of Regulations,~~
23 ~~except that every reference therein to “pharmacy” and “pharmacist”~~
24 ~~shall be replaced by “veterinary premises” and “veterinarian,” and~~
25 ~~any reference to “patient” shall be understood to refer to the animal~~
26 ~~patient. In addition, each label on a compounded veterinary drug~~
27 ~~preparation shall include withdrawal and holding times, if needed,~~
28 ~~and the disease, symptom, or condition for which the drug is being~~
29 ~~prescribed. Any compounded veterinary drug preparation that is~~
30 ~~intended to be sterile, including for injection, administration into~~
31 ~~the eye, or inhalation, shall in addition meet the labeling~~
32 ~~requirements of Section 1751.2 of Title 16 of the California Code~~
33 ~~of Regulations, except that every reference therein to “pharmacy”~~
34 ~~and “pharmacist” shall be replaced by “veterinary premises” and~~
35 ~~“veterinarian,” and any reference to “patient” shall be understood~~
36 ~~to refer to the animal patient.~~

37 ~~(e) Any veterinarian, registered veterinarian technician who is~~
38 ~~under the direct supervision of a veterinarian, and veterinary~~
39 ~~premises engaged in compounding shall meet the compounding~~
40 ~~requirements for pharmacies and pharmacists stated by the~~

1 provisions of Article 4.5 (commencing with Section 1735) of Title
2 16 of the California Code of Regulations, except that every
3 reference therein to “pharmacy” and “pharmacist” shall be replaced
4 by “veterinary premises” and “veterinarian,” and any reference to
5 “patient” shall be understood to refer to the animal patient:

6 (1) Section 1735.1 of Title 16 of the California Code of
7 Regulations.

8 (2) Subdivisions (d),(e), (f), (g), (h), (i), (j), (k), and (l) of
9 Section 1735.2 of Title 16 of the California Code of Regulations.

10 (3) Section 1735.3 of Title 16 of the California Code of
11 Regulations, except that only a licensed veterinarian or registered
12 veterinarian technician may perform compounding and shall not
13 delegate to or supervise any part of the performance of
14 compounding by any other person.

15 (4) Section 1735.4 of Title 16 of the California Code of
16 Regulations.

17 (5) Section 1735.5 of Title 16 of the California Code of
18 Regulations.

19 (6) Section 1735.6 of Title 16 of the California Code of
20 Regulations.

21 (7) Section 1735.7 of Title 16 of the California Code of
22 Regulations.

23 (8) Section 1735.8 of Title 16 of the California Code of
24 Regulations.

25 (f) Any veterinarian, registered veterinarian technician under
26 the direct supervision of a veterinarian, and veterinary premises
27 engaged in sterile compounding shall meet the sterile compounding
28 requirements for pharmacies and pharmacists under Article 7
29 (commencing with Section 1751) of Title 16 of the California Code
30 of Regulations, except that every reference therein to “pharmacy”
31 and “pharmacist” shall be replaced by “veterinary premises” and
32 “veterinarian,” and any reference to “patient” shall be understood
33 to refer to the animal patient.

34 (g) The California State Board of Pharmacy shall have authority
35 with the board to ensure compliance with this section and shall
36 have the right to inspect any veterinary premises engaged in
37 compounding, along with or separate from the board, to ensure
38 compliance with this section. The board is specifically charged
39 with enforcing this section with regard to its licensees.

1 ~~SEC. 11. Section 4826.5 is added to the Business and~~
2 ~~Professions Code, to read:~~

3 ~~4826.5. Failure by a licensed veterinarian, registered~~
4 ~~veterinarian technician, or veterinary premises to comply with the~~
5 ~~provisions of this article shall be deemed unprofessional conduct~~
6 ~~and constitute grounds for discipline.~~

7 ~~SEC. 12. Section 4826.7 is added to the Business and~~
8 ~~Professions Code, to read:~~

9 ~~4826.7. The board may adopt regulations to implement the~~
10 ~~provisions of this article.~~

11 *SEC. 10. Section 4826.5 is added to the Business and*
12 *Professions Code, to read:*

13 *4826.5. Notwithstanding any other law, a licensed veterinarian*
14 *or a registered veterinary technician under the supervision of a*
15 *licensed veterinarian may compound drugs for animal use pursuant*
16 *to Section 530 of Title 21 of the Code of Federal Regulations and*
17 *in accordance with regulations promulgated by the board. The*
18 *regulations promulgated by the board shall, at a minimum, address*
19 *the storage of drugs, the level and type of supervision required for*
20 *compounding drugs by a registered veterinary technician, and the*
21 *equipment necessary for the safe compounding of drugs. Any*
22 *violation of the regulations adopted by the board pursuant to this*
23 *section shall constitute grounds for an enforcement or disciplinary*
24 *action.*

25 ~~SEC. 13.~~

26 *SEC. 11.* Section 4830 of the Business and Professions Code
27 is amended to read:

28 4830. (a) This chapter does not apply to:

29 (1) Veterinarians while serving in any armed branch of the
30 military service of the United States or the United States
31 Department of Agriculture while actually engaged and employed
32 in their official capacity.

33 (2) Regularly licensed veterinarians in actual consultation from
34 other states.

35 (3) Regularly licensed veterinarians actually called from other
36 states to attend cases in this state, but who do not open an office
37 or appoint a place to do business within this state.

38 (4) Students in the School of Veterinary Medicine of the
39 University of California or the College of Veterinary Medicine of
40 the Western University of Health Sciences who participate in

1 diagnosis and treatment as part of their educational experience,
2 including those in off-campus educational programs under the
3 direct supervision of a licensed veterinarian in good standing, as
4 defined in paragraph (1) of subdivision (b) of Section 4848,
5 appointed by the University of California, Davis, or the Western
6 University of Health Sciences.

7 (5) A veterinarian who is employed by the Meat and Poultry
8 Inspection Branch of the California Department of Food and
9 Agriculture while actually engaged and employed in his or her
10 official capacity. A person exempt under this paragraph shall not
11 otherwise engage in the practice of veterinary medicine unless he
12 or she is issued a license by the board.

13 (6) Unlicensed personnel employed by the Department of Food
14 and Agriculture or the United States Department of Agriculture
15 when in the course of their duties they are directed by a veterinarian
16 supervisor to conduct an examination, obtain biological specimens,
17 apply biological tests, or administer medications or biological
18 products as part of government disease or condition monitoring,
19 investigation, control, or eradication activities.

20 (b) (1) For purposes of paragraph (3) of subdivision (a), a
21 regularly licensed veterinarian in good standing who is called from
22 another state by a law enforcement agency or animal control
23 agency, as defined in Section 31606 of the Food and Agricultural
24 Code, to attend to cases that are a part of an investigation of an
25 alleged violation of federal or state animal fighting or animal
26 cruelty laws within a single geographic location shall be exempt
27 from the licensing requirements of this chapter if the law
28 enforcement agency or animal control agency determines that it
29 is necessary to call the veterinarian in order for the agency or
30 officer to conduct the investigation in a timely, efficient, and
31 effective manner. In determining whether it is necessary to call a
32 veterinarian from another state, consideration shall be given to the
33 availability of veterinarians in this state to attend to these cases.
34 An agency, department, or officer that calls a veterinarian pursuant
35 to this subdivision shall notify the board of the investigation.

36 (2) Notwithstanding any other provision of this chapter, a
37 regularly licensed veterinarian in good standing who is called from
38 another state to attend to cases that are a part of an investigation
39 described in paragraph (1) may provide veterinary medical care
40 for animals that are affected by the investigation with a temporary

1 shelter facility, and the temporary shelter facility shall be exempt
2 from the registration requirement of Section 4853 if all of the
3 following conditions are met:

4 (A) The temporary shelter facility is established only for the
5 purpose of the investigation.

6 (B) The temporary shelter facility provides veterinary medical
7 care, shelter, food, and water only to animals that are affected by
8 the investigation.

9 (C) The temporary shelter facility complies with Section 4854.

10 (D) The temporary shelter facility exists for not more than 60
11 days, unless the law enforcement agency or animal control agency
12 determines that a longer period of time is necessary to complete
13 the investigation.

14 (E) Within 30 calendar days upon completion of the provision
15 of veterinary health care services at a temporary shelter facility
16 established pursuant to this section, the veterinarian called from
17 another state by a law enforcement agency or animal control agency
18 to attend to a case shall file a report with the board. The report
19 shall contain the date, place, type, and general description of the
20 care provided, along with a listing of the veterinary health care
21 practitioners who participated in providing that care.

22 (c) For purposes of paragraph (3) of subdivision (a), the board
23 may inspect temporary facilities established pursuant to this
24 section.

25 ~~SEC. 14.~~

26 *SEC. 12.* Section 4846.5 of the Business and Professions Code
27 is amended to read:

28 4846.5. (a) Except as provided in this section, the board shall
29 issue renewal licenses only to those applicants that have completed
30 a minimum of 36 hours of continuing education in the preceding
31 two years.

32 (b) (1) Notwithstanding any other law, continuing education
33 hours shall be earned by attending courses relevant to veterinary
34 medicine and sponsored or cosponsored by any of the following:

35 (A) American Veterinary Medical Association (AVMA)
36 accredited veterinary medical colleges.

37 (B) Accredited colleges or universities offering programs
38 relevant to veterinary medicine.

39 (C) The American Veterinary Medical Association.

1 (D) American Veterinary Medical Association recognized
2 specialty or affiliated allied groups.

3 (E) American Veterinary Medical Association's affiliated state
4 veterinary medical associations.

5 (F) Nonprofit annual conferences established in conjunction
6 with state veterinary medical associations.

7 (G) Educational organizations affiliated with the American
8 Veterinary Medical Association or its state affiliated veterinary
9 medical associations.

10 (H) Local veterinary medical associations affiliated with the
11 California Veterinary Medical Association.

12 (I) Federal, state, or local government agencies.

13 (J) Providers accredited by the Accreditation Council for
14 Continuing Medical Education (ACCME) or approved by the
15 American Medical Association (AMA), providers recognized by
16 the American Dental Association Continuing Education
17 Recognition Program (ADA CERP), and AMA or ADA affiliated
18 state, local, and specialty organizations.

19 (2) Continuing education credits shall be granted to those
20 veterinarians taking self-study courses, which may include, but
21 are not limited to, reading journals, viewing video recordings, or
22 listening to audio recordings. The taking of these courses shall be
23 limited to no more than six hours biennially.

24 (3) The board may approve other continuing veterinary medical
25 education providers not specified in paragraph (1).

26 (A) The board has the authority to recognize national continuing
27 education approval bodies for the purpose of approving continuing
28 education providers not specified in paragraph (1).

29 (B) Applicants seeking continuing education provider approval
30 shall have the option of applying to the board or to a
31 board-recognized national approval body.

32 (4) For good cause, the board may adopt an order specifying,
33 on a prospective basis, that a provider of continuing veterinary
34 medical education authorized pursuant to paragraph (1) or (3) is
35 no longer an acceptable provider.

36 (5) Continuing education hours earned by attending courses
37 sponsored or cosponsored by those entities listed in paragraph (1)
38 between January 1, 2000, and January 1, 2001, shall be credited
39 toward a veterinarian's continuing education requirement under
40 this section.

1 (c) Every person renewing his or her license issued pursuant to
2 Section 4846.4, or any person applying for relicensure or for
3 reinstatement of his or her license to active status, shall submit
4 proof of compliance with this section to the board certifying that
5 he or she is in compliance with this section. Any false statement
6 submitted pursuant to this section shall be a violation subject to
7 Section 4831.

8 (d) This section shall not apply to a veterinarian's first license
9 renewal. This section shall apply only to second and subsequent
10 license renewals granted on or after January 1, 2002.

11 (e) The board shall have the right to audit the records of all
12 applicants to verify the completion of the continuing education
13 requirement. Applicants shall maintain records of completion of
14 required continuing education coursework for a period of four
15 years and shall make these records available to the board for
16 auditing purposes upon request. If the board, during this audit,
17 questions whether any course reported by the veterinarian satisfies
18 the continuing education requirement, the veterinarian shall provide
19 information to the board concerning the content of the course; the
20 name of its sponsor and cosponsor, if any; and specify the specific
21 curricula that was of benefit to the veterinarian.

22 (f) A veterinarian desiring an inactive license or to restore an
23 inactive license under Section 701 shall submit an application on
24 a form provided by the board. In order to restore an inactive license
25 to active status, the veterinarian shall have completed a minimum
26 of 36 hours of continuing education within the last two years
27 preceding application. The inactive license status of a veterinarian
28 shall not deprive the board of its authority to institute or continue
29 a disciplinary action against a licensee.

30 (g) Knowing misrepresentation of compliance with this article
31 by a veterinarian constitutes unprofessional conduct and grounds
32 for disciplinary action or for the issuance of a citation and the
33 imposition of a civil penalty pursuant to Section 4883.

34 (h) The board, in its discretion, may exempt from the continuing
35 education requirement any veterinarian who for reasons of health,
36 military service, or undue hardship cannot meet those requirements.
37 Applications for waivers shall be submitted on a form provided
38 by the board.

39 (i) The administration of this section may be funded through
40 professional license and continuing education provider fees. The

1 fees related to the administration of this section shall not exceed
2 the costs of administering the corresponding provisions of this
3 section.

4 (j) For those continuing education providers not listed in
5 paragraph (1) of subdivision (b), the board or its recognized
6 national approval agent shall establish criteria by which a provider
7 of continuing education shall be approved. The board shall initially
8 review and approve these criteria and may review the criteria as
9 needed. The board or its recognized agent shall monitor, maintain,
10 and manage related records and data. The board may impose an
11 application fee, not to exceed two hundred dollars (\$200)
12 biennially, for continuing education providers not listed in
13 paragraph (1) of subdivision (b).

14 (k) (1) Beginning January 1, 2018, a licensed veterinarian who
15 renews his or her license shall complete a minimum of one credit
16 hour of continuing education on the judicious use of medically
17 important antimicrobial drugs every four years as part of his or
18 her continuing education requirements.

19 (2) For purposes of this subdivision, “medically important
20 antimicrobial drug” means an antimicrobial drug listed in Appendix
21 A of the federal Food and Drug Administration’s Guidance for
22 Industry #152, including critically important, highly important,
23 and important antimicrobial drugs, as that appendix may be
24 amended.

25 ~~SEC. 15.~~

26 *SEC. 13.* Section 4848.1 is added to the Business and
27 Professions Code, to read:

28 4848.1. (a) A veterinarian engaged in the practice of veterinary
29 medicine, as defined in Section 4826, employed by the University
30 of California ~~while and~~ engaged in the performance of duties in
31 connection with the School of Veterinary Medicine or employed
32 by the Western University of Health Sciences ~~while and~~ engaged
33 in the performance of duties in connection with the College of
34 Veterinary Medicine shall be ~~licensed in California or shall hold~~
35 *issued* a university license ~~issued by the board. pursuant to this~~
36 *section or hold a license to practice veterinary medicine in this*
37 *state.*

38 (b) ~~An applicant is eligible to hold~~ *individual may apply for and*
39 *be issued* a university license if all of the following are satisfied:

1 (1) ~~The applicant~~ *He or she* is currently employed by the
2 University of California or Western University of Health Sciences
3 *Sciences*, as defined in subdivision (a).

4 (2) ~~Passes~~ *He or she passes* an examination concerning the
5 statutes and regulations of the Veterinary Medicine Practice Act,
6 administered by the board, pursuant to subparagraph (C) of
7 paragraph (2) of subdivision (a) of Section 4848.

8 (3) ~~Successfully~~ *He or she successfully* completes the approved
9 educational curriculum described in paragraph (5) of subdivision
10 (b) of Section 4848 on regionally specific and important diseases
11 and conditions.

12 (4) *He or she completes and submits the application specified*
13 *by the board and pays the application fee, pursuant to subdivision*
14 *(g) of Section 4905, and the initial license fee, pursuant to*
15 *subdivision (h) of Section 4905.*

16 (c) A university license:

17 (1) Shall be numbered as described in Section 4847.

18 (2) Shall *automatically* cease to be valid upon termination *or*
19 *cessation* of employment by the University of California or by the
20 Western University of Health Sciences.

21 (3) Shall be subject to the license renewal provisions in Section
22 ~~4846.4.~~ *4846.4 and the payment of the renewal fee pursuant to*
23 *subdivision (i) of Section 4905.*

24 (4) Shall be subject to denial, revocation, or suspension pursuant
25 to Sections ~~4875 and 4883.~~ *480, 4875, and 4883.*

26 (5) *Authorizes the holder to practice veterinary medicine only*
27 *at the educational institution described in subdivision (a) and any*
28 *locations formally affiliated with those institutions.*

29 (d) An individual who holds a university license is exempt from
30 satisfying the license renewal requirements of Section 4846.5.

31 ~~SEC. 16.~~

32 *SEC. 14.* Section 4853.7 is added to the Business and
33 Professions Code, to read:

34 4853.7. A premise registration that is not renewed within five
35 years after its expiration may not be renewed and shall not be
36 restored, reissued, or reinstated thereafter. However, an application
37 for a new premise registration may be submitted and obtained if
38 both of the following conditions are met:

39 (a) No fact, circumstance, or condition exists that, if the premise
40 registration was issued, would justify its revocation or suspension.

1 (b) All of the fees that would be required for the initial premise
2 registration are paid at the time of application.

3 *SEC. 15. Section 4904 of the Business and Professions Code*
4 *is amended to read:*

5 4904. All fees collected on behalf of the board and all receipts
6 of every kind and nature shall be reported each month for the month
7 preceding to the State Controller and at the same time the entire
8 amount shall be paid into the State Treasury and shall be credited
9 to the Veterinary Medical Board Contingent Fund. This contingent
10 fund shall be *available, upon appropriation by the Legislature,*
11 *for the use of the Veterinary Medical Board and out of it and not*
12 ~~otherwise shall be paid all expenses of the board.~~ *Board.*

13 *SEC. 16. Section 4905 of the Business and Professions Code*
14 *is amended to read:*

15 4905. The following fees shall be collected by the board and
16 shall be credited to the Veterinary Medical Board Contingent Fund:

17 (a) The fee for filing an application for examination shall be set
18 by the board in an amount it determines is reasonably necessary
19 to provide sufficient funds to carry out the purpose of this chapter,
20 not to exceed three hundred fifty dollars (\$350).

21 (b) The fee for the California state board examination shall be
22 set by the board in an amount it determines is reasonably necessary
23 to provide sufficient funds to carry out the purpose of this chapter,
24 not to exceed three hundred fifty dollars (\$350).

25 (c) The fee for the Veterinary Medicine Practice Act
26 examination shall be set by the board in an amount it determines
27 reasonably necessary to provide sufficient funds to carry out the
28 purpose of this chapter, not to exceed one hundred dollars (\$100).

29 (d) The initial license fee shall be set by the board not to exceed
30 five hundred dollars (\$500) except that, if the license is issued less
31 than one year before the date on which it will expire, then the fee
32 shall be set by the board at not to exceed two hundred fifty dollars
33 (\$250). The board may, by appropriate regulation, provide for the
34 waiver or refund of the initial license fee where the license is issued
35 less than 45 days before the date on which it will expire.

36 (e) The renewal fee shall be set by the board for each biennial
37 renewal period in an amount it determines is reasonably necessary
38 to provide sufficient funds to carry out the purpose of this chapter,
39 not to exceed five hundred dollars (\$500).

- 1 (f) The temporary license fee shall be set by the board in an
 2 amount it determines is reasonably necessary to provide sufficient
 3 funds to carry out the purpose of this chapter, not to exceed two
 4 hundred fifty dollars (\$250).
- 5 (g) *The fee for filing an application for a university license shall*
 6 *be one hundred twenty-five dollars (\$125), which may be revised*
 7 *by the board in regulation but shall not exceed three hundred fifty*
 8 *dollars (\$350).*
- 9 (h) *The initial license fee for a university license shall be two*
 10 *hundred ninety dollars (\$290), which may be revised by the board*
 11 *in regulation but shall not exceed five hundred dollars (\$500).*
- 12 (i) *The biennial renewal fee for a university license shall be two*
 13 *hundred ninety dollars (\$290), which may be revised by the board*
 14 *in regulation but shall not exceed five hundred dollars (\$500).*
- 15 ~~(g)~~
- 16 (j) The delinquency fee shall be set by the board, not to exceed
 17 fifty dollars (\$50).
- 18 ~~(h)~~
- 19 (k) The fee for issuance of a duplicate license is twenty-five
 20 dollars (\$25).
- 21 ~~(i)~~
- 22 (l) Any charge made for duplication or other services shall be
 23 set at the cost of rendering the service, except as specified in
 24 subdivision~~(h)~~: (k).
- 25 ~~(j)~~
- 26 (m) The fee for failure to report a change in the mailing address
 27 is twenty-five dollars (\$25).
- 28 ~~(k)~~
- 29 (n) The initial and annual renewal fees for registration of
 30 veterinary premises shall be set by the board in an amount not to
 31 exceed four hundred dollars (\$400) annually.
- 32 ~~(l)~~
- 33 (o) If the money transferred from the Veterinary Medical Board
 34 Contingent Fund to the General Fund pursuant to the Budget Act
 35 of 1991 is redeposited into the Veterinary Medical Board
 36 Contingent Fund, the fees assessed by the board shall be reduced
 37 correspondingly. However, the reduction shall not be so great as
 38 to cause the Veterinary Medical Board Contingent Fund to have
 39 a reserve of less than three months of annual authorized board
 40 expenditures. The fees set by the board shall not result in a

1 Veterinary Medical Board Contingent Fund reserve of more than
2 10 months of annual authorized board expenditures.

3 SEC. 17. Section 825 of the Government Code is amended to
4 read:

5 825. (a) Except as otherwise provided in this section, if an
6 employee or former employee of a public entity requests the public
7 entity to defend him or her against any claim or action against him
8 or her for an injury arising out of an act or omission occurring
9 within the scope of his or her employment as an employee of the
10 public entity and the request is made in writing not less than 10
11 days before the day of trial, and the employee or former employee
12 reasonably cooperates in good faith in the defense of the claim or
13 action, the public entity shall pay any judgment based thereon or
14 any compromise or settlement of the claim or action to which the
15 public entity has agreed.

16 If the public entity conducts the defense of an employee or
17 former employee against any claim or action with his or her
18 reasonable good-faith cooperation, the public entity shall pay any
19 judgment based thereon or any compromise or settlement of the
20 claim or action to which the public entity has agreed. However,
21 where the public entity conducted the defense pursuant to an
22 agreement with the employee or former employee reserving the
23 rights of the public entity not to pay the judgment, compromise,
24 or settlement until it is established that the injury arose out of an
25 act or omission occurring within the scope of his or her
26 employment as an employee of the public entity, the public entity
27 is required to pay the judgment, compromise, or settlement only
28 if it is established that the injury arose out of an act or omission
29 occurring in the scope of his or her employment as an employee
30 of the public entity.

31 Nothing in this section authorizes a public entity to pay that part
32 of a claim or judgment that is for punitive or exemplary damages.

33 (b) Notwithstanding subdivision (a) or any other provision of
34 law, a public entity is authorized to pay that part of a judgment
35 that is for punitive or exemplary damages if the governing body
36 of that public entity, acting in its sole discretion except in cases
37 involving an entity of the state government, finds all of the
38 following:

1 (1) The judgment is based on an act or omission of an employee
2 or former employee acting within the course and scope of his or
3 her employment as an employee of the public entity.

4 (2) At the time of the act giving rise to the liability, the employee
5 or former employee acted, or failed to act, in good faith, without
6 actual malice and in the apparent best interests of the public entity.

7 (3) Payment of the claim or judgment would be in the best
8 interests of the public entity.

9 As used in this subdivision with respect to an entity of state
10 government, “a decision of the governing body” means the
11 approval of the Legislature for payment of that part of a judgment
12 that is for punitive damages or exemplary damages, upon
13 recommendation of the appointing power of the employee or
14 former employee, based upon the finding by the Legislature and
15 the appointing authority of the existence of the three conditions
16 for payment of a punitive or exemplary damages claim. The
17 provisions of subdivision (a) of Section 965.6 shall apply to the
18 payment of any claim pursuant to this subdivision.

19 The discovery of the assets of a public entity and the introduction
20 of evidence of the assets of a public entity shall not be permitted
21 in an action in which it is alleged that a public employee is liable
22 for punitive or exemplary damages.

23 The possibility that a public entity may pay that part of a
24 judgment that is for punitive damages shall not be disclosed in any
25 trial in which it is alleged that a public employee is liable for
26 punitive or exemplary damages, and that disclosure shall be
27 grounds for a mistrial.

28 (c) Except as provided in subdivision (d), if the provisions of
29 this section are in conflict with the provisions of a memorandum
30 of understanding reached pursuant to Chapter 10 (commencing
31 with Section 3500) of Division 4 of Title 1, the memorandum of
32 understanding shall be controlling without further legislative action,
33 except that if those provisions of a memorandum of understanding
34 require the expenditure of funds, the provisions shall not become
35 effective unless approved by the Legislature in the annual Budget
36 Act.

37 (d) The subject of payment of punitive damages pursuant to this
38 section or any other provision of law shall not be a subject of meet
39 and confer under the provisions of Chapter 10 (commencing with

1 Section 3500) of Division 4 of Title 1, or pursuant to any other
2 law or authority.

3 (e) Nothing in this section shall affect the provisions of Section
4 818 prohibiting the award of punitive damages against a public
5 entity. This section shall not be construed as a waiver of a public
6 entity's immunity from liability for punitive damages under Section
7 1981, 1983, or 1985 of Title 42 of the United States Code.

8 (f) (1) Except as provided in paragraph (2), a public entity shall
9 not pay a judgment, compromise, or settlement arising from a
10 claim or action against an elected official, if the claim or action is
11 based on conduct by the elected official by way of tortiously
12 intervening or attempting to intervene in, or by way of tortiously
13 influencing or attempting to influence the outcome of, any judicial
14 action or proceeding for the benefit of a particular party by
15 contacting the trial judge or any commissioner, court-appointed
16 arbitrator, court-appointed mediator, or court-appointed special
17 referee assigned to the matter, or the court clerk, bailiff, or marshal
18 after an action has been filed, unless he or she was counsel of
19 record acting lawfully within the scope of his or her employment
20 on behalf of that party. Notwithstanding Section 825.6, if a public
21 entity conducted the defense of an elected official against such a
22 claim or action and the elected official is found liable by the trier
23 of fact, the court shall order the elected official to pay to the public
24 entity the cost of that defense.

25 (2) If an elected official is held liable for monetary damages in
26 the action, the plaintiff shall first seek recovery of the judgment
27 against the assets of the elected official. If the elected official's
28 assets are insufficient to satisfy the total judgment, as determined
29 by the court, the public entity may pay the deficiency if the public
30 entity is authorized by law to pay that judgment.

31 (3) To the extent the public entity pays any portion of the
32 judgment or is entitled to reimbursement of defense costs pursuant
33 to paragraph (1), the public entity shall pursue all available
34 creditor's remedies against the elected official, including
35 garnishment, until that party has fully reimbursed the public entity.

36 (4) This subdivision shall not apply to any criminal or civil
37 enforcement action brought in the name of the people of the State
38 of California by an elected district attorney, city attorney, or
39 attorney general.

1 (g) Notwithstanding subdivision (a), a public entity shall pay
2 for a judgment or settlement for treble damage antitrust awards
3 against a member of a regulatory board for an act or omission
4 occurring within the scope of his or her employment as a member
5 of a regulatory board.

6 (h) *Treble damages awarded pursuant to the federal Clayton*
7 *Act (Sections 12 to 27 of Title 15 of, and Sections 52 to 53 of Title*
8 *29 of, the United States Code) for a violation of the federal*
9 *Sherman Act (Sections 1 to 6, 6a, and 7 of Title 15 of the United*
10 *States Code) are not punitive or exemplary damages under the*
11 *Government Claims Act (Division 3.6 (commencing with Section*
12 *810) of Title 1 of the Government Code) for purposes of this*
13 *section.*

14 SEC. 18. Section 11346.5 of the Government Code is amended
15 to read:

16 11346.5. (a) The notice of proposed adoption, amendment, or
17 repeal of a regulation shall include the following:

18 (1) A statement of the time, place, and nature of proceedings
19 for adoption, amendment, or repeal of the regulation.

20 (2) Reference to the authority under which the regulation is
21 proposed and a reference to the particular code sections or other
22 provisions of law that are being implemented, interpreted, or made
23 specific.

24 (3) An informative digest drafted in plain English in a format
25 similar to the Legislative Counsel's digest on legislative bills. The
26 informative digest shall include the following:

27 (A) A concise and clear summary of existing laws and
28 regulations, if any, related directly to the proposed action and of
29 the effect of the proposed action.

30 (B) If the proposed action differs substantially from an existing
31 comparable federal regulation or statute, a brief description of the
32 significant differences and the full citation of the federal regulations
33 or statutes.

34 (C) A policy statement overview explaining the broad objectives
35 of the regulation and the specific benefits anticipated by the
36 proposed adoption, amendment, or repeal of a regulation, including,
37 to the extent applicable, nonmonetary benefits such as the
38 protection of public health and safety, worker safety, or the
39 environment, the prevention of discrimination, the promotion of

1 fairness or social equity, and the increase in openness and
2 transparency in business and government, among other things.

3 (D) An evaluation of whether the proposed regulation is
4 inconsistent or incompatible with existing state regulations.

5 (4) Any other matters as are prescribed by statute applicable to
6 the specific state agency or to any specific regulation or class of
7 regulations.

8 (5) A determination as to whether the regulation imposes a
9 mandate on local agencies or school districts and, if so, whether
10 the mandate requires state reimbursement pursuant to Part 7
11 (commencing with Section 17500) of Division 4.

12 (6) An estimate, prepared in accordance with instructions
13 adopted by the Department of Finance, of the cost or savings to
14 any state agency, the cost to any local agency or school district
15 that is required to be reimbursed under Part 7 (commencing with
16 Section 17500) of Division 4, other nondiscretionary cost or
17 savings imposed on local agencies, and the cost or savings in
18 federal funding to the state.

19 For purposes of this paragraph, “cost or savings” means
20 additional costs or savings, both direct and indirect, that a public
21 agency necessarily incurs in reasonable compliance with
22 regulations.

23 (7) If a state agency, in proposing to adopt, amend, or repeal
24 any administrative regulation, makes an initial determination that
25 the action may have a significant, statewide adverse economic
26 impact directly affecting business, including the ability of
27 California businesses to compete with businesses in other states,
28 it shall include the following information in the notice of proposed
29 action:

30 (A) Identification of the types of businesses that would be
31 affected.

32 (B) A description of the projected reporting, recordkeeping, and
33 other compliance requirements that would result from the proposed
34 action.

35 (C) The following statement: “The (name of agency) has made
36 an initial determination that the (adoption/amendment/repeal) of
37 this regulation may have a significant, statewide adverse economic
38 impact directly affecting business, including the ability of
39 California businesses to compete with businesses in other states.
40 The (name of agency) (has/has not) considered proposed

1 alternatives that would lessen any adverse economic impact on
2 business and invites you to submit proposals. Submissions may
3 include the following considerations:

4 (i) The establishment of differing compliance or reporting
5 requirements or timetables that take into account the resources
6 available to businesses.

7 (ii) Consolidation or simplification of compliance and reporting
8 requirements for businesses.

9 (iii) The use of performance standards rather than prescriptive
10 standards.

11 (iv) Exemption or partial exemption from the regulatory
12 requirements for businesses.”

13 (8) If a state agency, in adopting, amending, or repealing any
14 administrative regulation, makes an initial determination that the
15 action will not have a significant, statewide adverse economic
16 impact directly affecting business, including the ability of
17 California businesses to compete with businesses in other states,
18 it shall make a declaration to that effect in the notice of proposed
19 action. In making this declaration, the agency shall provide in the
20 record facts, evidence, documents, testimony, or other evidence
21 upon which the agency relies to support its initial determination.

22 An agency’s initial determination and declaration that a proposed
23 adoption, amendment, or repeal of a regulation may have or will
24 not have a significant, adverse impact on businesses, including the
25 ability of California businesses to compete with businesses in other
26 states, shall not be grounds for the office to refuse to publish the
27 notice of proposed action.

28 (9) A description of all cost impacts, known to the agency at
29 the time the notice of proposed action is submitted to the office,
30 that a representative private person or business would necessarily
31 incur in reasonable compliance with the proposed action.

32 If no cost impacts are known to the agency, it shall state the
33 following:

34 “The agency is not aware of any cost impacts that a
35 representative private person or business would necessarily incur
36 in reasonable compliance with the proposed action.”

37 (10) A statement of the results of the economic impact
38 assessment required by subdivision (b) of Section 11346.3 or the
39 standardized regulatory impact analysis if required by subdivision
40 (c) of Section 11346.3, a summary of any comments submitted to

1 the agency pursuant to subdivision (f) of Section 11346.3 and the
2 agency's response to those comments.

3 (11) The finding prescribed by subdivision (d) of Section
4 11346.3, if required.

5 (12) (A) A statement that the action would have a significant
6 effect on housing costs, if a state agency, in adopting, amending,
7 or repealing any administrative regulation, makes an initial
8 determination that the action would have that effect.

9 (B) The agency officer designated in paragraph (15) shall make
10 available to the public, upon request, the agency's evaluation, if
11 any, of the effect of the proposed regulatory action on housing
12 costs.

13 (C) The statement described in subparagraph (A) shall also
14 include the estimated costs of compliance and potential benefits
15 of a building standard, if any, that were included in the initial
16 statement of reasons.

17 (D) For purposes of model codes adopted pursuant to Section
18 18928 of the Health and Safety Code, the agency shall comply
19 with the requirements of this paragraph only if an interested party
20 has made a request to the agency to examine a specific section for
21 purposes of estimating the costs of compliance and potential
22 benefits for that section, as described in Section 11346.2.

23 (13) ~~If the regulatory action is submitted by a state board on~~
24 ~~which a controlling number of decisionmakers are active market~~
25 ~~participants in the market the board regulates, a statement that the~~
26 ~~adopting agency has evaluated the impact of the proposed~~
27 ~~regulation on competition, and that the proposed regulation furthers~~
28 ~~a clearly articulated and affirmatively expressed state law to restrain~~
29 ~~competition.~~ *board within the Department of Consumer Affairs,*
30 *a statement that the Director of Consumer Affairs has reviewed*
31 *the proposed regulation and determined that the proposed*
32 *regulation furthers state law.*

33 (14) A statement that the adopting agency must determine that
34 no reasonable alternative considered by the agency or that has
35 otherwise been identified and brought to the attention of the agency
36 would be more effective in carrying out the purpose for which the
37 action is proposed, would be as effective and less burdensome to
38 affected private persons than the proposed action, or would be
39 more cost effective to affected private persons and equally effective
40 in implementing the statutory policy or other provision of law. For

1 a major regulation, as defined by Section 11342.548, proposed on
2 or after November 1, 2013, the statement shall be based, in part,
3 upon the standardized regulatory impact analysis of the proposed
4 regulation, as required by Section 11346.3, as well as upon the
5 benefits of the proposed regulation identified pursuant to
6 subparagraph (C) of paragraph (3).

7 (15) The name and telephone number of the agency
8 representative and designated backup contact person to whom
9 inquiries concerning the proposed administrative action may be
10 directed.

11 (16) The date by which comments submitted in writing must
12 be received to present statements, arguments, or contentions in
13 writing relating to the proposed action in order for them to be
14 considered by the state agency before it adopts, amends, or repeals
15 a regulation.

16 (17) Reference to the fact that the agency proposing the action
17 has prepared a statement of the reasons for the proposed action,
18 has available all the information upon which its proposal is based,
19 and has available the express terms of the proposed action, pursuant
20 to subdivision (b).

21 (18) A statement that if a public hearing is not scheduled, any
22 interested person or his or her duly authorized representative may
23 request, no later than 15 days prior to the close of the written
24 comment period, a public hearing pursuant to Section 11346.8.

25 (19) A statement indicating that the full text of a regulation
26 changed pursuant to Section 11346.8 will be available for at least
27 15 days prior to the date on which the agency adopts, amends, or
28 repeals the resulting regulation.

29 (20) A statement explaining how to obtain a copy of the final
30 statement of reasons once it has been prepared pursuant to
31 subdivision (a) of Section 11346.9.

32 (21) If the agency maintains an Internet Web site or other similar
33 forum for the electronic publication or distribution of written
34 material, a statement explaining how materials published or
35 distributed through that forum can be accessed.

36 (22) If the proposed regulation is subject to Section 11346.6, a
37 statement that the agency shall provide, upon request, a description
38 of the proposed changes included in the proposed action, in the
39 manner provided by Section 11346.6, to accommodate a person
40 with a visual or other disability for which effective communication

1 is required under state or federal law and that providing the
2 description of proposed changes may require extending the period
3 of public comment for the proposed action.

4 (b) The agency representative designated in paragraph (15) of
5 subdivision (a) shall make available to the public upon request the
6 express terms of the proposed action. The representative shall also
7 make available to the public upon request the location of public
8 records, including reports, documentation, and other materials,
9 related to the proposed action. If the representative receives an
10 inquiry regarding the proposed action that the representative cannot
11 answer, the representative shall refer the inquiry to another person
12 in the agency for a prompt response.

13 (c) This section shall not be construed in any manner that results
14 in the invalidation of a regulation because of the alleged inadequacy
15 of the notice content or the summary or cost estimates, or the
16 alleged inadequacy or inaccuracy of the housing cost estimates, if
17 there has been substantial compliance with those requirements.

18 ~~SEC. 19. Section 11349 of the Government Code is amended~~
19 ~~to read:~~

20 ~~11349. The following definitions govern the interpretation of~~
21 ~~this chapter:~~

22 (a) ~~“Necessity” means the record of the rulemaking proceeding~~
23 ~~demonstrates by substantial evidence the need for a regulation to~~
24 ~~effectuate the purpose of the statute, court decision, or other~~
25 ~~provision of law that the regulation implements, interprets, or~~
26 ~~makes specific, taking into account the totality of the record. For~~
27 ~~purposes of this standard, evidence includes, but is not limited to,~~
28 ~~facts, studies, and expert opinion.~~

29 (b) ~~“Authority” means the provision of law which permits or~~
30 ~~obligates the agency to adopt, amend, or repeal a regulation.~~

31 (c) ~~“Clarity” means written or displayed so that the meaning of~~
32 ~~regulations will be easily understood by those persons directly~~
33 ~~affected by them.~~

34 (d) ~~“Consistency” means being in harmony with, and not in~~
35 ~~conflict with or contradictory to, existing statutes, court decisions,~~
36 ~~or other provisions of law.~~

37 (e) ~~“Reference” means the statute, court decision, or other~~
38 ~~provision of law which the agency implements, interprets, or makes~~
39 ~~specific by adopting, amending, or repealing a regulation.~~

1 (f) “Nonduplication” means that a regulation does not serve the
 2 same purpose as a state or federal statute or another regulation.
 3 This standard requires that an agency proposing to amend or adopt
 4 a regulation must identify any state or federal statute or regulation
 5 which is overlapped or duplicated by the proposed regulation and
 6 justify any overlap or duplication. This standard is not intended
 7 to prohibit state agencies from printing relevant portions of
 8 enabling legislation in regulations when the duplication is necessary
 9 to satisfy the clarity standard in paragraph (3) of subdivision (a)
 10 of Section 11349.1. This standard is intended to prevent the
 11 indiscriminate incorporation of statutory language in a regulation.

12 (g) “Competitive impact” means that the record of the
 13 rulemaking proceeding or other documentation demonstrates that
 14 the regulation is authorized by a clearly articulated and
 15 affirmatively expressed state law, that the regulation furthers the
 16 public protection mission of the state agency, and that the impact
 17 on competition is justified in light of the applicable regulatory
 18 rationale for the regulation.

19 SEC. 20. Section 11349.1 of the Government Code is amended
 20 to read:

21 11349.1. (a) The office shall review all regulations adopted,
 22 amended, or repealed pursuant to the procedure specified in Article
 23 5 (commencing with Section 11346) and submitted to it for
 24 publication in the California Code of Regulations Supplement and
 25 for transmittal to the Secretary of State and make determinations
 26 using all of the following standards:

- 27 (1) Necessity.
- 28 (2) Authority.
- 29 (3) Clarity.
- 30 (4) Consistency.
- 31 (5) Reference.
- 32 (6) Nonduplication.
- 33 (7) For those regulations submitted by a state board on which
 34 a controlling number of decisionmakers are active market
 35 participants in the market the board regulates, the office shall
 36 review for competitive impact.

37 In reviewing regulations pursuant to this section, the office shall
 38 restrict its review to the regulation and the record of the rulemaking
 39 except as directed in subdivision (h). The office shall approve the

1 regulation or order of repeal if it complies with the standards set
2 forth in this section and with this chapter.

3 (b) In reviewing proposed regulations for the criteria in
4 subdivision (a), the office may consider the clarity of the proposed
5 regulation in the context of related regulations already in existence.

6 (c) The office shall adopt regulations governing the procedures
7 it uses in reviewing regulations submitted to it. The regulations
8 shall provide for an orderly review and shall specify the methods,
9 standards, presumptions, and principles the office uses, and the
10 limitations it observes, in reviewing regulations to establish
11 compliance with the standards specified in subdivision (a). The
12 regulations adopted by the office shall ensure that it does not
13 substitute its judgment for that of the rulemaking agency as
14 expressed in the substantive content of adopted regulations.

15 (d) The office shall return any regulation subject to this chapter
16 to the adopting agency if any of the following occur:

17 (1) The adopting agency has not prepared the estimate required
18 by paragraph (6) of subdivision (a) of Section 11346.5 and has not
19 included the data used and calculations made and the summary
20 report of the estimate in the file of the rulemaking.

21 (2) The agency has not complied with Section 11346.3.
22 “Noncompliance” means that the agency failed to complete the
23 economic impact assessment or standardized regulatory impact
24 analysis required by Section 11346.3 or failed to include the
25 assessment or analysis in the file of the rulemaking proceeding as
26 required by Section 11347.3.

27 (3) The adopting agency has prepared the estimate required by
28 paragraph (6) of subdivision (a) of Section 11346.5, the estimate
29 indicates that the regulation will result in a cost to local agencies
30 or school districts that is required to be reimbursed under Part 7
31 (commencing with Section 17500) of Division 4, and the adopting
32 agency fails to do any of the following:

33 (A) Cite an item in the Budget Act for the fiscal year in which
34 the regulation will go into effect as the source from which the
35 Controller may pay the claims of local agencies or school districts.

36 (B) Cite an accompanying bill appropriating funds as the source
37 from which the Controller may pay the claims of local agencies
38 or school districts.

39 (C) Attach a letter or other documentation from the Department
40 of Finance which states that the Department of Finance has

1 approved a request by the agency that funds be included in the
2 Budget Bill for the next following fiscal year to reimburse local
3 agencies or school districts for the costs mandated by the
4 regulation.

5 (D) Attach a letter or other documentation from the Department
6 of Finance which states that the Department of Finance has
7 authorized the augmentation of the amount available for
8 expenditure under the agency's appropriation in the Budget Act
9 which is for reimbursement pursuant to Part 7 (commencing with
10 Section 17500) of Division 4 to local agencies or school districts
11 from the unencumbered balances of other appropriations in the
12 Budget Act and that this augmentation is sufficient to reimburse
13 local agencies or school districts for their costs mandated by the
14 regulation.

15 (4) The proposed regulation conflicts with an existing state
16 regulation and the agency has not identified the manner in which
17 the conflict may be resolved.

18 (5) The agency did not make the alternatives determination as
19 required by paragraph (4) of subdivision (a) of Section 11346.9.

20 (6) The office decides that the record of the rulemaking
21 proceeding or other documentation for the proposed regulation
22 does not demonstrate that the regulation is authorized by a clearly
23 articulated and affirmatively expressed state law, that the regulation
24 does not further the public protection mission of the state agency,
25 or that the impact on competition is not justified in light of the
26 applicable regulatory rationale for the regulation.

27 (e) The office shall notify the Department of Finance of all
28 regulations returned pursuant to subdivision (d).

29 (f) The office shall return a rulemaking file to the submitting
30 agency if the file does not comply with subdivisions (a) and (b)
31 of Section 11347.3. Within three state working days of the receipt
32 of a rulemaking file, the office shall notify the submitting agency
33 of any deficiency identified. If no notice of deficiency is mailed
34 to the adopting agency within that time, a rulemaking file shall be
35 deemed submitted as of the date of its original receipt by the office.
36 A rulemaking file shall not be deemed submitted until each
37 deficiency identified under this subdivision has been corrected.

38 (g) Notwithstanding any other law, return of the regulation to
39 the adopting agency by the office pursuant to this section is the
40 exclusive remedy for a failure to comply with subdivision (c) of

1 ~~Section 11346.3 or paragraph (10) of subdivision (a) of Section~~
2 ~~11346.5.~~

3 ~~(h) The office may designate, employ, or contract for the~~
4 ~~services of independent antitrust or applicable economic experts~~
5 ~~when reviewing proposed regulations for competitive impact.~~
6 ~~When reviewing a regulation for competitive impact, the office~~
7 ~~shall do all of the following:~~

8 ~~(1) If the Director of Consumer Affairs issued a written decision~~
9 ~~pursuant to subdivision (e) of Section 109 of the Business and~~
10 ~~Professions Code, the office shall review and consider the decision~~
11 ~~and all supporting documentation in the rulemaking file.~~

12 ~~(2) Consider whether the anticompetitive effects of the proposed~~
13 ~~regulation are clearly outweighed by the public policy merits.~~

14 ~~(3) Provide a written opinion setting forth the office's findings~~
15 ~~and substantive conclusions under paragraph (2), including, but~~
16 ~~not limited to, whether rejection or modification of the proposed~~
17 ~~regulation is necessary to ensure that restraints of trade are related~~
18 ~~to and advance the public policy underlying the applicable~~
19 ~~regulatory rationale.~~

20 ~~SEC. 21:~~

21 *SEC. 19.* No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.

BILL ANALYSIS

Bill No: SB 1195

Author: Hill (D)

Amended: 6/1/16

Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 6-0, 4/18/16

AYES: Hill, Block, Galgiani, Hernandez, Mendoza, Wieckowski

NO VOTE RECORDED: Bates, Berryhill, Jackson

SENATE APPROPRIATIONS COMMITTEE: 5-0, 5/27/16

AYES: Lara, Beall, Hill, McGuire, Mendoza

NO VOTE RECORDED: Bates, Nielsen

SUBJECT: Professions and vocations: board actions

SOURCE: Author

DIGEST: This bill makes various changes that are intended to improve the effectiveness of the Veterinary Medical Board (VMB), extends the VMB's sunset dates. This bill also authorizes the Director of the Department of Consumer Affairs (DCA) to review, veto, or modify actions and decisions of DCA boards to ensure such actions or decisions conform with public policy; and prohibits any board executive officer (EO) from being an actively licensed member of the profession the board regulates.

ANALYSIS:

Existing law:

- 1) Establishes the California Veterinary Medicine Practice Act until January 1, 2017, and requires the VMB within the DCA to, among other things, license and regulate veterinarians, registered veterinary technicians (RVTs), RVT schools and programs, and veterinary premises. (Business and Professions Code (BPC) §§ 4800 et seq.)
- 2) Makes decisions of any board within the DCA pertaining to setting standards, conducting examinations, passing candidates, and revoking licenses final, except as specified, and provides that those decisions are not subject to review by the Director of the DCA. (BPC § 109 (a))
- 3) Authorizes the Director to initiate an investigation of any allegations of misconduct in the preparation, administration, or scoring of any examination which is administered by a

board, or in the review and qualifications which are part of the licensing process of any board. (BPC § 109 (b))

- 4) Requires regulations, except those pertaining to examinations and qualifications for licensure and fee changes proposed or promulgated by a board within the DCA, to comply with certain requirements before the regulation or fee change can take effect, including that the Director is required to be notified of the rule or regulation and given 30 days to disapprove the regulation. (BPC § 313.1)
- 5) Prohibits a rule or regulation that is disapproved by the Director from having any force or effect, unless the Director's disapproval is overridden by a unanimous vote of the members of the board, as specified. (BPC § 313.1 (e)(3))
- 6) Provides, until January 1, 2018, for the licensure and regulation of registered nurses by the Board of Registered Nursing (BRN) which is within the DCA, and requires the BRN to appoint an EO who is a nurse currently licensed by the BRN. (BPC § 2708)

This bill:

- 1) Extends the sunset date for the VMB and the VMB EO until January 1, 2021.
- 2) Authorizes a veterinarian and RVT who is under the direct supervision of a veterinarian with a current and active license to compound a drug for animal use pursuant to federal regulations and in accordance with regulations promulgated by the VMB.
- 3) Requires veterinarians engaged in practice of veterinary medicine employed by the University of California or by Western University of Health Sciences to be licensed as a veterinarian in the state or hold a university license issued by the VMB, and that the applicant for a university license meet certain requirements, including that the applicant passes a specified exam.
- 4) Provides that a veterinary premise registration may be canceled after five years of delinquency, unless the VMB finds circumstances or conditions that would justify a new premise registration to be issued.

- 5) Makes technical changes to BPC regarding the VMB.
- 6) Authorizes the Director to review actions or decisions related to the setting of professional standards and conducting examinations.
- 7) Authorizes the Director, upon his or her own initiative, and requires the Director upon the request of Legislature or the DCA board making the subject decision or action, to review a decision or other action, except for disciplinary actions, to determine whether it furthers state law.
- 8) Authorizes the Director, after reviewing a board action or decision, to approve, disapprove, modify, or request further information from the board regarding the action or decision.
- 9) Requires the Director to post on the DCA's Web site his or her final written decision on the board action or decision and the reasons for his or her decision within 90 days.
- 10) Commencing March 1, 2017, requires the Director to annually report to the chairs of specified committees of the Legislature information regarding the Director's disapprovals, modifications, or findings from any audit, review or monitoring and evaluation.
- 11) Prohibits a DCA board from overruling a Director's decision to disapprove a regulation.
- 12) Prohibits any DCA board's executive director from being an active licensee of the profession the board regulates.
- 13) Clarifies that treble damages awarded pursuant to the Clayton Act are not punitive or exemplary damages.

Background

In March of 2015, the Senate Business, Professions, and Economic Development Committee and the Assembly Business and Professions Committee (Committees) conducted three joint oversight hearings to review 12 regulatory entities including the VMB. This bill and the accompanying sunset bills are intended to implement legislative changes as recommended by staff of the Committees and that are reflected in the Background Papers prepared by Committee staff for each agency and program reviewed this year.

Changes to the DCA are in response to a recent U.S. Supreme

Court decision, North Carolina State Board of Dental Examiners v. FTC, regarding potential anticompetitive actions taken by licensing boards which could result in antitrust litigation. In 2010, the Federal Trade Commission (FTC) brought an administrative complaint against the North Carolina State Board of Dental Examiners (Board) for excluding non-dentists from the practice of teeth whitening. The FTC alleged that the Board's decision was anticompetitive under the FTC Act because the Board was not acting as a state agent. The Board appealed to the Supreme Court, arguing that it was acting on behalf of the government and should be afforded immunity from antitrust lawsuits.

The Supreme Court ruled in the FTC's favor, stating that regulatory bodies comprised of active market participants in the occupation regulated by that body may invoke state-action antitrust immunity only if it is subject to active supervision by the state.

The Supreme Court has stated that to qualify as active supervision "the [state] supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy." N. Carolina State Bd., 135 S. Ct. at 1116.

In order to establish active supervision for California boards, this bill builds upon the current authority of the Director DCA to review certain board decisions (except those relating to disciplinary actions) in order to ensure they conform with state policy. This bill also ensures that DCA board members are not personally liable in the event they are sued in an antitrust matter related to their board service.

This bill also prohibits an active licensee in the profession a board regulates from serving as EO of a DCA board. This provision will apply to all boards, but currently only the BRN requires its EO to be an active licensee. There are no other licensees serving as EOs of other DCA boards. Because the EO has such influence on a board's proceedings, especially with regards to disciplinary decisions, it is important to comply with the Supreme Court's holding that this person not be an "active" market participant. The California Nurses Association has expressed concern that this bill will prohibit a nurse from serving as the BRN's EO. However, this is not the case. A retired nurse or a nurse with a license on "inactive" status may serve as the EO under this bill.

The author's office has worked closely with the DCA, the Governor's and Attorney General's offices in crafting this bill.

FISCAL EFFECT: Appropriation: No Fiscal
Com.:YesLocal: Yes

According to the Senate Appropriations Committee, this bill will result in one-time costs of \$600,000 and ongoing costs of \$570,000 per year for DCA to establish an Anti-Trust Unit to review board actions for their impacts on trade, costs which would be paid from the DCA boards and bureaus, which are supported by license fees. This bill would also result in ongoing costs of about \$4.8 million per year for the continued operation of the VMB, funded through licensing fees. Minor costs are anticipated by the VMB for the changes in the bill to its statutory requirements and procedures. This bill would result in ongoing costs of about \$160,000 per year for the Board of Pharmacy to coordinate inspection and enforcement activities with respect to the regulation of drug compounding on veterinary premises .

SUPPORT: (Verified5/31/16)
Center for Public Interest Law

OPPOSITION: (Verified5/31/16)
California Nurses Association
California Pharmacists Association
California Psychiatric Association
California Society of Certified Public Accountants

ARGUMENTS IN SUPPORT: The Center for Public Interest Law (CPIL) supports this bill and just suggests some minor amendments to clear up inconsistency in the language. The CPIL makes clear that boards are not immune from federal antitrust scrutiny unless they are controlled by public members (and not licensees) or the state has created a mechanism to actively supervise the acts and decisions of these boards to ensure they benefit the public, and not merely the professions themselves. "Indeed, failure to approve SB 1195 will continue to expose consumers to anticompetitive actions and decisions made by occupational licensing boards within the Department of Consumer Affairs (DCA) that are controlled by 'active market participants' in the relevant market, and will expose DCA boards and board members to potential federal antitrust criminal and civil liability."
The CPIL further argues that the opposition to this bill

registered by trade associations misunderstands federal antitrust law and the North Carolina decision itself. States have to either require occupational licensing boards to be controlled by public members, or they can create an "adequate state supervision" mechanism to oversee, review, veto, and/or modify acts and decisions that violate federal antitrust laws made by boards controlled by active market participants. In addition, CPIL supports the provision which eliminates the requirements that the EO of the BRN be a licensee of the Board.

ARGUMENTS IN OPPOSITION: The California Pharmacists Association, the California Psychiatric Association and the California Society of Certified Public Accountants writes, "We do not believe that the additional authority the bill would give to the Director of Consumer Affairs will best serve our collective goals of protecting the legitimate actions of licensing boards."

The California Nurses Association are also concerned about the new authority of the director, stating that "The DCA director, no matter who fills the position, may be influenced or swayed by political agendas designed to overturn board actions and regulations somehow vaguely harmful to corporate profits or, as part of a general ideological bias against government and regulations. This power is particularly dangerous when countenanced in one person, subject to the varying winds of political pressure."

Prepared by:Nicole Billington / B., P. & E.D. / (916) 651-4104,
Bill Gage / B., P. & E.D. / (916) 651-4104
6/1/16 18:41:47

**** END ****

Agenda Item #2

c. Legislative and Regulatory Update

SB 1348 (Cannella)

License Applications: military experience

AMENDED IN SENATE MAY 31, 2016

SENATE BILL

No. 1348

Introduced by Senator Cannella

February 19, 2016

An act to amend Section 114.5 of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1348, as amended, Cannella. Licensure applications: military experience.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law requires each board to inquire in every application for licensure if the individual applying for licensure is serving in, or has previously served in, the military.

This bill would require each board, with a governing law authorizing veterans to apply military experience and training towards licensure requirements, to ~~modify their application for licensure to advise veteran applicants~~ *post information on the board's Internet Web site about their the ability of veteran applicants to apply that their military* experience and training towards licensure requirements.

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 114.5 of the Business and Professions
- 2 Code is amended to read:

1 114.5. (a) Each board shall inquire in every application for
2 licensure if the individual applying for licensure is serving in, or
3 has previously served in, the military.

4 (b) If a board's governing law authorizes veterans to apply
5 military experience and training towards licensure requirements,
6 that board shall ~~modify their application for licensure to advise~~
7 ~~veteran applicants~~ *post information on the board's Internet Web*
8 *site about their the ability of veteran applicants to apply military*
9 *experience and training towards licensure requirements.*

SENATE RULES COMMITTEE		SB 1348
Office of Senate Floor Analyses		
(916) 651-1520 Fax: (916)		
327-4478		

THIRD READING

Bill No: SB 1348
Author: Cannella (R)
Amended: 5/31/16
Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 9-0, 4/11/16
AYES: Hill, Bates, Berryhill, Block, Galgiani, Hernandez,
Jackson, Mendoza, Wieckowski

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/27/16
AYES: Lara, Bates, Beall, Hill, McGuire, Mendoza, Nielsen

SUBJECT: Licensure applications: military experience

SOURCE: Author

DIGEST: This bill provides that if a board or bureau within the Department of Consumer Affairs (Department) authorizes veterans to apply military experience and training towards licensure, than the board or bureau shall post information on its Internet Web site about the ability of veteran applicants to apply their military experience.

ANALYSIS:

Existing law:

1)Provides for the licensure, registration and regulation of various professions and vocations by the boards, bureaus,

committees, programs and commission (board(s)) within the Department.

2)Specifies that it is the policy of this state that persons with the skills, knowledge, and experiences obtained in the armed services should be permitted to apply this learning and contribute to the employment needs of this state at the maximum level of responsibility and skill for which they are qualified, and that to this end, that the rules and regulations of boards shall provide a method of evaluating education, training and experience obtained in the armed services and determine how it may be used to meet the licensure requirements for the particular business, or

occupation, or profession regulated. (Business and Professions Code (BPC) § 35)

3) Requires each board to inquire in every application if the individual applying for licensure is serving in, or has previously served in, the military.

(BPC § 114.5)

4) Requires after July 1, 2016, that a board within the Department expedite, and may assist, the initial licensure process for an applicant who supplies satisfactory evidence to the board that the applicant has served as an active duty member of the Armed Forces of the United States and was honorably discharged and provides that the board may adopt regulations necessary to implement this requirement. (BPC § 115.4)

5) States that it is the policy of the State of California that, consistent with high quality health care services, persons with skills, knowledge and experience obtained in the armed services of the United States should be permitted to apply such learning and contribute to the health manpower needs of the state at the maximum level of responsibility and skill for which they are qualified, and to this end, the rules and regulations of healing arts boards shall provide for methods of evaluating education, training, and experience obtained in military service if such training is applicable to the requirements of that profession. (BPC § 710)

6) Requires, by July 1, 2015, the Chancellor of the California Community Colleges, using common course descriptors and pertinent standards of the American Council on Education, to determine for which courses credit should be awarded for prior military experience. (Education Code § 66025.7)

This bill requires that if a board's governing law authorizes veterans to apply military experience and training towards licensure requirements, that board shall post information on its Internet Web site about the ability of veterans applicants to apply military experience and training towards licensure requirements.

Background

The Department currently oversees 39 licensing programs that issue more than two million licenses, registrations and certifications in nearly 200 professional categories. These licensing boards are charged with regulating a particular profession through licensure and enforcement programs. Each of these entities is responsible for enforcing the minimum

qualifications for licensure that are established by statute and regulation. Licensure requirements vary in their specificity and flexibility. In many cases, the stated qualifications are specific and provide the regulating entity with little or no discretion over what experience or education can be accepted. Professional and occupational licensure requirements range from completing a form and paying a licensing fee to satisfying significant experience, education and exam requirements.

Consideration of Military Experience and Education. In 2012, the Department provided a report to the Legislature regarding the licensing programs that have statutes or regulations that allow for the use of military experience and education to meet licensing requirements for the various boards under the Department. Titled, "Report to the California State Legislature: Acceptance of Military Experience & Education Towards Licensure," it outlined administrative solutions that the Department's programs were instituting to assist military applicants with the licensure process. It provided a breakdown of all licensing programs under the Department that allowed for members of the military to apply experience, education, or training towards licensure and those that did not.

In 2015, the Department provided an update to its 2012 report and focused on boards providing acceptance of military experience towards licensure pursuant to BPC Section 35, which requires that rules and regulations of boards shall provide for methods of evaluating education, training and experience obtained in the armed services. It was found that none of the licensing programs have regulations based on BPC Section 35, but that many of the Department's programs have either specific or broad authority to review and apply military education, experience, or training towards licensure. For example, the Bureau of Security and Investigative Services worked with over 5,000 military applicants to guide them through the application process in the last two years. The Contractors' State License Board has also created a formal program to assist former military members with properly applying their education and experience and completing the licensing process. To better account for military veterans who apply for California licenses, each licensing board was required to ask on its license application whether the individual applying for licensure is serving in, or has previously served in, the military, beginning in 2015. This bill will require all boards to also alert applicants that some of their military experience and training may be counted towards licensure requirements.

The author believes that individuals will look to the licensure application in order to determine the requirements for licensure. While this is undoubtedly true in certain

circumstances, it may also benefit veterans for boards to advertise opportunities for military credit in locations prior to the point of credential verification, such as on boards' Web site, at schools and training programs, and in Veterans Affairs offices.

According to the Senate Appropriations Committee, this bill will result in minor one-time costs to Department boards and bureaus to place information on their websites about the ability for veterans to apply military experience and training to license requirements and a one-time cost of about \$100,000 for the Dental Board of California to amend various existing regulations regarding license applications to include the required information in this bill.

SUPPORT: (Verified5/31/16)
California Board of Accountancy

OPPOSITION: (Verified5/31/16)
None received

ARGUMENTS IN SUPPORT: The California Board of Accountancy is supportive of amending its application to clarify that all valid experience including military is accepted for licensure since under the Accountancy Act, military experience can be applied towards licensure as long as it meets legal requirements and is done under the supervision of a licensed Certified Public Accountant.

Prepared by: Bill Gage / B., P. & E.D. / (916) 651-4104
5/31/16 20:58:29

Agenda Item #2

c. Legislative and Regulatory Update

Update on Regulations



ACUPUNCTURE BOARD

1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
 (916) 515-5200 FAX (916) 928-2204 www.acupuncture.ca.gov

CAB list of past and future regulations

Updated: June 10, 2016

Set out below are a list of past and future pending regulations. Please note this list may be incomplete and subject to change depending upon Legislative or Executive action.

Authority for regulatory changes is provided under California Business and Professions (B&P) Code Chapter 12, Article 1, Code section 4933.

Pending regulations				
	Subject	California Code of Regulations (CCR) Section referred	Date authorizing vote taken (vote)	Current Status
1	Uniform Standards Related to Substance Abuse and Recommended Guidelines for Disciplinary Orders and Conditions of Probation (SB 1441)	Amend Section 1399.469	10/25/2013 (5-0)	Rulemaking package complete and filed with OAL. Public comment period ended May 30, 2016. To be submitted for final approval by DCA and Agency July 2016.
2	Standards for the Approval of Educational Training and Clinical Experience Received Outside the United States; Curriculum Standards for Board Approval of Curriculum; Requirements for Board Approval of Curriculum. (SB 1246)	Adopt Section 1399.433, Amend Section 1399.434, Repeal Section 1399.436, Amend Section 1399.437	11/17/2015 (7-0)	Rulemaking package complete and filed with OAL. Public comment period ended June 6, 2016. To be submitted for final approval by DCA and Agency July 2016.
3	Sponsored Free Health-Care Events (AB 2699)	Add Article 7 and Sections 1399.480, 1400.1, 1400.2 and 1400.3	11/17/2011 (5-0)	Rulemaking package complete and undergoing final approval by DCA and Agency. If no OAL changes, regulation would be effective Fall 2016.
4	Display of licensure by Acupuncture Board (BPC 138)	Add section 1399.463.3	9/12/2014 (6-0)	Approved by DCA and Agency 5/31/16. To OAL for final approval. If no OAL changes, regulation would be effective Fall 2016.

5	Advertising guidelines – display of license numbers in advertising	Adopt Section 1399.455	2/19/2013 (5-0)	Package being completed by staff. Expected submittal to OAL for notice publication and public comment period by July 2016.
6	Prostitution enforcement and condition of office	Amend Section 1399.450(b)	2/14/2014 (6-0)	Package being completed by staff. Expected submittal to OAL for notice publication and public comment period by August 2016.
7	Continuing education ethics requirement – change of “medical ethics” to “professional ethics”	Adopt Section 1399.482.2	11/15/2012 (5-0)	Package being completed by staff. Expected submittal to OAL for notice publication and public comment period by September 2016.
8	Hand Hygiene requirements	Amend Section 1399.451(a)	2/14/2014 (5-0)	Package under staff development. Expected submittal to OAL for notice publication and public comment period by Fall 2016.

Adopted Regulations

	Subject	CCR Sections referred	Date approved by Office of Administrative Law (effective one month later) with link to text of regulation
1	Educational Curriculum Requirements	Amend Section 1399.415	Approved by OAL 10/5/04 http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art2.shtml#1399415
2	Cite and Fine enforcement	Amend Section 1399.465	Approved by OAL 4/17/06 http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art6.shtml#1399465
3	Continuing education	Amends Sections 1399.480 – 1399.489.1	Approved by OAL on 8/25/08 http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art8.shtml#1399480
4	Retroactive fingerprinting requirements	Adopts Sections 1399.419.1 and 1399.419.2	Approved by OAL 9/23/10 http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art25.shtml#13994191
5	Consumer Protection Enforcement Initiative (CPEI)	Amends Section 1399.405, 1399.419, 1399.469.1, 1399.468.2	Approved by OAL 9/1/15 https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I45A8F9C0D48E11DEBC02831C6D6C108E&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)

ACUPUNCTURE BOARD

1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
(916) 515-5200 FAX (916) 928-2204 www.acupuncture.ca.gov



NOTICE OF ACUPUNCTURE BOARD MEETING
Draft Minutes
February 26, 2016

1747 NORTH MARKET BOULEVARD, FIRST FLOOR HEARING ROOM
SACRAMENTO, CA 95834

The Board plans to webcast this meeting on its website at <https://thedcapage.wordpress.com/webcasts/>. Webcast availability cannot, however, be guaranteed due to limitations on resources. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location.

<https://thedcapage.wordpress.com/webcasts/>

Board Members Present

Michael Shi, L.Ac, Licensed Member
Hildegarde Aguinaldo, President, Public Member
Jamie Zamora, Vice President, Public Member
Kitman Chan, Public Member
Francisco Hsieh, Public Member
Jeannie Kang, L.Ac, Licensed Member
Dr. Michael Corradino, DAOM, Licensed Member

Legal Counsel

Tamara Colson

Staff Present

Terri Thorfinnson, Executive Officer
Van Martini, Office Technician

FULL BOARD MEETING - 9:00 a.m.

1. Call to Order and Establishment of a Quorum

2. Opening Remarks

President Shi welcomed everyone to the first Board meeting of the year.

3. President's Report

President Shi reported that he had been very busy focusing on his clinical work. It had been three years since he came on board, and he noted a vast improvement of work that the office and the staff had accomplished. He added that there was still a lot more work to be done and improve to make this Board even stronger than the past three years. He thanked the Board

Acupuncture Board Members

Michael Shi, L.Ac, President, Licensed Member
Hildegarde Aguinaldo, Vice President, Public Member
Kitman Chan, Public Member
Francisco Hsieh, Public Member
Jeannie Kang, L.Ac, Licensed Member
Jamie Zamora, Public Member
Dr. Michael Corradino, DAOM, Licensed

Members and the public for their continued service to the Board. However, due to his commitment to the clinic, he resigned from his post as the President of the Board effective immediately.

5. Election of Officers:

President Shi moved to have the Election of Officers agenda before the Executive Officer's Report schedule. Member Kang seconded the motion.

- **President**

Member Zamora nominated member Aguinaldo as the President. Member Kang seconded the nomination. Member Chan appointed President Shi to be the President again, and Member Hsieh seconded the nomination. President Shi declined the nomination.

- Members Chan and Hsieh voted No, Members Zamora, Aguinaldo, Kang, and Dr. Corradino voted Yes. President Shi abstained. Total Vote: 4 Yes, 2 No, 1 Abstain.
- Member Aguinaldo accepted the nomination to be the new President of the Board.
- Member Zamora thanked the outgoing President Shi for his hard work for the Board in the past three years even though the Board was not fully staffed at times. Elected President Aguinaldo acknowledged that outgoing President Shi "*left a very big shoe to fill*". She is very excited to be following his enormous role and responsibilities as the President of the Board.

- **Vice President**

Dr. Corradino nominated Member Kang to be the Vice President of the Board. Member Zamora nominated himself to be the Vice President. Former President Michael seconded Member Zamora's self-nomination. Member Hsieh nominated Member Chan to be the Vice President.

- First vote for Member Zamora as Vice President: Members Shi, Chan and Zamora voted yes. President Aguinaldo abstained. Members Hsieh, Kang and Dr. Corradino voted no. Total Vote: 3 Yes, 3 No, 1 Abstain.
- First vote for Member Kang as Vice President: Members Shi, Chan, Zamora and Hsieh voted no. President Aguinaldo abstained. Members Kang and Dr. Corradino voted yes. Total Vote: 2 Yes, 4 No, 1 Abstain.
- First vote for Member Chan as Vice President: Members Shi, Zamora and Kang voted no. Members Chan and Hsieh voted yes. President Aguinaldo and Dr. Corradino abstained. Total Vote: 2 Yes, 3 No, 2 Abstain.

There was no majority vote, and this election was by a majority, so a candidate needed four votes for Yes to become Vice President. The election repeated until one candidate has a majority vote. There was no candidate volunteering to drop out of the Vice President election. A second roll call proceeded.

- Second vote for Member Kang as Vice President: Members Shi, Chan, Zamora and Hsieh voted no. President Aguinaldo abstained. Members Kang and Dr. Corradino voted yes. Total Vote: 2 Yes, 4 No, 1 Abstain.
- Second vote for Member Zamora as Vice President: Members Shi, Chan, Zamora and Hsieh voted yes. Member Kang voted no. President Aguinaldo and Dr. Corradino abstained. Total Vote: 4 Yes, 1 No, 2 Abstain.
- Second vote for Member Chan as Vice President: President Aguinaldo, Members Shi, Hsieh and Dr. Corradino abstained. Members Kang, Chan and Zamora voted no. Total Vote: 0 Yes, 3 No, 4 Abstain.

Member Zamora received the majority of the votes and elected Vice-President of the Board.

4. Executive Officer's Report

- **Staff Update**

EO Thorfinnson informed that the office was staffed with all the authorized positions. She had no plans on filling the vacant seasonal clerk position due to the budget constraint.

- **Budget Update**

EO Thorfinnson reviewed and addressed the significant costs that drove the final numbers of the Budget Report closer to a margin than the projected budget. She reminded the Board of the one-time occurrence of the Occupational Analysis and the NCCAOM Exam Audit expenditures. She also reported that the Enforcement Fund is rapidly rising due to the Attorney General cost, and the increase of DOI activities. The budget was calculated based on the total trend usage of the previous two years for future budget projection. Hence, it is harder to manage in real time. DCA Budget Officers gave an overview of how the budget proposal process work. A concept paper is sent out in the spring asking the agency about their planned workload and projected cost. The Budget Officers will work closely with the staff on the Budget Change Proposal to meet the July deadline. This Budget Report remained confidential until it reached to the Governor's desk, and will be released in January timeframe. The Budget Officers confirmed the Board's concern regarding the CAB fund reserve to be in safe standing between 3 to 24 months. President Aguinaldo requested EO Thorfinnson to include a projected calendar of meetings with stakeholders, hearings, or significant events that the EO attended in the next report for the Board members to gauge her attendance and involvement in the community. Also, the Board members can maintain their calendar as well as having expectations of what come up every year.

- **Exam Update: Audit of NCCAOM exam, March Exam 2016**

EO Thorfinnson informed the Board that the Audit of NCCAOM was completed, and there would be presentation on that for Agenda Item 7. The next scheduled California Licensing Examination was March 16, 2016, in Ontario, CA.

- **Enforcement: Data Report**

EO Thorfinnson reviewed the Budget data and charts to clarify the results of complaints received versus closed. Concern was raised regarding a quarterly report versus annual report update. The Executive Officer pointed out that the quarterly report would not reflect the actual number of cases closed when these cases were carried over from other previous reports. The fiscal year update showed a better picture of the caseload that the staff worked on. She highlighted a big public safety issue regarding the significant invisible caseload for the Board, which was the number of unlicensed or unregistered licensees who practiced without their licenses. Since the Board does not have jurisdiction over unlicensed acupuncturists, the staff can only give out citations instead of the formal disciplinary actions route. Concerns were raised over the 1,142 days of average processing time for formal discipline trends; EO Thorfinnson reminded the Board that these cases only applied to cases that go to hearing or stipulated settlement for final board decision; the report does not measure cases that do not go to final discipline which are the

vast majority of the cases. Additionally, these cases were more complex and required more investigation time. Also, the higher number of days is attributed to time the cases spent at the Attorney General's Office waiting for a hearing. Therefore, not every case takes over 1000 days to process, only the complex or backlogged cases. A question was raised regarding the relation of the original convictions versus complaints, EO Thorfinnson explained that most of the convictions reports came from fingerprints results, and the complaints were randomly reported when the public would take the time to file for it via the Board's website. There were no known statistics of how many cases were convictions versus complaints unless the staff takes inventory of the locked up confidential files.

- **Regulatory Update**

Uniform Standards Related to Substance Abuse (SB 1441) was completed and submitted with Legal Counsel for approval. Standards for the Approval of Education Training (SB 1246) would be completed pending the approval of the November 17, 2015 meeting minutes on the later agenda. Sponsored Free and Health-Care Events (AB 2699), and Display of Licensure (BPC 138) packages were pending final approval by DCA and Agency. Prostitution enforcement, Advertising guidelines, and Continuing education ethics requirement packages were pending in terms of drafting by staff.

- **Legislative Update**

EO Thorfinnson informed the Board that since the new bills do not come out until June 2016, she included the list of current bills so the members can see which bills passed or did not passed.

6. Approval of Board Meeting Minutes for:

- **November 17, 2015**

Vice President Zamora identified a few typos on page 3 of the minutes. Legal Counsel Colson changed the wording "*convene*" to "*commence*" in paragraph 9. She also added "*The Board considered the Education Committee recommendation that the same curriculum standards should be utilized for all licensees regardless of where their education and training was received.*" to paragraph 10. First bullet point in paragraph 12 sentence "*Business and Profession Code*" was changed to "*California Code of Regulations, Title 16*". Vice President Zamora made the first motion to approve and withdrew.

- Vice President Zamora moved to approve the Board Meeting minutes 11/17/15 with the revision discussed at the meeting.
- Dr. Corradino seconded the motion. President Aguinaldo, Vice President Zamora, Members Chan, Shi, Hsieh, Kang and Dr. Corradino voted yes. Motion passed 7-0.

7. Consideration and Possible Action Related to Results of the Audit of the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) exam

Legal Counsel reminded the public that the redacted sections in some of the audit report were necessary to protect information that the National Exam deemed confidential and typically not made available to the public. Raul Villanueva, M.A. presented the review of the National Certification Commission for Acupuncture and Oriental Medicine Examinations (NCCAOM)

report. He gave an overview of the result of the report, highlighting the differences between the NCCAOM and the 2015 California Acupuncture Occupational Analysis report. Various concerns were raised regarding itemized areas not covered in the NCCAOM Exam listed on page 34 of the report. It was noted that these were only a sample of questions given to the auditing Team and not a representation of the complete exam. It was also suggested that other Boards who use the National Exam included a California Supplement Exam that was tailored specifically to California Laws and Ethics. The focus on an Adaptive Model (CALE) versus a Linear Model (NCCAOM) of exams was also heavily discussed emphasizing on “recall versus application” model.

Various public comments in support of the NCCAOM Exam included:

- NCCAOM offers flexibility and financial stability where candidates can minimize the wait time for the biannual CALE.
- The modular model gives accessibility for students to have the option of taking the exam before graduation. This option shortens licensing time and increase earnings stability.
- The modular design gives the student the best focus to do the best care they can.
- Chinese Herbal Medicine area of CALE is inadequate and creates a public safety concern.
- Adopting NCCAOM with the California Supplement Exam (Option #4 of the audit report).
- Addressing the frequencies and expenses of taking the CALE.
- NCCAOM exam offers flexibility and opportunities for licensees to practice out of California.

A few comments encouraged the Board to keep the focus on CALE where California laws and ethics were designed to protect the public. One public comment suggested adopting the CALE as the National Standard to save California from having to offer the exam, thus minimizing personnel costs and would raise the National standard to California standard.

The Board met in Closed Session to hear and discuss the confidential content of the NCCAOM examination audit with staff of the Office of Professional Examination Services.

- President Aguinaldo moved to direct staff to work with OPES to discuss with NCCAOM to get more information on the Occupational Analysis Exam Development passing scores and exam scoring, and obtain more information for our next board meeting.
- Vice President Zamora seconded the motion. President Aguinaldo, Members Chan, Hsieh, Kang, Zamora and Dr. Corradino voted yes. Member Shi abstained.

Motion passed 6-1.

8. Consideration and Possible Action Related to:

- **Implementation of SB 1246**
- **Impacts of the Changes to Business and Professions Code sections 4927.5 (regarding approved education and training program), 4939 (regarding standards for educational training and clinical experience received outside of the United States), 4938 (requirements for licensure), and 4944 (investigation and evaluation of applicant and school) Effective January 1, 2017**
- **Proposed Legislation Related to Adding a Provision to Business and Professions Code section 4927.5 Regarding Status of Approved Education and Training Programs Approved by the Board Prior to 2017**

EO Thorfinnson explained the technical issues with implementing SB 1246 where there would not be “Board Approved Schools” hence jeopardizing the schools or curriculums eligibility status

of applicants. This proposed language will give the provisions for a smooth transition to fully implementing SB 1246. There were no public comments.

- President Aguinaldo made a motion to approve the proposed amendment regarding Business and Professions Code Section 4927.5 with the word “it” change to “its” and direct staff to work with the legislature regarding the proposed legislation.
- Member Chan seconded the motion. President Aguinaldo, Members Chan, Hsieh, Kang, Zamora and Dr. Corradino voted yes. Motion passed 6-0.

9. Consideration and Possible Action Related to Proposed Legislation Related to Approval of Foreign Credential Evaluators

EO Thorfinnson stated that this proposed language would give the Board the authority to promulgate regulations related to how the Board would develop the curriculum and the approval process to evaluate what standards the Foreign Credential Evaluators have in place for verifying foreign equivalency training programs. A public comment questioned how the Board plans to choose the Agency. Legal Counsel verified that the Board does not choose any particular agency, but the Board has the ability to require the applicant to submit documentation to a credential services approved by the Board. And there would be criteria for the Board approval for credential accreditation services.

- Member Chan made a motion to have the Board approve the proposed statutory language and direct staff to work with the legislature regarding the proposed legislation.
- Dr. Corradino seconded the motion. President Aguinaldo, Members Chan, Hsieh, Kang, Zamora and Dr. Corradino voted yes. Motion passed 6-0.

10. Consideration and Possible Action Related to Legislature’s Sunset Review of Board

EO Thorfinnson informed that the Board has a schedule for the Sunset hearing on Mar 14, 2016. The Board will be receiving the background papers to make the corrections before the meeting. Legal Counsel verified that the Board president can decide who attends the meeting as a public member. There were no public comments.

11. Public Comment for items not on Agenda

Various requests for items not on the agenda included:

- A trend of “Transitional DAOM” degrees surfaced where the public needs to be aware that these degrees lack the traditional credentials required for a postgraduate Doctor of Acupuncture of Oriental Medicine.
- The Board needs to enforce the licensees to disclose their degrees accurately and ethically.
- A request to explain the process and definition the Board uses to define a substantive change to the curriculum for previously approved school to warrant submitting a new school application.

12. Future Agenda Items.

- Dr. Corradino requested to have Doctor credentialing, the disclosure of licensees Degrees and Transitional degrees on Future Agenda Items.
- Dr. Corradino suggested having Dry Needling topic addressed.
- EO Thorfinnson suggested a presentation on a North Carolina case that affected public Boards.
- Member Kang requested to do The Executive Officer evaluation.

Public comments on Future Agenda Meetings included:

- The unethical practice of commerce and education offered by CEU providers in exchange for certain products like herbs.
- State Licensure titles that were not academic titles were being used in California. This practice was deceiving to consumers.
- The teaching of Buddhism and Acupuncture claiming to be able to eliminate family karma based on pulse readings and needling acupuncture points. What is the Board process for approving CEU providers?
- Renewal of CPR certificate when renewing licenses.

CLOSED SESSION

- 13. Pursuant to Government Code section 11126(c) (1), the Board will meet in closed session to discuss the results of the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination audit with staff of the Office of Professional Examination Services.**

The Board met in Closed Session to hear and discuss the confidential content of the NCCAOM examination audit with staff of the Office of Professional Examination Services.

- 14. The Board will meet in closed session to hear and discuss the contents of two investigation reports concerning complaints or charges filed against a board employee pursuant to Government Code section 11126(a) (1) and (a) (2).**

OPEN SESSION

- 15. Adjournment – 5:00 p.m.**

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

THE AGENDA, AS WELL AS BOARD MEETING MINUTES, CAN BE FOUND ON THE ACUPUNCTURE BOARD'S WEBSITE AT

www.acupuncture.ca.gov

Please Note: Board meetings are open to the public and are held in barrier free facilities that are accessible to those with physical disabilities in accordance with the Americans with Disabilities Act (ADA). If you need additional reasonable accommodations, please make your request no later than five (5) business days before this meeting. Please direct any questions regarding this meeting to the Board Liaison, Tammy Graver at (916) 515-5204; FAX (916) 928-2204.



NOTICE OF ACUPUNCTURE BOARD MEETING

Draft Minutes

March 10, 2016

**1747 NORTH MARKET BOULEVARD
FIRST FLOOR HEARING ROOM
SACRAMENTO, CA 95834**

The Board plans to webcast this meeting on its website at <https://thedcapage.wordpress.com/webcasts>. Webcast availability cannot, however, be guaranteed due to limitations on resources. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location.

Board Members Present

Hildegard Aguinaldo, President, Public Member
Jamie Zamora, Vice President, Public Member
Kitman Chan, Public Member
Francisco Hsieh, Public Member
Dr. Michael Corradino, DAOM, Licensed Member

Board Member Absent

Jeanie Kang, L.Ac, Licensed Member

Legal Counsel

Tamara Colson

Staffs Present

Terri Thorfinnson – Executive Officer
Van Martini – Office Technician

FULL BOARD MEETING - 10:50 A.M.

OPEN SESSION

1. Call to Order and Establishment of a Quorum

2. Opening Remarks

Hildy welcomed everyone to the second public Board meeting of the year. She reported that the Board had been busy preparing for the Sunset Review Hearing before the Joint Senate and Assembly Committee on Monday, March 14, 2016. The Board welcomed any feedback from the hearing.

3. Public Comment for items not on Agenda

Several public comments supported the Board to continue with the California Acupuncture Licensing Exam (CALE).

4. Future Agenda Items

Dr. Corradino suggested putting Dry Needle Issues and Doctors Credentialing items on the future agenda. A public comment also supported the Dry Needle Issue for the future agenda item.

CLOSED SESSION – 11:10 am

The Executive Officer elected to have items 5, 6 and 7 on the agenda heard in Closed Session. Several public comments supported the importance of the role she played in all the improvement of the Acupuncture Board during her tenure and expressed their wishes to have The Board retain her position. Hildy thanked the public for their comments and commenced the Board in closed session.

5. The Board met in Closed Session to hear and discuss an investigation report concerning complaints or charges filed against a board employee pursuant to Government Code section 11126(a) (1) and (a) (2).
6. Evaluation and Continued Employment of the Executive Officer pursuant to Section 11126 (a) (1) of the Government Code.
7. Appointment of an Acting or Interim Executive Officer if necessary, depending on the action of Agenda Item #6.

OPEN SESSION

8. Announcement of Actions Taken in Closed Session (Government Code Section 11125.2)

The Board voted in Closed Session to terminate the Executive Officer effective immediately. The Board also voted in Closed Session to appoint Ben Bodea as the Acting Executive Officer.

9. Discussion of Procedures for the Selection of a new Executive Officer.

The general procedure for the Board to move forward with a selection of a new Executive Officer is a joint processing of applications with the Office of Human Resources. It was suggested that the Board appoint a two-person search committee to review, evaluate and recommend a pool of qualified applicants for the selection process.

- Dr. Corradino nominated Jeannie Kang as the candidate for the Search Committee.
- Francisco Hsieh nominated Kitman Chan as the candidate for the Search Committee.
- Kitman nominated Jamie Zamora as the candidate for the Search Committee. Jamie declined the nomination.

Hildy confirmed Jeannie Kang and Kitman Chan to be the two members of the Search Committee. The Committee will define the selection criteria, the applications will be filtered and processed by the Committee, and the top three candidates will be brought back to the Board

for review. Ricardo de La Cruz, the personnel officer for the Department of Consumer Affairs, reported that his office and staff will be assisting the Search Committee with the selection process of the new Executive Officer. Hildy requested to have the Duty Statement be reviewed by the Board on the next agenda for any possible revisions. There were no public comments on this agenda.

10. Adjournment - 2:53 pm

Public comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. Times are approximate and subject to change. Action may be taken on any item listed on the Agenda. The Board Meeting agenda, as well as Board Meeting minutes, can be found on the Board's website at www.acupuncture.ca.gov.

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DUTY STATEMENT
EXECUTIVE OFFICER
Acupuncture Board
Exempt Level O
606-110-0665-001

Current

The Executive Officer is responsible for carrying out the mission and policies of the Board and serves at the pleasure of the 7-member Board. The Executive Officer is the chief operating officer of the Board and oversees all functions performed by this Board and promotes the primary mission of protecting the public's health, safety and welfare through ensuring the competency and qualifications of providers of board-regulated services. The responsibilities include:

Licensing and Enforcement: Direct the processing of applications for licensure or registration, ensuring only qualified applicants are issued licensure or registration. Manage and direct the Board's Continuing Professional Development (continuing education) Program.

Oversight of the handling of enforcement cases, processing complaints, investigations, prosecution and disciplinary actions performed by the Office of the Attorney General, Division of Investigation and Office of Administrative Hearings. Ensure the Board's citation and fine program is in compliance with the Board's mandates and operating pursuant to Board policies and procedures.

Administrative and Managerial: Recruitment, training, motivation, evaluation and management of staff. Development of the Board budget. Responsibility for timely implementation of and follow-through on Board approved policies and actions. Responsible for smooth-running Board and Committee meetings, timely agendas and Board packets and all Board communications. Ensure compliance with the Open Meeting Act. Designated spokesperson for the Board to the Legislature and professional groups. Requires cooperation in attitude and interactions with all Board, staff and constituencies to create and maintain mutual respect and partnership.

Legislation and Regulations: Identify the need for new legislation. Recommend modification of existing statutes or regulations to conform to Board policy. Draft specific language to effect statute or regulatory change. Oversee and ensure compliance with all aspects of the legislative and rulemaking process. Prepare author's statements and fact sheets. Testify before legislative committees on the Board's behalf. Advocate consumer protection and lobby on behalf of the consumer and the Board. Obtain authors for legislation, as needed.

Public Contact

The Executive Officer is responsible for interpretation and clarification of the Board's licensure act ([B&P Code Section 4925 et.seq.](#)), regulations and policies and represents the Board before professional associations, other governmental agencies, consumer groups, legislators and other programs. The Executive Officer will solicit support on issues affecting the Board and obtain information and feedback for the Board, as needed.

Exempt Employee's Name	
Classification Title Executive Officer	Board / Bureau / Commission / Committee Acupuncture Board
Exempt Level / Salary Range 6,584.00 – 7,334.00	Geographic Location Sacramento
Position Number 606-110-0665-001	Effective Date of Appointment

General Statement:

Under the general direction of the seven-member Board, the Executive Officer (EO) is responsible for overseeing all aspects of the Board's operations and functions which includes: licensure; educational programs; development, supervision and administration of examinations; and enforcement of the Acupuncture Licensure Act found at California Business and Professions Code section 4925, et seq. The EO works collaboratively with the Director of the Department of Consumer Affairs (DCA) to interpret and execute the intent of the Board policies in a way that ensures the public is protected and Board mandates and Strategic Plan are met and accomplished. Specific responsibilities include, but are not limited to, the following:

A. Specific Assignments [Essential (E) / Marginal (M) Functions]:

30% Managerial and Administrative (E)

Act as principal operations officer for the Board; establish short and long term personnel goals that underscore succession planning and training; manage all personnel including recruitment, orientation, staff development through Individual Development Plans (IDPs) and evaluation; develop long term fiscal and budgetary goals and strategies; and identify resource needs.

20% Board Liaison (E)

Function as administrative liaison for the Board. Coordinate and manage all Board and Committee meetings. Prepare agendas and minutes for all Board meetings and committee meetings; act as Board spokesperson at all meetings and hearings as delegated by the Board; serve as liaison between Board, Board Committees and staff; conduct orientation for new Board members and facilitate annual transition of Board Committee assignments and election of new officers; follow proper administrative procedure for noticing meetings and hearings. Inform, advise, and consult Board on programs and activities administered by staff. Implement all Board-approved policies and actions. Ensure full compliance with the Open Meeting Act.

20% Program Management – Licensing, Enforcement, Education and Examinations (E)

Develop industry-specific disciplinary guidelines. Oversee the processing of applications for licensure, ensuring that only qualified applicants are issued licensure. Oversee the approval of school curriculum and/or programs and continuing education providers and courses.

Department of Consumer Affairs

Exempt Position Duty Statement

HR-041E (new 1/2015)

Oversee the handling of enforcement cases and the processing of complaints, including disciplinary actions handled for the Board by the Office of Attorney General, investigations conducted by the

Division of Investigation, and [matters heard by the](#) Office of Administrative Hearings. Provide for investigation of complaints, preparation of accusations or statements of issues, and initiation, direction and evaluation of administrative and/or criminal investigations; approve and sign final accusation; monitor case flow and costs; advise Attorney General's Office-; ensure adherence to Administrative Procedure Act timelines; and ensure appropriate implementation of all Board disciplinary decisions. Meet and confer with outside legal agencies on cases; serve as Board's spokesperson on all cases. Maintain confidentiality in accordance with the Public Records Act.

Oversee the administration of examinations to ensure compliance with applicable statutes, regulations and policies. Coordinate periodic occupational analysis and examination validation functions.

15% Legislation and Regulations (E)

Identify the need for new legislation; recommend modification of existing statutes or regulations. Prepare and analyze legislative proposals to effect statutory or regulatory change; facilitate legislative author's research in preparation of statements and fact sheets. Obtain independent author for legislation, as needed. Provide testimony before legislative committees and public hearings regarding Board policies, programs and activities. Oversee and ensure compliance with all aspects of the legislative and rule-making processes and the Administrative Procedure Act. Prepare the sunset review report. Interpret and execute the Business and Professions Code and all Board policies and guidelines; seek legal counsel from the DCA in executing the above duties.

15% Public Contact (E)

Serve as Board liaison to a wide array of government, professional and volunteer organizations; participate and serve as Board representative to professional organizations. Disseminate accurate and timely information via available communication tools and resources, including the department website and Internet social media venues regarding the Board's licensure act, regulations and policies, and general consumer awareness information. Serve as liaison to professional associations, other government agencies, nursing organizations, school administrators, students, consumer groups and the general public.

B. Supervision Received

The EO reports directly to the Board President and receives majority of assignments from the Board.

C. Supervision Exercised

The EO directly supervises subordinate staff and may supervise contracted consultants.

D. Administrative Responsibility

The EO manages Board resources, programs and personnel.

Department of Consumer Affairs

Exempt Position Duty Statement

HR-041E (new 1/2015)

E. Personal Contacts

The EO will have regular direct contact with licensees, members of the Board of Acupuncture, and various DCA employees and other agencies. The information exchanged will include sensitive/confidential information. On a daily basis, the EO will respond to inquiries from the general public by telephone, e-mail or in writing. In addition, the EO works directly with the Board's President and other Board Members, program staff, DCA staff and other state agencies.

F. Actions and Consequences

Failure to complete assigned duties in a timely manner may delay licensing and enforcement actions which could result in a fiscal loss to the Board. Failure to properly ensure completion of Board responsibilities could result in the Board's inability to fulfill its mission-critical activities related to the regulation of this profession for the protection of the consumer public, and may result in direct patient harm and discredit to the Board.

G. Functional Requirements

The EO works full time in an office setting, with artificial light and temperature control. The EO may spend 75%-85% of the working day using a personal computer. The position requires bending and stooping to retrieve files, walking, and occasional light lifting, up to 20-25 pounds. The ability to use a personal computer and telephone is essential. Regular attendance and punctuality are an essential part of this job. The EO is required to professionally and tactfully interact with the public and licensees, and use good judgment at all times.

H. Other Information

The EO must possess good communication skills, use good judgment in decision-making, exercise creativity and flexibility in problem identification and resolution, manage time and resources effectively, be responsive to Board needs, and represent the Board in a professional manner. The EO must also use strong interpersonal skills to support the achievement of the goals and objectives of the Board and maintain good working relationships with staff, governmental agencies and public entities. This position has access to confidential and sensitive information related to consumers of Board services and/or employees of the Board. The individual occupying this position is expected to maintain the privacy and confidentiality of such information at all times. Travel is required to attend various meetings. The EO will travel by whichever method, commercial carrier or automobile, is in the best interest of the State. Travel may occur for one or several consecutive days.

This position has access to Criminal Offender Record Information (CORI). Title 11, Section 703(d) of the California Code of Regulations requires criminal record checks of all personnel who have access to CORI. Pursuant to this requirement, incumbents in this position will be required to submit fingerprints to the Department of Justice and be cleared prior to appointment.

Department of Consumer Affairs

Exempt Position Duty Statement

HR-041E (new 1/2015)

This position also requires the incumbent to take an Oath of Office prior to appointment.

Additionally, this position is subject to the Department of Consumer Affairs' Conflict of Interest Code (16 CCR § 3830) and the incumbent must file a Statement of Economic Interests Form upon appointment, annually, and upon separation.

I have read and understand the duties listed above and I can perform these duties with or without reasonable accommodation. (If you believe reasonable accommodation is necessary, discuss your concerns with the hiring supervisor. If unsure of a need for reasonable accommodation, inform the hiring supervisor, who will discuss your concerns with the Health & Safety analyst.)

Employee Signature

Date

Employee's Printed Name, Classification

I have discussed the duties of this position with and have provided a copy of this duty statement to the employee named above.

Board President / Chairperson Signature

Date

Board President / Chairperson's Printed Name

| **Revision Date:** ~~June~~ ~~May~~ 2016

Communication

1. Board Member Administrative Manual ("BMAM") -adopted by the Board
 - a. Board Members shall not discuss personnel or enforcement matters outside of their official capacity in properly noticed and agendized meetings or with members of the public or the profession.
2. Violations of the Open Meeting Act ("OMA")
 - a. **Meeting:** Any situation where a quorum of members convenes and issues under the Board's jurisdiction are addressed (§ 11122.5.)
 - i. Deciding issues
 - ii. Receiving information
 - b. **Serial Meeting:** The OPA prohibits the use of direct communication, personal intermediaries, or technological devices that are employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body outside of an open meeting. (§ 11122.5(b).)
 - i. A series of meetings, that when taken as a whole, constitute a quorum of the Board addressing Board issues.
3. "Ex parte communications" in violation of the Administrative Procedure Act
 - a. For licensing or disciplinary actions it is prohibited to have direct or indirect communication with you by one of the parties or its representative without notice and opportunity for all parties to participate in the communication
4. Communications that are more appropriate for the Executive Officer or Board staff
 - a. Communications about the day- to- day operations should be handled by the Executive Officer and/or the Board staff
 - i. 1399.405. Delegates to the executive officer, all functions necessary to the dispatch of business of the board in connection with investigative and administrative proceedings under the jurisdiction of the board, including, but not limited to, the ability to approve settlement agreements for the revocation, surrender or interim suspension of a license.
 - ii. Strategies for the day-to-day management of programs and staff shall be the responsibility of the Executive Officer as an instrument of the Board.
 - b. If the public wants to bring to the Board alleged errors of procedure or protocol or staff misconduct involving matters that are currently under or subject to investigation or involve a pending administrative or criminal action, then they may do so at a public meeting so that the Board may address it properly (BMAM).
 - c. Communications with Other Organizations & Individuals
 - i. All communications relating to any Board action or policy to any individual or organization shall be made only by the President of the Board, his or her designee, or the Executive Officer. Any Board Member who is contacted by any of the above should inform the Board President or Executive Officer of the contact immediately. All correspondence shall be issued on the Board's standard letterhead and will be disseminated by the Executive Officer's office. (BMAM)
 - d. Contact with Licensees and Applicants
 - i. Board Members shall not intervene on behalf of a licensee or applicant for licensure for any reason. They should forward all contacts or inquiries to the Executive Officer. (BMAM)