

California Acupuncture Board Meeting

Friday, June 26, 2020

WebEx Conference Call



Board Members

Dr. Amy Matecki, MD, L.Ac. – President

Kitman Chan – Vice President

John Harabedian, Esq.

Ruben Osorio

Hyun “Francisco” Kim, L.Ac.

Shu Dong Li, Ph.D

Dr. Yong Ping Chen, L.Ac., Ph.D.

2020

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ACUPUNCTURE BOARD MEETING

AGENDA

Friday, June 26, 2020
9:30 a.m. to 5:00 p.m.
(or until the close of business)

LOCATION:

Web Ex Teleconference

Link to Join Event: <https://dca-ca.webex.com/dca-ca/onstage/g.php?MTID=ed67b3daf26873232bc0b936a9bb2c90e>

Action may be taken on any item listed on the full board meeting agenda.

NOTE: Pursuant to the provisions of Governor Gavin Newsom's Executive Order N-25-20, dated March 12, 2020, neither a public location nor teleconference locations are provided.

1. **Call to Order, Roll Call, and Establishment of Quorum (Dr. Amy Matecki, President)**
2. **President's Remarks (Dr. Matecki, Board President)**
 - Welcoming message and meeting information
3. **Public Comment on Items Not on the Agenda (Dr. Matecki)**

The Board may not discuss or take action on any matter raised during the Public Comment section that is not included on this agenda, except whether to decide to place the matter on the agenda of a future meeting. (Gov. Code, §§ 11125, 11125.7(a).)
4. **Review and Possible Approval of the August 15-16, 2019 Board Meeting Minutes (Dr. Matecki)**
5. **Executive Officer's Report (Ben Bodea, Executive Officer)**
 - (A) COVID-19 Update
 - (B) Budget Update - Fund Condition
 - (C) Staff Update Regarding Vacancies
 - (D) Board Member Services Update
 - (E) Business Modernization Update
 - (F) AB 434 Web Accessibility Requirements of State Agencies
6. **Enforcement Report (Bodea)**
 - (A) Q1, FY 19-20 Enforcement Report
 - (B) Q2, FY 19-20 Enforcement Report

(C) Q3, FY 1920 Enforcement Report

7. 2019 Acupuncture Board Annual Report (Bodea)

- (A) FY 18/19 Staffing Updates
- (B) FY 18/19 Accomplishments
- (C) FY 18/19 Licensing Statistics
- (D) FY 18/19 Enforcement Statistics

8. Licensing Report (Jay Herdt, Licensing Manager)

- (A) Q1, FY 19-20 Licensing Report
- (B) Q2, FY 19-20 Licensing Report
- (C) Q3, FY 19-20 Licensing Report

9. Legislative Report (Alex Dodge, Policy Analyst)

- (A) Report of 2020 Legislative Calendar
- (B) Report of 2020 Legislative Bills of Interest to the Board
 - i) AB 613 (Low) Professions and vocations: regulatory fees
 - ii) AB 778 (Low) Acupuncture: Continuing education
 - iii) AB 888 (Low) Opioid prescriptions: Information: Nonpharmacological treatment for pain
 - iv) AB 1263 (Low) Contracts: Consumer services: Consumer complaints
 - v) AB 1616 (Low) Department of Consumer Affairs: Boards: Expunged Convictions
 - vi) AB 1665 (Bonta) Athletic trainers
 - vii) AB 1850 (Gonzalez) Worker classification: employees and independent contractors
 - viii) AB 1909 (Gonzalez) Healing arts licensees: Virginity examinations or tests
 - ix) AB 2028 (Aguiar-Curry) State agencies: Meetings
 - x) AB 2113 (Low) Refugees, asylees, and immigrants: Professional licensing
 - xi) AB 2185 (Patterson) Professions and vocations: Applicants licensed in other states: reciprocity
 - xii) AB 2214 (Carrillo) Administrative Procedure Act: notice of proposed action
 - xiii) AB 2411 (Nazarian) Healing arts licensees: Remuneration: Drug or device companies: disclosure
 - xiv) AB 2631 (Cunningham) License fees: Military partners and spouses
 - xv) AB 2704 (Ting) Healing arts: Licensees: Data collection
 - xvi) AB 2748 (Fong) Consumer credit reports: Security freezes: Protected consumers

- xvii) AB 2978 (Ting) Department of Justice: arrest and conviction records: review
- xviii) AB 3045 (Gray) Department of Consumer Affairs: Boards: Veterans: military spouses: Licenses
- xix) AB 3298 (Brough) Frauds of medical credentials: penalty
- xx) SB 878 (Jones) Department of Consumer Affairs Licensing: Applications: wait times
- xxi) SB 937 (Hill) State agencies: Web accessibility
- xxii) SB 1097 (Durazo) Medical services: Credit or loan
- xxiii) SB 1432 (Glazer) Clinical laboratories

10. Regulations Update (Dodge)

(A) Review of the Board's Submitted 2020 Rulemaking Calendar

- i) Substantial Relationship and Rehabilitation Criteria (Title 16 CCR sections 1399.469.4, 1399.469.5, 1399.469.6)
- ii) Disciplinary Guidelines; Uniform Standards for Substance Abusing Licensees; Probation Disclosure (Title 16 CCR section 1399.469)
- iii) Align Curriculum Standards and Approval Related Regulations with Statute (Title 16 CCR sections 1399.415, 1399.416, 1399.434, 1399.435, 1399.437, 1399.438, 1399.439)
- iv) Application Process, Criteria, and Procedures for Approval of a Credential Evaluation Service (Title 16 CCR sections 1399.411, 1399.413, 1399.414, 1399.415, 1399.416, 1399.416.1, 1399.416.2)
- v) Board Fee Schedule (Title 16 CCR sections 1399.460, 1399.461, 1399.462)
- vi) Application for Retired Status; Retired Status (Title 16 CCR section 1399.419.3)
- vii) Continuing Education Requirements (Title 16 CCR sections 1399.483, 1399.489)

(B) Board Regulations Progress Tracker

11. Strategic Plan Progress Report (Bodea)

12. Discussion and Possible Action Regarding the Repeal of Title 16 Division 13.7 Article 1.5 (Free & Sponsored Health Care Events)

13. Discussion and Possible Action regarding the following Rulemaking Packages (Dodge)
 - i) Adopt Section 1399.469.4 Substantial Relationship Criteria under Title 16, California Code of Regulations
 - ii) Adopt Section 1399.469.5 Denial of Licensure under Title 16, California Code of Regulations
 - iii) Adopt Section 1399.469.6 Criteria for Rehabilitation- Suspensions or Revocations under Title 16, California Code of Regulations
14. Consumer and Professional Associations Reports
15. Election of Board President and Vice-President (Bodea)
16. Establishment of the 2020 Meeting Calendar (Bodea)
17. Future Agenda Items (Dr. Matecki)
18. Adjournment (Dr. Matecki)

Informational Notes:

Discussion and action may be taken on any item on the full board meeting agenda. The agenda, as well as any available Board meeting minutes and materials, can be found on the California Acupuncture Board website: www.acupuncture.ca.gov. The time and order of agenda items are approximate and subject to change at the discretion of the Board President; agenda items scheduled for a particular day may be moved or continued to an earlier or later noticed meeting day to facilitate the effective transaction of business.

In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public. The Board plans to webcast this meeting at: <https://thedcapage.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. Adjournment, if it is the only item that occurs after a closed session, may not be webcast.

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board or prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issues before the Board, but the Board President may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on these items at the time for the same meeting. (Gov. Code, §§ 11125, 11125.7(a).)

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 are a person with a disability requiring disability-related modifications or accommodations to participate in the meeting, including auxiliary aids or services, please contact Alex Dodge, Policy Analyst – (916) 515-5200; Fax: (916) 928-2204. Requests should be made as soon as possible, but at least five (5) working days prior to the scheduled meeting. You may also dial a voice TTY/TDD Communications Assistant at (800) 322-1700 or 7-1-1.

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Shu Dong Li, Ph.D.

BOARD MEETING DRAFT Meeting Minutes August 15 & 16, 2019

LOCATION:

Sun Room
Five Branches University
1885 Lundy Ave, Suite 108
San Jose, CA 95131

Board Members Present

Dr. Amy Matecki, M.D., L.Ac, President, Licensed Member
Kitman Chan, C.P.A., Vice President, Public Member
Bradley Cimino, M.A., L.Ac., Licensed Member
Hyun “Francisco” Kim, M.S., L.Ac., Licensed Member
Shu Dong Li, Ph.D., Public Member
Ruben Osorio, Public Member

Staff Present

Benjamin Bodea, Executive Officer
Salwa Bojack, Legal Counsel
Jay Herdt, Licensing Manager
Matt Nishimine, Central Services Manager
Tammy Stadley, Exam Coordinator
Cricket Borges, Enforcement Coordinator

Guest List on File

Full Board Meeting – Thursday, August 15, 2019

1. Call to Order, Roll Call, and Establishment of Quorum (Dr. Amy Matecki)

Board President, Dr. Amy Matecki (President Matecki), called the meeting to order at 9:34 a.m.

Exam Coordinator, Tammy Stadley (Stadley), standing in for the Policy Coordinator, called the roll.



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Members Present:

5 Present – Matecki, Chan, Cimino, Kim, and Li.

2 Absent – Harabedian and Osorio

5-0-2 Quorum Established

2. President’s Remarks (Dr. Amy Matecki)

President Matecki thanked Five Branches University for hosting the meeting and staff for helping to coordinate and prepare for the August meeting.

3. Public Comment on Items Not on the Agenda (Dr. Amy Matecki)

No comments were made.

President Matecki called to recess until 10:00 am PST

**4. Petition for Early Termination of Probation – 10:00am
Gregory Willis (AC 17472) PETP-1A-2015-93**

Stadley called roll.

Members Present:

6 Present – Matecki, Chan, Cimino, Kim, Osorio and Li.

1 Absent- Harabedian

Jill Schlichtmann (Schlichtmann), Administrative Law Judge, Office of Administrative Hearings presided over this hearing and identified Alice Wong (Wong), Deputy Attorney General for the people of the State of California.

The Board heard the petition for Early Termination.

Matecki called for an hour lunch break at 12:05pm PST



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Stadley called roll to reopen the meeting after the lunch break.

Members Present:

6 Present – Matecki, Chan, Cimino, Kim, Osorio and Li.
1 Absent- Harabedian

7. Preview and Possible Approval of the June 13-14, 2019 Board Meeting Minutes (Dr. Amy Matecki)

MOTION:

President Matecki motioned to approve the June 13-14, 2019 minutes.

Member Osorio seconded the motion.

Vote: Matecki - Yes; Chan - Yes; Cimino – Yes; Kim - Yes; Li – Yes; Osorio – Yes.

6-0 motion passes

8. Executive Officer’s Report (Ben Bodea, Executive Officer)

(A) Staff Update Regarding Vacancies

Executive Officer Ben Bodea (EO Bodea) announced that Tammy Graver, Board Liaison, has retired. EO Bodea also noted that Van Martini, CE Coordinator, has taken a promotion at another state agency. The Board will be seeking a replacement for both positions. Additionally, the previously vacant Education Coordinator position will be filled by Monday (8/19/19).

(B) Budget Update – Fund Condition

Staff Services Manager, Matt Nishimine, presented the Board’s fund condition. For complete presentation, please refer to the presentation materials under agenda item 8b in the Board’s August 15-16, 2019 meeting materials. Nishimine relayed the Department of Finance’s (DOF) concerns with the Board’s structural imbalances when deliberating the possibility of continued funding for updates to our IT systems. If the fee audit is not implemented in January 2021, DOF will not approve continued funding for the IT improvements as the Board’s structural imbalances will be exacerbated, driving the Board towards insolvency.



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(C) Board Member Services Update

Nishimine noted that he is the point of contact for any board member needs that may arise. Nishimine also explained that Jenna Dennis and Erica Bautista will also be assisting with this responsibility.

Nishimine then presented plans to develop a voluntary training program for Board members. The program will provide Board members with the skills, knowledge, and insight needed to lead the regulation of the Acupuncture profession forward as effectively as possible during their tenure.

9. Enforcement Report (Cricket Borges, Enforcement Coordinator)

(A) Q3, FY 18-19 Enforcement Report (Amended)

Enforcement Coordinator Cricket Borges (Borges) presented the amended enforcement data and statistics from quarter three (Q3) of fiscal year 18-19. At the former meeting, Member Harabedian noted discrepancies in initiated investigations by the Board. The error has been corrected and the report was presented with correct values.

(B) Q4, FY 18-19 Enforcement Report

Enforcement Coordinator Borges presented the enforcement data and statistics from quarter four (Q4) of fiscal year 18-19.

Vice President Chan (VP Chan) made note of the category defined as “office conduct” under complaints for unprofessional conduct and inquired as to what kind of activities would fall under that category. VP Chan also asked about wide discrepancies between reports for unprofessional conduct in Q3 and Q4 (36 and 10, respectively.) VP Chan suggested that these cases can be reduced through continuing education or an emphasis on this topic at the schools educating future acupuncturist licensees.

EO Bodea commented that staff is currently in the process of developing continuing education requirements pertaining to ethics and professional conduct by licensees.

10. Review of the Capital Accounting Partners Fee Audit Report (Dan Edds, Consultant)

Dan Edds (Edds), Capitol Accounting Partners, opened his presentation on the fee audit report by commending EO Bodea, CSM Nishimine, and Board staff in their cooperation and contributions to the successful fee audit.



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Edds explained basic assumptions taken to complete the study, goals of the study, and the overall process for determining costs of each business process and how these costs should be distributed across various fees to licensees.

Edds explained the method by which it was determined that the fee audit utilized quality data to produce quality results. Edds and Nishimine explained that the Board is and has been providing services at no cost to the requestor; services that the Board has the authority to charge for. The projected revenue from fees at current rates versus actual revenue received only differed by 0.9%, demonstrating the high quality of data provided by the Board and assuring the method employed to project and assign costs would be accurate.

Edds explained that through this analysis, combined with the analysis of the fund condition provided, the Board must raise revenue or cut costs to remain solvent moving forward.

Edds singled out enforcement costs, noting that every fee audit performed for similarly situated Boards must devote significant efforts towards assigning these costs, which the Board has limited control over. Attorney General costs are rising 33%, posing high cost pressures on the enforcement expenditures of the Board. Edds explained several methods used to allocated enforcement costs:

- Assign to individual licensees as an overhead function, the higher the processing cost of a license, the more cost allocated;
- Assigning cost based on what or who triggers the enforcement activity; and
- Assigned on a flat cost per license.

Staff recommended, and Board members agreed, to assign costs associated with enforcement in two ways. External costs assigned to the Board, such as by the Attorney Generals Office, investigations pro rata, etc. are assigned to all fees, while the direct costs associated with Board enforcement staff are allocated 100% to biennial renewal fees.

Edds noted that the Board is not in a financially sustainable position. Currently, the proportion of our enforcement costs relative to our total spending (30-35%) is half of that seen in other similarly situated Boards (65-70%.) The Board does not have site inspection authority, but if it does seek and gain the authority, currently masked enforcement costs would rise. The Board has long term goals of adding enforcement staff, which would raise enforcement related costs substantially, due in part to the direct staff benefits paid to enforcement staff and in part due to more violations resulting from increased capacity and authority for inspections.



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Edds recommended that the Board set fees to recover full costs and maintain additional reserves that would sustain the Board for three to six (3-6) months of expenditures in times that revenues do not meet expenditures. Further, Edds recommended raising the statutory cap to cover the regular fee increases described here and to give the Board the ability to raise fees as needed over the next few years. Additionally, Edds recommended the Board establish guidelines pertaining to pricing and how the Board would prefer certain costs are allocated to or subsidized by certain fee types. Last, Edds recommended that the Board conduct a fee audit every three to five years to reassess revenue, costs of business processes, and how the regulatory landscape has changed to the extent that it would necessitate additional changes to the Board's fee schedule.

VP Chan inquired about cost recovery efforts surrounding enforcement actions. It was explained that these cost recovery efforts are often unsuccessful and as a result is an unreliable source of funding. Our budget can't be constructed assuming any consistently significant cost recovery from licensees subject to enforcement action. EO Bodea noted that an Administrative Law Judge could waive the fees associated with enforcement action against the licensee. VP Chan asked if we had data on how successful the Board is in cost recovery efforts overall. Nishimine explained that these values have fluctuated between \$130,000 and \$60,000, and the Board must set fees assuming we will recover no costs due to their inherent unreliability.

Edds then noted how enforcement costs are distributed in other Boards, many of which have multiple licensee types. This presents multiple new methods to assign enforcement costs across different licensees. Edds reiterated the importance of regular fee audits, as the regulatory landscape and cost pressures can change substantially from one year to the next.

13. Education Report (Jay Herdt, Licensing Manager)

To accommodate scheduling concerns of attendees, this agenda item was moved up.

Herdt explained to the Board the current state of the curriculum review and approval process for education programs. All programs under review are currently out of state. Herdt explained how many programs are currently under review by the Board and shared relevant statistics as to how often/quickly applications are reviewed.

Herdt shared the current efforts towards auditing continuing education compliance of those who have a renewal date in August. Herdt then shared statistics on the amount of continuing education providers that are currently approved, as well as statistics surrounding the prevalence of tutorial program approvals and participants.



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Herdts then shared statistics from computer-based CALE over 10/1/18- 6/30/19. 329 passed and 39 failed, presenting an 89% pass rate. School specific statistics are available in the presentation materials for use by the programs, if they wish.

VP Chan asked about the percentage of approved CE courses over a certain period, which was not available. Herdt commented that staff do not have specific numbers on approval rates, although the approval rate for continuing education course applications are generally high. VP Chan noted there was around 50 approved courses per licensee. EO Bodea explained that courses can vary significantly with respects to the numbers in attendance; some courses are webcast and reach over a hundred participants, while others may only have a handful of attendees.

Public Comment

A commenter said it was necessary to raise standards for the approval of continuing education providers and expressed concern that the education providers only care about “price,” instead of the quality of education provided to Acupuncturists.

Dr. Matecki then opened public comment for item #7 and item #8, to which there was none.

Dr. Matecki then opened public comment on item #9.

A public comment was provided noting to the Board how valuable the enforcement report is to the students for a teaching tool. It shows students what the most common complaints are concerning and how to avoid practices that could result in a complaint.

A public commenter suggested that there should be increased education surrounding laws and regulations and that the Board provide licensees with these books which contain most statute and regulations affecting acupuncturists.

10. Review of the Capital Accounting Partners Fee Audit Report Cont. (Nishimine, CSM)

Nishimine started by thanking Dan Edds and Capitol Accounting Partners for their help in preparing the fee audit. Under this proposal, the Board will implement a fee “floor”, as captured in the handout entitled V1, and a “cap”, as captured in the handout entitled V2. This will allow the Board to account for current costs and enable the Board to raise fees as necessary to account for future cost pressures.

Nishimine noted the dedication of Staff in their duties of protecting consumers and serving licensees. Nishimine also noted that the Board and staff are aware of the



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impacts fee increases have on businesses.

The Acupuncture Board loaned the State \$5,000,000. \$4,000,000 was repaid in FY 16-17, and the remaining \$1,000,000 will be repaid before the close of FY 19-20. Under current law, the Board cannot raise fees until all loans to the State have been repaid. As the loan will be repaid this fiscal year, this will be the Board's first opportunity to raise fees as proposed.

Nishimine then proceeded to explain the chart which displays annual volume of each work process, total revenue for each process, and what projected revenue would look like under the proposed fees while holding process volume relatively constant

Nishimine explained that each column displayed the Board's losses for every process and its associated fee. The fee audit found that the Board was undercharging for every fee category it has. Nishimine noted that the Board loses \$22,000 for every Acupuncture Tutorial Program application processed. The renewal fee is different, however, from other fees, as it is used as a "catch all." Other fees should be set at or near the actual cost to the Board, while other costs are assigned to the renewal license fee.

The fee audit showed "V1," or the floor fee amount, as the minimum required for the Board's revenue to match costs.

As for Continuing education courses, the Board is proposing to implement a "tiered" pricing system based on the hours of each course. The other new fees are implemented as required by AB 779 (Low, 2019) and were adjusted accordingly as part of the fee audit.

Nishimine then showed the Fund Condition statement in three different scenarios; without fee increases, with the floor fee increases (described in "V1"), and, with the cap fee increases (described in "V2"). Nishimine also noted how the proposed changes would account for costs associated with the Board's business modernization process, as well as build the Board's contingent fund towards DOF recommended levels of three to six (3-6) months reserve balance.

VP Chan asked how increased costs are accounted for in different models. Nishimine explained that V1 is the minimum we need for projected costs next year, while the fee level cap described in V2 accounts for rising costs associated with staffing, enforcement, and prorata costs. Board Member Bradley Cimino (Cimino) asked why there are not larger differences in reserve funds between V1 and V2 models. Nishimine noted that V2 accounts for some of the more predictable costs associated with long-term goals of the Board, including the hiring of additional enforcement staff. If the Board does not realize increased costs or chooses not to hire more staff, then the Board will



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not raise fees towards V2 accordingly. Cimino asked how cost recovery plays into our budget. EO Bodea noted that cost recovery was touched on earlier in the meeting and that staff does track how much money we recover as part of enforcement actions. Nishimine, reiterated that the Board cannot rely on cost recovery due to its inconsistency and as such, we should raise fees to account for such costs.

Dr. Matecki asked about enforcement costs, which is currently at 35% of total Board costs, while other Boards are at 70%, and if V1/V2 would cover increased enforcement related costs. Nishimine noted that costs can be absorbed in the short term, but if there are increased inspection actions due to new authority given by the legislature, the Board's enforcement costs as a proportion of total costs will rise closer to that of other boards. However, Nishimine noted that every board is different, so doing comparisons between programs, like Medical Board, may not yield results fit for extrapolation. Nishimine noted that the proposed fee structure is good for this Board's structure. EO Bodea has noted that the ceiling, and this floor/cap model, is good for the Board as there are costs absorbed by the Board that are hard to account for. For example, the Board plans to absorb the credit transaction fees when licensees can pay renewal fees online.

No Public Comment Received

11. Discussion and Possible Action to Seek Statutory Amendments to Business and Professions Code §§ 4970 and 4971 for Increases to Certification and Tutorial Program Fees (Nishimine, CSM)

Nishimine again explained the Board's current fiscal situation, noting the Board must generate sufficient revenue to account for rising costs. The Boards revenue are short of expenditures by \$2.1 million and in 2022 the Board will become insolvent.

Therefore, it is imperative we adjust fees to remain solvent. The fee audit was performed to gain insight as to what costs each process poses to the Board. Nishimine noted that the reasoning given under item #10 applies to this item as well. The statutory amendments incorporate both the V1 "floor" and V2 "cap" into statute.

VP Chan Motioned to Approve option 1, approving the proposed amendments to BPC Sections 4970 and 4971 and directing staff to seek an author to sponsor a bill to implement the proposed fees through legislation in the 2020/2021 legislative calendar year. Kim seconded.

No Public Comment Received



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Vote: Matecki - Yes; Chan - Yes; Cimino – Yes; Kim - Yes; Li – Yes; Osorio – Yes.

Motion passes 6-0

12. Discussion and Possible Action to initiate a Rulemaking to Increase Board Fees, including Acupuncture Tutorial Fees and Continuing Education Fees (Nishimine, CSM)

Nishimine explained this item's memo is nearly identical to the previously discussed memo, except that this relates to the regulatory language instead of the statutory language. Nishimine noted that the Board may seek an emergency regulation, expediting the process by which regulations can be adopted.

EO Bodea explained there would be three votes for each section amended.

Motions

Motion for Amendments to CCR §1399.460

Member Kim motioned to approve option 1, approving the proposed regulatory text for Title 16, CCR Section 1399.460, directing staff to submit the text to the Director of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorizing the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for hearing.

Member Cimino Seconded

No Public Comment Received

Vote: Matecki - Yes; Chan - Yes; Cimino – Yes; Kim - Yes; Li – Yes; Osorio – Yes.

Motion passes 6-0

Motion for Amendments to CCR §1399.461

Member Osorio motioned to approve option 1, approving the proposed regulatory text for Title 16, CCR Section 1399.461, directing staff to submit the text to the Director of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorizing the Executive Officer to



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take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for hearing.

VP Chan seconded.

No Public Comment Received.

Vote: Matecki - Yes; Chan - Yes; Cimino – Yes; Kim - Yes; Li – Yes; Osorio – Yes.

Motion passes 6-0

Motion for Amendments to CCR §1399.462

VP Chan motioned to approve option 1, approving the proposed regulatory text for Title 16, CCR Section 1399.462, directing staff to submit the text to the Director of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorizing the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for hearing.

Member Kim seconded.

No Public Comment received

Vote: Matecki - Yes; Chan - Yes; Cimino – Yes; Kim - Yes; Li – Yes; Osorio – Yes.

Motion passes 6-0

20. Discussion and Possible Action to Initiate the Following Rulemaking Package on Curriculum Oversight Authority (Herdt, Licensing Manager)

SB 1246 (2014) removed the Board's authority for program oversight and instead made the Board's role pertain to the approval of curriculum offered instead of schools. The Education Committee has reviewed and approved the proposed amendments and are now bringing them to the Board for approval.

The main goal of this is to align Board regulations with statute and to remove duplicative or erroneous language in our regulations. These changes will also improve clarity and organization.



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Motion for amending CCR §1399.415

Member Kim motioned for approval of option 2 and to approve text as amended, changing “tutor” in subdivision (a) with “tutorial supervisor”

Member Cimino Seconded the motion.

No Public Comment Received

Vote: Matecki - Yes; Chan - Yes; Cimino – Yes; Kim - Yes; Li – Yes; Osorio – Yes.

Motion passes 6-0

Discussion on amending CCR §1399.416

Herd explained the memo, in which it is explained that the proposed amendments require transcript evaluation services to send results directly to the Board, instead of to the prospective licensee who in turn sends the materials to the Board.

Motion for amending CCR §1399.416

President Matecki motioned to approve option 1, amending 1399.416.

VP Chan seconded the motion.

No Public Comment received

Vote: Matecki - Yes; Chan - Yes; Cimino – Yes; Kim - Yes; Li – Yes; Osorio – Yes.

Motion passes 6-0

Discussion on Amending CCR §1399.434 and Repealing CCR §1399.435

Herd explained the memo detailing the proposed regulatory changes to the Board. Herdt noted that removing unnecessary language from 1399.435 and combining it all under a newly amended §1399.434. The committee is also proposing to retitle Article 3.5 from “acupuncture Training Programs” to “Approved Educational and Training Programs” to be in line with statute.



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This will result in increased clarity and ease of compliance by the regulated public.

Herdt then went through the list below of each amendment:

- Retitling of CCR §1399.434 from “Criteria for approval of acupuncture and oriental medicine curriculum” to “Criteria for approval of acupuncture educational and training program curriculum” to align with the statutory term from BPC §4927.5.
- All of CCR §1399.435 is proposed to be repealed. However, some subsections will be moved under CCR §1399.434, as specified below.
- The introduction of CCR §1399.435 was not moved under CCR §1399.434 because there are no longer different curriculums contingent on an applicant’s enrollment date. Therefore, this preamble is no longer relevant or necessary.
- Subdivision (a) of CCR §1399.435 was not moved under CCR section 1399.434, which is a requirement that candidates have completion of 60 semester units/90 quarter credits of education at the baccalaureate level. This subdivision is not being retained because it is not a requirement that aligns with the curriculum standards under the Board’s purview. Rather, this is a requirement that the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) ensures is being upheld by the programs when accreditation is granted.
- Subdivision (b) of CCR §1399.435 was not moved under CCR §1399.434 because this requirement is duplicative of BPC 4927.5 (a)(2), which is the provision requiring Bureau for Private Postsecondary Education (BPPE) approval for an approved educational and training program.
- Subdivision (c) of CCR §1399.435 pertains to the development of a self-study evaluation process required for training programs. This subdivision is not being retained and moved over because this is currently a requirement of ACAOM accreditation, which makes it unnecessary and duplicative.
- Subdivisions (d) through (f) of CCR §1399.435 have been moved over to CCR §1399.434 as subdivisions (i) through (k) but no amendments to content are suggested.
- Subdivision (g) of CCR §1399.435 has been moved to CCR §1399.434 as subdivision (l). The words “educational and” have been added to existing language to reflect the statutory term “educational and training.” The word “program” has been removed and replaced with “curriculum” because CCR §1399.434 covers curriculum requirements and not the program as a whole.



- Subdivision (g)(1) of CCR §1399.435 has been moved to CCR §1399.434 as subdivision (l)(1). This language has been amended to add the authority to accept coursework as credit when a course has been challenged by a College Level Examination Program (CLEP) exam as determined by the Board. Staff feels this is necessary to align with other academic institutions, as well as ACAOM, who all accept CLEP challenged courses for transfer students.
- Subdivision (g)(2) of CCR §1399.435 was moved under CCR §1399.434 as subdivision (l)(2). There are no amendments.
- Subdivision (g)(3) has been moved under CCR §1399.434 as subdivision (l)(3). This subdivision is amended to add the statutory term “educational and training curriculum.”
- Subdivision (g)(4) of CCR §1399.435 was moved under CCR §1399.434 as subdivision (l)(4). It has been amended to update the correct Education Code citation for BPPE authority.
- Subdivision (g)(5) of CCR §1399.435 was not moved under CCR §1399.434 because all Traditional Chinese Medicine programs in the US are accredited by ACAOM, therefore, ACAOM already oversees any transfer credit rules.
- Subdivision (g)(6) of CCR §1399.435 has been moved under CCR §1399.434 (l)(5). It has been amended to remove the requirement that record of a student’s transfer credit evaluation and award be filed with the Board upon request. This is unnecessary because transcripts documenting such an evaluation and award of transfer credit is already submitted to the Board by the educational and training program.
- Subdivision (g)(7) of CCR §1399.435 has not been moved under CCR §1399.434 as it is outside the Board’s jurisdiction to oversee transfer credit policies and procedures. ACAOM is the entity that oversees transfer rules.

Motion

Possible Motions for CCR sections 1399.434 and 1399.435

EO Bodea noted that §1399.434 (l)(3) should have “which is an educational or and training curriculum approved by the Board” changed to “which is an approved training or education program.”



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Member Osorio motioned to approve Option 2, which includes the above changes as noted by EO Bodea.

Member Kim Seconded the Motion.

Public Comment:

A comment was received from the public, expressing concern about the titling of Article 3.5 not giving the full scope of the body of “Asian Medicine” as intended by the legislature when they passed the statute outlining requirements for those in the “Asian medicine” profession. The commenter commended Herdt for his efforts on this issue.

EO Bodea spoke to the lack of general agreement on what terms are appropriate for the profession. The commenter noted that the term “oriental” medicine was offensive to some and noted concerns that any changes implemented now could require further change to comply with the original intent of the law.

Legal Counsel Salwa Bojack (Bojack) noted that the change would be good for clarity, as it clearly demonstrates what the criteria are for an approved training or educational program as described in the Business and Professions Code.

Another commenter stated that in the mind of many people, acupuncture and traditional medicine are separate. The commenter noted that California played a leadership role among other states. Many other states are moving towards “oriental, Chinese, or traditional medicine” while the national accreditation programs are moving in a separate direction, dictating that schools must provide specific degrees. The commenter encouraged the Board to continue to play its leadership role in defining the purview of oriental medicine and what role acupuncture plays.

A commenter asked if the Board working with the legislature on the terminology from statute is within their purview.

A different commenter noted that schools don’t know how this will work out practically. They also noted that they can’t split the medicine, and, splitting up the professions, which are inherently intertwined, would degrade the integrity of the medicine and cause confusion about the medicine.

Member Kim expressed the importance for the Board, the profession, and the public to work together in discussing a solution that works for everyone.



Bojack suggested a straw poll of the Board be taken on the matter of changing the title.

A straw poll was conducted for removing acupuncture from the title.

The Board agreed to remove.

Vote: Matecki - Yes; Chan - Yes; Cimino – Yes; Kim - Yes; Li – Yes; Osorio – Yes.

The motion was withdrawn with a 6-0 vote.

Motion was resubmitted with the removal of Acupuncture from the title.

President Matecki approved the motion.

Member Li seconded the motion.

No Public Comment Received.

Vote: Matecki - Yes; Chan - Yes; Cimino – Yes; Kim - Yes; Li – Yes; Osorio – Yes.

Motion passes 6-0

Motions for Retitling Article 3.5

VP Chan Motioned to approve Option 1, retitling Title 16, Article 3.5.

Member Osorio Seconded.

No Public Comment received.

Vote: Matecki - Yes; Chan - Yes; Cimino – Yes; Kim - Yes; Li – Yes; Osorio – Yes.

Motion passes 6-0

Discussion to Amend CCR §1399.437

Herdt went through the proposed changes listed in the memo. Herdt explained the changes to §1399.437 that governs the application process and that it will be the new location for the language removed from §1399.435.



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Bojack asked about §1399.437 (f), which describes the form that will be used for application. Bojack suggested “requested for” be changed to “requesting” for purposes of clarity. EO Bodea agreed it sounds clearer.

Motion:

Member Kim motioned to accept option two, incorporating the changes requested by staff in addition to those outlined above.

Member Osorio seconded the motion.

No Public Comment Received.

Vote: Matecki - Yes; Chan - Yes; Cimino – Yes; Kim - Yes; Li – Yes; Osorio – Yes.

Motion passes 6-0

Discussion to Amend CCR §1399.438

Committee and staff requested to add the word curriculum to §1399.438 and replace acupuncture with “approved educational and” for clarity purposes.

Motion:

Member Cimino motioned to approve option 1.

VP Chan seconded the motion.

No Public Comment received.

Vote: Matecki - Yes; Chan - Yes; Cimino – Yes; Kim - Yes; Li – Yes; Osorio – Yes.

Motion passes 6-0

Discussion to Amend CCR §1399.439

This proposal addresses efforts by the Education and Research Committee to clarify the Board’s jurisdiction over curriculum and not the schools themselves. This section relates to requirements for school annual reports, which is no longer in effect. These changes are necessary to reflect the Board’s removed authority over training programs and address only its role in approving curriculum.



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Below are the recommended changes to CCR §1399.439:

- The title of CCR §1399.439 has been changed from “School Monitoring; Records; Reporting” to “Educational and Training Program Curriculum Monitoring; Records; Reporting” to align the terminology with the statutory term “educational and training program” pursuant to BPC §4927.5.
- Terminology has been aligned with the statute changing ‘acupuncture school’ to ‘educational and training program’ under subdivision (a).
- The Committee is also recommending moving up the reporting period from 60 days after the close of a school’s fiscal year to 90 days before, or earlier, the close of the school’s academic year. Moving the reporting period up allows the Board more time to review any curriculum changes prior to the start of the school’s new academic year. Academic year was specified instead of fiscal year because changes to curriculum are planned and aligned as part the academic year versus a school’s fiscal year end.
- Reference to the application for board approval of curriculum as defined in CCR § 1399.437 was added to specify that approved educational and training programs communicate annual curriculum changes through the same form used to apply for curriculum approval.
- Course catalog was deleted because the application for board approval of curriculum is only deemed complete when a copy of a current course catalog is included as set forth under CCR §1399.437 (a)(5). Therefore, it is unnecessary and duplicative to include the submission of a course catalog again in CCR §1399.439.
- Currently the Board requires approved educational and training programs to communicate any changes in faculty, however, the Board only has criteria related to clinic supervisors. Therefore, staff has removed faculty and replaced it with clinic supervisors to allow the Board to only receive information about changes to clinic supervisors.
- The Board does not have authority over a school’s administration, facility, or financial condition, so staff has amended CCR §1399.439 to remove all those references. The Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM), and the Bureau for Private Postsecondary Education (BPPE) are the entities that oversee these areas.
- A minor change to subdivision (b) changing the word ‘school’ to ‘curriculum,’ since the Board only has authority to review and evaluate curriculum, not the school itself.



- Subdivision (c) has been revised for clarity, so it is understood that all student records shall be maintained in English, at minimum. This is a non-substantive change.
- Subdivision (d) has been removed because the process for approved educational and training programs' communication of changes to curriculum have already been addressed under subdivision (a).

EO Bodea and Bojack noted clarity concerns in §1399.439 (a) and suggested edits accordingly after ascertaining what the stated policy goal was.

EO Bodea and Bojack suggested the Board consider the following language, “Every approved educational and training program shall be required to submit to the board at least 90 days before the close of the school’s academic year, the newly proposed curriculum for the following academic year on the board application for approved curriculum as defined in CCR §1399.437...”

EO Bodea then asked members of the public who were associated with schools to address the language.

A public commenter suggested it be changed to “at least 90 days before the implementation of the new curriculum”

The Board agreed to the suggested language.

Motions:

Option 2, as amended:

(a) “Every approved educational and training program shall be required to submit to the Board at least 90 days before implementation of the newly proposed curriculum on the application for board approval of curriculum as defined in §1399.437. The application shall also include a letter...”

Possible Motions for CCR 1399.439

Member Kim motioned to use Option 2 and to approve the suggested changes.

Member Osorio seconded the motion

No Public Comment received

Vote: Matecki - Yes; Chan - Yes; Cimino – Yes; Kim - Yes; Li – Yes; Osorio – Yes.



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Motion passes 6-0

14. Recess Until Friday, August 16, 2019

President Matecki motioned for recess at 5:31pm.

DAY 2 AGENDA – 9:00 a.m. PST, Friday, August 16, 2019

15. Call to Order, Roll Call, and Establishment of Quorum (Dr. Amy Matecki, President)

President Matecki called the meeting to order at 9:34 a.m.
Exam Coordinator, Tammy Stadley (Stadley) called the roll.

Members Present:

4 Present – Matecki, Chan, Cimino, Kim

3 Absent – Harabedian, Osorio, and Li

4-3 Quorum Established

16. President's Remarks (Dr. Matecki)

President Matecki thanked all present for their contributions to a successful Board meeting.

17. Public Comment on Items Not on the Agenda (Dr. Matecki)

No public comment was received. Dr. Matecki noted that item 20 was moved to yesterday's agenda and wanted to provide quick summaries for members of the public that were not present to provide comment on the previous day.

Licensing Manager Jay Herdt (Herdt) summarized the changes adopted by the Board the prior day.

EO Bodea brought up 1399. 416, concerning the submission of credential evaluation, suggesting that "with the application for examination" be struck for purposes of clarity.

Motion to approve the proposed regulatory text with the further amendment to strike the



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language “with his or her application for examination” from §1399.416.

Pres. Matecki motioned to approve.

Cimino Seconded.

No Public Comment received.

Vote: Matecki- yes, Chan- yes, Kim- yes, Cimino-yes

Motion passes 4-0

18. Legislative Update (Ben Bodea, Executive Officer)

EO Bodea presented the bills moving through the legislature that are of interest to the Board.

The Board took an opposed position and AB 544 has been moved to the suspense file in the appropriations committee.

AB 633 would allow the Board’s within the Department of Consumer Affairs to raise fees based on rises in the Consumer Price Index. The Board supported this bill and EO

AB 778 required the Board to establish procedures for the approval of continuing education providers. The Board took a support position on the Bill and a hearing will be held in the Legislature next week, August 19th.

AB 779 adds the requirement for wall licenses to acupuncture licensees. EO Bodea explained the provisions of the bill and noted that the Board supports this bill and it is likely to pass.

AB 888 extends requirements that require prescribers discuss the risks of opioids and the availability of other non-pharmalogical treatments, including acupuncture, prior to the first subscription of opioids. The Board voted to support this Bill.

AB 1076 requires the Department of Justice to analyze records weekly to identify individuals eligible for release, to subsequently grant them relief, and to notify the superior court with jurisdiction of such relief. The bill was amended on August 12th, 2019 and was rereferred to the Appropriations Committee.



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Counsel Bojack noted how this bill relates to AB 2138 and the Boards ability to take action against licensees. Bojack noted that arrest information on wrap sheets will be reviewed weekly to find those that were not convicted, relieving them of penalties associated with arrests for misdemeanors or felonies. With misdemeanors, the information can be wiped from the record if no criminal proceedings began and a calendar year had passed since the date of the arrest. For felonies, three calendar years must pass since the date of the arrest.

As for convictions, the DOJ must review those eligible for relief from conviction. The bill could be interpreted differently with regards to how this relief is denoted, either completely cleansing it from the record, or noting that relief was granted but keeping the contents currently in the record.

Counsel noted that AB 2138 narrows the scope of convictions considered in granting a license to the prior seven years, except in specified serious cases. If relief is granted pursuant to the changes proposed by AB 1076, while a licensee should be denied under AB 2138, they would not be due to the changes to the record pursuant to AB 1076. As a result, this bill requires more work and analysis. President Matecki noted the bill had been amended. EO Bodea explained that we could meet in November to discuss the bill and its amendments, if it passes.

President Matecki asked if there was public comment in relation to AB 1076.

A member of the public requested that the Board express concerns about those with criminal histories subverting the limited requirements surrounding license denials and revocations set forth by AB 2138; the implications on public safety. The commenter asked if it would be out of scope for the Board to revisit its neutral position on this to potentially oppose the bill. EO Bodea noted the list of support and opposition as listed in committee hearings on the bill. No boards representing healing arts professionals weighed in on the bill at the committee level. The commenter requested that the Board add its voice in opposition.

SB 53, places requirements on advisory committees that are part of larger committees. The Board opposed this bill, as it realizes substantial benefits in preparing materials for review for the public and the Board as a whole. The efficiencies and resulting benefit to public protection significantly outweigh the perceived lack in transparency resulting from current requirements placed on sub-committees or similar entities. It is unlikely to move forward this session.

SB 425 requires health facilities to report allegation of sexual abuse sexual misconduct



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to the appropriate regulatory board if the accuser or representative submits a written allegation. The Board must investigate the allegation and the report, or any documents related to the allegation, would not be subject to disclosure. Willful failure of a health care facility to report would result in substantial civil fines not exceeding \$100,000. This was supported by the Board as it provides for public safety and consumer protection. It has been referred to committee with a hearing scheduled for the 21st of August 2019.

SB 601 would allow licensees to submit a request for waiver of fees as a result of natural disasters and associated economic hardship. It is scheduled for a hearing in the appropriations committee on August 21st, 2019. The Board did not take a position on this.

Public Comment:

A commenter noted that AB 888 is a two-year bill and seemed to be a “slam dunk” until the California Medical Association expressed opposition.

19. Regulations Update (Ben Bodea, Executive Officer)

(A) AB 2138 (2018 Chiu and Low)

Legal counsel has reviewed this, and it is now with the Department of Consumer Affairs for review.

(B) SB 1441 (2008 Ridley-Thomas) and Update of Acupuncture Board Disciplinary Guidelines

Board staff is working on the initial rulemaking package.

(C) SB 1448 (2018 Hill)

This will be combined with the rulemaking package in which SB 1441 is incorporated.

(D) SB 1246 (2014 Lieu)

Initial rulemaking package is currently in production.

(E) AB 2190 (2016 Salas)

Jay, Tammy, and Licensing Unit staff are currently working on language for this proposed rulemaking.



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EO Bodea then went through the Board regulation tracking document which illustrates the status of all regulatory packages.

President Matecki called to recess until 10:30am

21. Discussion and Possible Action to Initiate a Rulemaking to Adopt Title 16, CCR §1399.419.3 Application for Retired Status; Retired Status; Restoration

Herdt explained that licensees that are not suspended, revoked, or otherwise restricted could apply for a retired licensee status if this proposal is adopted, pursuant to BPC §464. Licensees would be required to submit an application and pay a fee of \$75 to handle costs of processing. Herdt outlined the process by which a retired licensee can re-instate their license to active status. Staff recommends that a retired licensee wishing to go back into active status should be required to retake the CALE, among other requirements, as listed.

VP Chan suggested that we state explicitly that the check should be made out to the California Acupuncture Board. Stadley noted that it should be made clear, on the form to go into retired status, that if the licensee should wish to reinstate their license, they will have to take and pass the CALE.

EO Bodea and Bojack added a requirement to comply with §1399.419.3 (b)(1-3) to §1399.419.3 (c) (11).

Motion:

Member Cimino motioned to approve the text including the above amendments.

Member Kim Seconds the Motion

Public Comment:

A commenter described that it is imperative we explain to students the tradeoffs between going inactive versus retiring, noting the challenge it can be to re-take and pass the CALE again.

Bojack brought up subsection (c) (10) as that could be construed to mean when they stopped practicing or to mean when they submitted the application for retired status. (c)(10) was struck, with (c)(11) being renumbered to (c)(10) and (c)(12) to (c)(11)



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Public Comment:

Commenter brought up if someone had a license in another state, if they would be required to take the CALE as well, to which EO Bodea clarified they would be required to.

Kim moves to withdraw the motion.

Chan seconds.

Public Comment:

A commenter shared appreciation that the Board was following “Robert’s Rules” and parliamentary procedure.

Vote: Matecki- yes, Chan- yes, Kim- yes, Cimino-yes

Motion passes 4-0

New motion to adopt proposed changes and the changes outlined above for (c)(10-12)

Member Kim motions to approve the language.

Member Cimino Seconds

No Public Comment Received

Vote: Matecki- yes, Chan- yes, Kim- yes, Cimino-yes

Motion passes 4-0

22. Updates from Acupuncture Professional Associations

CaIATMA (California Acupuncture and Traditional Chinese Medicine Association)

Neil Miller, on behalf of CaIATMA, extended CaIATMA’s appreciation to the Board for addressing dry needling and other issues surrounding scope of practice. Miller asked to place an item on the next agenda to address any concerns in statute or regs as issues come up. Miller also thanked the Board for their effort to reduce backlogs of enforcement cases and expressed relief that the number of sexual impropriety cases



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have gone down. He noted that if the Board can work with associations and schools to improve professional standards and education, perhaps enforcement costs of the Board can stay relatively low or even be reduced.

The Center for Medicare and Medicaid Services is doing a research study into the efficacy of acupuncture for lower back pain. CalATMA sent a letter to CMS expressing concerns that California practitioners will not be able to participate due to the study only accepting those with NCAOM accreditation.

Miller asked that the Board weigh in and verify the main points of the letter they sent to CMS. Miller again asked if this could be placed on the agenda for the next Board meeting slated for November 2019.

Miller informed the Board that CalATMA's first annual meeting will be in September, in which they will be discussing issues surrounding continuing education and taking time to honor Assemblyman Low for his efforts in uniting the acupuncture community in California.

Miller then talked about bleeding, requesting that it be on the next Board meeting agenda in November 2019. CalATMA believes that it is within their scope of practice and cites "article 3.5 §1399.434 (b)(i)," presumably referring to Board curriculum standards. Miller stated that a prior EO had given the impression "Bleeding" techniques were not in their scope and CalATMA disagrees and as a result is seeking clarity.

Miller also thanked the Board for their willingness to work with the public and the profession on changes to §1399.434. Miller then brought up the "Consumer Guide to Acupuncture," noting it had not been republished since Governor Arnold Schwarzenegger left office and is a useful resource for consumers wanting to learn more about acupuncture.

Miller then noted that ACAOM has put forth proposals which split up the profession, stating that they plan to accredit acupuncture programs and herbal medicine programs separately. Miller noted that this would have a large impact on the profession and could pose problems because ACAOM has so much power in the profession. Miller stated he would keep the Board informed on the issue and commended the Board's willingness to accept feedback from the profession, schools, and the public.

Christy Vitiello, LAC, on behalf of the California State Oriental Medical Association (CSOMA), shared that Mike Morgan, L.Ac., has taken over as president of CSOMA. CSOMA has met with other state associations in their efforts to fight "dry needling." CSOMA met with the Deputy AG on insurance reimbursement discrepancies between other health professions and acupuncturists. DAG office gave them advice on how to proceed with challenging this practice. Vitiello then thanked the Board for their work.



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Rona Ma, President of CalATMA, added that CalATMA joined the American Society of Acupuncturists (ASA).

23. Future Agenda Items and Meeting Dates (Dr. Matecki, President)

Member Kim would like updates on the CE Ethics requirements.

A commenter shared support of reviewing issues surrounding scope and also the State of Colorado's current disclosure requirements of degree types. California doesn't allow other license types to function in California, but with the increased practice of splitting up the profession and the proliferation of different types of degrees, it is imperative that the State and Board can ensure consumers are informed of what type of degree their prospective practitioner holds.

A commenter reiterated the problems surrounding degree fragmentation, urging for the creation of a task force with stakeholders from the schools, consumers, the Board, and the profession

President Matecki noted that the next meeting would be in San Diego, California.

24. Adjournment (Dr. Matecki, President)

President Matecki thanked Five Branches University for hosting the Board and thanked members of the public for their continued engagement and hard work towards helping the Board and the profession.

Meeting Adjourned at 11:45 AM PST.

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0108 - Acupuncture Analysis of Fund Condition

Prepared 6.2.2020

(Dollars in Thousands)

2020-21 Governor's Budget

	PY 2018-19	Budget Act CY 2019-20	BY 2020-21
BEGINNING BALANCE	\$ 3,992	\$ 4,097	\$ 2,794
Prior Year Adjustment	\$ 507	\$ -	\$ -
Adjusted Beginning Balance	\$ 4,499	\$ 4,097	\$ 2,794
REVENUES AND TRANSFERS			
Revenues:			
4121200 Delinquent Fees	\$ 13	\$ 14	\$ 33
4127400 Renewal Fees	\$ 1,997	\$ 2,020	\$ 2,570
4129200 Other Regulatory Fees	\$ 56	\$ 56	\$ 118
4129400 Other Regulatory Licenses and Permits	\$ 483	\$ 482	\$ 802
4163000 Investment Income - Surplus Money Investments	\$ 75	\$ 21	\$ 9
4171400 Escheat - Unclaimed Checks, Warrants, Bonds, and Coupons	\$ 2	\$ -	\$ -
Totals, Revenues	\$ 2,626	\$ 2,593	\$ 3,532
Transfers and Other Adjustments:			
Loan Repayment from the GF (001) to Acupuncture Fund (0108), per item 1110-011-0108 Budget Act of 2011.	\$ -	\$ 1,000	\$ -
Totals, Revenues and Transfers	\$ 2,626	\$ 3,593	\$ 3,532
Totals, Resources	\$ 7,125	\$ 7,690	\$ 6,326
EXPENDITURES			
1111 - Department of Consumer Affairs Regulatory Boards, Bureaus, Divisions (State Operations)	\$ 2,749	\$ 4,667	\$ 4,881
9892 Supplemental Pension Payments (State Operations)	\$ 20	\$ 43	\$ 43
9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations)	\$ 259	\$ 186	\$ 148
Total Disbursements	\$ 3,028	\$ 4,896	\$ 5,072
FUND BALANCE			
Reserve for economic uncertainties	\$ 4,097	\$ 2,794	\$ 1,254
Months in Reserve	10.0	6.6	3.0

NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.
- B. ASSUMES APPROPRIATION GROWTH OF 3% PER YEAR BEGINNING IN BY+1.
- C. ASSUMES INTEREST RATE AT 1.5%.

**CALIFORNIA ACUPUNCTURE BOARD
BUDGET REPORT
FY 2019-20 EXPENDITURE PROJECTION
Preliminary FISCAL MONTH 10**

Updated 6/2/2020

OBJECT DESCRIPTION	FY 2016-17	FY 2017-18	FY 2018-19	Budget	CURRENT YEAR	FY 2019-20		
	ACTUAL EXPENDITURES (MONTH 13)	ACTUAL EXPENDITURES (Prelim FM 13)	Prelim EXPENDITURES (Prelim FM 13)	Act 2019-20	EXPENDITURES (Prelim FM 10)	PERCENT SPENT	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
PERSONNEL SERVICES								
Civil Service - Perm	487,887	518,774	541,128	831,000	539,195	65%	670,203	160,797
Temp Help	59,236	66,880	42,065	19,000	46,423	244%	61,488	(42,488)
Statutory Exempt (EO)	65,868	87,168	90,660	80,000	78,190	98%	93,828	(13,828)
Board Member Per Diem	9,800	3,600	100	7,000	3,300	47%	5,000	2,000
Overtime	161	0	35	5,000	0	0%	0	5,000
Staff Benefits	286,026	323,932	333,196	573,000	360,104	63%	447,830	125,170
TOTALS, PERSONNEL SVC	908,978	1,000,354	1,007,184	1,515,000	1,027,212	68%	1,278,349	236,651
OPERATING EXPENSE AND EQUIPMENT								
General Expense	55,883	14,070	9,870	79,000	13,270	17%	15,924	63,076
Printing	17,998	9,143	8,053	18,000	146	1%	8,598	9,402
Communication	9,060	2,723	2,714	18,000	1,834	10%	2,201	15,799
Postage	24,925	17,098	11,920	28,000	0	0%	14,509	13,491
Insurance	15	22	4,180	0	30		5,000	(5,000)
Travel In State	34,315	17,188	7,740	34,000	15,409	45%	18,491	15,509
Travel, Out-of-State	2,073	0	0	0	1,002		1,002	(1,002)
Training	469	420	2,790	4,000	2,890	72%	2,890	1,110
Facilities Operations	112,769	123,053	121,412	65,000	111,832	172%	278,361	(213,361)
C & P Services - Interdept.	0	43	22,321	84,000	54		75,000	9,000
Attorney General	214,240	117,691	191,542	386,000	234,004	0%	299,364	86,636
Office of Administrative Hearings	26,504	14,745	32,060	107,000	23,100	22%	28,575	78,425
C & P Services - External	361,166	407,589	444,534	1,066,000	125,490	12%	1,143,000	(77,000)
DCA Pro Rata	1,191,199	842,000	716,000	874,000	728,330	83%	874,000	0
IA w/ OPES	272,208	298,828	225,867	0	132,716		281,320	(281,320)
Departmental Services	361,166	202	1,234	334,000	17,179	5%	20,615	313,385
Consolidated Data Center	890	4,635	9,456	4,000	10,471	262%	12,565	(8,565)
Information Technology	3,973	2,540	4,844	5,000	0	0%	3,786	1,214
Equipment	2,016	20,263	8,363	66,000	32,138	49%	66,000	0
Other Items of Expense	0	0	0	3,000	0		0	3,000
TOTALS, OE&E	2,690,869	1,892,253	1,824,900	3,175,000	1,449,895	46%	3,151,201	23,799
TOTAL EXPENSE	3,599,847	2,892,607	2,832,084	4,690,000	2,477,107	113%	4,429,550	260,450
Sched. Reimb. - Fingerprints	(441)	(294)	(588)	(22,000)	(441)	2%	(22,000)	0
Sched. Reimb. - Other	(1,410)	(470)	(1,175)	(1,000)	0	0%	(1,000)	0
Unsched. Reimb. - Other	(130,413)	(88,022)	(59,727)	0	(41,338)		0	0
NET APPROPRIATION	3,467,583	2,803,821	2,770,594	4,667,000	2,435,328	52%	4,406,550	260,450
SURPLUS/(DEFICIT):								5.6%



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DATE	November 19, 2019
TO	Board Members
FROM	Cricket Borges, Enforcement Coordinator
SUBJECT	Enforcement Report for Quarter (Q1) FY 2019/2020: July 1, 2019 to September 30, 2019

COMPLAINTS/CONVICTIONS & ARRESTS

DCA Category		Received
Unprofessional Conduct	Sub-Total	4
• <i>Corporation Naming violations</i>	1	-
• <i>Misleading Advertising</i>	-	-
• <i>Misrepresentation</i>	-	-
• <i>Office Responsibilities</i>	1	-
• <i>Office Conduct</i>	1	-
• <i>HIPAA</i>	-	-
• <i>Infection Control</i>	1	-
Unlicensed/Unregistered		5
Criminal Charges/Convictions**		15
• <i>Applicants</i>	7	-
• <i>Licensees</i>	8	-
Sexual Misconduct		2
Fraud		7
Non-jurisdictional		4
Incompetence/Negligence		10
Unsafe/Unsanitary Conditions		0
Other		0
Substance Abuse/Drug & Mental/Physical Impairment		0
Discipline by Another State Agency		2
Total		49

The graph above shows the number of complaints received by complaint type for this quarter. 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	4	35	3
Unlicensed/Unregistered	5	35	3
Criminal Charges/Convictions (includes pre-licensure)	15	23	12
Sexual Misconduct	2	15	1
Fraud	7	36	3
Non-jurisdictional	4	4	1
Incompetence/Negligence	10	36	4
Unsafe/Unsanitary Conditions	0	6	2
Other	0	0	1
Substance Abuse/Drug & Mental/Physical Impairment	0	0	0
Discipline by Another State Agency	2	2	2
Total	49	192	32

* Includes both formal investigations by DCA category conducted by DOI and desk investigations conducted by staff.

**These numbers include current and previous quarters and the DCA Category may change after the investigation is initiated to better categorize the complaint.

FY 2019/20 - Q1 Performance Measures

Performance Measures (PM) 1 Volume Convictions/Arrests received

Complaint Intake								
	FY 2018/19	Fiscal Year 2019/20						
	YTD	Q1		Q2		Q3		YTD
		Jul	Sep	Oct	Dec	Jan - Mar	Apr - Jun	
PM1: Total Complaints Received	192	34						34
PM1: Total Convictions/Arrest Received	55	15						15
PM1: Total Received	247	49						49

*Of the Convictions/Arrests, 8 were received on Applicants and 7 were received on Licensees.

PM2 Cycle Time Intake - Average number of complaints intake during the specified time period.

Intake								
Target: 10 Days	FY 2018/19	Fiscal Year 2019/20						
	YTD	Q1		Q2		Q3		YTD
		Jul	Sep	Oct	Dec	Jan - Mar	Apr - Jun	
PM2: Intake/Avg. Days	5.5	8						8.0

PM3 Cycle Time - Average Number of Days to complete the entire enforcement process for complaints investigated and not transmitted to the AG for formal discipline. (Includes intake, investigation, and case outcome or non-AG formal discipline.)

Investigations								
Target: 180 Days	FY 2018/19	Fiscal Year 2019/20						
	YTD	Q1		Q2		Q3		YTD
		Jul	Sep	Oct	Dec	Jan - Mar	Apr - Jun	
PM3: All Investigations Closed	229	29						29
PM3: Average Cycle Time Investigations	136	148						148

The percent reflects how many investigation cases were closed in the respective time frames.

	FY 2018/19	Fiscal Year 2019/20						
	YTD	Q1		Q2		Q3		YTD
		Jul	Sep	Oct	Dec	Jan - Mar	Apr - Jun	
Up to 90 Days	62%	17						53%
91 - 180 Days	12%	3						9%
181 Days - 1 Year (364)	14%	7						22%
1 to 2 Years (365-730)	7%	5						16%
2 to 3 Years (731- 1092)	4%	0						0%
Over 3 Years (1093 +)	1%	0						0%

The average time frame reflects the length of time it took to process the citations that were closed within the respective quarter.

Citations								
	FY 2018/19	Fiscal Year 2019/20						
	YTD	Q1		Q2		Q3		YTD
		Jul	Sep	Oct	Dec	Jan - Mar	Apr - Jun	
Final Citations	43	3						3
Average Days to Close	203.5	416						416.0

PM4 Cycle Time-Discipline Average number of days to close cases transmitted to the AG for formal disciplinary action. This includes formal discipline, and closures without formal discipline. (e.g. withdrawals, dismissals, etc.)

Transmittals to Attorney General (AG)							
Target: 540 Days	FY 2018/19		Fiscal Year 2019/20				
	YTD	Q1		Q2	Q3	Q4	YTD
		Jul	Sep	Oct	Dec	Jan - Mar	
PM4:Volume AG Cases	18	4					4
PM4: Total Cycle Time	427	1081					1081

	FY 2018/19		Fiscal Year 2019/20				
	YTD	Q1		Q2	Q3	Q4	YTD
		Jul	Sep	Oct	Dec	Jan - Mar	
AG Cases Initiated	16	3					3
AG Cases Pending	11	7					7
SOIs Filed	2	0					0
Accusations Filed	9	3					3
Total Closed after Transmission	16	4					4
Revoked	0	0					0
Voluntary Surrender	5	3					3
Probation	5	1					1
License Denied	0	0					0
Public Reprimand	0	0					0
Closed w/out Disciplinary Action	6	0					0

The percent represents how many cases already assigned for discipline were closed in the specified range.

Total Orders Aging/Final Decision							
	FY 2018/19		Fiscal Year 2019/20				
	YTD	Q1		Q2	Q3	Q4	YTD
		Jul	Sep	Oct	Dec	Jan - Mar	
Up to 90 Days	0%	0					0%
91 - 180 Days	0%	0					0%
181 Days - 1 Year (364)	0%	1					25%
1 to 2 Years (365-730)	70%	1					25%
2 to 3 Years (731- 1092)	10%	0					0%
Over 3 Years (1093 +)	20%	2					50%

Other Legal Actions							
	FY 2018/19		Fiscal Year 2019/20				
	YTD	Q1		Q2	Q3	Q4	YTD
		Jul	Sep	Oct	Dec	Jan - Mar	
PC 23 Ordered	2	0					0
Interim Suspension	0	0					0

6B - (B) Q2, FY 19-20 Enforcement Report

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DATE	March 2, 2020
TO	Board Members
FROM	Cricket Borges, Enforcement Coordinator
SUBJECT	Enforcement Report for Quarter (Q2) FY 2019/2020: October 1, 2019 to December 31, 2019

COMPLAINTS/CONVICTIONS & ARRESTS

DCA Category		Received
Unprofessional Conduct	Sub-Total	15
• Notification of Business Address	1	-
• Misleading Advertising	1	-
• Misrepresentation	2	-
• Unsupervised Students	1	-
• Office Conduct	4	-
• Failed Continuing Education Audit	1	-
• Failure to notify Board of Mailing address	1	-
• Probation Violation	1	-
• Medical Malpractice	1	-
• Use of Fictitious Name	1	-
• Failure to respond to Investigation-Outside Entity	1	-
Unlicensed/Unregistered		4
Criminal Charges/Convictions**		10
• Applicants	4	-
• Licensees	6	-
Sexual Misconduct		3
Fraud		20
Non-jurisdictional		1
Incompetence/Negligence		1
Unsafe/Unsanitary Conditions		2
Other		0
Substance Abuse/Drug & Mental/Physical Impairment		0
Discipline by Another State Agency		2
Total		58

The graph above shows the number of complaints received by complaint type for this quarter. 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	15	40	10
Unlicensed/Unregistered	4	33	7
Criminal Charges/Convictions (includes pre-licensure)	10	30	9
Sexual Misconduct	3	14	4
Fraud	20	53	4
Non-jurisdictional	1	3	2
Incompetence/Negligence	1	36	1
Unsafe/Unsanitary Conditions	2	6	2
Other	0	0	0
Substance Abuse/Drug & Mental/Physical Impairment	0	0	0
Discipline by Another State Agency	2	4	0
Total	58	219	39

* Includes both formal investigations by DCA category conducted by DOI and desk investigations conducted by staff.

**These numbers include current and previous quarters and the DCA Category may change after the investigation is initiated to better categorize the complaint.

FY 2019/20 - Q2 Performance Measures

Performance Measures (PM) 1 Volume Convictions/Arrests received

Complaint Intake

	FY 2018/19	Fiscal Year 2019/20				
	YTD	Q1		Q2		YTD
		Jul Sep	Oct Dec	Jan - Mar	Apr - Jun	
PM1: Total Complaints Received	192	34	48			82
PM1: Total Convictions/Arrests Received	55	15	10			25
PM1: Total Received	247	49	58			107

*Of the Convictions/Arrests, 4 were received on Applicants and 6 were received on Licensees.

PM2 Cycle Time Intake - Average number of complaints intake during the specified time period.

Intake

Target: 10 Days	FY 2018/19	Fiscal Year 2019/20				
	YTD	Q1		Q2		YTD
		Jul Sep	Oct Dec	Jan - Mar	Apr - Jun	
PM2: Intake/Avg. Days	5.5	8	4			6.0

PM3 Cycle Time - Average Number of Days to complete the entire enforcement process for complaints investigated and not transmitted to the AG for formal discipline. (Includes intake, investigation, and case outcome or non-AG formal discipline.)

Investigations

Target: 180 Days	FY 2018/19	Fiscal Year 2019/20				
	YTD	Q1		Q2		YTD
		Jul Sep	Oct Dec	Jan - Mar	Apr - Jun	
PM3: All Investigations Closed	229	29	33			62
PM3: Average Cycle Time Investigation	136	148	229			189

The percent reflects how many investigation cases were closed in the respective time frames.

	FY 2018/19	Fiscal Year 2019/20				
	YTD	Q1		Q2		YTD
		Jul Sep	Oct Dec	Jan - Mar	Apr - Jun	
Up to 90 Days	62%	17	16			46%
91 - 180 Days	12%	3	4			10%
181 Days - 1 Year (364)	14%	7	6			18%
1 to 2 Years (365-730)	7%	5	10			21%
2 to 3 Years (731- 1092)	4%	0	2			3%
Over 3 Years (1093 +)	1%	0	1			1%

The average time frame reflects the length of time it took to process the citations that were closed within the respective quarter.

Citations

	FY 2018/19	Fiscal Year 2019/20				
	YTD	Q1		Q2		YTD
		Jul Sep	Oct Dec	Jan - Mar	Apr - Jun	
Final Citations	43	3	9			12
Average Days to Close	203.5	416	332			374.0

PM4 Cycle Time-Discipline Average number of days to close cases transmitted to the AG for formal disciplinary action. This includes formal discipline, and closures without formal discipline. (e.g. withdrawals, dismissals, etc.)

Transmittals to Attorney General (AG)						
Target: 540 Days	FY 2018/19	Fiscal Year 2019/20				
	YTD	Q1		Q2		YTD
		Jul	Sep	Oct	Dec	
PM4:Volume AG Cases	18	4		0		4
PM4: Total Cycle Time	427	1081		0		541

	FY 2018/19	Fiscal Year 2019/20				
	YTD	Q1		Q2		YTD
		Jul	Sep	Oct	Dec	
AG Cases Initiated	16	3		6		9
AG Cases Pending	11	7		12		12
SOIs Filed	2	0		0		0
Accusations Filed	9	3		5		8
Total Closed after Transmission	16	4		0		4
Revoked	0	0		0		0
Voluntary Surrender	5	3		0		3
Probation	5	1		0		1
License Denied	0	0		0		0
Public Reprimand	0	0		0		0
Closed w/out Disciplinary Action	6	0		0		0

The percent represents how many cases already assigned for discipline were closed in the specified range.

Total Orders Aging/Final Decision						
	FY 2018/19	Fiscal Year 2019/20				
	YTD	Q1		Q2		YTD
		Jul	Sep	Oct	Dec	
Up to 90 Days	0%	0		0		0%
91 - 180 Days	0%	0		0		0%
181 Days - 1 Year (364)	0%	1		0		25%
1 to 2 Years (365-730)	70%	1		0		25%
2 to 3 Years (731- 1092)	10%	0		0		0%
Over 3 Years (1093 +)	20%	2		0		50%

Other Legal Actions						
	FY 2018/19	Fiscal Year 2019/20				
	YTD	Q1		Q2		YTD
		Jul	Sep	Oct	Dec	
PC 23 Ordered	2	0		1		1
Interim Suspension	0	0		0		0

6C - (C) Q3, FY 19-20 Enforcement Report

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DATE	May 15, 2020
TO	Board Members
FROM	Cricket Borges, Enforcement Coordinator
SUBJECT	Enforcement Report for Quarter (Q3) FY 2019/2020: January 1, 2020 to March 31, 2020

COMPLAINTS/CONVICTIONS & ARRESTS

DCA Category		Received
Unprofessional Conduct		49
	Sub-Total	-
• <i>Notification of Business Address</i>	2	-
• <i>Misleading Advertising</i>	2	-
• <i>Office Conduct</i>	6	-
• <i>Failed Continuing Education Audit</i>	10	-
• <i>Continuing Education Provider violations</i>	26	-
• <i>Failure to respond to Investigation</i>	1	-
• <i>Aiding and Abetting UL practice</i>	2	-
Unlicensed/Unregistered		8
Criminal Charges/Convictions**		19
	Sub-Total	-
• <i>Applicants</i>	10	-
• <i>Licensees</i>	9	-
Sexual Misconduct		3
Fraud		2
Non-jurisdictional		2
Incompetence/Negligence		3
Unsafe/Unsanitary Conditions		0
Other		0
Substance Abuse/Drug & Mental/Physical Impairment		0
Discipline by Another State Agency		0
Total		86

The graph above shows the number of complaints received by complaint type for this quarter. 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	49	80	12
Unlicensed/Unregistered	8	35	6
Criminal Charges/Convictions (includes pre-licensure)	19	29	22
Sexual Misconduct	3	17	1
Fraud	2	50	4
Non-jurisdictional	2	3	1
Incompetence/Negligence	3	28	10
Unsafe/Unsanitary Conditions	0	6	1
Other	0	0	0
Substance Abuse/Drug & Mental/Physical Impairment	0	0	0
Discipline by Another State Agency	0	3	1
Total	86	251	58

* Includes both formal investigations by DCA category conducted by DOI and desk investigations conducted by staff.

**These numbers include current and previous quarters and the DCA Category may change after the investigation is initiated to better categorize the complaint.

FY 2019/20 - Q3 Performance Measures

Performance Measures (PM) 1 Volume Convictions/Arrests received

Complaint Intake								
	FY 2018/19	Fiscal Year 2019/20						
	YTD	Q1		Q2		Q3	Q4	YTD
		Jul	Sep	Oct	Dec	Jan - Mar	Apr - Jun	
PM1: Total Complaints Received	192	34		48		67		149
PM1: Total Convictions/Arrests Received	55	15		10		19		44
PM1: Total Received	247	49		58		86		193

*Of the Convictions/Arrests, 4 were received on Applicants and 6 were received on Licensees.

PM2 Cycle Time Intake - Average number of complaints intake during the specified time period.

Intake								
Target: 10 Days	FY 2018/19	Fiscal Year 2019/20						
	YTD	Q1		Q2		Q3	Q4	YTD
		Jul	Sep	Oct	Dec	Jan - Mar	Apr - Jun	
PM2: Intake/Avg. Days	5.5	8		4		2		4.7

PM3 Cycle Time - Average Number of Days to complete the entire enforcement process for complaints investigated and not transmitted to the AG for formal discipline. (Includes intake, investigation, and case outcome or non-AG formal discipline.)

Investigations								
Target: 180 Days	FY 2018/19	Fiscal Year 2019/20						
	YTD	Q1		Q2		Q3	Q4	YTD
		Jul	Sep	Oct	Dec	Jan - Mar	Apr - Jun	
PM3: All Investigations Closed	229	29		33		60		122
PM3: Average Cycle Time Investigation	136	148		229		209		195

The percent reflects how many investigation cases were closed in the respective time frames.

	FY 2018/19	Fiscal Year 2019/20						
	YTD	Q1		Q2		Q3	Q4	YTD
		Jul	Sep	Oct	Dec	Jan - Mar	Apr - Jun	
Up to 90 Days	62%	17		16		27		45%
91 - 180 Days	12%	3		4		8		11%
181 Days - 1 Year (364)	14%	7		6		11		18%
1 to 2 Years (365-730)	7%	5		10		12		20%
2 to 3 Years (731- 1092)	4%	0		2		4		5%
Over 3 Years (1093 +)	1%	0		1		0		1%

The average time frame reflects the length of time it took to process the citations that were closed within the respective quarter.

Citations								
	FY 2018/19	Fiscal Year 2019/20						
	YTD	Q1		Q2		Q3	Q4	YTD
		Jul	Sep	Oct	Dec	Jan - Mar	Apr - Jun	
Final Citations	43	3		9		9		21
Average Days to Close	203.5	416		332		61		269.7

PM4 Cycle Time-Discipline Average number of days to close cases transmitted to the AG for formal disciplinary action. This includes formal discipline, and closures without formal discipline. (e.g. withdrawals, dismissals, etc.)

Transmittals to Attorney General (AG)								
Target: 540 Days	FY 2018/19	Fiscal Year 2019/20						
	YTD	Q1		Q2		Q3	Q4	YTD
		Jul	Sep	Oct	Dec	Jan - Mar	Apr - Jun	
PM4:Volume AG Cases	18	4	0	1			5	
PM4: Total Cycle Time	427	1081	0	436			506	

	FY 2018/19	Fiscal Year 2019/20						
	YTD	Q1		Q2		Q3	Q4	YTD
		Jul	Sep	Oct	Dec	Jan - Mar	Apr - Jun	
AG Cases Initiated	16	3	6	2			11	
AG Cases Pending	11	7	12	13			13	
SOIs Filed	2	0	0	0			0	
Accusations Filed	9	3	5	5			13	
Total Closed after Transmission	16	4	0	1			5	
Revoked	0	0	0	1			1	
Voluntary Surrender	5	3	0	0			3	
Probation	5	1	0	0			1	
License Denied	0	0	0	0			0	
Public Reprimand	0	0	0	0			0	
Closed w/out Disciplinary Action	6	0	0	0			0	

The percent represents how many cases already assigned for discipline were closed in the specified range.

Total Orders Aging/Final Decision								
	FY 2018/19	Fiscal Year 2019/20						
	YTD	Q1		Q2		Q3	Q4	YTD
		Jul	Sep	Oct	Dec	Jan - Mar	Apr - Jun	
Up to 90 Days	0%	0	0	0			0%	
91 - 180 Days	0%	0	0	0			0%	
181 Days - 1 Year (364)	0%	1	0	0			20%	
1 to 2 Years (365-730)	70%	1	0	1			40%	
2 to 3 Years (731- 1092)	10%	0	0	0			0%	
Over 3 Years (1093 +)	20%	2	0	0			40%	

Other Legal Actions								
	FY 2018/19	Fiscal Year 2019/20						
	YTD	Q1		Q2		Q3	Q4	YTD
		Jul	Sep	Oct	Dec	Jan - Mar	Apr - Jun	
PC 23 Ordered	2	0	1	0			1	
Interim Suspension	0	0	0	0			0	



Licenses and regulates acupuncturists and acupuncture schools.

www.acupuncture.ca.gov

STAFF:

11 civil servant positions
1 exempt

LICENSES, REGISTRATIONS, PERMITS, AND CERTIFICATES:

12,353

BOARD MEMBERSHIP:

4 public representatives
3 licensees

BOARD STAFF:

Executive Officer: Ben Bodea
ben.bodea@dca.ca.gov

LAWS AND REGULATIONS:

Business and Professions Code §§ 4925–4979;
California Code of Regulations, Division 13.7,
Title 16, 1399.400–1399.489.2.

SUNSET REVIEW:

Last review: 2018 Next review: 2022

Board Highlights

RECIPROCITY

The Board does not have reciprocity.

ACCOMPLISHMENTS

Strategic Plan

The Acupuncture Board (Board) completed the first year of the *2018–22 Strategic Plan*, adopted by the Board June 29, 2018, guiding the Board to achieve its long-term vision. The *Strategic Plan* identifies multiple goals in five specific areas: licensing, enforcement, education, outreach, and legislation and regulation.

Board member appointments in 2018–19 filled all Board member vacancies. A fully appointed Board facilitates quorum and allows the board additional member resources to help achieve the Board's *Strategic Plan*. The Board president has convened the following committees: Education and Research, Enforcement, Licensing and Examination, and Executive and Legislation. These committees will explore and develop policy that can be effectively and efficiently presented to the full Board for action.

Staffing

Under the direction of the executive officer, with the support of the Board president, organizational and staff development planning resulted in the addition of two Staff Services Manager positions. The licensing manager oversees the licensing, education, and examination functions of the Board, and the central services manager manages the Board's administrative, regulatory, legislative, and policy functions. Both have contributed to several Board improvements, including project development, Board member communications, stakeholder communications, and office efficiencies. In addition, the Board received funding authority to add two limited term Associate Governmental Program Analyst positions, which are planned to be used as support staff during the implementation of the business modernization process (BMP).

Business Modernization Process (BMP)

The Board received funding to begin the implementation of the BMP. This project will move the Board from its current legacy IT system to a full platform software solution, which will allow the Board to automate its current labor-intensive business processes. This project is managed and will be implemented by the Office of Information Services (OIS) and partners, and is following the California Department of Technology (CDT) Project Approval Lifecycle (PAL) process. This BMP has gained CDT approval of stage three of the PAL process. Implementation of this BMP is set to begin in January 2020.

Examination Services

The Board, with the assistance and guidance of the Office of Professional Examination Services (OPES), went live on October 1, 2018, with offering the California Acupuncture Licensing Exam (CALE) in a computer-based testing format. The Board historically only offered the exam in a paper and pencil format twice a year. The CALE is now available for applicant testing during business hours, Monday through Friday, at 17 test sites in California and 22 additional sites nationwide. Computer-based testing provides cost savings, increases security, and improves accessibility for candidates.

Regulations

The Board adopted two major regulatory items for staff to initiate the formal rulemaking process and promulgate regulations. At the March 28–29, 2019, public meeting, the Board adopted proposed regulations to implement Assembly Bill 2138 (Chiu, Chapter 995, Statutes of 2018), which establishes the Board’s substantial relationship and rehabilitation criteria when assessing convictions for the denial or discipline of a license. The Board also adopted a proposed regulation and the incorporated disciplinary guidelines to implement the Uniform Standards Related to Substance Abusing Licensees, Senate Bill 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008); Patient’s Right to Know Act of 2018, SB 1448 (Hill, Chapter 570, Statutes of 2018); and update the Board’s disciplinary guidelines.

Online License Renewals

The Board has begun the process and will soon offer online acupuncture license renewals by credit card. This functionality will allow licensees a convenient platform to manage their license. This project was developed and implemented in partnership with OIS.

Outreach

The Board has continued working with the Communications Division to develop its communications plan. The Board released the publications “Who We Are and What We Do” and “Ten Top Enforcement Violations.” These publications are on the Board’s website and provide consumer outreach about the functions of the Board and useful enforcement trends. The Board is currently working to complete “A Consumer’s Guide to Acupuncture.”

NEW LEGISLATION

AB 779 (Low, Chapter 308, Statutes of 2019) requires, beginning January 1, 2021, acupuncturists licensed by the Board to obtain a wall license for, and unique to, each practice location and renew the wall licenses biennially. This bill imposes a wall license fee, renewal fee, and replacement fee of \$15 each. This bill also requires acupuncturist licensees to register each new practice location and expressly imposes responsibility upon the licensee for services provided under their license at each practice location. This bill also renames the license renewal receipt as a “pocket license” and sets a replacement fee for a pocket license at \$10.

License Requirements*

License Requirements	Y/N?
DEGREE/PROFESSIONAL SCHOOLING	Y
QUALIFYING EXPERIENCE (MAY INCLUDE EDUCATION)	Y
EXAMINATION	Y
CONTINUING EDUCATION/COMPETENCY	Y
FINGERPRINT REQUIREMENT	Y

*Applicable to specific license types—refer to laws and regulations for details.

Fees*

License Type/Fee Type	Actual Fee	Statutory Limit
APPLICATION FEE	\$75	\$75
EXAMINATION FEE	\$550	ACTUAL COST
INITIAL LICENSURE FEE	\$176 - \$325 FOR INITIAL, \$325 THEREAFTER	<= \$325
BIENNIAL RENEWAL FEE	\$325	\$325

*Additional fees may be required. Refer to the laws and regulations for details.

Summary of Licensing Activity

Initial Licenses/Certificates/Permits			
TYPE	APPS RECEIVED	ISSUED	RENEWED
LICENSED ACUPUNCTURIST	552	416	5,967
TOTAL	552	416	5,967

Licensing Population by Type			
TYPE	CERTIFICATES/ PERMITS	LICENSES/ REGISTRATIONS	APPROVALS
LICENSED ACUPUNCTURIST	0	12,353	0
TOTAL	0	12,353	0

Renewal and Continuing Education (CE)		
TYPE	FREQUENCY OF RENEWAL	NUMBER CE HOURS REQUIRED EACH CYCLE
LICENSED ACUPUNCTURIST	EVERY 2 YEARS	50

Exams Results			
EXAM TITLE	PASS	FAIL	TOTAL
CALIFORNIA ACUPUNCTURE LICENSING EXAM	393	89	482

Summary of Enforcement Activity

Consumer Complaints—Intake	
192	RECEIVED
0	CLOSED WITHOUT REFERRAL FOR INVESTIGATION
195	REFERRED FOR INVESTIGATION
1	PENDING

Conviction/Arrest Notification Complaints	
55	RECEIVED
56	CLOSED/REFERRED FOR INVESTIGATION
0	PENDING

Inspections	
N/A	CONDUCTED
N/A	CITATIONS ISSUED

Investigations	
251	OPENED
224	CLOSED
172	PENDING

Number of Days to Complete Intake and Investigations	
133	UP TO 90 DAYS
29	91 TO 180 DAYS
33	181 DAYS TO 1 YEAR
18	1 TO 2 YEARS
9	2 TO 3 YEARS
2	OVER 3 YEARS
160	AVERAGE NUMBER OF DAYS TO COMPLETE INTAKE AND INVESTIGATIONS

Citations and Fines	
43	ISSUED
43	ISSUED WITH A FINE
0	WITHDRAWN
3	DISMISSED
179	AVERAGE NUMBER OF DAYS TO ISSUE A CITATION AND FINE

Total Amount of Fines	
\$23,160	ASSESSED
\$6,040	REDUCED
\$24,485	COLLECTED

Criminal/Civil Actions	
0	REFERRALS FOR CRIMINAL/CIVIL ACTION
1	CRIMINAL ACTIONS FILED
0	CIVIL ACTIONS FILED

12	CASES CLOSED
11	CASES PENDING

11	1 TO 2 YEARS
1	2 TO 3 YEARS
2	OVER 3 YEARS
554	AVERAGE NUMBER OF DAYS TO IMPOSE DISCIPLINE

9	ACCUSATIONS FILED
2	RESTRAINING/RESTRICTION/SUSPENSION ORDERS GRANTED
1	STATEMENTS OF ISSUES WITHDRAWN/DISMISSED
0	ACCUSATIONS WITHDRAWN/DISMISSED

0	REVOCATION
5	SURRENDER OF LICENSE
0	PROBATION WITH SUSPENSION
0	SUSPENSION ONLY
7	PROBATION ONLY
0	PUBLIC REPRIMAND
1	OTHER DECISIONS

0	DENIED
1	TOTAL

2	DENIED
3	TOTAL

Cost Recovery to DCA

\$47,991.81	ORDERED
\$33,250.10	COLLECTED

\$0	AMOUNT REFUNDED
\$0	REWORK AT NO CHARGE
\$0	ADJUSTMENTS/RETURNS/EXCHANGES
\$0	TOTAL SAVINGS ACHIEVED FOR CONSUMERS

Receipt of Complaint to Assignment to Investigator

5	AVERAGE NUMBER OF DAYS
----------	------------------------

Investigations: Opening to Closing of Case

206	AVERAGE NUMBER OF DAYS
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Investigations: Closure of Investigation to Imposing Formal Discipline

282	AVERAGE NUMBER OF DAYS
------------	------------------------

8 - Q1, Q2, Q3 FY 19-20 Licensing Report

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FY 2019/20 Acupuncture Licensing Report

License Status	Q1 Jul - Sep	Q2 Oct - Dec	Q3 Jan - Mar	Q4 April - June
Active	12369	12361	12354	
Inactive	2220	2231	2252	
Delinquent	966	968	984	
Cancelled	85	56	61	
Initial License Applications Approved	98	71	77	
Initial License Applications Denied	0	0	0	
License Renewal	1248	1310	1772	

Fiscal Year 2019/20 Continuing Education Report

Type	Q1 Jul - Sep	Q2 Oct - Dec	Q3 Jan - Mar	Q4 April - June
CE Provider Applications Approved	14	22	12	
CE Provider Applications Denied	0	0	0	
Course Applications Received	1189	706	791	
Course Applications Approved	1104	672	762	
Course Denials	85	34	49	
Continuing Education Providers current as of June 2020	601	599	599	
Providers - Total Provider numbers issued to date	1648			

Fiscal Year 2019/20 Examination Report

Type	Q1 Jul - Sep	Q2 Oct - Dec	Q3 Jan - Mar	Q4 April - June
Initial Exam Applications Received	109	96	92	
Initial Exam Applications Approved & Closed	106	88	63	
First time Test Takers	104	82	66	
Re-Test Test Takers	23	20	17	
Total Exam Takers	127	102	83	

Fiscal Year 2019/20 Acupuncture Educational and Training Programs

Application for Board Approval of Curriculum (ABAC)	Q1 Jul - Sep	Q2 Oct - Dec	Q3 Jan - Mar	Q4 April - June
ABAC - Received	4	4	4	
ABAC - Incomplete	1	2	0	
ABAC - Approved	4	0	4	
Loss of Approval	0	2	0	

Fiscal Year 2019/20 Acupuncture Tutorial Training Programs

Type	Q1 Jul - Sep	Q2 Oct - Dec	Q3 Jan - Mar	Q4 April - June
Applications Received	0	0	0	
New Program Approvals	4	4	4	
Programs Completed	1	2	0	
Programs Terminated, Abandoned	4	0	4	
Total Approved Programs	40	43	44	

CALE Results by Program
(First Time and Overall)

7/1/2019 - 12/31/2019						
Approved Acupuncture and Educational Training Programs	1ST TIME TAKERS			OVERALL (Inc. Re-takers)		
	#PASS	#FAIL	PASS %	#PASS	#FAIL	PASS %
Academy of Chinese Culture & Health Sciences	3	0	100%	3	0	100%
Acupuncture & Integrative Medicine College	9	2	82%	10	3	77%
Alhambra Medical University	9	1	90%	9	2	82%
American College of Traditional Chinese Medicine at the California Institute of Integral Studies	15	1	93%	15	3	83%
AOMA Graduate School of Integrative Medicine	1	0	100%	1	0	100%
Bastyr University	2	0	100%	2	0	100%
Dongguk University Los Angeles	10	4	71%	12	8	60%
Emperor's College of Traditional Chinese Medicine	7	0	100%	7	0	100%
Five Branches University	6	0	100%	6	2	75%
Golden State University School of Asian Medicine	2	0	100%	2	0	100%
Kingston University	0	0	0%	1	0	100%
Nine Star University of Health Sciences	0	1	0%	0	1	0%
National University of Natural Medicine	1	0	100%	1	0	100%
Oregon College of Oriental Medicine	0	0	0%	2	0	100%
Pacific College of Oriental Medicine	21	8	72%	24	10	71%
South Baylo University	40	12	77%	44	22	67%
Southern California University School of Oriental Medicine and Acupuncture	1	0	100%	1	0	100%
Southern California University of Health Sciences	3	1	75%	3	1	75%
Stanton University	0	0	0%	0	1	0%
University of East West Medicine	16	2	89%	17	5	77%
USLA (formerly Life University)	0	0	0%	0	1	0%
YoSan University of TCM	5	0	100%	5	1	83%
Tutorials	1	2	34%	1	3	25%
Foreign	5	1	83%	6	2	75%
GRAND TOTAL	157	35	82%	172	65	73%

CALE Results by Language

7/1/2019 - 12/31/2019			
Language	#PASS	#FAIL	PASS %
Chinese	44	15	75%
English	98	38	72%
Korean	30	12	71%
Total	172	65	73%

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2020 TENTATIVE LEGISLATIVE CALENDAR

COMPILED BY THE OFFICE OF THE SECRETARY OF THE SENATE

Revised May 6, 2020

DEADLINES

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

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

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

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

- [Jan. 1](#) Statutes take effect (Art. IV, Sec. 8(c)).
- [Jan. 6](#) Legislature Reconvenes (J.R. 51(a)(4)).
- [Jan. 10](#) Budget must be submitted by Governor (Art. IV, Sec. 12(a)).
- [Jan. 17](#) Last day for **policy committees** to hear and report to **fiscal committees** fiscal bills introduced in their house in the **odd-numbered year** (J.R. 61(b)(1)).
- [Jan. 20](#) Martin Luther King, Jr. Day.
- [Jan. 24](#) Last day for any committee to hear and report to the **floor** bills introduced in that house in the odd-numbered year (J.R. 61(b)(2)).
Last day to **submit bill requests** to the Office of Legislative Counsel.
- [Jan. 31](#) Last day for each house to **pass bills introduced** in that house in the odd-numbered year (Art. IV, Sec. 10(c)), (J.R. 61(b)(3)).
- [Feb. 17](#) Presidents' Day.
- [Feb. 21](#) Last day for bills to be **introduced** (J.R. 61(b)(4)), (J.R. 54(a)).
- [Mar. 16](#) Legislature in recess, ACR 189, Resolution Chapter 15, Statutes of 2020
- [Mar. 27](#) Cesar Chavez Day observed

2020 TENTATIVE LEGISLATIVE CALENDAR

COMPILED BY THE OFFICE OF THE SECRETARY OF THE SENATE

Revised May 6, 2020

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

[May 11](#) Senate Reconvenes

[May 25](#) Memorial Day

[May 29](#) Last day for **policy committees** to hear and report to **fiscal committees** fiscal bills introduced in their house (J.R. 61(b)(5)).

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

[June 5](#) Last day for **policy committees** to hear and report to the floor non-fiscal bills introduced in their house (J.R. 61(b)(6)). Last day for policy committees to meet prior to June 8 (J.R. 61(b)(7)).

[June 15](#) **Budget Bill** must be **passed** by **midnight** (Art. IV, Sec. 12(c)(3)).

[June 19](#) Last day for **fiscal committees** to hear and report to the floor bills introduced in their house (J.R. 61(b)(8)). Last day for **fiscal committees** to meet prior to June 29 (J.R.61(b)(9)).

[June 22-26](#) **Floor Session Only.** No committees, other than conference or Rules committees, may meet for any purpose (J.R. 61(b)(10)).

[June 25](#) Last day for a legislative measure to qualify for the November 3 General Election ballot (Election code Sec. 9040).

[June 26](#) Last day for each house to pass bills introduced in that house (J.R. 61(b)(11)).

2020 TENTATIVE LEGISLATIVE CALENDAR

COMPILED BY THE OFFICE OF THE SECRETARY OF THE SENATE

Revised May 6, 2020

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

[July 2](#) **Summer Recess** begins upon adjournment provided Budget Bill has been passed (J.R. 51(b)(2)).

[July 3](#) Independence Day observed.

[July 13](#) Legislature reconvenes from **Summer Recess** (J.R. 51(b)(2)).

[July 31](#) Last day for **policy committees** to hear and report **fiscal bills** to fiscal committees (J.R. 61(b)(13)).

AUGUST						
S	M	T	W	TH	F	S
						1
2	3	4	5	6	<u>7</u>	8
9	10	11	12	13	<u>14</u>	15
16	<u>17</u>	<u>18</u>	<u>19</u>	<u>20</u>	<u>21</u>	22
23	<u>24</u>	<u>25</u>	<u>26</u>	<u>27</u>	<u>28</u>	29
30	<u>31</u>					

[August 7](#) Last day for **policy committees** to meet and report bills (J.R. 61(b)(14)).

[Aug. 14](#) Last day for **fiscal committees** to meet and report bills (J.R. 61(b)(15)).

[Aug. 17 – 31](#) **Floor Session only**. No committees, other than conference and Rules committees, may meet for any purpose (J.R. 61(b)(16)).

[Aug. 21](#) Last day to **amend bills** on the Floor (J.R. 61(b)(17)).

[Aug. 31](#) Last day for **each house to pass bills**, except bills that take effect immediately or bills in Extraordinary Session (Art. IV, Sec. 10(c)), (J.R. 61(b)(18)). **Final recess** begins upon adjournment (J.R. 51(b)(3)).

*Holiday schedule subject to Senate Rules committee approval.

IMPORTANT DATES OCCURRING DURING FINAL RECESS

2020

[Sept. 30](#)

Last day for Governor to sign or veto bills passed by the Legislature before Sept. 1 and in the Governor's possession on or after Sept. 1 (Art. IV, Sec. 10(b)(2)).

[Nov. 3](#)

General Election

[Nov. 30](#)

Adjournment *Sine Die* at midnight (Art. IV, Sec. 3(a)).

[Dec. 7](#)

12 m. convening of 2021-22 Regular Session (Art. IV, Sec. 3(a)).

2021

[Jan. 1](#)

Statutes take effect (Art. IV, Sec. 8(c)).

[Jan. 4](#)

Legislature reconvenes (JR 51(a)(1)).

2020 TENTATIVE ASSEMBLY LEGISLATIVE CALENDAR

COMPILED BY THE OFFICE OF THE ASSEMBLY CHIEF CLERK

Revised 5-6-20

DEADLINES

- Jan. 1** Statutes take effect (Art. IV, Sec. 8(c)).
- Jan. 6** Legislature reconvenes (J.R. 51(a)(4)).
- Jan. 10** Budget must be submitted by Governor (Art. IV, Sec. 12(a)).
- Jan. 17** Last day for **policy committees** to hear and report to **fiscal committees** fiscal bills introduced in their house in the odd-numbered year (J.R. 61(b)(1)).
- Jan. 20** Martin Luther King, Jr. Day.
- Jan. 24** Last day for any committee to hear and report to the **floor** bills introduced in that house in the odd-numbered year. (J.R. 61(b)(2)). Last day to submit **bill requests** to the Office of Legislative Counsel.
- Jan. 31** Last day for each house to pass bills introduced in that house in the odd-numbered year (J.R. 61(b)(3)) (Art. IV, Sec. 10(c)).

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

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

Feb. 17 Presidents' Day.

Feb. 21 Last day for bills to be **introduced** (J.R. 61(b)(4), J.R. 54(a)).

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

Mar. 3 Primary Election.

Mar. 20 Joint Recess begins upon adjournment (A.C.R. 189, Resolution Chapter 15, Statutes of 2020).

Mar. 27 Cesar Chavez Day observed.

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

2020 TENTATIVE ASSEMBLY LEGISLATIVE CALENDAR

COMPILED BY THE OFFICE OF THE ASSEMBLY CHIEF CLERK

Revised 5-6-20

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

May 4 Assembly reconvenes from Joint Recess (A.C.R. 189, Resolution Chapter 15, Statutes of 2020).

May 22 Last day for **policy committees** to hear and report to fiscal committees **fiscal bills** introduced in the Assembly (J.R. 61(b)(5)).

May 25 Memorial Day.

May 29 Last day for **policy committees** to hear and report to the floor **nonfiscal** bills introduced in the Assembly (J.R. 61(b)(6))

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

June 5 Last day for **fiscal committees** to hear and report to the **floor** bills introduced in the Assembly (J.R. 61 (b)(8)).

June 15 Budget Bill must be passed by midnight (Art. IV, Sec. 12(c)).

June 15-19 Assembly Floor session only. No committee may meet for any purpose except for Rules Committee, bills referred pursuant to Assembly Rule 77.2, and Conference Committees (J.R. 61(b)(10)).

June 19 Last day for the Assembly to pass bills introduced in that house (J.R. 61(b)(11)).

Summer Recess begins for the Assembly upon adjournment, provided Budget Bill has been passed (J.R. 51(b)(2)).

June 25 Last day for a legislative measure to qualify for the Nov. 3 General Election ballot (Elections Code Sec. 9040).

2020 TENTATIVE ASSEMBLY LEGISLATIVE CALENDAR

COMPILED BY THE OFFICE OF THE ASSEMBLY CHIEF CLERK

Revised 5-6-20

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

July 3 Independence Day observed.

July 13 Legislature reconvenes from **Summer Recess** (J.R. 51(b)(2)).

July 31 Last day for **policy committees** to hear and report **fiscal bills** to fiscal committees (J.R. 61(b)(13)).

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

Aug. 7 Last day for **policy committees** to meet and report bills (J.R. 61(b)(14)).

Aug. 14 Last day for **fiscal committees** to meet and report bills (J.R. 61(b)(15)).

Aug. 17 – 31 Floor session only. No committee may meet for any purpose except Rules Committee, bills referred pursuant to Assembly Rule 77.2, and Conference Committees (J.R. 61(b)(16)).

Aug. 21 Last day to **amend** bills on the floor (J.R. 61(b)(17)).

Aug. 31 Last day for each house to pass bills (Art. IV, Sec 10(c), J.R. 61(b)(18)).

Final Recess begins upon adjournment (J.R. 51(b)(3)).

IMPORTANT DATES OCCURRING DURING FINAL RECESS

2020

Sept. 30 Last day for Governor to sign or veto bills passed by the Legislature before Sept. 1 and in the Governor's possession on or after Sept. 1 (Art. IV, Sec. 10(b)(2)).

Oct. 1 Bills enacted on or before this date take effect January 1, 2021. (Art. IV, Sec. 8(c)).

Nov. 3 General Election.

Nov. 30 Adjournment *sine die* at midnight (Art. IV, Sec. 3(a)).

Dec. 7 2021-22 Regular Session convenes for Organizational Session at 12 noon. (Art. IV, Sec. 3(a)).

2021

Jan. 1 Statutes take effect (Art. IV, Sec. 8(c)).

*Holiday schedule subject to final approval by Rules Committee.

9B - 2019 Legislative Bills of Interest Memo

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DATE	June 26, 2020
TO	Board Members, Acupuncture Board
FROM	Alex Dodge, Policy, Legislative, and Regulatory Affairs Analyst
SUBJECT	2019-2020 Pending CA Legislation of Interest

[AB 613 \(Low\) Professions and vocations: regulatory fees.](#)

Status:

This is a two-year bill located in the Senate Business, Professions and Economic Development Committee (Senate BPEDC). It may be acted upon in 2020. This has not been acted on since 07/01/19.

Summary:

This bill would authorize programs within the Department of Consumer Affairs to increase their fees every four years in an amount not to exceed the increase in the Consumer Price Index in the last four years. Fees increased pursuant to this bill would be exempt from the Administrative Procedure Act.

Current Board Position: Support

~ ~ ~

[AB 778 \(Low\) Acupuncture: continuing education.](#)

Status:

This is a two-year bill located in the Senate Inactive File. It may be acted upon in 2020. It is unclear whether the author (Asm. Low) intends to move this bill out of the inactive file.

Summary:

This bill would require the Acupuncture Board (Board) to establish, by regulation, a procedure for identifying acceptable providers of continuing education courses and would require all providers of continuing education to comply with the procedures established by the Board. The bill would authorize the Board to revoke or deny the right of a provider to offer continuing education coursework for failure to comply with specified provisions of law.

Current Board Position: Support

~ ~ ~

[AB 888](#) (Low) Opioid prescriptions: information: nonpharmacological treatments for pain.

Status:

This is a two-year bill located in the Senate BPEDC. While it may be acted upon in 2020, it has not been acted on since 07/01/19.

Summary:

This bill would expand existing requirements for prescribers when discussing specific risks associated with opioids when dispensing the first prescription for a controlled substance containing an opioid, among other provisions. This bill would also require a prescriber to obtain informed written consent from the patient, a minor patient's parent or guardian, or another authorized adult as specified. Additionally, this bill would require prescribers to discuss the availability of nonpharmacological treatments for pain with the patient and provide a referral if requested, as deemed appropriate by the prescriber.

Current Board Position: Support

~~~

**[AB 1263](#) (Low) Contracts: consumer services: consumer complaints.**

**Status:**

In Senate, pending referral to policy committee by Committee on Rules (1/30/20). Unclear if it will pass.

**Summary:**

This bill was gut-and-amended on January 6<sup>th</sup> to prohibit a licensee from limiting a consumer's right to file a complaint with a licensing board or participate in an investigation into the licensee by the licensing board. A violation would constitute unprofessional conduct subject to discipline by the licensing board.

**Staff Recommendation: Support**

This bill has been introduced in response to companies providing professional services seeking to restrict their customer's authority to make substantiated complaints to regulatory boards through refund agreements and other contracts. This bill would clearly prohibit these provisions, called non-disparagement clauses, in any contract governing the provision of professional services that are subject to licensure and oversight by the state. This bill protects consumers and provides recourse through the disciplinary process which is why staff is recommending a support position.

**Recommended Motion Language:**

I motion that the Acupuncture Board take a [support] position on AB 1263 (Low), as amended on January 6, 2020, for the reasons discussed by members and staff and as reflected in the staff memo and direct the EO to inform the Legislature and the Author's office of this position.

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[AB 1616](#) (Low) Department of Consumer Affairs: boards: expunged convictions.

Status:

In Senate, pending referral to policy committee by Committee on Rules (1/30/20). Unclear if it will pass.

Summary:

This bill was gut-and-amended on January 6th to require programs under the Department of Consumer Affairs that post information on its website about a revoked license due to a criminal conviction to update or remove information about the revoked license within six months of the board receiving an expungement order related to the conviction. The person seeking the change must pay to the board a fee, determined by the Department, designed to cover the administrative costs of these requirements.

Staff Recommendation: Watch

This bill is designed to reduce employment barriers for people with previous criminal records who have been rehabilitated and whose conviction has been dismissed, or expunged, through the judicial process.

There is already a process in place for licensees to establish they are rehabilitated through a petition for reinstatement of a revoked license with the Board. It is through this process the Board can separately make a determination if a licensee is rehabilitated since the court system may have different criteria than the Board. The licensee's expungement is taken into consideration at this time and the Board's disciplinary action, which is separate from the court's action, can be reconsidered. However, there is not a process in place where the licensee's disciplinary documents are removed. Although the revocation imposed by the Board resulted from a conviction, it is a distinct action on the license unrelated to the licensee's criminal record. The purpose of having a licensee's disciplinary actions on the Board's website is to allow the consumer to see the nature of the violation so they can make an informed decision when choosing their provider.

Recommended Motion Language:

I motion that the Acupuncture Board take a [watch] position on AB 1616 (Low), as amended on January 23, 2020, for the reasons discussed by members and staff and as reflected in the staff memo.

~~~

## [AB 1665](#) (Bonta) Athletic Trainers.

### **Status:**

In Senate, pending referral to policy committee by Rules Committee, pursuant to Senate Rule 29.10(c), which dictates how amendments creating new bills affect the bill's movement through the committee process (2/27/20). Unclear if it will pass.

## Summary:

This bill would create the California Board of Athletic Training within the Department of Consumer Affairs, enact the Athletic Training Practice Act, prohibit a person from practicing as an athletic trainer without being licensed by the Board, define the practice, specify licensure requirements, and require an athletic trainer to practice in collaboration with a physician.

### **Staff Recommendation: Oppose, unless amended**

This bill lists multiple healing arts professions in setting the bounds of the potential scope of a licensed athletic trainer. Acupuncturists are not included. The Board will need to provide the amendments they would like to see.

### **Recommended Motion Language:**

I motion that the Acupuncture Board take an [oppose unless amended] position on AB 1665 (Bonta), as amended on February 24, 2020, for the reasons discussed by members and staff and as reflected in the staff memo and direct the EO to inform the Legislature and the Author's office of this position.

~~~

AB 1850 (Gonzalez) Employee classification: still photographers, photojournalists: freelancers.

Status: In Senate, To Committee on Rules for assignment. This will likely pass.

This bill is the vehicle to address *Dynamex Operations W. v. Superior Court* (2018), 4 Cal.5th 903 and AB 5 (Gonzalez, Chapter 296, Statutes of 2019). As drafted, this bill originally revised the application of Dynamex for photographers, photojournalists, freelance writers, editors, and newspaper cartoonists, but has now expanded to exclude additional classes from certain applications of worker classification law.

Staff Recommendation: Oppose, unless amended

Multiple similar healing arts professions are exempted from the Dynamex test, and instead are governed by the Borello test in the determination of worker classification. Acupuncturists should be included with other similarly situated healing arts licensees. The Board should specify that Acupuncturists be included with the healing arts licensees already addressed.

Recommended Motion Language:

I motion that the Acupuncture Board take an [oppose unless amended] position on AB 1850 (Gonzalez), as amended on May 12, 2020, for the reasons discussed by members and staff and as reflected in the staff memo and direct the EO to inform the Legislature and the Author's office of this position.

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**AB 1909 (Gonzalez) Healing arts licensees: virginity examinations or tests.**

**Status:** In Assembly, referred to the Committee on Business and Professions (1/17/20). Unclear if this will pass.

**Summary:** This bill would prohibit a healing arts licensee from performing an examination or test on a patient for the purpose of determining whether the patient is a virgin. Violations of the provisions would constitute unprofessional conduct and be grounds for disciplinary action by the licensing board.

**Staff Recommendation: Watch**

Staff did not find a bill analysis prepared by the Legislature.

**Recommended Motion Language:**

I motion that the Acupuncture Board take a [watch] position on AB 1909 (Gonzalez), as introduced on January 8, 2020, for the reasons discussed by members and staff and as reflected in the staff memo.

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AB 2028 (Aguiar-Curry) State agencies: meetings.

Status: In Senate, To Committee on Rules for assignment. This will likely pass.

Summary:

This bill would require state bodies subject to the Bagley-Keene Open Meeting Act to post all relevant background documents online at least forty-eight (48) hours prior to a public meeting or when the board members get it, whichever is earlier, instead of the agenda alone. Such writing and materials would only be eligible for distribution or discussion at the noticed meeting if posted within the ten-day timeframe. This bill would also clarify that the public has the right to comment on any agenda item listed for that meeting, regardless of whether it has been previously discussed.

Staff Recommendation: Watch

This bill would conceivably provide the public more time to review the materials that will be utilized in Board deliberations at the respective meeting.

Recommended Motion Language:

I motion that the Acupuncture Board take a [watch] position on AB 2028 (Aguiar-Curry), as amended on June 4, 2020, for the reasons discussed by members and staff and as reflected in the staff memo.

~~~

**AB 2113 (Low) Refugees, asylees, and immigrants: professional licensing.**

**Status:** In Senate, Referred to Com. on Rules for assignment (6/11).

**Summary:** This bill would require programs within the Department of Consumer Affairs to expedite and assist the initial licensure process for an applicant who supplies satisfactory evidence that they are a refugee, have been granted political asylum, or have a special immigrant visa, as specified. This bill would authorize programs to adopt regulations necessary to administer these provisions.

### **Staff Recommendation: Watch**

The Board has quick initial licensing processes, provided that the applicant has passed the CALE and provided the required documentation to prove educational requirements have been met. All foreign applicants are required to utilize a prescribed transcript evaluation service, adding a lead time to the overall initial licensing process which is out of the Board's control. However, if this bill passes, it will not have much effect on current Board processes, as the Board is already expedient with a two-day processing time for initial licensure application. The performance goals for initial license application processing times is set at ten days; the Board is well under that.. The greater challenge would be in the individual being able to obtain their records of education from their place of origin/egress if it is experiencing civil or political challenges.

### **Recommended Motion Language:**

I motion that the Acupuncture Board take a [watch] position on AB 2113 (Low), as amended on June 4, 2020, for the reasons discussed by members and staff and as reflected in the staff memo.

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AB 2185 (Patterson) Professions and vocations: applicants licensed in other states: reciprocity.

Status: In Assembly, re-referred to the Committee on Business and Professions (5/14/20). It is unclear if this bill will progress.

Summary:

This bill would require each program at the Department of Consumer Affairs to issue a license to an applicant who is married to or is in a domestic partnership or other legal union with, an active duty member of the Armed Forces stationed in California if the applicant holds an out-of-state license in good standing in the discipline and practice level. Applicants must meet certain requirements, including, but not limited to, holding the out-of-state license for the past three of five years.

Staff Recommendation: Oppose/Oppose unless amended

While license reciprocity may serve as a benefit in other professions with similar state to state standards, California licensed acupuncturists must attend training programs with 3000 curriculum hours; by comparison, most states require 1900 hours. The Bill appears to authorize boards to require that licensees take the program's California licensing exam. Thus, only after completion of these hours, at specific institutions, do applicants become eligible to sit for the California Acupuncture Licensing Examination. The Board may oppose unilaterally or oppose unless amended to remove the Acupuncture Board from this requirement.

Recommended Motion Language:

I motion that the Acupuncture Board take an [oppose/oppose unless amended] position on AB 2185 (Patterson), as amended on May 13, 2020, for the reasons discussed by members and staff and as reflected in the staff memo and direct the EO to inform the Legislature and the Author's office of this position.

~~~

**[AB 2214](#) (Carrillo) Administrative Procedure Act: notice of proposed action.**

**Status:**

In Assembly, referred to the Committee on Accountability and Administrative Review (2/20). This bill is likely dead.

**Summary:**

This bill would require a state agency, including programs within the Department of Consumer Affairs, to conspicuously post specified regulatory documents on its website within 24 hours of submitting a proposed action to the Office of Administrative Law.

**Staff Recommendation: Oppose**

The initial three days after a notice has been submitted is used by OAL to review and work with the submitting agency to make last minute checks before submitting it for publication in the notice register, officially starting the rulemaking process beyond the Board level. Requiring boards to post these documents before OAL has even reviewed them or sent them to the publisher for publication in the notice register is redundant and yields little public benefit. The documents are already required to be posted for 45 days following a publication in the notice register.

**Recommended Motion Language:**

I motion that the Acupuncture Board take an [oppose] position on AB 2214 (Carillo), as introduced on February 12, 2020, for the reasons discussed by members and staff and as reflected in the staff memo and direct the EO to inform the Legislature and the Author's office of this position.

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[AB 2411](#) (Nazarian) Healing arts licensees: remuneration: drug or device companies: disclosure.

Status:

In Assembly, referred to Com. on Business and Professions and Com. on Health (3/02/20). Unclear if this will pass.

Summary:

This bill would require a healing arts licensee who receives remuneration from a drug or device company to disclose the amount and source orally and in writing

to each patient before the intended use or prescription of a drug or device manufactured or distributed.

Staff Recommendation: Watch

It is unclear if the disclosure requirements imposed by this bill would apply to herbs. However, it appears to apply to devices acupuncturists use in treatment. The bill promotes more transparency with the consumer and opens the subject up if a consumer has more questions.

Recommended Motion Language:

I motion that the Acupuncture Board take a [watch] position on AB 2411 (Nazarian), as amended on February 18, 2020, for the reasons discussed by members and staff and as reflected in the staff memo.

~~~

**AB 2631 (Cunningham) License fees: military partners and spouses.**

**Status:**

In Assembly, referred to Com. on Business and Professions (3/02). Unclear if this will be taken up in this session.

**Summary:**

This bill would require programs within the Department of Consumer Affairs to waive initial or original licensing fees for spouses and domestic partners of active duty military members.

**Staff Recommendation: Watch**

**Recommended Motion Language:**

I motion that the Acupuncture Board take a watch position on AB 2411 (Nazarian), as amended on February 18, 2020, for the reasons discussed by members and staff and as reflected in the staff memo.

~~~

AB 2704 (Ting) Healing arts: licensees: data collection.

Status:

In Assembly, referred to Com. on Business and Professions (5/18/20)

Summary:

This bill would standardize the licensee demographic data that must be collected by all healing arts boards. Several board-specific data collection requirements would be repealed. Aggregate information collected must be posted on each board's website and provided to the Office of Statewide Health Planning and Development.

Staff Recommendation: Watch

Staff has recently encountered challenges in quantifying our authority to ask for pieces of licensee data needed to effectively communicate with the licensee,

carry out investigations, and execute enforcement actions, if needed. The specified demographic information given to the Board is under a voluntary basis, so it is unclear if this will provide any actionable data.

~~~

**[AB 2748](#) (Fong) Public agencies: information practices.**

**Status:**

In Assembly, Com. on Privacy and Consumer Protection. This bill has been gut and amended to be unrelated to Acupuncture.

**Summary:**

This bill would require public agencies subject to the Information Practices Act of 1977, including the Department of Consumer Affairs and its programs, to collect the least amount of personal information required to fulfill the purposes of its collection, and would require those agencies to substitute the collection of nonpersonal information instead of personal information to fulfill any information gathering requirements whenever possible.

**Staff Recommendation: No Position**

The bill previously had language that could have been problematic to the Board's standard licensing activities. This bill is now unrelated to Acupuncture

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[AB 2978](#) (Ting) Department of Justice: arrest and conviction records: review.

Status:

In Assembly, hearing postponed by Com. on Public Safety (3/17/20). This may not be taken up this session.

Summary:

Pursuant to AB 1076 (Ting, Chapter 578, Statutes of 2019), the Department of Justice is required, beginning January 1, 2021, to review statewide criminal justice databases and identify individuals who are eligible for arrest record relief or automatic conviction record relief by having their arrest records, or criminal conviction records, withheld from disclosure or modified. Current law provides that individuals are eligible for this relief, among other criteria, if the arrest or conviction occurred on or after January 1, 2021. This bill would instead require the arrest or conviction to have occurred on or after January 1, 1973.

Staff Recommendation: Watch

Recommended Motion Language:

I motion that the Acupuncture Board take a watch position on AB 2978 (Ting), as amended on February 21, 2020, for the reasons discussed by members and staff and as reflected in the staff memo.

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**[AB 3045](#) (Gray) Department of Consumer Affairs: boards: veterans: military spouses: licenses.**

**Status:**

In Senate, pending referral by Com. On Committee on Rules (RLS). This is moving.

**Summary:** This bill would require certain programs within the Department of Consumer Affairs to issue licenses to veterans and active duty military spouses and domestic partners who hold active licenses in other jurisdictions.

**Staff Recommendation: Oppose**

Standards for acupuncture licensure vary widely from state to state. For this reason, California does not have reciprocity for acupuncture licenses from other states. The bill appears to waive the examination requirement, which is in place to ensure only qualified and competent acupuncturists can obtain a California license. Without this measure in place, California is reliant on other jurisdictions' examinations.

**Recommended Motion Language:**

I motion that the Acupuncture Board take an [oppose] position on AB 3045 (Gray), as revised on May 22, 2020, for the reasons discussed by members and staff and as reflected in the staff memo and direct the EO to inform the Legislature and the Author's office of this position.

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[AB 3298](#) (Brough) Frauds of medical credentials: penalty.

Status:

In Assembly, referred to Committee on Business and Professions (4/24).

Summary:

This bill would increase the maximum fine from \$6,000 to \$10,000 for certain types of healing arts license fraud, including: selling or offering to sell a healing arts degree or diploma, making false statements as part of an application, or violating the security of an examination.

Staff Recommendation: Support

Recommended Motion Language:

I motion that the Acupuncture Board take a [support] position on AB 3298 (Brough), as introduced on February 21, 2020, for the reasons discussed by members and staff and as reflected in the staff memo and direct the EO to inform the Legislature and the Author's office of this position.

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**[SB 878](#) (Jones) Department of Consumer Affairs Licensing: applications: wait times.**

**Status:**

In Senate Appropriations following a 9-0 vote to pass and re-refer from Senate BPEDC. This looks likely to proceed through to the Assembly.

**Summary:**

This bill would require each licensing program within the Department of Consumer Affairs to prominently display on its website the current average timeframe for processing initial and renewal license applications for each license it offers.

**Staff Recommendation: Watch**

This is likely written with other boards in mind, but the Board's current business modernization project will allow prospective or current licensees to track the status of their application throughout the process and receive notifications on status changes or incomplete applications. It should also be noted that the word current is not defined, and no timeframe is specified within the language.

**Recommended Motion Language:**

I motion that the Acupuncture Board take a [watch] position on SB 878 (Jones), as introduced on January 22, 2020, for the reasons discussed by members and staff and as reflected in the staff memo.

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SB 937 (Hill) State agencies: web accessibility.

Status:

In Senate, double-referred to the Committees on Judiciary and Governmental Organization. Referral to Judiciary rescinded due to shortened 2020 Legislative Calendar.

Summary:

This bill would authorize a state agency to temporarily remove public documents from digital access if a justifiable impediment exists, the Director of Technology verifies the impediment prohibits full compliance, and the state agency complies with various requirements, including, but not limited to, citing the reason for the document's removal and listing options and instructions for how to access the document offline. This bill would make any file or document removed after October 14, 2017 subject to these requirements.

Staff Recommendation: Watch

Recommended Motion Language:

I motion that the Acupuncture Board take a [watch] position on SB 937 (Hill), as introduced on February 6, 2020, for the reasons discussed by members and staff and as reflected in the staff memo.

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**[SB 1097 \(Durazo\) Medical services: credit or loan.](#)**

**Status:**

In Senate, referred to the Committee on Business, Professions and Economic Development. Last hearing scheduled for March 30<sup>th</sup> was postponed by committee.

**Summary:**

This bill would strengthen provisions included in SB 639 (Mitchell, Chapter 856, Statutes of 2019) that, among other things, barred healing arts licensees from charging treatment or costs to an open-end credit or loan that is extended by a third party and that is arranged for, or established in, that licensee's office more than 30 days before treatment. This bill would prohibit such loans regardless of if they were arranged for or established in the licensee's office.

**Staff Recommendation: Watch**

**Recommended Motion Language:**

I motion that the Acupuncture Board take a watch position on SB 1097 (Durazo), as introduced on February 19, 2020, for the reasons discussed by members and staff and as reflected in the staff memo.

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[SB 1432 \(Glazer\) Clinical laboratories.](#)

Status:

In Senate, referred to Committee on Businesses, Professions, and Economic Development.

Summary:

In addition to performing other specified notice requirements, this bill would require clinical laboratories to notify the Department of Consumer Affairs via email when improper specimen storage occurs. This bill would also require the notice of improper storage form developed by the Department of Public Health to be posted on the Department of Consumer Affairs' website.

Staff Recommendation: No position

This adds a requirement that DCA provide reporting forms online. Additionally, it requires that reports of improper specimen handling are emailed to DCA, as well.

9B01 - AB 613 (Low)

Professions and Vocations: Regulatory Fees

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ASSEMBLY BILL

No. 613

Introduced by Assembly Member Low

February 14, 2019

An act to add Section 101.1 to the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 613, as introduced, Low. Professions and vocations: regulatory fees.

Existing law establishes the Department of Consumer Affairs, which is comprised of boards that are established for the purpose of regulating various professions and vocations, and generally authorizes a board to charge fees for the reasonable regulatory cost of administering the regulatory program for the profession or vocation. Existing law establishes the Professions and Vocations Fund in the State Treasury, which consists of specified special funds and accounts, some of which are continuously appropriated.

This bill would authorize each board within the department to increase every 4 years any fee authorized to be imposed by that board by an amount not to exceed the increase in the California Consumer Price Index for the preceding 4 years, subject to specified conditions. The bill would require the Director of Consumer Affairs to approve any fee increase proposed by a board except under specified circumstances. By authorizing an increase in the amount of fees deposited into a continuously appropriated fund, this bill would make an appropriation.

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

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

1 SECTION 1. Section 101.1 is added to the Business and
2 Professions Code, to read:

3 101.1. (a) Notwithstanding any other law, no more than once
4 every four years, any board listed in Section 101 may increase any
5 fee authorized to be imposed by that board by an amount not to
6 exceed the increase in the California Consumer Price Index, as
7 determined pursuant to Section 2212 of the Revenue and Taxation
8 Code, for the preceding four years in accordance with the
9 following:

10 (1) The board shall provide its calculations and proposed fee,
11 rounded to the nearest whole dollar, to the director and the director
12 shall approve the fee increase unless any of the following apply:

13 (A) The board has unencumbered funds in an amount that is
14 equal to more than the board’s operating budget for the next two
15 fiscal years.

16 (B) The fee would exceed the reasonable regulatory costs to the
17 board in administering the provisions for which the fee is
18 authorized.

19 (C) The director determines that the fee increase would be
20 injurious to the public health, safety, or welfare.

21 (2) The adjustment of fees and publication of the adjusted fee
22 list is not subject to the Administrative Procedure Act (Chapter
23 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
24 Title 2) of the Government Code.

25 (b) For purposes of this section, “fee” includes any fees
26 authorized to be imposed by a board for regulatory costs. “Fee”
27 does not include administrative fines, civil penalties, or criminal
28 penalties.

O

9B02 - AB 778 (Low)

Acupuncture: Continuing Education

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Assembly Bill No. 613

CHAPTER 799

An act to add and repeal Section 1246.7 of the Business and Professions Code, relating to clinical laboratories.

[Approved by Governor September 27, 2018. Filed with
Secretary of State September 27, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 613, Nazarian. Healing arts: clinical laboratories.

Existing law provides for the licensure, registration, and regulation of clinical laboratories and various clinical laboratory personnel by the State Department of Public Health, with specified exceptions. A violation of those provisions is a crime. Existing law authorizes a person who is licensed under those provisions to perform certain laboratory tests.

This bill, until January 1, 2021, would authorize a person with specified qualifications to perform a total protein test using a digital refractometer in a licensed plasma collection center in this state if specified circumstances are met, as determined by the department, including that the person meets certain education and training requirements. The bill would require the digital refractometer used to perform a total protein test pursuant to these provisions to meet specific criteria, including that it be used within 30 feet of the donor for whom the test is being conducted. The bill would require a participating licensed plasma collection center to make specified information available to the department. The bill would exempt the information obtained pursuant to these provisions from the California Public Records Act. Because a violation of those provisions would be a crime, the bill would impose a state-mandated local program.

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

This bill would make legislative findings to that effect.

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

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

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

SECTION 1. It is the intent of the Legislature to enact legislation to specify the qualifications of, and the limited circumstances in which, properly trained and supervised personnel may perform a total protein test using a digital refractometer in a licensed plasma collection center in this state.

SEC. 2. Section 1246.7 is added to the Business and Professions Code, to read:

1246.7. (a) Notwithstanding any other law, a person may perform a total protein test using a digital refractometer in a licensed plasma collection center in this state, if the department, as part of its routine, fee-supported inspection of the licensed plasma collection center, including its review of personnel reports for licensed and unlicensed personnel and job descriptions of all center positions for a licensed plasma collection center, determines that all of the following conditions are met:

(1) (A) He or she has earned a high school diploma or equivalent, as determined by the federal Centers for Medicare and Medicaid Services (CMS) pursuant to the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA) (42 U.S.C. Sec. 263a).

(B) He or she has training sufficient to demonstrate that the individual has the skills and abilities described in paragraph (2) of subdivision (a) of Section 1269.

(2) (A) In addition to the education and training requirements specified in paragraph (1), he or she has received five hours of training in the proper procedures to be employed when performing a total protein test using a digital refractometer and the procedures for recording the test results pursuant to paragraph (7).

(B) His or her training in the proper procedure to be employed when performing a total protein test using a digital refractometer has been certified by a moderate complexity laboratory technical consultant as specified in Section 1036.2 of Title 17 of the California Code of Regulations, by a physician and surgeon licensed in this state, or by a licensed clinical laboratory director who is in charge of the licensed plasma collection center.

(C) The instructor documents, and the plasma collection center maintains the documentation of, the individual's successful completion of training in the performance of the total protein test using a digital refractometer. This documentation shall be made available to the department upon request.

(3) He or she performs the total protein test using a digital refractometer under the supervision of one of the following individuals who is physically onsite in the licensed plasma collection center and is available for consultation and direction while the person is processing specimens and performing the test:

(A) A moderate complexity laboratory technical consultant as specified in Section 1036.2 of Title 17 of the California Code of Regulations.

(B) A registered nurse licensed pursuant to Chapter 6 of Division 2.

(C) A physician or surgeon licensed pursuant to Chapter 5 of Division 2.

(D) A clinical laboratory director licensed pursuant to this chapter.

(4) He or she performs the total protein test using a digital refractometer in accordance with both of the following:

(A) Standardized operating procedures required by the licensed plasma collection center's license.

(B) Standardized procedures developed and approved by the licensed plasma collection center's supervising physician and surgeon or licensed clinical laboratory director for administration of the total protein test by the persons authorized to perform the total protein test pursuant to this section. These standardized procedures shall be made available to the department upon request.

(5) He or she does not draw the blood sample required for the test using a procedure that requires a registration, certification, or license under state law unless he or she is properly registered, certified, or licensed to perform the procedure.

(6) His or her competency in performing total protein tests using a digital refractometer is evaluated before testing on donors, and every six months thereafter, by the CLIA lab director or technical consultant by direct observation. A licensed plasma collection center shall maintain documentation of the competency evaluation, which shall be made available to the department upon request.

(7) He or she accurately records the results of the total protein test in a federal FDA 510k-approved blood establishment computer system (BECS), which shall be verified in one of the following ways:

(A) Using a digital refractometer that creates an electronic record of the test results.

(B) Having each record entered by the individual verified for accuracy at the time the test result is recorded and while the result remains visible on the digital refractometer by a registered nurse or by the individual described in paragraph (4) who is supervising the individual performing the test. The individual certifying the accuracy shall affix his or her name to the record verifying the accuracy of the entries.

(C) Affixing a date- and time-stamped photograph of the digital refractometer test results to the spreadsheet.

(D) The plasma collection center utilizing a double blind computer entry system that requires the test results to be accurately entered into the record twice before the results are recorded as final.

(b) The digital refractometer used to perform a total protein test pursuant to this section shall meet all of the following criteria:

(1) Is used within 30 feet of the donor for whom the test is being conducted.

(2) Is used in accordance with the donor test management system, the quality control program, and the comprehensive quality assurance program established and maintained by the laboratory pursuant to paragraph (2) of subdivision (d) of Section 1220, if applicable to the licensed plasma collection center under federal law.

(3) Performs total protein tests classified as waived or of moderate complexity under the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA) (42 U.S.C. Sec. 263a).

(4) Performs total protein tests using a digital refractometer on biological specimens that require manual blood collection, centrifugation to separate the blood cells from the plasma, pipetting the plasma from the cells, and application of the plasma into the refractometer.

(5) Provides total protein test results without calculation or discretionary intervention by the testing personnel.

(6) Performs total protein tests without the necessity for testing personnel to perform calibration or maintenance, except basic cleaning, resetting, and daily standardization pursuant to the manufacturer's instructions.

(c) To assess the competency and performance of persons authorized to perform the total protein test pursuant to this section, a licensed plasma collection center utilizing this section shall make available to the department any information required by statute or regulation to be collected or maintained by the licensed plasma collection center, and the results of any testing required by statute or regulation to be performed by the licensed plasma collection center, related to assessing the competency and performance of persons using a digital refractometer, as determined by the department. Information obtained pursuant to this subdivision shall be confidential and is not a public record. The department may contract for collection and review of the information required by this subdivision. The contract shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code and shall be exempt from review or approval by any division of the Department of General Services.

(d) Records of digital refractometer test results collected pursuant to paragraph (7) of subdivision (a) shall be maintained for three years and made available to the department upon request.

(e) This section shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2021, deletes or extends that date.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 1246.7 to the Business and Professions Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect against an unwarranted invasion of personal privacy as a result of the disclosure of personnel, medical, or similar files, it is necessary that this act limit the public's right of access to that information.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of

Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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9B03 - AB 888 (Low) Opioid Prescriptions:
Information: Nonpharmacological
Treatment for Pain

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AMENDED IN ASSEMBLY APRIL 11, 2019

AMENDED IN ASSEMBLY MARCH 21, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 888

Introduced by Assembly Member Low

February 20, 2019

An act to amend Section 11158.1 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 888, as amended, Low. Opioid prescriptions: information: nonpharmacological treatments for pain.

Existing law requires a prescriber, with certain exceptions, before directly dispensing or issuing for a minor the first prescription for a controlled substance containing an opioid in a single course of treatment, to discuss specified information with the minor, the minor's parent or guardian, or another adult authorized to consent to the minor's medical treatment.

This bill would extend that requirement for the prescriber by applying it to any patient, not only a minor, under those circumstances. The bill would also require the prescriber to discuss the availability of nonpharmacological treatments for pain, as defined.

Existing law makes an exception to the requirement for the prescriber in the case of a patient who is being treated for a diagnosis of chronic intractable pain, as specified.

This bill would remove that exception and would instead make an exception in the case of a patient who is currently receiving hospice care.

The bill would require the prescriber, after discussing the information, to ~~offer~~ *offer, as deemed appropriate by the prescriber*, a referral for a provider of nonpharmacological treatments for pain, and to obtain informed written consent from the patient, a minor patient's parent or guardian, or another authorized adult, as specified.

Existing federal law, the federal Patient Protection and Affordable Care Act (PPACA), requires a health benefit plan issuer that offers coverage in the small group or individual market to ensure that the coverage includes the essential health benefits package, as defined.

This bill would make legislative findings and declarations relating to addiction associated with overreliance on prescription medication for pain management, and providing that nonpharmacological treatments for pain should be considered during the next update to the state's essential health benefits benchmark plan.

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

3 (a) The opioid crisis has devastated communities within
4 California, which has prompted an urgent discussion about the
5 risks of addiction associated with overreliance on prescription
6 medication for pain management.

7 (b) A growing body of research indicates that certain
8 nonpharmacological therapies are proven to be equally effective
9 to treat certain causes of pain as prescription opioids, without
10 placing patients at risk for addiction or overdose.

11 (c) To this end, awareness of, and access to, nonpharmacological
12 treatments for pain are vitally important to the state's efforts to
13 combat the opioid crisis, and that coverage of these treatments
14 should be considered during the next update to the state's essential
15 health ~~benefit~~ *benefits* benchmark plan pursuant to Section 156.111
16 of Title 45 of the Code of Federal Regulations.

17 SEC. 2. Section 11158.1 of the Health and Safety Code is
18 amended to read:

19 11158.1. (a) Except when a patient is being treated as set forth
20 in Sections 11159, 11159.2, and 11167.5, and Article 2
21 (commencing with Section 11215) of Chapter 5, pertaining to the

1 treatment of addicts, or except when a patient is currently receiving
2 hospice care, a prescriber shall discuss all of the following
3 information with the patient, or, if the patient is a minor, the minor,
4 the minor's parent or guardian, or another adult authorized to
5 consent to the minor's medical treatment, before directly dispensing
6 or issuing to a patient the first prescription in a single course of
7 treatment for a controlled substance containing an opioid:

8 (1) The risks of addiction and overdose associated with the use
9 of opioids.

10 (2) The increased risk of addiction to an opioid for an individual
11 who is suffering from both mental and substance abuse disorders.

12 (3) The danger of taking an opioid with a benzodiazepine,
13 alcohol, or another central nervous system depressant.

14 (4) The availability of nonpharmacological treatments for pain.

15 (5) Any other information required by law.

16 (b) After discussing the information required by subdivision
17 (a), the prescriber shall do both of the following:

18 (1) Obtain informed written consent from the patient, a minor
19 patient's parent or guardian, or another adult authorized to consent
20 to the minor patient's medical treatment, which shall be placed in
21 the patient's medical record and shall contain all of the following:

22 (A) The name and quantity of the controlled substance being
23 prescribed or issued to the patient, and the amount of the initial
24 dose.

25 (B) A statement certifying that the prescriber discussed with
26 the patient, a minor patient's parent or guardian, or another adult
27 authorized to consent to the minor patient's medical treatment, the
28 information required by subdivision (a).

29 (C) A space for the signature of the patient, a minor patient's
30 parent or guardian, or another adult authorized to consent to the
31 minor patient's medical treatment.

32 (2) ~~Offer~~ *Offer, as deemed appropriate by the prescriber, a*
33 *referral for a provider of nonpharmacological treatments for pain.*

34 (c) This section does not apply in any of the following
35 circumstances:

36 (1) If the patient's treatment includes emergency services and
37 care as defined in Section 1317.1.

38 (2) If the patient's treatment is associated with, or incidental to,
39 an emergency surgery, regardless of whether the surgery is
40 performed on an inpatient or outpatient basis.

1 (3) If, in the prescriber’s professional judgment, fulfilling the
2 requirements of subdivision (a) or (b) would be detrimental to the
3 patient’s health or safety, or in violation of the patient’s legal rights
4 regarding confidentiality.

5 (d) For purposes of this section, “nonpharmacological treatments
6 for pain” include, but are not limited to, acupuncture, chiropractic
7 care, physical therapy, occupational therapy, and licensed mental
8 health provider services.

9 (e) *This section shall not be construed as requiring health care*
10 *coverage, or changing existing health care coverage requirements,*
11 *for nonpharmacological treatments for pain.*

12 ~~(e)~~

13 (f) Notwithstanding any other law, including Section 11374,
14 failure to comply with this section shall not constitute a criminal
15 offense.

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9B04 - AB 1263 (Low)

Contracts: Consumer Services: Consumer
Complaints

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AMENDED IN ASSEMBLY JANUARY 6, 2020

AMENDED IN ASSEMBLY APRIL 1, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1263

Introduced by Assembly Member Low

February 21, 2019

An act to add Chapter 1.6 (commencing with Section 1939.60) to Title 5 of Part 4 of Division 3 of the Civil Code, to add Article 5.1 (commencing with Section 11629.6) to Chapter 1 of Part 3 of Division 2 of, and to repeal Section 11580.24 of, the Insurance Code, and to amend Sections 11752, 11754, and 11760 of the Vehicle Code, Section 1670.8.5 to the Civil Code, relating to business regulation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1263, as amended, Low. ~~Peer-to-peer car sharing.~~ *Contracts: consumer services: consumer complaints.*

Existing law regulates the formation and enforcement of contracts, including what constitutes an unlawful contract. Under existing law, a contract is unlawful if it is contrary to an express provision of law, contrary to the policy of express law, though not expressly prohibited, or otherwise contrary to good morals.

Existing law regulates licensees who are subject to the jurisdiction of a state licensing entity, including the State Bar of California, the Department of Real Estate, the Department of Consumer Affairs, or any other state agency that issues a license, certificate, or registration authorizing a person to engage in a business or profession.

This bill would prohibit a contract or proposed contract involving the provision of a consumer service by a licensee regulated by a

licensing board from including a provision limiting the consumer’s ability to file a complaint with that board or to participate in the board’s investigation into the licensee. The bill would specify that a waiver of these provisions is contrary to public policy and is void and unenforceable. The bill would provide that a violation of these provisions by a licensee constitutes unprofessional conduct subject to discipline by the licensee’s regulatory board.

~~Existing law defines a personal vehicle sharing program as a legal entity qualified to do business in the state that is engaged in the business of facilitating the sharing of private passenger vehicles for noncommercial use by individuals within the state.~~

~~This bill would rename “personal vehicle sharing program” to “peer-to-peer car sharing program” and would require specified disclosures to be made in a peer-to-peer car sharing contract. This bill would authorize a peer-to-peer car sharing program to only enter into a contract with a licensed driver, as specified. The bill would make a peer-to-peer car sharing program responsible for any equipment that is to be installed in a vehicle to facilitate car sharing transactions. The bill would authorize airports to regulate access and use by peer-to-peer car sharing vehicles. The bill would also require peer-to-peer car sharing programs and participants to be insured, as specified.~~

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

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

- 1 SECTION 1. Section 1670.8.5 is added to the Civil Code, to
- 2 read:
- 3 1670.8.5. (a) A contract or proposed contract involving the
- 4 provision of a consumer service by a licensee regulated by a
- 5 licensing board shall not include a provision limiting the
- 6 consumer’s ability to file a complaint with that board or to
- 7 participate in the board’s investigation into the licensee.
- 8 (b) Any waiver of the provisions of this section is contrary to
- 9 public policy, and is void and unenforceable.
- 10 (c) For purposes of this section, the following terms apply:
- 11 (1) “Consumer service” means any service which is obtained
- 12 for use primarily for personal, family, or household purposes.
- 13 (2) “Licensing board” means any entity contained in Section
- 14 101 of the Business and Professions Code, the State Bar of

1 California, the Department of Real Estate, or any other state
2 agency that issues a license, certificate, or registration authorizing
3 a person to engage in a business or profession.

4 (d) Violation of this section by a licensee shall constitute
5 unprofessional conduct subject to discipline by the licensee’s
6 licensing board.

7 SECTION 1. Chapter 1.6 (commencing with Section 1939.60)
8 is added to Title 5 of Part 4 of Division 3 of the Civil Code, to
9 read:

10
11 ~~CHAPTER 1.6. PEER-TO-PEER CAR SHARING PROGRAMS~~
12

13 ~~1939.60. This chapter may be cited as the Peer-to-Peer Car~~
14 ~~Sharing Program Act.~~

15 ~~1939.61. As used in this chapter, the following terms have the~~
16 ~~following meanings:~~

17 ~~(a) “Car sharing delivery period” means the period of time~~
18 ~~during which a shared vehicle is being delivered to the location~~
19 ~~where the car sharing start time will commence, if applicable, as~~
20 ~~documented by the governing car sharing program agreement.~~

21 ~~(b) “Car sharing period” means the period of time from the~~
22 ~~commencement of the car sharing delivery period or, if there is no~~
23 ~~car sharing delivery period, from the car sharing start time, through~~
24 ~~the car sharing termination time.~~

25 ~~(c) “Car sharing program agreement” means the terms and~~
26 ~~conditions applicable to a shared vehicle owner and a shared~~
27 ~~vehicle driver that govern the use of a shared vehicle through a~~
28 ~~peer-to-peer car sharing program.~~

29 ~~(d) “Car sharing start time” means the time when the shared~~
30 ~~vehicle driver takes control of the shared vehicle at or after the~~
31 ~~time the reservation of a shared vehicle is scheduled to begin as~~
32 ~~documented in the records of a peer-to-peer car sharing program.~~

33 ~~(e) “Car sharing termination time” means the time when the~~
34 ~~shared vehicle is returned to the location designated by the shared~~
35 ~~vehicle owner through a peer-to-peer car sharing program, and the~~
36 ~~earliest of one of the following occurs:~~

37 ~~(1) The intent to terminate the use of the shared vehicle is~~
38 ~~verifiably communicated by the shared vehicle driver to the shared~~
39 ~~vehicle owner using the peer-to-peer car sharing program.~~

- 1 ~~(2) The shared vehicle owner or the shared vehicle owner’s~~
2 ~~authorized designee takes possession and control of the shared~~
3 ~~vehicle.~~
- 4 ~~(3) The period of time established for the use of a shared vehicle~~
5 ~~in the governing car sharing program agreement expires.~~
- 6 ~~(f) “Peer-to-peer car sharing” means the authorized use of a~~
7 ~~vehicle by an individual other than the vehicle’s owner through a~~
8 ~~peer-to-peer car sharing program.~~
- 9 ~~(g) “Peer-to-peer car sharing program” means a business~~
10 ~~platform that connects vehicle owners with licensed drivers to~~
11 ~~enable the sharing of vehicles for financial consideration.~~
12 ~~“Peer-to-peer car sharing program” does not mean car rental~~
13 ~~agency.~~
- 14 ~~(h) “Shared vehicle” means a vehicle that is available for sharing~~
15 ~~through a peer-to-peer car sharing program.~~
- 16 ~~(i) “Shared vehicle driver” means a person who is authorized~~
17 ~~to drive a shared vehicle by the shared vehicle owner under a car~~
18 ~~sharing program agreement.~~
- 19 ~~(j) “Shared vehicle owner” means the registered owner of a~~
20 ~~vehicle made available for sharing to shared vehicle drivers through~~
21 ~~a peer-to-peer car sharing program.~~
- 22 ~~1939.62. Each car sharing program agreement made in the state~~
23 ~~shall disclose to the shared vehicle owner and the shared vehicle~~
24 ~~driver all of the following:~~
- 25 ~~(a) Any right of the peer-to-peer car sharing program to seek~~
26 ~~indemnification from the shared vehicle owner or the shared vehicle~~
27 ~~driver for economic loss sustained by the peer-to-peer car sharing~~
28 ~~program resulting from a breach of the terms and conditions of~~
29 ~~the car sharing program agreement.~~
- 30 ~~(b) That an automobile liability insurance policy issued to the~~
31 ~~shared vehicle owner for the shared vehicle or to the shared vehicle~~
32 ~~driver does not provide a defense or indemnification for any claim~~
33 ~~asserted by the peer-to-peer car sharing program.~~
- 34 ~~(c) That the peer-to-peer car sharing program’s insurance~~
35 ~~coverage on the shared vehicle owner and the shared vehicle driver,~~
36 ~~required pursuant to Article 5.1 (commencing with Section~~
37 ~~11629.6) to Chapter 1 of Part 3 of Division 2 of the Insurance~~
38 ~~Code, is in effect only during each car sharing period and that, for~~
39 ~~any use of the shared vehicle by the shared vehicle driver after the~~

1 ~~car sharing termination time, the shared vehicle driver and the~~
2 ~~shared vehicle owner may not be covered.~~

3 ~~(d) The amounts of the daily rate, additional mandatory charges,~~
4 ~~fees, and, if applicable, any insurance or protection plan costs that~~
5 ~~are charged to the shared vehicle owner or the shared vehicle~~
6 ~~driver.~~

7 ~~(e) That the shared vehicle owner's motor vehicle liability~~
8 ~~insurance may not provide coverage for a shared vehicle.~~

9 ~~(f) An emergency telephone number for customer service~~
10 ~~inquiries, including requests for emergency roadside assistance.~~

11 ~~1939.63. A peer-to-peer car sharing program shall disclose the~~
12 ~~daily rate, charges, fees, and costs when providing a quote and~~
13 ~~shall not require any other fees or charges to be paid as a condition~~
14 ~~of using the shared vehicle.~~

15 ~~1939.64. (a) A peer-to-peer car sharing program shall only~~
16 ~~enter into a car sharing program agreement with a shared vehicle~~
17 ~~driver who is at least 18 years of age and who provides~~
18 ~~documentation of either of the following documents:~~

19 ~~(1) A valid, unexpired California driver's license that authorizes~~
20 ~~the driver to operate a vehicle of the same class as the shared~~
21 ~~vehicle.~~

22 ~~(2) A valid, unexpired driver's license issued by the state or~~
23 ~~country of the shared vehicle driver's residence that authorizes the~~
24 ~~driver in that state or country to drive a vehicle of the same class~~
25 ~~as the shared vehicle.~~

26 ~~1939.65. A peer-to-peer car sharing program shall have sole~~
27 ~~responsibility for any equipment that is installed in or on the~~
28 ~~vehicle to facilitate the car sharing transaction, and shall agree to~~
29 ~~indemnify and hold harmless the shared vehicle owner for any~~
30 ~~damage to or theft of the equipment during the sharing period not~~
31 ~~caused by the vehicle owner. The peer-to-peer car sharing program~~
32 ~~has the right to seek indemnity from the shared vehicle driver for~~
33 ~~any loss or damage to the equipment that occurs during the car~~
34 ~~sharing period.~~

35 ~~1939.66. (a) Notwithstanding any other law, a commercial~~
36 ~~airport authority is authorized to regulate access to an airport and~~
37 ~~set access fees for peer-to-peer car sharing programs. If required,~~
38 ~~a peer-to-peer car sharing program shall obtain a permit or other~~
39 ~~written authorization from the airport operator prior to facilitating~~
40 ~~the sharing of vehicles at that airport.~~

1 ~~(b) This section does not affect the authority of any political~~
2 ~~subdivision of the state to regulate access to an airport it owns or~~
3 ~~operates and to set access fees or requirements for a peer-to-peer~~
4 ~~car sharing program.~~

5 ~~SEC. 2. Section 11580.24 of the Insurance Code is repealed.~~

6 ~~SEC. 3. Article 5.1 (commencing with Section 11629.6) is~~
7 ~~added to Chapter 1 of Part 3 of Division 2 of the Insurance Code,~~
8 ~~to read:~~

9
10 ~~Article 5.1. Peer-to-Peer Car Sharing Programs~~
11

12 ~~11629.6. For purposes of this article, the definitions set forth~~
13 ~~in Section 1939.61 of the Civil Code shall apply.~~

14 ~~11629.61. (a) A peer-to-peer car sharing program shall assume~~
15 ~~the liability of a shared vehicle owner for any property damage to~~
16 ~~the shared vehicle or any bodily injury or property damage to third~~
17 ~~parties or uninsured and underinsured motorist or personal injury~~
18 ~~protection losses during the car sharing period in an amount stated~~
19 ~~in the peer-to-peer car sharing program agreement which amount~~
20 ~~may not be less than those set forth in Section 16056 of the Vehicle~~
21 ~~Code. In addition, a peer-to-peer car sharing program shall also~~
22 ~~assume liability for the shared vehicle.~~

23 ~~The assumption of liability does not apply if the shared vehicle~~
24 ~~owner makes an intentional or fraudulent material~~
25 ~~misrepresentation to the peer-to-peer car sharing program before~~
26 ~~the car sharing period in which the loss occurred.~~

27 ~~(b) A peer-to-peer car sharing program shall ensure that, during~~
28 ~~each car sharing period, the shared vehicle owner and the shared~~
29 ~~vehicle driver are insured under a motor vehicle liability insurance~~
30 ~~policy that provides insurance coverage in amounts no less than~~
31 ~~_____.~~

32 ~~(c) The insurance described in subdivision (b) may be satisfied~~
33 ~~by motor vehicle liability insurance maintained by any of the~~
34 ~~following:~~

- 35 ~~(1) The shared vehicle owner.~~
- 36 ~~(2) The shared vehicle driver.~~
- 37 ~~(3) The peer-to-peer car sharing program.~~
- 38 ~~(4) Any combination of the above.~~

39 ~~(d) The peer-to-peer car sharing program shall assume primary~~
40 ~~liability for a claim when it is, in whole or in part, providing the~~

1 insurance required under subdivision (b) and both of the following
2 are true:

3 (1) A dispute exists as to who was in control of the shared motor
4 vehicle at the time of the loss.

5 (2) The peer-to-peer car sharing program does not have
6 available, did not retain, or fails to provide the information required
7 pursuant to Section 11629.65.

8 (e) If a peer-to-peer car sharing program assumes liability for
9 a claim pursuant to subdivision (d), and it is later determined that
10 the shared motor vehicle's owner was in control of the shared
11 motor vehicle at the time of the loss, the shared motor vehicle's
12 insurer shall indemnify the car sharing program to the extent of
13 its obligation, if any, under the applicable insurance policy.

14 (f) If the insurance described in subdivision (e) maintained by
15 a shared vehicle owner or shared vehicle driver has lapsed or does
16 not provide the required coverage, insurance maintained by the
17 peer-to-peer car sharing program shall provide the coverage
18 required pursuant to subdivision (b) beginning with the first dollar
19 of a claim and shall have the duty to defend such a claim.

20 (g) Coverage under an automobile insurance policy maintained
21 by the peer-to-peer car sharing program shall not be dependent on
22 a personal automobile insurer first denying a claim nor shall a
23 personal automobile insurance policy be required to first deny a
24 claim.

25 (h) This article does not limit either of the following:

26 (1) The liability of a peer-to-peer car sharing program for any
27 act or omission of the peer-to-peer car sharing program itself that
28 results in injury to any person as a result of the use of a shared
29 vehicle through a peer-to-peer car sharing program.

30 (2) The ability of a peer-to-peer car sharing program to, by
31 contract, seek indemnification from the shared vehicle owner or
32 the shared vehicle driver for economic loss sustained by the
33 peer-to-peer car sharing program resulting from a breach of the
34 terms and conditions of the car sharing program agreement.

35 11629.62. Before a shared vehicle is made available for car
36 sharing on the peer-to-peer car sharing program, the peer-to-peer
37 car sharing program shall notify the shared vehicle owner that, if
38 the shared vehicle has a lien against it, the use of the shared vehicle
39 through a peer-to-peer car sharing program, including use without

1 physical damage coverage, may violate the terms of the contract
2 with the lienholder.

3 ~~11629.63. An authorized insurer that writes motor vehicle
4 liability insurance may exclude any and all coverage and the duty
5 to defend or indemnify for any claim afforded under a shared
6 vehicle owner's personal motor vehicle liability insurance policy.
7 This article does not invalidate or limit an exclusion contained in
8 a motor vehicle liability insurance policy, including any insurance
9 policy in use or approved for use that excludes coverage for motor
10 vehicles made available for rent, sharing, or hire or for any business
11 use.~~

12 ~~11629.64. A motor vehicle insurer may not deny, cancel, void,
13 terminate, rescind, or nonrenew a policy of personal private
14 passenger automobile liability insurance of a shared vehicle owner
15 solely on the basis that vehicle covered under the policy has been
16 made available for sharing through a peer-to-peer car sharing
17 program.~~

18 ~~11629.65. A peer-to-peer car sharing program shall collect and
19 verify records pertaining to the use of a vehicle, including, but not
20 limited to, times used, fees paid by the shared vehicle driver, and
21 revenues received by the shared vehicle owner and provide that
22 information upon request to the shared vehicle owner, the shared
23 vehicle owner's insurer, or the shared vehicle driver's insurer to
24 facilitate a claim coverage investigation. The peer-to-peer car
25 sharing program shall retain the records for not less than five years
26 unless a longer retention period is otherwise required by law.~~

27 ~~11629.66. A motor vehicle insurer that defends or indemnifies
28 a claim involving a shared vehicle that is excluded under the terms
29 of its policy shall have the right to seek contribution against the
30 motor vehicle insurer of the peer-to-peer car sharing program if
31 both of the following are true:~~

32 ~~(a) The claim is made against the shared vehicle owner or the
33 shared vehicle driver for loss or injury that occurs during the car
34 sharing period.~~

35 ~~(b) Coverage for peer-to-peer vehicle sharing is excluded under
36 the terms of its policy.~~

37 ~~11629.67. A peer-to-peer car sharing program shall, for each
38 vehicle that it facilitates the use of, provide the registered owner
39 of the vehicle with a Department of Motor Vehicles Form REG
40 5085 or other suitable proof of compliance with the insurance~~

1 requirements of this section and the requirements of the California
2 Financial Responsibility Law in Section 1656.2 of the Vehicle
3 Code, a copy of which shall be maintained in the vehicle by the
4 vehicle's registered owner during any time when the vehicle is
5 operated by any person other than the vehicle's owner pursuant to
6 a peer-to-peer car sharing program.

7 SEC. 4. Section 11752 of the Vehicle Code is amended to read:

8 11752. As used in this article, the following definitions apply:

9 (a) The term "dealer" has the same meaning as in Section 285.

10 (b) (1) A "manufacturer's recall" is a recall conducted pursuant
11 to Sections 30118 to 30120, inclusive, of Title 49 of the United
12 States Code.

13 (2) A manufacturer's recall does not include a service campaign
14 or emission recall when the vehicle manufacturer or the National
15 Highway Traffic Safety Administration has not issued a recall
16 notice to owners of affected vehicles, pursuant to Section 30118
17 of Title 49 of the United States Code.

18 (c) A "peer-to-peer car sharing program" has the same meaning
19 as defined in Section 1939.61 of the Civil Code.

20 (d) A "recall database" is a database from which an individual
21 may obtain vehicle identification number (VIN) specific
22 manufacturer's recall information relevant to a specific vehicle.

23 (1) For a vehicle manufacturer that is not subject to the
24 regulations adopted pursuant to Section 31301 of the federal
25 Moving Ahead for Progress in the 21st Century Act (Public Law
26 112-141), a recall database is one of the following:

27 (A) The recall data on a vehicle manufacturer's internet website
28 for a specific vehicle's line-make.

29 (B) The recall data in a vehicle manufacturer's internal system
30 that provides information to its franchisees on vehicles subject to
31 recall.

32 (C) The recall data in subparagraph (A) or (B) that is contained
33 in a commercially available vehicle history system.

34 (2) For a vehicle manufacturer that is subject to the regulations
35 adopted pursuant to Section 31301 of the federal Moving Ahead
36 for Progress in the 21st Century Act (Public Law 112-141), a recall
37 database shall include, at a minimum, the recall information
38 required pursuant to Section 573.15 of Title 49 of the Code of
39 Federal Regulations.

1 (e) A “recall database report” is a report, specific to a vehicle
2 that is identified by its VIN, containing information obtained from
3 a recall database.

4 (f) A “rental car company” is a person or entity in the business
5 of renting passenger vehicles to the public in California.

6 SEC. 5. Section 11754 of the Vehicle Code is amended to read:

7 11754. (a) No later than 48 hours after receiving a notice of a
8 manufacturer’s recall, or sooner if practicable, a dealer or rental
9 car company with a motor vehicle fleet of 34 or fewer loaner or
10 rental vehicles shall not loan, rent, or offer for loan or rent a vehicle
11 subject to that recall until the recall repair has been made.

12 (b) If a recall notification indicates that the remedy for the recall
13 is not immediately available and specifies actions to temporarily
14 repair the vehicle in a manner to eliminate the safety risk that
15 prompted the recall, the dealer or rental car company, after having
16 the repairs completed, may loan or rent the vehicle. Once the
17 remedy for the vehicle becomes available to the dealer or rental
18 car company, the dealer or rental car company shall not loan or
19 rent the vehicle until the vehicle has been repaired.

20 (c) As soon as practicable but not more than 48 hours after a
21 vehicle is subject to a manufacturer’s recall, as defined in
22 subdivision (b) of Section 11752, and a recall notice has been
23 issued by the manufacturer and appears in the recall database
24 provided by the National Highway Traffic Safety Administration
25 pursuant to Section 573.15 of Title 49 of the Code of Federal
26 Regulations, or not more than 48 hours after the peer-to-peer car
27 sharing program receives notification of a manufacturer’s recall
28 by a third party with which the peer-to-peer car sharing program
29 contracts to provide notification of active recalls, a peer-to-peer
30 car sharing program shall not facilitate or otherwise arrange for
31 transportation with that vehicle until after any recall notices for
32 that vehicle no longer appear in the recall database provided by
33 the National Highway Traffic Safety Administration.

34 (d) The changes to this section made by Chapter 591 of the
35 Statutes of 2018 do not apply in any manner to litigation pending
36 as of January 1, 2019.

37 (e) This section does not affect the determination of whether or
38 not a company is a rental car company or whether or not a company
39 is a peer-to-peer car sharing company.

40 SEC. 6. Section 11760 of the Vehicle Code is amended to read:

1 ~~11760. (a) This article does not create any legal duty upon the~~
2 ~~dealer, rental car company, peer-to-peer car sharing program, or~~
3 ~~department related to the accuracy, errors, or omissions contained~~
4 ~~in a recall database report or any legal duty to provide information~~
5 ~~added to a recall database after the dealer, rental car company,~~
6 ~~peer-to-peer car sharing program, or department obtained the recall~~
7 ~~database report pursuant to Sections 11754 and 11758.~~

8 ~~(b) The changes to this section made by Chapter 591 of the~~
9 ~~statutes of 2018 shall not apply in any manner to litigation that is~~
10 ~~pending as of January 1, 2019.~~

11 ~~(c) This section does not affect the determination of whether or~~
12 ~~not a company is a rental car company or whether or not a company~~
13 ~~is a peer-to-peer car sharing program.~~

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9B05 - AB 1616 (Low)

Department of Consumer Affairs: Boards:
Expunged Convictions

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AMENDED IN ASSEMBLY JANUARY 6, 2020

AMENDED IN ASSEMBLY APRIL 1, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1616

Introduced by Assembly Member Low
(Coauthor: Assembly Member Eduardo Garcia)

February 22, 2019

An act to ~~amend Section 10295.6 of the Insurance Code, relating to insurance;~~ *add Section 493.5 to the Business and Professions Code, relating to professions and vocations.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1616, as amended, Low. ~~Accelerated death benefits—Department of Consumer Affairs: boards: expunged convictions.~~

Existing law establishes the Department of Consumer Affairs, which is composed of various boards, and authorizes a board to suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. Existing law, the Medical Practice Act, provides for the licensure and regulation of the practice of medicine by the Medical Board of California and requires the board to post certain historical information on current and former licensees, including felony and certain misdemeanor convictions. Existing law also requires the Medical Board of California, upon receipt of a certified copy of an expungement order from a current or former licensee, to post notification of the expungement order and the date thereof on its internet website.

This bill would require a board within the department that has posted on its internet website that a person’s license was revoked because the person was convicted of a crime to, within 6 months of receiving the expungement order for the underlying offense from the person, post notification of the expungement order and the date thereof on the board’s internet website if the person applies for licensure or is relicensed, or remove the initial posting on its internet website that the person’s license was revoked if the person is not currently licensed and does not reapply for licensure, as specified. The bill would require a person to pay a fee, to be determined by the department, to the board for the cost of administering the bill’s provisions.

~~Existing law regulates classes of insurance, including life insurance, and prescribes certain requirements governing the payment of an accelerated death benefit under a life insurance policy. Existing law authorizes an accelerated death benefit to be added to a life insurance policy to provide for the advance payment of a part of the death proceeds if a qualifying event, including a terminal or chronic illness, occurs. Existing law prohibits an accelerated death benefit from being effective more than 30 days following the effective date of the policy provision, rider, endorsement, or certificate.~~

~~This bill would authorize the effective period of an accelerated death benefit to be extended to not more than 60 days following the effective date of the policy provision, rider, endorsement, or certificate.~~

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

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

- 1 SECTION 1. Section 493.5 is added to the Business and
- 2 Professions Code, to read:
- 3 493.5. (a) A board within the department that has posted on
- 4 its internet website that a person’s license was revoked because
- 5 the person was convicted of a crime, upon receiving from the
- 6 person a certified copy of an expungement order granted pursuant
- 7 to Section 1203.4 of the Penal Code for the underlying offense,
- 8 shall, within six months of receiving the expungement order, unless
- 9 it is otherwise prohibited by law, or by other terms or conditions,
- 10 do either of the following:

1 (1) *If the person reapplies for licensure or has been relicensed,*
2 *post notification of the expungement order and the date thereof*
3 *on its internet website.*

4 (2) *If the person is not currently licensed and does not reapply*
5 *for licensure, remove the initial posting on its internet website that*
6 *the person’s license was revoked.*

7 (b) *A person described in subdivision (a) shall pay to the board*
8 *a fee in an amount to be determined by the department that does*
9 *not exceed the reasonable cost of administering this section. The*
10 *fee shall be deposited by the board into the appropriate fund and*
11 *shall be available only upon appropriation by the Legislature.*

12 (c) *For purposes of this section “board” means an entity listed*
13 *in Section 101.*

14 (d) *If any provision in this section conflicts with Section 2027,*
15 *Section 2027 shall prevail.*

16 SECTION 1. ~~Section 10295.6 of the Insurance Code is~~
17 ~~amended to read:~~

18 ~~10295.6. (a) If a policyholder or certificate holder requests an~~
19 ~~acceleration of death benefits, the insurer shall send a statement~~
20 ~~to the policyholder or certificate holder and irrevocable beneficiary~~
21 ~~showing any effect that the payment of the accelerated death benefit~~
22 ~~would have on the policy’s cash value, accumulation account,~~
23 ~~death benefit, premium, policy loans, and policy liens. The~~
24 ~~statement shall disclose that receipt of accelerated death benefit~~
25 ~~payments may adversely affect the recipient’s eligibility for~~
26 ~~Medicaid or other government benefits or entitlements. In addition,~~
27 ~~receipt of an accelerated death benefit payment may be taxable~~
28 ~~and assistance should be sought from a personal tax adviser. If a~~
29 ~~previous disclosure statement becomes invalid as a result of an~~
30 ~~acceleration of the death benefit, the insurer shall send a revised~~
31 ~~disclosure statement to the policyholder or certificate holder and~~
32 ~~irrevocable beneficiary.~~

33 ~~(b) The accelerated death benefit shall be effective not more~~
34 ~~than 60 days following the effective date of the policy provision,~~
35 ~~rider, endorsement, or certificate.~~

36 ~~(c) If the insurer charges a separate premium for the accelerated~~
37 ~~death benefit, then the insurer may also offer a waiver of premium~~
38 ~~benefit as defined in subdivision (a) of Section 10271.1. At the~~
39 ~~time the waiver of the accelerated death benefit premium benefit~~

1 is claimed, the insurer shall explain any continuing premium
2 requirement to keep the underlying policy in force.

3 (d) ~~An insurer shall not unfairly discriminate among insureds
4 with different qualifying events covered under the policy or among
5 insureds with similar qualifying events covered under the policy.
6 An insurer shall not apply further conditions on the payment of
7 the accelerated death benefits other than those conditions specified
8 in the accelerated death benefit.~~

9 (e) ~~No later than one month after payment of an accelerated
10 death benefit, the insurer shall provide the policyholder or
11 certificate holder with a report of any accelerated death benefits
12 paid out during the prior month, an explanation of any changes to
13 the policy or certificate, death benefits, and cash values on account
14 of the benefits being paid out, and the amount of the remaining
15 benefits that may be accelerated at the end of the prior month. The
16 insurer may use a calendar month or policy or certificate month.~~

17 (f) ~~The conversion benefit available to group certificate holders
18 on termination of employment pursuant to paragraph (2) of
19 subdivision (a) of Section 10209 shall include a benefit comparable
20 to the accelerated death benefit. This requirement may be satisfied
21 by an individual policy or certificate. This requirement, subject to
22 the approval of the commissioner, may be satisfied by arrangement
23 with another insurer to provide the required coverage.~~

24 (g) ~~If payment of an accelerated death benefit results in a pro
25 rata reduction in cash value, the payment may be applied toward
26 repaying a portion of the loan equal to a pro rata portion of any
27 outstanding policy loans if disclosure of the effect of acceleration
28 upon any remaining death benefit, cash value or accumulation
29 account, policy loan, and premium payments, including a statement
30 of the possibility of termination of any remaining death benefit,
31 is provided to the policyholder or certificate holder. The
32 policyholder or certificate holder shall provide written consent
33 authorizing any other arrangement for the repayment of outstanding
34 policy loans.~~

- 1
- 2 **REVISIONS:**
- 3 **Heading—Line 2.**
- 4

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9B06 - AB 1665 (Bonta)
Athletic Trainers

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AMENDED IN SENATE FEBRUARY 24, 2020

AMENDED IN ASSEMBLY MAY 8, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1665

Introduced by Assembly Member ~~Chau Bonta~~

February 22, 2019

An act to ~~add Section 1798.99.2 to the Civil Code, relating to business; amend, repeal, and add Sections 101 and 144 of, and to add and repeal Chapter 5.8 (commencing with Section 2697) of Division 2 of, the Business and Professions Code, relating to athletic trainers.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1665, as amended, ~~Chau Bonta. The Parent's Accountability and Child Protection Act.~~ *Athletic trainers.*

Existing law provides for the licensure and regulation of various professions and vocations by regulatory boards and entities within the Department of Consumer Affairs, including athlete agents.

This bill would enact the Athletic Training Practice Act, which, until January 1, 2028, would establish the California Board of Athletic Training within the Department of Consumer Affairs to exercise licensing, regulatory, and disciplinary functions under the act. The bill would prohibit a person from practicing as an athletic trainer or using certain titles or terms without being licensed by the board, subject to limited exceptions. The bill would define the practice of athletic training, specify requirements for licensure as an athletic trainer, and would require a licensed athletic trainer to practice only in collaboration with a physician and surgeon. The bill would provide that an athletic trainer license would be valid for 2 years and subject to renewal, and would

authorize the board to deny, suspend, or revoke a license and to discipline a licensee for specified reasons. The bill would specify acts that constitute unprofessional conduct and would make it a misdemeanor for any person to violate the act, as specified.

This bill would establish the Athletic Trainers Fund for the deposit of application and renewal fees, as specified, and would make those fees available to the board for the purpose of implementing the act's provisions upon appropriation by the Legislature. The bill would authorize the Director of Consumer Affairs to seek and receive donations from the California Athletic Trainers' Association or any other private individual or entity for the initial costs of implementing the act, and would specify that, if private funds are unavailable, would specify that a general fund or special fund loan may be used and repaid with fee revenue.

This bill would repeal its provisions on January 1, 2028.

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.

~~Existing federal law requires an operator of an internet website or online service directed to a child, as defined, or an operator of an internet website or online service that has actual knowledge that it is collecting personal information from a child, to provide notice of what information is being collected and how that information is being used, and to give the parents of the child the opportunity to refuse to permit the operator's further collection of information from the child.~~

~~Existing law prohibits an operator of an internet website, online service, online application, or mobile application, as specified, from marketing or advertising specified types of products or services to a minor. Existing law, the Parent's Accountability and Child Protection Act, commencing on January 1, 2020, requires a person or business that conducts business in California and that seeks to sell specified products or services to take reasonable steps, as specified, to ensure that the purchaser is of legal age at the time of purchase or delivery, including, but not limited to, verifying the age of the purchaser.~~

~~Existing law prohibits a business from selling the personal information of consumers if the business has actual knowledge that the consumer is less than 16 years of age, unless the consumer, in the case of~~

consumers between 13 and 16 years of age, or the consumer’s parent or guardian, in the case of consumers who are less than 13 years of age, has affirmatively authorized the sale of the consumer’s personal information. Existing law specifies that this right may be referred to as the “right to opt-in.”

~~This bill would prohibit a person or business that conducts business in California, that operates an internet website or application that requires opt-in consent before selling a minor’s personal information, to obtain consent to sell the minor’s personal information in a manner that is separate from the social media internet website or application’s general terms and conditions.~~

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

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

- 1 SECTION 1. Section 101 of the Business and Professions Code
- 2 is amended to read:
- 3 101. The department is comprised of the following:
- 4 (a) The Dental Board of California.
- 5 (b) The Medical Board of California.
- 6 (c) The State Board of Optometry.
- 7 (d) The California State Board of Pharmacy.
- 8 (e) The Veterinary Medical Board.
- 9 (f) The California Board of Accountancy.
- 10 (g) The California Architects Board.
- 11 (h) The State Board of Barbering and Cosmetology.
- 12 (i) The Board for Professional Engineers, Land Surveyors, and
- 13 Geologists.
- 14 (j) The Contractors’ State License Board.
- 15 (k) The Bureau for Private Postsecondary Education.
- 16 (l) The Bureau of Household Goods and Services.
- 17 (m) The Board of Registered Nursing.
- 18 (n) The Board of Behavioral Sciences.
- 19 (o) The State Athletic Commission.
- 20 (p) The Cemetery and Funeral Bureau.
- 21 (q) The Bureau of Security and Investigative Services.
- 22 (r) The Court Reporters Board of California.
- 23 (s) The Board of Vocational Nursing and Psychiatric
- 24 Technicians.

- 1 (t) The Landscape Architects Technical Committee.
 2 (u) The Division of Investigation.
 3 (v) The Bureau of Automotive Repair.
 4 (w) The Respiratory Care Board of California.
 5 (x) The Acupuncture Board.
 6 (y) The Board of Psychology.
 7 (z) The Podiatric Medical Board of California.
 8 (aa) The Physical Therapy Board of California.
 9 (ab) The Arbitration Review Program.
 10 (ac) The Physician Assistant Board.
 11 (ad) The Speech-Language Pathology and Audiology and
 12 Hearing Aid Dispensers Board.
 13 (ae) The California Board of Occupational Therapy.
 14 (af) The Osteopathic Medical Board of California.
 15 (ag) The Naturopathic Medicine Committee.
 16 (ah) The Dental Hygiene Board of California.
 17 (ai) The Professional Fiduciaries Bureau.
 18 (aj) The State Board of Chiropractic Examiners.
 19 (ak) The Bureau of Real Estate Appraisers.
 20 (al) The Structural Pest Control Board.
 21 (am) The Bureau of Cannabis Control.
 22 (an) *The California Board of Athletic Training.*
 23 ~~(an)~~
 24 (ao) Any other boards, offices, or officers subject to its
 25 jurisdiction by law.
 26 ~~(ao) This~~
 27 *This section shall become operative on July 1, 2018. remain in*
 28 *effect only until January 1, 2028, and as of that date is repealed.*
 29 *SEC. 2. Section 101 is added to the Business and Professions*
 30 *Code, to read:*
 31 *101. The department is composed of the following:*
 32 (a) *The Dental Board of California.*
 33 (b) *The Medical Board of California.*
 34 (c) *The State Board of Optometry.*
 35 (d) *The California State Board of Pharmacy.*
 36 (e) *The Veterinary Medical Board.*
 37 (f) *The California Board of Accountancy.*
 38 (g) *The California Architects Board.*
 39 (h) *The State Board of Barbering and Cosmetology.*

- 1 (i) *The Board for Professional Engineers, Land Surveyors, and*
- 2 *Geologists.*
- 3 (j) *The Contractors' State License Board.*
- 4 (k) *The Bureau for Private Postsecondary Education.*
- 5 (l) *The Bureau of Household Goods and Services.*
- 6 (m) *The Board of Registered Nursing.*
- 7 (n) *The Board of Behavioral Sciences.*
- 8 (o) *The State Athletic Commission.*
- 9 (p) *The Cemetery and Funeral Bureau.*
- 10 (q) *The Bureau of Security and Investigative Services.*
- 11 (r) *The Court Reporters Board of California.*
- 12 (s) *The Board of Vocational Nursing and Psychiatric*
- 13 *Technicians.*
- 14 (t) *The Landscape Architects Technical Committee.*
- 15 (u) *The Division of Investigation.*
- 16 (v) *The Bureau of Automotive Repair.*
- 17 (w) *The Respiratory Care Board of California.*
- 18 (x) *The Acupuncture Board.*
- 19 (y) *The Board of Psychology.*
- 20 (z) *The Podiatric Medical Board of California.*
- 21 (aa) *The Physical Therapy Board of California.*
- 22 (ab) *The Arbitration Review Program.*
- 23 (ac) *The Physician Assistant Board.*
- 24 (ad) *The Speech-Language Pathology and Audiology and*
- 25 *Hearing Aid Dispensers Board.*
- 26 (ae) *The California Board of Occupational Therapy.*
- 27 (af) *The Osteopathic Medical Board of California.*
- 28 (ag) *The Naturopathic Medicine Committee.*
- 29 (ah) *The Dental Hygiene Board of California.*
- 30 (ai) *The Professional Fiduciaries Bureau.*
- 31 (aj) *The State Board of Chiropractic Examiners.*
- 32 (ak) *The Bureau of Real Estate Appraisers.*
- 33 (al) *The Structural Pest Control Board.*
- 34 (am) *The Bureau of Cannabis Control.*
- 35 (an) *Any other boards, offices, or officers subject to its*
- 36 *jurisdiction by law.*
- 37 *This section shall become operative on January 1, 2028.*
- 38 **SEC. 3.** *Section 144 of the Business and Professions Code is*
- 39 *amended to read:*

- 1 144. (a) Notwithstanding any other law, an agency designated
2 in subdivision (b) shall require an applicant to furnish to the agency
3 a full set of fingerprints for purposes of conducting criminal history
4 record checks. Any agency designated in subdivision (b) may
5 obtain and receive, at its discretion, criminal history information
6 from the Department of Justice and the United States Federal
7 Bureau of Investigation.
- 8 (b) Subdivision (a) applies to the following:
- 9 (1) California Board of Accountancy.
 - 10 (2) State Athletic Commission.
 - 11 (3) Board of Behavioral Sciences.
 - 12 (4) Court Reporters Board of California.
 - 13 (5) Dental Board of California.
 - 14 (6) California State Board of Pharmacy.
 - 15 (7) Board of Registered Nursing.
 - 16 (8) Veterinary Medical Board.
 - 17 (9) Board of Vocational Nursing and Psychiatric Technicians.
 - 18 (10) Respiratory Care Board of California.
 - 19 (11) Physical Therapy Board of California.
 - 20 (12) Physician Assistant Committee.
 - 21 (13) Speech-Language Pathology and Audiology and Hearing
22 Aid Dispensers Board.
 - 23 (14) Medical Board of California.
 - 24 (15) State Board of Optometry.
 - 25 (16) Acupuncture Board.
 - 26 (17) Cemetery and Funeral Bureau.
 - 27 (18) Bureau of Security and Investigative Services.
 - 28 (19) Division of Investigation.
 - 29 (20) Board of Psychology.
 - 30 (21) California Board of Occupational Therapy.
 - 31 (22) Structural Pest Control Board.
 - 32 (23) Contractors' State License Board.
 - 33 (24) Naturopathic Medicine Committee.
 - 34 (25) Professional Fiduciaries Bureau.
 - 35 (26) Board for Professional Engineers, Land Surveyors, and
36 Geologists.
 - 37 (27) Bureau of Cannabis Control.
 - 38 (28) Podiatric Medical Board of California.
 - 39 (29) Osteopathic Medical Board of California.
 - 40 (30) California Architects Board, beginning January 1, 2021.

1 (31) Landscape Architects Technical Committee, beginning
2 January 1, 2021.

3 (32) *The California Board of Athletic Training.*

4 (c) For purposes of paragraph (26) of subdivision (b), the term
5 “applicant” shall be limited to an initial applicant who has never
6 been registered or licensed by the board or to an applicant for a
7 new licensure or registration category.

8 (d) *This section shall remain in effect only until January 1, 2028,*
9 *and as of that date is repealed.*

10 SEC. 4. *Section 144 is added to the Business and Professions*
11 *Code, to read:*

12 144. (a) *Notwithstanding any other law, an agency designated*
13 *in subdivision (b) shall require an applicant to furnish to the*
14 *agency a full set of fingerprints for purposes of conducting criminal*
15 *history record checks. Any agency designated in subdivision (b)*
16 *may obtain and receive, at its discretion, criminal history*
17 *information from the Department of Justice and the United States*
18 *Federal Bureau of Investigation.*

19 (b) *Subdivision (a) applies to the following:*

20 (1) *California Board of Accountancy.*

21 (2) *State Athletic Commission.*

22 (3) *Board of Behavioral Sciences.*

23 (4) *Court Reporters Board of California.*

24 (5) *Dental Board of California.*

25 (6) *California State Board of Pharmacy.*

26 (7) *Board of Registered Nursing.*

27 (8) *Veterinary Medical Board.*

28 (9) *Board of Vocational Nursing and Psychiatric Technicians.*

29 (10) *Respiratory Care Board of California.*

30 (11) *Physical Therapy Board of California.*

31 (12) *Physician Assistant Committee.*

32 (13) *Speech-Language Pathology and Audiology and Hearing*
33 *Aid Dispensers Board.*

34 (14) *Medical Board of California.*

35 (15) *State Board of Optometry.*

36 (16) *Acupuncture Board.*

37 (17) *Cemetery and Funeral Bureau.*

38 (18) *Bureau of Security and Investigative Services.*

39 (19) *Division of Investigation.*

40 (20) *Board of Psychology.*

- 1 (21) *California Board of Occupational Therapy.*
- 2 (22) *Structural Pest Control Board.*
- 3 (23) *Contractors' State License Board.*
- 4 (24) *Naturopathic Medicine Committee.*
- 5 (25) *Professional Fiduciaries Bureau.*
- 6 (26) *Board for Professional Engineers, Land Surveyors, and*
- 7 *Geologists.*
- 8 (27) *Bureau of Cannabis Control.*
- 9 (28) *Podiatric Medical Board of California.*
- 10 (29) *Osteopathic Medical Board of California.*
- 11 (30) *California Architects Board, beginning January 1, 2021.*
- 12 (31) *Landscape Architects Technical Committee, beginning*
- 13 *January 1, 2021.*
- 14 (c) *For purposes of paragraph (26) of subdivision (b), the term*
- 15 *“applicant” shall be limited to an initial applicant who has never*
- 16 *been registered or licensed by the board or to an applicant for a*
- 17 *new licensure or registration category.*
- 18 (d) *This section shall become operative on January 1, 2028.*
- 19 SEC. 5. *Chapter 5.8 (commencing with Section 2697) is added*
- 20 *to Division 2 of the Business and Professions Code, to read:*

21
22 *CHAPTER 5.8. ATHLETIC TRAINERS*

23
24 *Article 1. Administration*

- 25
- 26 2697. *This chapter shall be known, and may be cited, as the*
- 27 *Athletic Training Practice Act.*
- 28 2697.1. *For the purposes of this chapter, the following*
- 29 *definitions apply:*
- 30 (a) *“Athlete” means a person who participates in an athletic*
- 31 *activity.*
- 32 (b) *“Athlete patient” means a person who experiences an injury*
- 33 *during an athletic activity.*
- 34 (c) *“Athletic activity” means participation in exercise, sport,*
- 35 *game, recreation, wellness, fitness, performing arts, or employment*
- 36 *activities that requires physical exertion and skill.*
- 37 (d) *“Athletic trainer” means a person who meets the*
- 38 *requirements of this chapter, is licensed by the board, and practices*
- 39 *under the supervision of a licensed physician or surgeon. An*
- 40 *athletic trainer is a healing arts licensee.*

1 (e) “Board” means the California Board of Athletic Training.

2 (f) “Director” means the Director of Consumer Affairs.

3 2697.2. (a) There is established the California Board of
4 Athletic Training within the Department of Consumer Affairs.

5 (b) The board shall consist of seven members, all of whom shall
6 be California residents, as follows:

7 (1) Three licensed athletic trainers, except that initially, the
8 board shall include three athletic trainers certified by the Board
9 of Certification, Inc. or another nationally accredited athletic
10 trainer certification agency, who shall satisfy the remainder of the
11 licensure requirements described in Section 2697.4 as soon as it
12 is practically possible.

13 (2) Three public members.

14 (3) One physician and surgeon licensed by the Medical Board
15 of California or one osteopathic physician and surgeon licensed
16 by the Osteopathic Medical Board of California.

17 (c) Subject to confirmation by the Senate, the Governor shall
18 appoint the licensed athletic trainers, one of the public members,
19 and the physician and surgeon or osteopathic physician and
20 surgeon. The Senate Committee on Rules and the Speaker of the
21 Assembly shall each appoint a public member.

22 (1) The athletic trainers shall be appointed from the following:

23 (A) Two members shall be actively practicing athletic training
24 and engaged primarily in direct athlete or athlete patient care as
25 an athletic trainer with at least five continuous years of experience.

26 (B) One member shall be active primarily as an educator or
27 administrator in a program to educate athletic trainers.

28 (2) The physician and surgeon or osteopathic physician and
29 surgeon shall be appointed from persons who have supervised or
30 are currently supervising athletic trainers.

31 (3) Each public member shall satisfy all of the following:

32 (A) Chapter 6 (commencing with Section 450) of Division 1.

33 (B) Shall not be or have ever been an athletic trainer or in
34 training to become an athletic trainer.

35 (C) Shall not be a current or former licensee of any board under
36 this division or of any board referred to in Section 1000 or 3600.

37 (D) Shall not be an officer or faculty member of any college,
38 school, or institution involved in athletic training, physical therapy,
39 or occupational therapy education.

1 (E) Shall have no pecuniary interests in the provision of health
 2 care services.

3 (d) (1) All appointments shall be for a term of four years and
 4 shall expire on June 30 of the year in which the term expires.
 5 Appointees may be reappointed once. Vacancies shall be filled for
 6 any unexpired term.

7 (2) Notwithstanding paragraph (1), for initial appointments to
 8 the board, one public member appointed by the Governor, the
 9 physician and surgeon or osteopathic physician and surgeon, and
 10 one of the licensed athletic trainers shall serve terms of two years,
 11 and the remaining members shall serve terms of four years.

12 (e) Each of the board members shall receive per diem and
 13 expenses, except as otherwise specified in Section 103.

14 (f) The appointing power shall have the power to remove any
 15 member of the board from office for neglect of any duty required
 16 by law or for incompetency or unprofessional or dishonorable
 17 conduct.

18 (g) No person may serve as a member of the board for more
 19 than two consecutive terms. Vacancies shall be filled by
 20 appointment for the unexpired term.

21 (h) Annually, the board shall elect one of its members as
 22 president and one of its members as vice president.

23 (i) Subject to Sections 107 and 154, the board may employ an
 24 executive officer and other officers and employees.

25 2697.3. (a) (1) The board shall adopt, repeal, and amend
 26 regulations as may be necessary to administer and enforce this
 27 chapter.

28 (2) Before adopting regulations, the board may consult the
 29 professional standards issued by the National Athletic Trainers'
 30 Association, the Board of Certification, Inc., the Commission on
 31 Accreditation of Athletic Training Education, or any other
 32 nationally recognized professional athletic training organization.

33 (b) The board shall confirm, to the extent practicable, the
 34 information provided in an application before issuing a license to
 35 an applicant pursuant to this chapter.

36 (c) The board shall give protection of the public the highest
 37 priority in exercising its licensing, regulatory, and disciplinary
 38 functions. Whenever the protection of the public is inconsistent
 39 with other interests sought to be promoted, the protection of the
 40 public shall be paramount.

Article 2. Licensure

2697.4. Except as otherwise provided in this chapter, the board shall issue an athletic training license to an applicant who meets all of the following requirements:

(a) At the time of application, the applicant is over 18 years of age, is not addicted to alcohol or any controlled substance, and has not committed acts or crimes constituting grounds for denial of a license under Section 480.

(b) The applicant has submitted an application developed by the board.

(c) The applicant passed an athletic training certification examination offered by the Board of Certification, Inc., its predecessors or successors, or another nationally accredited athletic trainer certification agency approved and recognized by the board.

(d) The applicant has passed a criminal background check.

(e) The applicant has paid the application fee established by the board.

2697.5. A license issued by the board pursuant to Section 2697.4 is valid for two years and thereafter is subject to the renewal requirements described in Section 2697.7.

2697.7. The board shall renew a license if an applicant meets both of the following requirements:

(a) Pays the renewal fee as established by the board as described in Section 2697.20.

(b) Submits proof of both of the following:

(1) Subject to subdivision (c) of Section 2697.3, satisfactory completion of necessary continuing education, consistent with Board of Certification, Inc. requirements.

(2) Has a current athletic training certification from a certification body approved by the board, including, but not limited to, the Board of Certification, Inc., or its predecessors or successors.

2697.8. (a) The board may deny a license or discipline a licensee who is described by any of the following:

(1) Does not meet the requirements of this chapter.

(2) Has had an athletic training license, certification, or registration revoked or suspended by an accredited organization or another state or country.

1 (3) *Has been convicted of a crime that is substantially related*
2 *to the functions or duties of an athletic trainer.*

3 (4) *Has committed unprofessional conduct, as described in*
4 *Section 2697.10.*

5 (b) *The board may order any of the following actions regarding*
6 *an athletic training license after notice and a hearing to determine*
7 *unprofessional conduct:*

8 (1) *Placing the license on probation with terms and conditions.*

9 (2) *Suspending the license and the ability to practice athletic*
10 *training for a period not to exceed one year.*

11 (3) *Revoking the license.*

12 (4) *Suspending or staying the disciplinary order, or portions of*
13 *it, with or without conditions.*

14 (5) *Issuing an initial license on probation, with specific terms*
15 *and conditions, to an applicant who has violated this chapter or*
16 *the regulations adopted pursuant to it, but who has met all other*
17 *requirements for licensure.*

18 (6) *Taking any other action as the board, in its discretion, deems*
19 *proper to protect the public health and safety pursuant to*
20 *subdivision (c) of Section 2697.3.*

21 (c) *If a license is suspended, the holder may not practice as an*
22 *athletic trainer during the term of suspension. Upon the expiration*
23 *of the term of suspension, the license shall be reinstated and the*
24 *holder entitled to resume practice under any remaining terms of*
25 *the discipline, unless it is established to the satisfaction of the*
26 *board that the holder of the license practiced in this state during*
27 *the term of suspension. In this event, the board, after notice and*
28 *a hearing on this issue alone, may revoke the license.*

29 (d) *The board shall retain jurisdiction to proceed with any*
30 *investigation, action, or disciplinary proceeding against a license,*
31 *or to render a decision suspending or revoking a license,*
32 *regardless of the expiration, lapse, or suspension of the license by*
33 *operation of law, by order or decision of the board or a court of*
34 *law, or by the voluntary surrender of a license by the licensee.*

35 2697.9. (a) *A holder of a license that has been revoked,*
36 *suspended, or placed on probation, may petition the board for*
37 *reinstatement or modification of a penalty, including reduction or*
38 *termination of probation, after a period not less than the applicable*
39 *following minimum period has elapsed from either the effective*
40 *date of the decision ordering that disciplinary action, or, if the*

1 order of the board or any portion of it was stayed, from the date
2 the disciplinary action was actually implemented in its entirety.
3 The minimum periods that shall elapse prior to a petition are as
4 follows:

5 (1) For a license that was revoked for any reason other than
6 mental or physical illness substantially related to the functions or
7 duties of an athletic trainer, at least three years.

8 (2) For early termination of probation scheduled for three or
9 more years, at least two years.

10 (3) For modification of a penalty, reinstatement of a license
11 revoked for mental or physical illness substantially related to the
12 functions or duties of an athletic trainer, or termination of
13 probation scheduled for less than three years, at least one year.

14 (b) The board may, in its discretion, specify in its disciplinary
15 order a lesser period of time, provided that the period shall not
16 be less than one year.

17 (c) The petition submitted shall contain any information required
18 by the board, which may include a current set of fingerprints
19 accompanied by the fingerprinting fee.

20 (d) The board shall give notice to the Attorney General of the
21 filing of the petition. The petitioner and the Attorney General shall
22 be given timely notice by letter of the time and place of the hearing
23 on the petition, and an opportunity to present both oral and
24 documentary evidence and argument to the board. The petitioner
25 shall at all times have the burden of proof to establish by clear
26 and convincing evidence that they are entitled to the relief sought
27 in the petition.

28 (e) The board, or the administrative law judge if one is
29 designated by the board, shall hear the petition and shall prepare
30 a written decision setting forth the reasons supporting the decision.

31 (f) The board may grant or deny the petition or may impose any
32 terms and conditions that it reasonably deems appropriate as a
33 condition of reinstatement or reduction of penalty.

34 (g) The board shall refuse to consider a petition while the
35 petitioner is under sentence for any criminal offense, including
36 any period during which the petitioner is on court-imposed
37 probation or parole or subject to an order of registration pursuant
38 to Section 290 of the Penal Code.

39 (h) No petition shall be considered while there is an accusation
40 or petition to revoke probation pending against the petitioner.

- 1 2697.10. *For purposes of this chapter, unprofessional conduct*
2 *includes, but is not limited to, the following:*
- 3 (a) *Incompetence, negligence, or gross negligence in carrying*
4 *out usual athletic trainer functions.*
- 5 (b) *Repeated similar negligent acts in carrying out usual athletic*
6 *trainer functions.*
- 7 (c) *A conviction for practicing medicine without a license in*
8 *violation of Chapter 5 (commencing with Section 2000), in which*
9 *event a certified copy of the record of conviction shall be*
10 *conclusive evidence thereof.*
- 11 (d) *The use of advertising relating to athletic training which*
12 *violates Section 17500.*
- 13 (e) *Denial of licensure, revocation, suspension, restriction, or*
14 *any other disciplinary action against a licensee by another healing*
15 *arts board under the department, another state or territory of the*
16 *United States, or by any other government agency. A certified copy*
17 *of the decision, order, or judgment shall be conclusive evidence*
18 *thereof.*
- 19 (f) *Procuring a license by fraud, misrepresentation, or mistake.*
- 20 (g) *Violating or attempting to violate, directly or indirectly, or*
21 *assisting in or abetting the violation of, or conspiring to violate,*
22 *any provision or term of this chapter or any regulation adopted*
23 *pursuant to this chapter.*
- 24 (h) *Making or giving any false statement or information in*
25 *connection with the application for issuance or renewal of a*
26 *license.*
- 27 (i) *Conviction of a crime or of any offense substantially related*
28 *to the qualifications, functions, or duties of a licensee, in which*
29 *event the record of the conviction shall be conclusive evidence*
30 *thereof.*
- 31 (j) *Impersonating an applicant or acting as proxy for an*
32 *applicant in any examination required under this chapter for the*
33 *issuance of a license.*
- 34 (k) *Impersonating a licensee, or permitting or allowing another*
35 *unlicensed person to use a license.*
- 36 (l) *Committing any fraudulent, dishonest, or corrupt act that is*
37 *substantially related to the qualifications, functions, or duties of*
38 *a licensee.*
- 39 (m) *Committing any act punishable as a sexually related crime,*
40 *if that act is substantially related to the qualifications, functions,*

1 *or duties of a licensee, in which event a certified copy of the record*
2 *of conviction shall be conclusive evidence thereof.*

3 *(n) Using excessive force upon or mistreating or abusing any*
4 *athlete or athlete patient. For purposes of this subdivision,*
5 *“excessive force” means force clearly in excess of that which*
6 *would normally be applied in similar clinical circumstances.*

7 *(o) Falsifying or making grossly incorrect, grossly inconsistent,*
8 *or unintelligible entries in an athlete or athlete patient’s hospital*
9 *record or any other record.*

10 *(p) Changing the prescription of a physician and surgeon or*
11 *falsifying verbal or written orders for treatment or a diagnostic*
12 *regime received, whether or not that action resulted in actual harm*
13 *to the athlete or athlete patient.*

14 *(q) Failing to maintain the confidentiality of medical information*
15 *of an athlete or athlete patient, except as disclosure is otherwise*
16 *permitted or required by law.*

17 *(r) Delegating to an unlicensed employee or person a service*
18 *that requires the knowledge, skills, abilities, or judgment of a*
19 *licensee.*

20 *(s) Committing any act that would be grounds for denial of a*
21 *license under Section 480.*

22 *(t) Except for good cause, the knowing failure to protect athletes*
23 *or athlete patients by failing to follow infection control guidelines*
24 *of the committee, thereby risking transmission of infectious diseases*
25 *from licensee to athlete or athlete patient, from athlete or athlete*
26 *patient to athlete or athlete patient, or from athlete or athlete*
27 *patient to licensee.*

28 *(u) As a licensee, obtaining, possessing, or prescribing a*
29 *controlled substance in violation of Division 10 (commencing with*
30 *Section 11000) of the Health and Safety Code or any dangerous*
31 *drug or dangerous device in violation of Chapter 9 (commencing*
32 *with Section 4000).*

33 *(v) As a licensee, using to an extent or in a manner dangerous*
34 *or injurious to themselves, to any other person, or to the public,*
35 *or that impairs their ability to conduct with safety to the public*
36 *the practice authorized by their license, of any of the following:*

37 *(1) A controlled substance as defined in Division 10*
38 *(commencing with Section 11000) of the Health and Safety Code.*

39 *(2) A dangerous drug or dangerous device as defined in Section*
40 *4022.*

1 (3) *Alcoholic beverages.*

2 (w) *As a licensee, being convicted of a criminal offense involving*
 3 *the prescription, consumption, or self-administration of any of the*
 4 *substances described in paragraphs (1) and (2) of subdivision (v),*
 5 *or the possession of, or falsification of a record pertaining to, the*
 6 *substances described in paragraph (1) of subdivision (v), in which*
 7 *event the record of the conviction is conclusive evidence thereof.*

8 (x) *As a licensee, being committed or confined by a court of*
 9 *competent jurisdiction for intemperate use of any of the substances*
 10 *described in paragraphs (1) and (2) of subdivision (v), in which*
 11 *event the court order of commitment or confinement is prima facie*
 12 *evidence of the commitment or confinement.*

13 (y) *As a licensee, falsifying, or making grossly incorrect, grossly*
 14 *inconsistent, or unintelligible entries in any athlete or athlete*
 15 *patient's record, or any other record.*

16

17 *Article 3. Athletic Training*

18

19 2697.11. (a) *A person shall not practice athletic training or*
 20 *hold themselves out as an athletic trainer or as being able to*
 21 *practice athletic training, or to render athletic training services*
 22 *in this state unless the person is licensed as an athletic trainer*
 23 *pursuant to this chapter.*

24 (b) *A person shall not use the title "athletic trainer," "licensed*
 25 *athletic trainer," "certified athletic trainer," "athletic trainer*
 26 *certified," "a.t.," "a.t.l.," "l.a.t.," "c.a.t.," "a.t.c.," or any other*
 27 *variation of these terms, or any other similar terms indicating that*
 28 *the person is an athletic trainer unless that person is licensed*
 29 *pursuant to this chapter.*

30 (c) *A person who is currently using one of the titles listed under*
 31 *subdivision (b) and is covered under a collective bargaining*
 32 *agreement is not subject to the requirements of subdivision (b)*
 33 *until the parties to that bargaining agreement renew that*
 34 *agreement. At that time, a person shall not use the titles listed in*
 35 *subdivision (b) if the individual does not meet the requirements of*
 36 *this section. Those individuals may choose a different title to*
 37 *describe their positions under the new collective bargaining*
 38 *agreement.*

39 (d) *No employee whose title is changed in order to comply with*
 40 *this section shall suffer any loss of employment status as a result*

1 of the title change, including, but not limited to, layoff, demotion,
2 termination, reclassification, or loss of pay, seniority, benefits, or
3 any other status or compensation related to the position.

4 (e) Any person who violates subdivision (a) or (b) is guilty of a
5 misdemeanor; and upon conviction thereof, shall be punished by
6 a fine of not more than five thousand dollars (\$5,000), or by
7 imprisonment of not more than one year in a county jail, or by
8 both that fine and imprisonment.

9 2697.12. (a) The practice of athletic training includes all of
10 the following:

11 (1) Risk management and injury or illness prevention of an
12 athlete or athlete patient through preparticipation screening and
13 evaluation, educational programs, physical conditioning and
14 reconditioning programs, application of commercial products, use
15 of protective equipment, promotion of healthy behaviors, and
16 reduction of environmental risks.

17 (2) The evaluation and assessment of an athlete or athlete
18 patient for an injury sustained or exacerbated while participating
19 in athletic activity or a condition exacerbated while participating
20 in athletic activity, by obtaining a history of the injury or condition,
21 inspection and palpation of the injured part and associated
22 structures, and performance of specific testing techniques related
23 to stability and function to determine the extent of an injury.

24 (3) The acute care of an injury sustained or exacerbated while
25 an athlete or athlete patient participating in athletic activity or a
26 condition exacerbated while an athlete or athlete patient is
27 participating in athletic activity, by the application of first aid and
28 emergency procedures, techniques, and equipment for
29 nonlife-threatening or life-threatening injuries or conditions.

30 (4) The rehabilitation and reconditioning from an injury
31 sustained or exacerbated while an athlete or athlete patient is
32 participating in athletic activity and reconditioning from a
33 condition through the application of physical agents and
34 modalities, therapeutic exercise, manual therapy and massage,
35 standard reassessment techniques and procedures, commercial
36 products and durable medical equipment, and educational
37 programs, in accordance with guidelines established with a healing
38 arts licensee.

39 (b) The practice of athletic training does not include grade 5
40 spinal manipulations or the diagnosis of disease.

1 (c) An athletic trainer shall refer an athlete patient to an
2 appropriate healing arts licensee when the management of the
3 injury or condition does not fall within the practice of athletic
4 training as defined in this section.

5 (d) An athletic trainer shall not provide, offer to provide, or
6 represent that they are qualified to provide any treatment that they
7 are not qualified to perform by their professional education or
8 advanced postprofessional study or does not fall within the scope
9 of practice of athletic training.

10 2697.13. (a) An athletic trainer shall only render athletic
11 training services in collaboration with a physician and surgeon
12 licensed by the Medical Board of California or an osteopathic
13 physician and surgeon licensed by the Osteopathic Medical Board
14 of California.

15 (b) For purposes of this section, “collaboration” means services
16 are provided either under a verbal order by a physician and
17 surgeon who is present when the services are provided or, if the
18 physician is not present, under a written order from a physician
19 and surgeon, telecommunication from a physician and surgeon,
20 or a treatment plan from a physician and surgeon, or a protocol
21 from a physician and surgeon that meets all of the following:

22 (1) The plan or protocol authorizes the specific athletic training
23 services, and referral requirements that account for the individual
24 athletic trainer’s training and competence.

25 (2) The plan or protocol is established with and approved by
26 the supervising physician and surgeon or osteopathic physician
27 and surgeon.

28 (3) The plan or protocol accounts for the supervising physician
29 and surgeon’s availability to the athletic trainer as determined by
30 the supervising physician and surgeon.

31 (4) Notwithstanding subdivision (a), an athletic trainer may be
32 supervised by a licensed physical therapist, chiropractor, or
33 administrator in the context of the employer/employee relationship,
34 provided that they are still working in collaboration with a
35 physician and surgeon as defined in subdivision (b).

36 2697.14. The practice of athletic training does not include any
37 of the following:

38 (a) The practice of occupational therapy, as defined in Chapter
39 5.6 (commencing with Section 2570).

1 (b) *The practice of physical therapy, as defined in Chapter 5.7*
2 *(commencing with Section 2600).*

3 (c) *The practice of physician assistants, as defined in Chapter*
4 *7.7 (commencing with Section 3500).*

5 (d) *The practice of medicine, as defined in Chapter 5*
6 *(commencing with Section 2000).*

7 (e) *The practice of nursing, as defined in Chapter 6*
8 *(commencing with Section 2700).*

9 (f) *The practice of chiropractic, as defined in Chapter 2*
10 *(commencing with Section 1000).*

11 2697.15. *The requirements of this chapter do not apply to the*
12 *following:*

13 (a) *An athletic trainer who is licensed, certified, or registered*
14 *in another state or country who is in California temporarily, while*
15 *traveling with an out-of-state team or organization, to engage in*
16 *the practice of athletic training for, among other things, an athletic*
17 *or sporting event and only when the athletic trainer limits their*
18 *scope of practice to the members of the team or organization or*
19 *during an emergency.*

20 (b) *An athletic trainer licensed, certified, or registered in*
21 *another state or country who is invited by a sponsoring*
22 *organization, such as the United States Olympic Committee, to*
23 *temporarily provide athletic training services under the other state*
24 *or country's scope of practice for athletic training.*

25 (c) *A student enrolled in an athletic training education program,*
26 *while participating in educational activities during the course of*
27 *educational rotations under the supervision and guidance of an*
28 *athletic trainer licensed under this chapter, a physician and*
29 *surgeon licensed by the Medical Board of California, an*
30 *osteopathic physician and surgeon licensed by the Osteopathic*
31 *Medical Board of California, or any other healing arts licensee,*
32 *when the student's title clearly indicates student status.*

33 (d) *A member or employee of the United States Armed Forces,*
34 *licensed, certified, or registered in another state as an athletic*
35 *trainer, as part of temporary federal deployment or employment*
36 *in California for a limited time.*

37 (e) *A person performing athletic training in the state if all of*
38 *the following apply:*

39 (1) *An application for licensure as an athletic trainer has been*
40 *filed with the board on behalf of that person pursuant to Section*

1 2697.4 and an application for a license in this state has not been
2 previously denied with respect to that person.

3 (2) The person possesses a current, active, and nonrestricted
4 license to practice athletic training under the laws of another state
5 that the board determines has licensure requirements that are at
6 least as stringent as the requirements of this chapter.

7 (3) Athletic training services are performed by that person for
8 no more than 60 days from the date on which the application for
9 licensure of that person was filed with the board.

10 2697.16. An individual who provides instruction to an
11 individual or group to improve physical conditioning, for the use
12 of exercise equipment, or on the mechanics of activities of cycling,
13 running, free weights, calisthenics, or other technical aspects of
14 exercise is not engaging in athletic training.

15 2697.17. This chapter does not limit, impair, or otherwise apply
16 to the practice of any person licensed and regulated under any
17 other chapter of this division.

18 2697.18. This chapter does not require new or additional
19 reimbursement by a health care service plan, health insurer,
20 workers' compensation insurance plan, employer, or state program
21 for services rendered by an individual licensed under this chapter.

22 2697.19. Any person who violates this chapter shall be guilty
23 of a misdemeanor punishable by imprisonment in the county jail
24 not exceeding six months, or by a fine not exceeding one thousand
25 dollars (\$1,000), or by both.

26

27

Article 4. Revenue

28

29

30 2697.20. (a) The Athletic Trainers Fund is hereby established
31 in the State Treasury. All fees collected pursuant to this chapter
32 shall be paid into the fund. Moneys in the fund shall be available
33 to the board, upon appropriation by the Legislature, for
34 expenditure by the board to defray its expenses for administering
35 this chapter.

36 (b) The board shall charge the following fees:

37 (1) An application fee of not more than one hundred dollars
38 (\$100).

39 (2) An initial license fee, which shall be prorated and based on
the biennial renewal fee.

1 (3) A renewal fee to be established by the board, not to exceed
2 the costs of providing the regulatory administration of this chapter.

3 (4) A delinquency fee for late payment of the license renewal
4 fee in the following amounts:

5 (A) If the license is renewed not more than two years from the
6 date of its expiration, the delinquency fee shall be 50 percent of
7 the renewal fee in effect at the time of renewal.

8 (B) If the license is renewed more than two years after the date
9 of expiration of the license, the delinquency fee shall be 100 percent
10 of the renewal fee in effect at the time of renewal.

11 (5) A duplicate license fee, to replace one that is lost or
12 destroyed, or in the event of a name change, of thirty-five dollars
13 (\$35).

14 (6) An endorsement fee of not more than fifty dollars (\$50).

15 (7) A fee to collect fingerprints for criminal history record
16 checks charged by the Department of Justice and the Federal
17 Bureau of Investigation.

18 2697.21. Notwithstanding any other law, including Section
19 11005 of the Government Code, the director may seek and receive
20 funds from the California Athletic Trainers Association or any
21 other private individual or entity for the initial costs of
22 implementing this chapter. If private funds are unavailable to cover
23 the startup costs of implementing this act, a General Fund or
24 special fund loan may be used and shall be repaid with fee revenue.

25 2697.22. This chapter shall remain in effect only until January
26 1, 2028, and as of that date is repealed.

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

36 SECTION 1. ~~Section 1798.99.2 is added to the Civil Code,~~
37 ~~immediately following Section 1798.99.1, to read:~~

38 1798.99.2. (a) ~~A person or business that conducts business in~~
39 ~~California, that operates an internet website or application that~~
40 ~~requires opt-in consent pursuant to subdivision (c) of Section~~

- 1 ~~1798.120 before selling a minor’s personal information, as defined~~
- 2 ~~in Section 1798.140, shall obtain consent to sell the minor’s~~
- 3 ~~personal information in a manner that is separate from the social~~
- 4 ~~media internet website or the application’s general terms and~~
- 5 ~~conditions.~~
- 6 (b) ~~The failure of a parent to provide the parental consent to the~~
- 7 ~~sale, as defined in Section 1798.140, of the minor’s personal~~
- 8 ~~information shall not result in any minor being denied access to~~
- 9 ~~the social media internet website or application.~~
- 10 (c) ~~Parental consent shall not be obtained through the minor.~~

9B07 - AB 1850 (Gonzalez)

Worker Classification: Employees and
Independent Contractors

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AMENDED IN ASSEMBLY MAY 12, 2020
AMENDED IN ASSEMBLY FEBRUARY 27, 2020
AMENDED IN ASSEMBLY FEBRUARY 14, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1850

Introduced by Assembly Member Gonzalez

January 6, 2020

An act to repeal and add Section 2750.3 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1850, as amended, Gonzalez. ~~Employee classification: still photographers, photojournalists: freelancers.~~ *Worker classification: employees and independent contractors.*

Existing law requires a 3-part test, commonly known as the "ABC" test, to determine if workers are employees or independent contractors for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission. Under the ABC test, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is customarily engaged in an independently established trade, occupation, or business. Existing law charges the Labor Commissioner with the enforcement of labor laws, including worker classification.

Existing law exempts specified occupations and business relationships from the application of the ABC test described above. Existing law, instead, provides that these exempt relationships are governed by the multifactor test previously adopted in the case of S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341.

Existing exemptions include a bona fide business-to-business contracting relationship, as defined, under the specified conditions. Under existing law, the business-to-business exemption does not apply to an individual worker, as opposed to a business entity, who performs labor or services for a contracting business.

This bill would delete that individual worker provision.

Existing exemptions include the relationship between a referral agency and a service provider, as defined, under the specified conditions. If a business entity formed as a sole proprietor, partnership, limited liability company, limited liability partnership, or corporation (“service provider”) provides services to clients through a referral agency, the referral agency is required to demonstrate that certain criteria are satisfied, including that, if the work for the client is performed in a jurisdiction that requires the service provider to have a business license or business tax registration, the service provider has the required business license or business tax registration. The exemption does not apply to an individual worker, as opposed to a business entity, who performs services for a client through a referral agency.

This bill would revise the criteria to be satisfied, including requiring the referral agency to check the validity of one license in a location where the service provider performs work a minimum of one time per calendar year. The bill would delete that individual worker provision.

The referral agency exemption defines “referral agency” as a business that connects clients with specific listed service providers, including tutors.

This bill would revise the definition of “referral agency” to include a business that connects clients with service providers such as those listed in the definition. The bill would revise the definition of tutor. The bill would add youth sports coaching as a listed service provider and define the term.

Existing exemptions include persons providing professional services under specified circumstances, including services provided by still photographers, photojournalists, freelance writers, editors, and newspaper cartoonists who do not license or provide, as applicable, content submissions more than 35 times annually to a putative employer.

This bill would additionally exempt professional services of a specialized performer hired by a performing arts company or organization to teach a master class, as defined, for no more than one week, and an appraiser.

This bill would delete the existing professional services exemptions for services provided by still photographers, photojournalists, freelance writers, editors, and newspaper cartoonists. The bill would, instead, establish an exemption for services provided by a still photographer, photojournalist, videographer, or photo editor, as defined, who works under a contract that specifies certain terms in advance, as long as the individual providing the services is not replacing an employee performing the same work at the same volume, the individual does not primarily perform the work at the hiring entity's business location, and the individual is not restricted from working for more than one hiring entity. The bill would establish an exemption for services provided to a digital content aggregator, as defined, by a still photographer, photojournalist, videographer, or photo editor. The bill would establish an exemption for services provided by a freelance writer, certified translator, editor, copyeditor, illustrator, or newspaper cartoonist who works under a contract that specifies certain terms in advance, as long as the individual providing the services is not replacing an employee performing the same work at the same volume, the individual does not primarily perform the work at the hiring entity's business location, and the individual is not restricted from working for more than one hiring entity.

Existing exemptions include listed occupations, including a person or organization who is licensed by the Department of Insurance.

The bill would additionally exempt professional services of a person who provides underwriting inspections, premium audits, risk management or loss control work for the insurance industry.

The bill would additionally exempt an individual who is engaged by an international exchange visitor program, as prescribed, and a competition judge with a specialized skillset or expertise providing services that require the exercise of discretion and independent judgment to an organization for the purposes of determining the outcome of a competition.

The bill would additionally exempt certain occupations in connection with creating, marketing, promoting, or distributing sound recordings or musical compositions.

~~Existing law, as established in the case of Dynamex Operations W. v. Superior Court (2018) 4 Cal.5th 903 (Dynamex), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the “ABC” test, to determine if workers are employees or independent contractors for purposes of specified wage orders.~~

~~Existing statutory law establishes that, for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the “ABC” test is met. Existing law charges the Labor Commissioner with the enforcement of labor laws, including worker classification.~~

~~Existing law exempts specified occupations and business relationships, including persons providing professional services under specified circumstances, including services provided by still photographers, photojournalists, freelance writers, editors, and newspaper cartoonists who do not license or provide, as applicable, content submissions more than 35 times annually to a putative employer, from the application of Dynamex and these provisions. Existing law instead provides that these exempt relationships are governed by the multifactor test previously adopted in the case of S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341.~~

~~This bill would replace the submission limit and instead exempt still photographers, photojournalists, freelance writers, editors, and newspaper cartoonists from the application of Dynamex and these provisions based upon different specified criteria, including that these persons provide professional services pursuant to a contract that includes specified items, as provided.~~

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 2750.3 of the Labor Code is repealed.
- 2 SEC. 2. Section 2750.3 is added to the Labor Code, to read:
- 3 2750.3. (a) (1) For purposes of ~~the provisions of~~ this code
- 4 and the Unemployment Insurance Code, and for *the purposes of*

1 the wage orders of the Industrial Welfare Commission, a person
2 providing labor or services for remuneration shall be considered
3 an employee rather than an independent contractor unless the hiring
4 entity demonstrates that all of the following conditions are satisfied:

5 (A) The person is free from the control and direction of the
6 hiring entity in connection with the performance of the work, both
7 under the contract for the performance of the work and in fact.

8 (B) The person performs work that is outside the usual course
9 of the hiring entity’s business.

10 (C) The person is customarily engaged in an independently
11 established trade, occupation, or business of the same nature as
12 that involved in the work performed.

13 (2) Notwithstanding paragraph (1), any exceptions to the terms
14 “employee,” “employer,” “employ,” or “independent contractor,”
15 and any extensions of employer status or liability, that are expressly
16 made by a provision of this code, the Unemployment Insurance
17 Code, or in an applicable order of the Industrial Welfare
18 Commission, including, but not limited to, the definition of
19 “employee” in subdivision 2(E) of Wage Order No. 2, shall remain
20 in effect for the purposes set forth therein.

21 (3) If a court of law rules that the three-part test in paragraph
22 (1) cannot be applied to a particular context based on grounds other
23 than an express exception to employment status as provided under
24 paragraph (2), then the determination of employee or independent
25 contractor status in that context shall instead be governed by the
26 California Supreme Court’s decision in *S. G. Borello & Sons, Inc.*
27 *v. Department of Industrial Relations* (1989) 48 Cal.3d 341
28 (*Borello*).

29 (b) Subdivision (a) and the holding in *Dynamex Operations W.*
30 *v. Superior Court* (2018) 4 Cal.5th 903 (*Dynamex*) do not apply
31 to a bona fide business-to-business contracting relationship, as
32 defined below, under the following conditions:

33 (1) If a business entity formed as a sole proprietorship,
34 partnership, limited liability company, limited liability partnership,
35 or corporation (“business service provider”) contracts to provide
36 services to another such business (“contracting business”), the
37 determination of employee or independent contractor status of the
38 business services provider shall be governed by *Borello*, if the
39 contracting business demonstrates that all of the following criteria
40 are satisfied:

- 1 (A) The business service provider is free from the control and
2 direction of the contracting business entity in connection with the
3 performance of the work, both under the contract for the
4 performance of the work and in fact.
- 5 (B) The business service provider is providing services directly
6 to the contracting business rather than to customers of the
7 contracting business.
- 8 (C) The contract with the business service provider is in writing.
- 9 (D) If the work is performed in a jurisdiction that requires the
10 business service provider to have a business license or business
11 tax registration, the business service provider has the required
12 business license or business tax registration.
- 13 (E) The business service provider maintains a business location
14 that is separate from the business or work location of the
15 contracting business.
- 16 (F) The business service provider is customarily engaged in an
17 independently established business of the same nature as that
18 involved in the work performed.
- 19 (G) The business service provider actually contracts with other
20 businesses to provide the same or similar services and maintains
21 a clientele without restrictions from the hiring entity.
- 22 (H) The business service provider advertises and holds itself
23 out to the public as available to provide the same or similar
24 services.
- 25 (I) The business service provider provides its own tools,
26 vehicles, and equipment to perform the services.
- 27 (J) The business service provider can negotiate its own rates.
- 28 (K) Consistent with the nature of the work, the business service
29 provider can set its own hours and location of work.
- 30 (L) The business service provider is not performing the type of
31 work for which a license from the ~~Contractor's~~ *Contractors'* State
32 License Board is required, pursuant to Chapter 9 (commencing
33 with Section 7000) of Division 3 of the Business and Professions
34 Code.
- 35 ~~(2) This subdivision does not apply to an individual worker, as~~
36 ~~opposed to a business entity, who performs labor or services for~~
37 ~~a contracting business.~~
- 38 (3)
- 39 -

1 ~~The determination of whether an individual working for a business~~
2 ~~service provider is an employee or independent contractor of the~~
3 ~~business service provider is governed by paragraph (1) of~~
4 ~~subdivision (a).~~

5 (2) *When two bona fide businesses are contracting with one*
6 *another under the condition in paragraph (1), the determination*
7 *of whether an individual working for a business service provider*
8 *is an employee or independent contractor of the business service*
9 *provider is governed by paragraph (1) of subdivision (a).*

10 ~~(4)~~

11 (3) This subdivision does not alter or supersede any existing
12 rights under Section 2810.3.

13 (c) Subdivision (a) and the holding in *Dynamex* do not apply
14 to the relationship between a referral agency and a service provider,
15 as defined below, under the following conditions:

16 (1) If a business entity formed as a sole proprietor, partnership,
17 limited liability company, limited liability partnership, or
18 corporation (“service provider”) provides services to clients through
19 a referral agency, the determination whether the service provider
20 is an employee of the referral agency shall be governed by *Borello*,
21 if the referral agency demonstrates that all of the following criteria
22 are satisfied:

23 (A) The service provider is free from the control and direction
24 of the referral agency in connection with the performance of the
25 work for the client, both as a matter of contract and in fact.

26 (B) If the work for the client is performed in a jurisdiction that
27 requires the service provider to have a business license or business
28 tax registration, the service provider has the required business
29 license or business tax registration. *The referral agency shall be*
30 *required to check the validity of one license in a location where*
31 *the service provider performs work a minimum of one time per*
32 *calendar year. As used in this subparagraph:*

33 (i) *“Business license” includes a license, tax certificate, fee, or*
34 *equivalent payment that is required or collected by a local*
35 *jurisdiction annually, or on some other fixed cycle, as a condition*
36 *of providing services in the local jurisdiction.*

37 (ii) *“Local jurisdiction” means a city, county, or city and county,*
38 *including charter cities.*

39 (C) If the work for the client requires the service provider to
40 hold a state contractor’s license pursuant to Chapter 9 (commencing

1 with Section 7000) of Division 3 of the Business and Professions
2 Code, the service provider has the required contractor's license.

3 (D) The service provider delivers services to the client under
4 service provider's name, rather than under the name of the referral
5 agency.

6 (E) The service provider provides its own tools and supplies to
7 perform the services.

8 (F) The service provider is customarily engaged in an
9 independently established business of the same nature as that
10 involved in the work performed for the client.

11 (G) The *referral agency does not restrict the* service provider
12 ~~maintains from maintaining~~ a clientele ~~without any restrictions~~
13 ~~from outside of~~ the referral agency and the service provider is free
14 to seek work elsewhere, including through a competing agency.

15 (H) The service provider sets *or negotiates* its own hours and
16 terms of work *in consultation with the client* and is free to accept
17 or reject clients and contracts.

18 (I) The service provider sets *or negotiates* its own rates for
19 services performed, without deduction by the referral agency.

20 (J) The service provider is not penalized in any form for
21 rejecting clients or contracts. This subparagraph does not apply if
22 the service provider accepts a client or contract and then fails to
23 fulfill any of its contractual obligations.

24 (2) For purposes of this subdivision, the following definitions
25 apply:

26 (A) "Animal services" means services related to daytime and
27 nighttime pet care including pet boarding under Section 122380
28 of the Health and Safety Code.

29 (B) "Client" means a person or business that engages a service
30 contractor through a referral agency.

31 (C) "Referral agency" is a business that connects clients with
32 service providers that provide *services such as* graphic design,
33 photography, tutoring, event planning, minor home repair, moving,
34 home cleaning, errands, furniture assembly, *youth sports coaching*,
35 animal services, dog walking, dog grooming, web design, picture
36 hanging, pool cleaning, or yard cleanup.

37 (D) "Referral agency contract" is the agency's contract with
38 clients and service contractors governing the use of its intermediary
39 services described in subparagraph (C). *A referral agency's contract*
40 *with a client may include a fee to be paid by the client. This fee*

1 *shall not be deducted from the service provider's total*
2 *compensation for the services provided to the client.*

3 (E) "Service provider" means a person or business who agrees
4 to the referral agency's contract and uses the referral agency to
5 connect with clients.

6 (F) "Tutor" means a person who develops and teaches their own
7 ~~curriculum~~ *curriculum, and teaches curriculum that is*
8 *proprietary and privately developed, or provides private*
9 *instruction or supplemental academic enrichment services by using*
10 *their own teaching methodology or techniques.* A "tutor" does not
11 include a person who teaches a curriculum created by a public
12 school or who contracts with a public school through a referral
13 company for purposes of teaching students of a public school.

14 (G) "Youth sports coaching" means services provided by a
15 sports coach who develops and implements their own curriculum,
16 which may be subject to requirements of a youth sports league,
17 for an athletic program in which youth who are 18 years of age
18 or younger predominantly participate and that is organized for
19 the purposes of training for and engaging in athletic activity and
20 competition. "Youth sports coaching" does not constitute services
21 provided by an individual who teaches a curriculum created by a
22 public school or who contracts with a public school through a
23 referral company for purposes of teaching students of a public
24 school.

25 (3) ~~This subdivision does not apply to an individual worker, as~~
26 ~~opposed to a business entity, who performs services for a client~~
27 ~~through a referral agency.~~ The determination whether such an
28 individual is an employee of a ~~referral agency~~ *service provider* is
29 governed by subdivision (a).

30 (d) (1) Subdivision (a) and the holding in *Dynamex* do not
31 apply to a contract for "professional services" as defined below,
32 and instead the determination of whether the individual is an
33 employee or independent contractor shall be governed by *Borello*
34 if the hiring entity demonstrates that all of the following factors
35 are satisfied:

36 (A) The individual maintains a business location, which may
37 include the individual's residence, that is separate from the hiring
38 entity. Nothing in this subdivision prohibits an individual from
39 choosing to perform services at the location of the hiring entity.

1 (B) If work is performed more than six months after the effective
2 date of this section, the individual has a business license, in
3 addition to any required professional licenses or permits for the
4 individual to practice in their profession.

5 (C) The individual has the ability to set or negotiate their own
6 rates for the services performed.

7 (D) Outside of project completion dates and reasonable business
8 hours, the individual has the ability to set the individual’s own
9 hours.

10 (E) The individual is customarily engaged in the same type of
11 work performed under contract with another hiring entity or holds
12 themselves out to other potential customers as available to perform
13 the same type of work.

14 (F) The individual customarily and regularly exercises discretion
15 and independent judgment in the performance of the services.

16 (2) For purposes of this subdivision:

17 (A) An “individual” includes an individual providing services
18 through a sole proprietorship or other business entity.

19 (B) “Professional services” means services that meet any of the
20 following:

21 (i) Marketing, provided that the contracted work is original and
22 creative in character and the result of which depends primarily on
23 the invention, imagination, or talent of the employee or work that
24 is an essential part of or necessarily incident to any of the
25 contracted work.

26 (ii) Administrator of human resources, provided that the
27 contracted work is predominantly intellectual and varied in
28 character and is of such character that the output produced or the
29 result accomplished cannot be standardized in relation to a given
30 period of time.

31 (iii) Travel agent services provided by either of the following:

32 ~~(I)~~ a

33 (I) A person regulated by the Attorney General under Article
34 2.6 (commencing with Section 17550) of Chapter 1 of Part 3 of
35 Division 7 of the Business and Professions Code, or ~~(II) an~~ Code.

36 (II) An individual who is a seller of travel within the meaning
37 of subdivision (a) of Section 17550.1 of the Business and
38 Professions Code and who is exempt from the registration under
39 subdivision (g) of Section 17550.20 of the Business and Professions
40 Code.

1 (iv) Graphic design.

2 (v) Grant writer.

3 (vi) Fine artist.

4 (vii) *A specialized performer hired by a performing arts*
5 *company or organization to teach a master class for no more than*
6 *one week. "Master class" means a specialized course for limited*
7 *duration that is not regularly offered by the hiring entity and is*
8 *taught by an expert in a recognized field of artistic endeavor who*
9 *does not work for the hiring entity to teach on a regular basis.*

10 ~~(vii)~~

11 (viii) Services provided by an enrolled agent who is licensed
12 by the United States Department of the Treasury to practice before
13 the Internal Revenue Service pursuant to Part 10 of Subtitle A of
14 Title 31 of the Code of Federal Regulations.

15 (ix) *Services provided by an appraiser, as defined in Part 3*
16 *(commencing with Section 11300) of Division 4 of the Business*
17 *and Professions Code.*

18 ~~(viii)~~

19 (x) Payment processing agent through an independent sales
20 organization.

21 ~~(ix) Services provided by a still photographer or photojournalist~~
22 ~~who works under a contract that specifies in advance the rate of~~
23 ~~pay, intellectual property rights, and obligation to pay by a defined~~
24 ~~time, as long as the services are not replacing an employee, and~~
25 ~~the freelancer does not primarily perform the work at the hiring~~
26 ~~entity's business location and the freelancer is not restricted from~~
27 ~~working for more than one hiring entity. This clause is not~~
28 ~~applicable to an individual who works on motion pictures, which~~
29 ~~includes, but is not limited to, projects produced for theatrical,~~
30 ~~television, internet streaming for any device, commercial~~
31 ~~productions, broadcast news, music videos, and live shows, whether~~
32 ~~distributed live or recorded for later broadcast, regardless of the~~
33 ~~distribution platform. Nothing in this section shall impose~~
34 ~~limitations on a photographer or artist from displaying their work~~
35 ~~product for sale.~~

36 ~~(x) Services provided by a freelance writer, editor, or newspaper~~
37 ~~cartoonist who works under a contract that specifies in advance~~
38 ~~the rate of pay, intellectual property rights, and obligation to pay~~
39 ~~by a defined time, as long as the services are not replacing an~~
40 ~~employee, the freelancer does not primarily perform the work at~~

1 ~~the hiring entity's business location, and the freelancer is not~~
2 ~~restricted from working for more than one hiring entity.~~

3 (xi) (I) *Services provided:*

4 (ia) *By a still photographer, photojournalist, videographer, or*
5 *photo editor who works under a contract that specifies in advance*
6 *the rate of pay, intellectual property rights, and obligation to pay*
7 *by a defined time, as long as the individual providing the services*
8 *is not replacing an employee performing the same work at the*
9 *same volume, the individual does not primarily perform the work*
10 *at the hiring entity's business location, and the individual is not*
11 *restricted from working for more than one hiring entity. This*
12 *subclause is not applicable to a still photographer, photojournalist,*
13 *videographer, or photo editor who works on motion pictures, which*
14 *includes, but is not limited to, projects produced for theatrical,*
15 *television, internet streaming for any device, commercial,*
16 *productions, broadcast news, music videos, and live shows, whether*
17 *distributed live or recorded for later broadcast, regardless of*
18 *distribution platform. Nothing in this section shall impose*
19 *limitations on a photographer or artist from displaying their work*
20 *product for sale.*

21 (ib) *To a digital content aggregator by a still photographer,*
22 *photojournalist, videographer, or photo editor.*

23 (II) *For the purposes of this clause:*

24 (ia) *“Digital content aggregator” means a licensing*
25 *intermediary that obtains a license or assignment of copyright*
26 *from a still photographer, photojournalist, videographer, or photo*
27 *editor for the purposes of distributing that copyright by way of*
28 *sublicense or assignment, to the intermediary's third party end*
29 *users.*

30 (ib) *“Photo editor” means an individual who performs services*
31 *ancillary to the creation of digital content, such as retouching,*
32 *editing, and keywording.*

33 (xii) *By a freelance writer, certified translator, editor,*
34 *copyeditor, illustrator, or newspaper cartoonist who works under*
35 *a contract that specifies in advance the rate of pay, intellectual*
36 *property rights, and obligation to pay by a defined time, as long*
37 *as the individual providing the services is not replacing an*
38 *employee performing the same work at the same volume, the*
39 *individual does not primarily perform the work at the hiring entity's*

1 *business location, and the individual is not restricted from working*
2 *for more than one hiring entity.*

3 (xi)

4 (xiii) Services provided by a licensed esthetician, licensed
5 electrologist, licensed manicurist, licensed barber, or licensed
6 cosmetologist provided that the individual:

7 (I) Sets their own rates, processes their own payments, and is
8 paid directly by clients.

9 (II) Sets their own hours of work and has sole discretion to
10 decide the number of clients and which clients for whom they will
11 provide services.

12 (III) Has their own book of business and schedules their own
13 appointments.

14 (IV) Maintains their own business license for the services
15 offered to clients.

16 (V) If the individual is performing services at the location of
17 the hiring entity, then the individual issues a Form 1099 to the
18 salon or business owner from which they rent their business space.

19 (VI) This subdivision shall become inoperative, with respect to
20 licensed manicurists, on January 1, 2022.

21 (e) Subdivision (a) and the holding in *Dynamex Operations*
22 *West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903
23 (*Dynamex*), do not apply to the following occupations as defined
24 in the paragraphs below, and instead, the determination of
25 employee or independent contractor status for individuals in those
26 occupations shall be governed by *Borello*.

27 (1) A person or organization who is licensed by the Department
28 of Insurance pursuant to Chapter 5 (commencing with Section
29 1621), Chapter 6 (commencing with Section 1760), or Chapter 8
30 (commencing with Section 1831) of Part 2 of Division 1 of the
31 ~~Insurance Code~~. *Code or a person who provides underwriting*
32 *inspections, premium audits, risk management, or loss control*
33 *work for the insurance industry.*

34 (2) A physician and surgeon, dentist, podiatrist, psychologist,
35 or veterinarian licensed by the State of California pursuant to
36 Division 2 (commencing with Section 500) of the Business and
37 Professions Code, performing professional or medical services
38 provided to or by a health care entity, including an entity organized
39 as a sole proprietorship, partnership, or professional corporation
40 as defined in Section 13401 of the Corporations Code. Nothing in

1 this subdivision shall apply to the employment settings currently
2 or potentially governed by collective bargaining agreements for
3 the licensees identified in this paragraph.

4 (3) An individual who holds an active license from the State of
5 California and is practicing one of the following recognized
6 professions: lawyer, architect, engineer, private investigator, or
7 accountant.

8 (4) A securities broker-dealer or investment adviser or their
9 agents and representatives that are registered with the Securities
10 and Exchange Commission or the Financial Industry Regulatory
11 Authority or licensed by the State of California under Chapter 2
12 (commencing with Section 25210) or Chapter 3 (commencing with
13 Section 25230) of Division 1 of Part 3 of Title 4 of the
14 Corporations Code.

15 (5) A direct sales salesperson as described in Section 650 of the
16 Unemployment Insurance Code, so long as the conditions for
17 exclusion from employment under that section are met.

18 (6) A commercial fisherman working on an American vessel
19 as defined in subparagraph (A) below.

20 (A) For the purposes of this paragraph:

21 (i) “American vessel” has the same meaning as defined in
22 Section 125.5 of the Unemployment Insurance Code.

23 (ii) “Commercial fisherman” means a person who has a valid,
24 unrevoked commercial fishing license issued pursuant to Article
25 3 (commencing with Section 7850) of Chapter 1 of Part 3 of
26 Division 6 of the Fish and Game Code.

27 (iii) “Working on an American vessel” means the taking or the
28 attempt to take fish, shellfish, or other fishery resources of the state
29 by any means, and includes each individual aboard an American
30 vessel operated for fishing purposes who participates directly or
31 indirectly in the taking of these raw fishery products, including
32 maintaining the vessel or equipment used aboard the vessel.
33 However, “working on an American vessel” does not apply to
34 anyone aboard a licensed commercial fishing vessel as a visitor
35 or guest who does not directly or indirectly participate in the taking.

36 (B) For the purposes of this paragraph, a commercial fisherman
37 working on an American vessel is eligible for unemployment
38 insurance benefits if they meet the definition of “employment” in
39 Section 609 of the Unemployment Insurance Code and are

1 otherwise eligible for those benefits pursuant to the provisions of
2 the Unemployment Insurance Code.

3 (C) On or before March 1, 2021, and each March 1 thereafter,
4 the Employment Development Department shall issue an annual
5 report to the Legislature on the use of unemployment insurance in
6 the commercial fishing industry. This report shall include, but not
7 be limited to, reporting the number of commercial fishermen who
8 apply for unemployment insurance benefits, the number of
9 commercial fishermen who have their claims disputed, the number
10 of commercial fishermen who have their claims denied, and the
11 number of commercial fishermen who receive unemployment
12 insurance benefits. The report required by this subparagraph shall
13 be submitted in compliance with Section 9795 of the Government
14 Code.

15 (D) This paragraph shall become inoperative on January 1, 2023,
16 unless extended by the Legislature.

17 (7) *An individual who is engaged by an international exchange*
18 *visitor program that has obtained and maintains full official*
19 *designation by the United States Department of State under Part*
20 *62 of Title 22 of the Code of Federal Regulations for the purpose*
21 *of conducting international and cultural exchange visitor programs*
22 *and is in full compliance with Part 62 of Title 22 of the Code of*
23 *Federal Regulations.*

24 (8) *A competition judge with a specialized skillset or expertise*
25 *providing services that require the exercise of discretion and*
26 *independent judgment to an organization for the purposes of*
27 *determining the outcome of a competition.*

28 (f) Subdivision (a) and the holding in *Dynamex* do not apply to
29 the following, which are subject to the Business and Professions
30 Code:

31 (1) A real estate licensee licensed by the State of California
32 pursuant to Division 4 (commencing with Section 10000) of the
33 Business and Professions Code, for whom the determination of
34 employee or independent contractor status shall be governed by
35 subdivision (b) of Section 10032 of the Business and Professions
36 Code. If that section is not applicable, then this determination shall
37 be governed as follows: (A) for purposes of unemployment
38 insurance by Section 650 of the Unemployment Insurance Code;
39 (B) for purposes of workers compensation by Section 3200 et seq.;
40 and (C) for all other purposes in the Labor Code by *Borello*. The

1 statutorily imposed duties of a responsible broker under Section
2 10015.1 of the Business and Professions Code are not factors to
3 be considered under the Borello test.

4 (2) A repossession agency licensed pursuant to Section 7500.2
5 of the Business and Professions Code, for whom the determination
6 of employee or independent contractor status shall be governed
7 by Section 7500.2 of the Business and Professions Code, if the
8 repossession agency is free from the control and direction of the
9 hiring person or entity in connection with the performance of the
10 work, both under the contract for the performance of the work and
11 in fact.

12 (g) (1) *Subdivision (a) and the holding in Dynamex do not apply*
13 *to the following occupations in connection with creating,*
14 *marketing, promoting, or distributing sound recordings or musical*
15 *compositions, and instead the holding in Borello shall apply to all*
16 *of the following:*

17 (A) *Recording artists, subject to the below.*

18 (B) *Songwriters, lyricists, and composers.*

19 (C) *Managers of recording artists.*

20 (D) *Record producers.*

21 (E) *Musical engineers and mixers engaged in the creation of*
22 *sound recordings.*

23 (F) *Musicians engaged in the creation of sound recordings,*
24 *subject to the below.*

25 (G) *Vocalists, subject to the below.*

26 (H) *Photographers working on recording photo shoots, album*
27 *covers, and other press and publicity purposes.*

28 (I) *Independent radio promoters.*

29 (J) *Any other individual engaged to render any creative,*
30 *production, marketing, or independent music publicist services*
31 *related primarily to the creation, marketing, promotion, or*
32 *distribution of sound recordings or musical compositions, unless*
33 *otherwise stated in the terms and conditions of any current or*
34 *future collective bargaining agreement or agreement between the*
35 *applicable and respective parties, in which case those terms and*
36 *conditions shall govern.*

37 (2) *This subdivision shall not apply to any of the following:*

38 (A) *Film and television unit production crews working on live*
39 *or recorded performances for audiovisual works, including still*
40 *photographers and cinematographers.*

1 (B) Publicists who are not independent music publicists.

2 (C) People subject to collective bargaining agreements and
3 those hired by employers signed to collective bargaining
4 agreements.

5 (D) Solely for the purposes of determining a right to organize,
6 those who are deemed to be eligible in an appropriate collective
7 bargaining unit.

8 (3) Notwithstanding subdivision (a), the holding in *Dynamex*,
9 or paragraphs (1) and (2), the terms and conditions of any current
10 or future collective bargaining agreements or agreements between
11 the applicable unions and respective employers shall govern in
12 all events.

13 (4) The following shall apply to recording artists, musicians,
14 and vocalists:

15 (A) Recording artists, musicians, and vocalists shall not be
16 precluded from organizing under applicable provisions of labor
17 law, or otherwise exercising rights granted to employees under
18 the National Labor Relations Act (29 U.S.C. Sec. 151 et seq.).

19 (B) Musicians and vocalists who are not royalty-based
20 participants in the work created during any specific engagement
21 shall be governed by state and local administrative and judicial
22 bodies with respect to minimum wage and overtime requirements
23 related to that engagement, and therefore treated as employees
24 for such purposes under the applicable provisions of this code.

25 (C) In all events, the terms and conditions of any current or
26 future collective bargaining agreements or agreements between
27 the applicable unions and respective employers shall govern.

28 (h) (1) Subdivision (a) and the holding in *Dynamex* do not apply
29 to a musician or musical group for the purpose of a
30 single-engagement live performance event, and instead the
31 determination of employee or independent contractor status shall
32 be governed by *Borello*, unless one of the following conditions is
33 met:

34 (A) The musical group is performing as a symphony orchestra,
35 the musical group is performing at a theme park or amusement
36 park, or a musician is performing in a musical theater production.

37 (B) The musical group is an event headliner for a performance
38 taking place in a venue location with more than 1,500 attendees.

39 (C) The musical group is performing at a festival that sells more
40 than 18,000 tickets per day.

1 (2) *This subdivision is inclusive of rehearsals related to the*
2 *single-engagement live performance event.*

3 (3) *As used in this subdivision:*

4 (A) *“Event headliner” means the musical group that appears*
5 *most prominently in an event program, advertisement, or on a*
6 *marquee.*

7 (B) *“Festival” means a single day or multiday event in a single*
8 *venue location that occurs once per year, featuring performances*
9 *by various musical groups.*

10 (C) *“Musical group” means a solo artist, band, or a group of*
11 *musicians who perform under a distinct name.*

12 (D) *“Musical theater production” means a form of theatrical*
13 *performance that combines songs, spoken dialogue, acting, and*
14 *dance.*

15 (E) *“Musician” means an individual performing instrumental,*
16 *electronic, or vocal music in a live setting.*

17 (F) *“Single-engagement live performance event” means a*
18 *stand-alone musical performance in a single venue location, or a*
19 *series of performances in the same venue location no more than*
20 *once per week. The performance is not considered a part of a tour*
21 *or series of live performances at various locations.*

22 (G) *“Venue location” means an indoor or outdoor location*
23 *used primarily as a space to hold a concert or musical*
24 *performance. “Venue location” includes, but is not limited to, a*
25 *restaurant, bar, or brewery that regularly offers live musical*
26 *entertainment.*

27 ~~(g)~~

28 (i) Subdivision (a) and the holding in *Dynamex* do not apply to
29 the relationship between a contractor and an individual performing
30 work pursuant to a subcontract in the construction industry, and
31 instead the determination of whether the individual is an employee
32 of the contractor shall be governed by Section 2750.5 and by
33 *Borello*, if the contractor demonstrates that all the following criteria
34 are satisfied:

35 (1) The subcontract is in writing.

36 (2) The subcontractor is licensed by the ~~Contractors~~ *Contractors’*
37 *State License Board* and the work is within the scope of that
38 license.

39 (3) If the subcontractor is domiciled in a jurisdiction that requires
40 the subcontractor to have a business license or business tax

1 registration, the subcontractor has the required business license or
2 business tax registration.

3 (4) The subcontractor maintains a business location that is
4 separate from the business or work location of the contractor.

5 (5) The subcontractor has the authority to hire and to fire other
6 persons to provide or to assist in providing the services.

7 (6) The subcontractor assumes financial responsibility for errors
8 or omissions in labor or services as evidenced by insurance, legally
9 authorized indemnity obligations, performance bonds, or warranties
10 relating to the labor or services being provided.

11 (7) The subcontractor is customarily engaged in an
12 independently established business of the same nature as that
13 involved in the work performed.

14 (8) (A) Paragraph (2) shall not apply to a subcontractor
15 providing construction trucking services for which a contractor's
16 license is not required by Chapter 9 (commencing with Section
17 7000) of Division 3 of the Business and Professions Code, provided
18 that all of the following criteria are satisfied:

19 (i) The subcontractor is a business entity formed as a sole
20 proprietorship, partnership, limited liability company, limited
21 liability partnership, or corporation.

22 (ii) For work performed after January 1, 2020, the subcontractor
23 is registered with the Department of Industrial Relations as a public
24 works contractor pursuant to Section 1725.5, regardless of whether
25 the subcontract involves public work.

26 (iii) The subcontractor utilizes its own employees to perform
27 the construction trucking services, unless the subcontractor is a
28 sole proprietor who operates their own truck to perform the entire
29 subcontract and holds a valid motor carrier permit issued by the
30 Department of Motor Vehicles.

31 (iv) The subcontractor negotiates and contracts with, and is
32 compensated directly by, the licensed contractor.

33 (B) For work performed after January 1, 2020, any business
34 entity that provides construction trucking services to a licensed
35 contractor utilizing more than one truck shall be deemed the
36 employer for all drivers of those trucks.

37 (C) For purposes of this paragraph, "construction trucking
38 services" mean hauling and trucking services provided in the
39 construction industry pursuant to a contract with a licensed
40 contractor utilizing vehicles that require a commercial driver's

1 license to operate or have a gross vehicle weight rating of 26,001
 2 or more pounds.

3 (D) This paragraph shall only apply to work performed before
 4 January 1, 2022.

5 (E) Nothing in this paragraph prohibits an individual who owns
 6 their truck from working as an employee of a trucking company
 7 and utilizing that truck in the scope of that employment. An
 8 individual employee providing their own truck for use by an
 9 employer trucking company shall be reimbursed by the trucking
 10 company for the reasonable expense incurred for the use of the
 11 employee owned truck.

12 ~~(h)~~

13 (j) Subdivision (a) and the holding in *Dynamex* do not apply to
 14 the relationship between a motor club holding a certificate of
 15 authority issued pursuant to Chapter 2 (commencing with Section
 16 12160) of Part 5 of Division 2 of the Insurance Code and an
 17 individual performing services pursuant to a contract between the
 18 motor club and a third party to provide motor club services utilizing
 19 the employees and vehicles of the third party and, instead, the
 20 determination whether such an individual is an employee of the
 21 motor club shall be governed by *Borello*, if the motor club
 22 demonstrates that the third party is a separate and independent
 23 business from the motor club.

24 ~~(i)~~

25 (k) (1) ~~The addition of subdivision (a) to this section of the~~
 26 ~~Labor Code by this act.~~ *Subdivision (a)* does not constitute a change
 27 in, but is declaratory of, existing law with regard to wage orders
 28 of the Industrial Welfare Commission and violations of ~~the Labor~~
 29 ~~Code~~ *this code* relating to wage orders.

30 (2) Insofar as the application of subdivisions (b), (c), (d), (e),
 31 (f), (g), ~~and (h)~~ of this section *(h), (i), and (j)* would relieve an
 32 employer from liability, those subdivisions shall apply retroactively
 33 to existing claims and actions to the maximum extent permitted
 34 by law.

35 (3) Except as provided in paragraphs (1) and ~~(2)~~ of this
 36 ~~subdivision, the provisions of (2), this section of the Labor Code~~
 37 shall apply to work performed on or after January 1, 2020.

38 ~~(j)~~

39 (l) In addition to any other remedies available, an action for
 40 injunctive relief to prevent the continued misclassification of

1 employees as independent contractors may be prosecuted against
2 the putative employer in a court of competent jurisdiction by the
3 ~~Attorney-General~~ *General, by a district attorney*, or by a city
4 attorney of a city having a population in excess of 750,000, or by
5 a city attorney in a city and county or, with the consent of the
6 district attorney, by a city prosecutor in a city having a full-time
7 city prosecutor in the name of the people of the State of California
8 upon their own complaint or upon the complaint of a board, officer,
9 person, corporation, or association.

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9B08 - AB 1909 (Gonzalez)
Healing Arts Licensees:
Virginity Examinations or Tests

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ASSEMBLY BILL

No. 1909

Introduced by Assembly Member Gonzalez

January 8, 2020

An act to add Section 726.5 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1909, as introduced, Gonzalez. Healing arts licensees: virginity examinations or tests.

Existing law establishes the Department of Consumer Affairs in the Business, Consumer Services, and Housing Agency. The department is composed of boards for purposes of licensing and regulating various professions and vocations, including healing arts licensees. The boards are established for the purpose of ensuring that those private businesses and professions deemed to engage in activities that have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California. Existing law makes certain acts by a healing arts licensee, including, but not limited to, sexual abuse, misconduct, or relations with a patient, unprofessional conduct and grounds for disciplinary action.

This bill would prohibit a healing arts licensee, as defined, from performing an examination or test on a patient for the purpose of determining whether the patient is a virgin. The bill would also make a violation of its provisions unprofessional conduct and grounds for disciplinary action by the licensing board for the healing arts licensee.

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 726.5 is added to the Business and
- 2 Professions Code, to read:
- 3 726.5. (a) A healing arts licensee shall not perform an
- 4 examination or test on a patient for the purpose of determining
- 5 whether the patient is a virgin.
- 6 (b) A violation of subdivision (a) constitutes unprofessional
- 7 conduct and is grounds for disciplinary action by the licensing
- 8 board for the healing arts licensee.
- 9 (c) For purposes of this section, “healing arts licensee” means
- 10 any person working within their scope of practicing and engaging
- 11 in acts that are the subject of licensure or regulation under this
- 12 division or under any initiative act referred to in this division.

9B09 - AB 2028 (Aguiar-Curry)
State Agencies: Meetings

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ASSEMBLY BILL

No. 2028

Introduced by Assembly Member Aguiar-Curry

January 30, 2020

An act to amend Sections 11125 and 11125.7 of the Government Code, relating to public meetings.

LEGISLATIVE COUNSEL'S DIGEST

AB 2028, as introduced, Aguiar-Curry. State agencies: meetings.

Existing law, the Bagley-Keene Open Meeting Act, requires that all meetings of a state body, as defined, be open and public, and that all persons be permitted to attend any meeting of a state body, except as otherwise provided in that act. Existing law requires the state body to provide notice of its meeting, including specified information and a specific agenda of the meeting, as provided, to any person who requests that notice in writing and to make that notice available on the internet at least 10 days in advance of the meeting.

This bill would, except for closed sessions, require that this notice include all writings or materials provided for the noticed meeting to a member of the state body by staff of a state agency, board, or commission, or another member of the state body, that are in connection with a matter subject to discussion or consideration at the meeting. The bill would require these writings and materials to be made available on the internet at least 10 days in advance of the meeting. The bill would provide that a state body may only distribute or discuss these writings or materials at a meeting of the state body if it has complied with these requirements.

Existing law requires that a state body provide an opportunity for members of the public to directly address the body on each agenda item.

Existing law exempts from this requirement, among other things, an agenda item that has already been considered by a committee composed exclusively of members of the state body at a public meeting where members of the public were afforded an opportunity to address the committee on the item.

This bill would delete this exception, thereby making the requirement to provide an opportunity to address the state body applicable to an agenda item for which the public had an opportunity to address it at a public meeting of a committee of the state body.

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. The Legislature finds and declares the following:
- 2 (a) The Bagley-Keene Open Meeting Act (Article 9
- 3 (commencing with Section 11120) of Chapter 1 of Part 1 of
- 4 Division 3 of Title 2 of the Government Code) (hereafter
- 5 “Bagley-Keene”) was intended to implement Section 3 of Article
- 6 I of the California Constitution, which states in part, “The people
- 7 have the right of access to information concerning the conduct of
- 8 the people’s business, and, therefore, the meetings of public bodies
- 9 and the writings of public officials and agencies shall be open to
- 10 public scrutiny.”
- 11 (b) Bagley-Keene was written to protect public meetings and
- 12 public notice and to ensure the transparency of actions taken by
- 13 state agencies, boards, and commissions.
- 14 (c) Californians have the right to participate in state body
- 15 deliberations. This includes the public’s ability to comment on all
- 16 agenda items discussed at a meeting of the state body, regardless
- 17 of whether an item has been discussed previously in a committee
- 18 of the state body.
- 19 (d) The purpose of public notice is so that state bodies give the
- 20 public adequate time for review of the substance of a state body
- 21 meeting and for comment.
- 22 (e) Public notice must also include any writings or materials
- 23 provided by a state body’s staff or by a member of the state body
- 24 to other members of the state body for a noticed meeting of the
- 25 body held at least 10 days prior to the meeting.

1 (f) Bagley-Keene affirms these rights by stating in Section 11120
2 of the Government Code, “The people of this state do not yield
3 their sovereignty to the agencies which serve them. The people,
4 in delegating authority, do not give their public servants the right
5 to decide what is good for the people to know and what is not good
6 for them to know. The people insist on remaining informed so that
7 they may retain control over the instruments they have created.”

8 SEC. 2. Section 11125 of the Government Code is amended
9 to read:

10 11125. (a) The state body shall provide notice of its meeting
11 to any person who requests that notice in writing. Notice shall be
12 given and also made available on the ~~Internet~~ *internet* at least 10
13 days in advance of the meeting, and shall include the name,
14 address, and telephone number of any person who can provide
15 further information prior to the meeting, but need not include a
16 list of witnesses expected to appear at the meeting. The written
17 notice shall additionally include the address of the ~~Internet~~ *internet* site
18 *internet website* where notices required by this article are made
19 available.

20 (b) The notice of a meeting of a body that is a state body shall
21 include a specific agenda for the meeting, containing a brief
22 description of the items of business to be transacted or discussed
23 in either open or closed session. A brief general description of an
24 item generally need not exceed 20 words. A description of an item
25 to be transacted or discussed in closed session shall include a
26 citation of the specific statutory authority under which a closed
27 session is being held. No item shall be added to the agenda
28 subsequent to the provision of this notice, unless otherwise
29 permitted by this article.

30 (c) (1) *Except as otherwise provided in paragraph (4), any*
31 *notice provided pursuant to subdivision (a) shall include all*
32 *writings or materials provided for the noticed meeting to a member*
33 *of the state body by the staff of a state agency, board, or*
34 *commission, or another member of the state body, that are in*
35 *connection with a matter subject to discussion or consideration*
36 *at the meeting.*

37 (2) *The writings or materials described in paragraph (1) shall*
38 *be made available on the internet at least 10 days in advance of*
39 *the meeting, and to any person who requests that notice in writing.*

1 (3) *A state body may distribute or discuss writings or materials*
 2 *described in paragraph (1) at a meeting of the state body only if*
 3 *it has complied with this subdivision.*

4 (4) *This subdivision does not apply to writings or materials*
 5 *prepared for a matter to be discussed in a closed session of the*
 6 *state body.*

7 ~~(e)~~

8 (d) Notice of a meeting of a state body that complies with this
 9 section shall also constitute notice of a meeting of an advisory
 10 body of that state body, provided that the business to be discussed
 11 by the advisory body is covered by the notice of the meeting of
 12 the state body, provided that the specific time and place of the
 13 advisory body’s meeting is announced during the open and public
 14 state body’s meeting, and provided that the advisory body’s
 15 meeting is conducted within a reasonable time of, and nearby, the
 16 meeting of the state body.

17 ~~(d)~~

18 (e) A person may request, and shall be provided, notice pursuant
 19 to subdivision (a) for all meetings of a state body or for a specific
 20 meeting or meetings. In addition, at the state body’s discretion, a
 21 person may request, and may be provided, notice of only those
 22 meetings of a state body at which a particular subject or subjects
 23 specified in the request will be discussed.

24 ~~(e)~~

25 (f) A request for notice of more than one meeting of a state body
 26 shall be subject to the provisions of Section 14911.

27 ~~(f)~~

28 (g) The notice shall be made available in appropriate alternative
 29 formats, as required by Section 202 of the Americans with
 30 Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal
 31 rules and regulations adopted in implementation thereof, upon
 32 request by any person with a disability. The notice shall include
 33 information regarding how, to whom, and by when a request for
 34 any disability-related modification or accommodation, including
 35 auxiliary aids or services may be made by a person with a disability
 36 who requires these aids or services in order to participate in the
 37 public meeting.

38 SEC. 3. Section 11125.7 of the Government Code is amended
 39 to read:

1 11125.7. (a) Except as otherwise provided in this section, the
2 state body shall provide an opportunity for members of the public
3 to directly address the state body on each agenda item before or
4 during the state body's discussion or consideration of the item.
5 ~~This section is not applicable if the agenda item has already been~~
6 ~~considered by a committee composed exclusively of members of~~
7 ~~the state body at a public meeting where interested members of~~
8 ~~the public were afforded the opportunity to address the committee~~
9 ~~on the item, before or during the committee's consideration of the~~
10 ~~item, unless the item has been substantially changed since the~~
11 ~~committee heard the item, as determined by the state body.~~ Every
12 notice for a special meeting at which action is proposed to be taken
13 on an item shall provide an opportunity for members of the public
14 to directly address the state body concerning that item prior to
15 action on the item. In addition, the notice requirement of Section
16 11125 shall not preclude the acceptance of testimony at meetings,
17 other than emergency meetings, from members of the public if no
18 action is taken by the state body at the same meeting on matters
19 brought before the body by members of the public.

20 (b) The state body may adopt reasonable regulations to ensure
21 that the intent of subdivision (a) is carried out, including, but not
22 limited to, regulations limiting the total amount of time allocated
23 for public comment on particular issues and for each individual
24 speaker.

25 (c) (1) Notwithstanding subdivision (b), when a state body
26 limits time for public comment the state body shall provide at least
27 twice the allotted time to a member of the public who utilizes a
28 translator to ensure that non-English speakers receive the same
29 opportunity to directly address the state body.

30 (2) Paragraph (1) shall not apply if the state body utilizes
31 simultaneous translation equipment in a manner that allows the
32 state body to hear the translated public testimony simultaneously.

33 (d) The state body shall not prohibit public criticism of the
34 policies, programs, or services of the state body, or of the acts or
35 omissions of the state body. Nothing in this subdivision shall confer
36 any privilege or protection for expression beyond that otherwise
37 provided by law.

38 (e) This section is not applicable to ~~closed~~ *any of the following*:

39 (1) *Closed* sessions held pursuant to Section 11126.

40 (f) ~~This section is not applicable to decisions~~

1 (2) *Decisions* regarding proceedings held pursuant to Chapter
2 5 (commencing with Section 11500), relating to administrative
3 adjudication, or to the conduct of those proceedings.
4 ~~(g) This section is not applicable to hearings~~
5 (3) *Hearings* conducted by the California Victim Compensation
6 Board pursuant to Sections 13963 and 13963.1.
7 ~~(h) This section is not applicable to agenda~~
8 (4) *Agenda* items that involve decisions of the Public Utilities
9 Commission regarding adjudicatory hearings held pursuant to
10 Chapter 9 (commencing with Section 1701) of Part 1 of Division
11 1 of the Public Utilities Code. For all other agenda items, the
12 commission shall provide members of the public, other than those
13 who have already participated in the proceedings underlying the
14 agenda item, an opportunity to directly address the commission
15 before or during the commission’s consideration of the item.

9B10 - AB 2113 (Low)

Refugees, Asylees, and Immigrants:

Professional Licensing

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AMENDED IN ASSEMBLY MAY 4, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 2113

**Introduced by Assembly Member Low
(Coauthors: Assembly Members Carrillo, *Chiu*, Medina, and
Blanca Rubio)**

February 6, 2020

An act to add Section 135.4 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2113, as amended, Low. Refugees, asylees, and immigrants: professional licensing.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law prohibits an entity within the department from denying licensure to an applicant based upon their citizenship or immigration status.

This bill, notwithstanding any other law, would require a board within the department to expedite, and authorize it to assist, the initial licensure process for an applicant who supplies satisfactory evidence to the board that they are a refugee, have been granted political asylum, or have a special immigrant visa, as specified. The bill would authorize a board to adopt regulations necessary to administer 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 135.4 is added to the Business and
2 Professions Code, to read:

3 135.4. (a) Notwithstanding any other law, a board within the
4 department shall expedite, and may assist, the initial licensure
5 process for an applicant who supplies satisfactory evidence to the
6 board that they have been admitted to the United States as a refugee
7 under Section 1157 of Title 8 of the United States Code, have been
8 granted political asylum by the Secretary of Homeland Security
9 or the Attorney General of the United States pursuant to Section
10 1158 of Title 8 of the United States Code, or they have a special
11 immigrant visa (SIV) that has been granted a status under Section
12 1244 of Public Law 110-181, under Public Law 109-163, or under
13 Section 602(b) of Title VI of Division F of Public Law 111-8.

14 *(b) Nothing in this section shall be construed as changing*
15 *existing licensure requirements. A person applying for expedited*
16 *licensure under subdivision (a) shall meet all applicable statutory*
17 *and regulatory licensure requirements.*

18 ~~(b)~~

19 (c) A board may adopt regulations necessary to administer this
20 section.

9B11 - AB 2185 (Patterson)

Professions and Vocations: Applicants Licensed
in Other States: Reciprocity

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AMENDED IN ASSEMBLY MAY 13, 2020
AMENDED IN ASSEMBLY MARCH 16, 2020
CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 2185

Introduced by Assembly Members Patterson and Gallagher

February 11, 2020

An act to add Section 117 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2185, as amended, Patterson. Professions and vocations: applicants licensed in other states: reciprocity.

Existing law establishes the Department of Consumer Affairs, which is composed of boards that license and regulate various professions and vocations to ensure that certain businesses and professions that have potential impact upon the public health, safety, and welfare are adequately regulated. Existing law makes a violation of some of those licensure provisions a crime.

Existing law authorizes certain boards, for purposes of reciprocity, to waive examination or other requirements and issue a license to an applicant who holds a valid license in another state and meets specified other requirements, including, among others, a license to practice veterinary medicine.

This bill, with exceptions, would require each board within the department to issue a license to an applicant in the discipline for which the applicant applies if the person meets certain requirements, including, but not limited to, that the person is married to, or is in a domestic partnership or other legal union with, an active duty member of the

Armed Forces of the United States, who is assigned to a duty station in this state, the person currently holds a license in good standing in another state in the discipline and practice level and with the same scope of practice for which the person applies, the person has held the license and has practiced in the licensed field in ~~the other~~ *another state or jurisdiction* for at least 3 of the last 5 years, and the person pays all applicable fees and complies with any applicable surety bond and insurance requirements. By expanding the applicants who are authorized to be licensed and who may be prosecuted for a violation of those licensure provisions constituting a crime, the bill would impose a state-mandated program.

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

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

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

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

- 1 SECTION 1. Section 117 is added to the Business and
- 2 Professions Code, to read:
- 3 117. (a) Notwithstanding any law, each board within the
- 4 department shall issue a license in the discipline for which the
- 5 applicant applies if the applicant meets all of the following
- 6 requirements:
- 7 (1) The person is married to, or is in a domestic partnership or
- 8 other legal union with, an active duty member of the Armed Forces
- 9 of the United States who is assigned to a duty station in this state
- 10 under official active duty military orders.
- 11 (2) The person currently holds a license in good standing in
- 12 another state in the discipline and practice level and with the same
- 13 scope of practice for which the person is applying.
- 14 (3) The person has held the license and has practiced in the
- 15 licensed field in ~~the other~~ *another state or jurisdiction* for at least
- 16 three of the last five years.
- 17 (4) The person has not had any disciplinary actions imposed
- 18 against their license and has not had a license in the discipline for

1 which the person is applying revoked or suspended in any other
2 state.

3 (5) The person submits verification that they have ~~satisfied all~~
4 ~~education, work, examination, and other requirements for gained~~
5 ~~licensure in the other state in which the person holds a license in~~
6 ~~good standing and those requirements are similar to the standards~~
7 ~~required for licensure in this state. and holds that license in good~~
8 ~~standing, and those requirements are deemed similar to the~~
9 ~~standards required for licensure in this state by the appropriate~~
10 ~~licensing board.~~

11 (6) The person would not be denied licensure under any other
12 provision of this code, including, but not limited to, disqualification
13 for criminal history relating to the license sought.

14 (7) The person pays all applicable fees for licensure and
15 complies with any applicable surety bond and insurance
16 requirements.

17 (8) If required by the board, the person has passed a California
18 jurisprudence and ethics examination ~~or other examination~~
19 otherwise required for applicants by the board on the statutes and
20 regulations relating to the license.

21 (b) This section shall not supersede any other reciprocity
22 agreement, compact membership, or statute that provides
23 reciprocity for a person who holds a valid license in another state.

24 (c) This section shall not apply to the Board of Registered
25 ~~Nursing, Nursing or any other board that currently authorizes~~
26 ~~license portability as a component of qualifying for licensure in~~
27 ~~this state, and the Board of Behavioral Sciences or any other board~~
28 ~~that has a mandatory license portability requirement in statute, and~~
29 ~~any board that currently authorizes license portability as a~~
30 ~~component of qualifying for licensure in this state. statute. License~~
31 ~~portability is defined as either providing a license by endorsement~~
32 ~~with verification of an out-of-state license in good standing, or~~
33 ~~exempting state-specific requirements to facilitate a practitioner's~~
34 ~~ability to obtain a license and practice in multiple jurisdictions.~~

35 (d) Notwithstanding any law, the fees, fines, penalties, or other
36 money received by a board pursuant to this section shall not be
37 continuously appropriated and shall be available only upon
38 appropriation by the legislature.

39 SEC. 2. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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9B12 - AB 2214 (Carrillo)
Administrative Procedure Act: Notice of
Proposed Action

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ASSEMBLY BILL

No. 2214

Introduced by Assembly Member Carrillo

February 12, 2020

An act to amend Section 11346.2 of the Government Code, relating to administrative regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2214, as introduced, Carrillo. Administrative Procedure Act: notice of proposed action.

Existing law, the Administrative Procedure Act, governs, among other things, the procedures 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 a state agency proposing to adopt, amend, or repeal specific administrative regulations to prepare, submit as specified, and make available to the public upon request, certain documents relating to the proposed regulation, including, among other things, a copy of the express terms of the proposed regulation.

This bill would require the state agency to conspicuously post those documents on the state agency's website within 24 hours of submitting those documents to the office, instead of making those documents available to the public upon request. The bill would also remove an obsolete provision.

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 11346.2 of the Government Code is
2 amended to read:

3 11346.2. Every agency subject to this chapter shall prepare,
4 submit to the office with the notice of the proposed action as
5 described in Section 11346.5, and ~~make available to the public~~
6 ~~upon request~~, *post conspicuously on the agency's website within*
7 *24 hours of submission to the office* all of the following:

8 (a) A copy of the express terms of the proposed regulation.

9 (1) The agency shall draft the regulation in plain, straightforward
10 language, avoiding technical terms as much as possible, and using
11 a coherent and easily readable style. The agency shall draft the
12 regulation in plain English.

13 (2) The agency shall include a notation following the express
14 terms of each California Code of Regulations section, listing the
15 specific statutes or other provisions of law authorizing the adoption
16 of the regulation and listing the specific statutes or other provisions
17 of law being implemented, interpreted, or made specific by that
18 section in the California Code of Regulations.

19 (3) The agency shall use underline or italics to indicate additions
20 to, and ~~strikeout~~ to indicate deletions from, the California Code
21 of Regulations.

22 (b) An initial statement of reasons for proposing the adoption,
23 amendment, or repeal of a regulation. This statement of reasons
24 shall include, but not be limited to, all of the following:

25 (1) A statement of the specific purpose of each adoption,
26 amendment, or repeal, the problem the agency intends to address,
27 and the rationale for the determination by the agency that each
28 adoption, amendment, or repeal is reasonably necessary to carry
29 out the purpose and address the problem for which it is proposed.
30 The statement shall enumerate the benefits anticipated from the
31 regulatory action, including the benefits or goals provided in the
32 authorizing statute. These benefits may include, to the extent
33 applicable, nonmonetary benefits such as the protection of public
34 health and safety, worker safety, or the environment, the prevention
35 of discrimination, the promotion of fairness or social equity, and
36 the increase in openness and transparency in business and
37 government, among other things. Where the adoption or
38 amendment of a regulation would mandate the use of specific

1 technologies or equipment, a statement of the reasons why the
2 agency believes these mandates or prescriptive standards are
3 required.

4 (2) (A) For a regulation that is not a major regulation, the
5 economic impact assessment required by subdivision (b) of Section
6 11346.3.

7 (B) For a major regulation proposed on or after November 1,
8 2013, the standardized regulatory impact analysis required by
9 subdivision (c) of Section 11346.3.

10 (3) An identification of each technical, theoretical, and empirical
11 study, report, or similar document, if any, upon which the agency
12 relies in proposing the adoption, amendment, or repeal of a
13 regulation.

14 (4) (A) A description of reasonable alternatives to the regulation
15 and the agency's reasons for rejecting those alternatives.
16 Reasonable alternatives to be considered include, but are not
17 limited to, alternatives that are proposed as less burdensome and
18 equally effective in achieving the purposes of the regulation in a
19 manner that ensures full compliance with the authorizing statute
20 or other law being implemented or made specific by the proposed
21 regulation. In the case of a regulation that would mandate the use
22 of specific technologies or equipment or prescribe specific actions
23 or procedures, the imposition of performance standards shall be
24 considered as an alternative.

25 (B) A description of reasonable alternatives to the regulation
26 that would lessen any adverse impact on small business and the
27 agency's reasons for rejecting those alternatives.

28 (C) Notwithstanding subparagraph (A) or (B), an agency is not
29 required to artificially construct alternatives or describe
30 unreasonable alternatives.

31 (5) (A) Facts, evidence, documents, testimony, or other
32 evidence on which the agency relies to support an initial
33 determination that the action will not have a significant adverse
34 economic impact on business.

35 (B) (i) If a proposed regulation is a building standard, the initial
36 statement of reasons shall include the estimated cost of compliance,
37 the estimated potential benefits, and the related assumptions used
38 to determine the estimates.

39 (ii) The model codes adopted pursuant to Section 18928 of the
40 Health and Safety Code shall be exempt from the requirements of

1 this subparagraph. However, if an interested party has made a
2 request in writing to the agency, at least 30 days before the
3 submittal of the initial statement of reasons, to examine a specific
4 section for purposes of estimating the cost of compliance and the
5 potential benefits for that section, and including the related
6 assumptions used to determine the estimates, then the agency shall
7 comply with the requirements of this subparagraph with regard to
8 that requested section.

9 (6) A department, board, or commission within the
10 Environmental Protection Agency, the Natural Resources Agency,
11 or the Office of the State Fire Marshal shall describe its efforts, in
12 connection with a proposed rulemaking action, to avoid
13 unnecessary duplication or conflicts with federal regulations
14 contained in the Code of Federal Regulations addressing the same
15 issues. These agencies may adopt regulations different from federal
16 regulations contained in the Code of Federal Regulations
17 addressing the same issues upon a finding of one or more of the
18 following justifications:

19 (A) The differing state regulations are authorized by law.

20 (B) The cost of differing state regulations is justified by the
21 benefit to human health, public safety, public welfare, or the
22 environment.

23 (c) A state agency that adopts or amends a regulation mandated
24 by federal law or regulations, the provisions of which are identical
25 to a previously adopted or amended federal regulation, shall be
26 deemed to have complied with subdivision (b) if a statement to
27 the effect that a federally mandated regulation or amendment to a
28 regulation is being proposed, together with a citation to where an
29 explanation of the regulation can be found, is included in the notice
30 of proposed adoption or amendment prepared pursuant to Section
31 11346.5. However, the agency shall comply fully with this chapter
32 with respect to any provisions in the regulation that the agency
33 proposes to adopt or amend that are different from the
34 corresponding provisions of the federal regulation.

35 ~~(d) This section shall be inoperative from January 1, 2012, until~~
36 ~~January 1, 2014.~~

9B13 - AB 2411 (Nazarian)

Healing Arts Licensees: Remuneration: Drug or
Device Companies: Disclosure

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ASSEMBLY BILL

No. 2411

Introduced by Assembly Member Nazarian

February 18, 2020

An act to amend Section 650 of, and to add Section 654.4 to, the Business and Professions Code, relating to the healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2411, as introduced, Nazarian. Healing arts licensees: remuneration: drug or device companies: disclosure.

Existing law provides for the licensure and regulation of various healing arts licensees by boards within the Department of Consumer Affairs. Under existing law, it is unlawful for healing arts licensees, 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, subject to certain exceptions. Existing law also prohibits specified healing arts licensees from charging, billing, or otherwise soliciting payment from a patient on behalf of, or referring a patient to, an organization in which the licensee, or the licensee's immediate family, has a significant beneficial interest, unless the licensee first makes specified disclosures in writing to the patient. Existing law makes a violation of these and other provisions governing unearned rebates, refunds, and discounts, unprofessional conduct and grounds for suspension or revocation of a license and a misdemeanor, as specified.

This bill would require a healing arts licensee who receives remuneration from a drug or device company to disclose the amount and source orally and in writing to each patient before the intended use

or prescription of a drug or device manufactured or distributed. The bill would also require a healing arts licensee to obtain a signature from the patient on the written disclosure. By expanding a crime, the bill would impose a state-mandated local program.

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

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

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

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

1 SECTION 1. Section 650 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

1 quality, of services provided to a medically underserved population
2 served by the health center, shall be permitted only to the extent
3 sanctioned or permitted by federal law.

4 (d) Except as provided in Chapter 2.3 (commencing with Section
5 1400) of Division 2 of the Health and Safety Code and in Sections
6 654.1 and 654.2 of this code, it shall not be unlawful for any person
7 licensed under this division to refer a person to any laboratory,
8 pharmacy, clinic (including entities exempt from licensure pursuant
9 to Section 1206 of the Health and Safety Code), or health care
10 facility solely because the licensee has a proprietary interest or
11 coownership in the laboratory, pharmacy, clinic, or health care
12 facility, provided, however, that the licensee's return on investment
13 for that proprietary interest or coownership shall be based upon
14 the amount of the capital investment or proportional ownership of
15 the licensee which ownership interest is not based on the number
16 or value of any patients referred. Any referral excepted under this
17 section shall be unlawful if the prosecutor proves that there was
18 no valid medical need for the referral.

19 (e) Except as provided in Chapter 2.3 (commencing with Section
20 1400) of Division 2 of the Health and Safety Code and in Sections
21 654.1 and ~~654.2 of this code~~, *654.2, and subject to Section 654.4*,
22 it shall not be unlawful to provide nonmonetary remuneration, in
23 the form of hardware, software, or information technology and
24 training services, as described in subsections (x) and (y) of Section
25 1001.952 of Title 42 of the Code of Federal Regulations, as
26 amended October 4, 2007, as published in the Federal Register
27 (72 Fed. Reg. 56632 and 56644), and subsequently amended
28 versions.

29 (f) "Health care facility" means a general acute care hospital,
30 acute psychiatric hospital, skilled nursing facility, intermediate
31 care facility, and any other health facility licensed by the State
32 Department of Public Health under Chapter 2 (commencing with
33 Section 1250) of Division 2 of the Health and Safety Code.

34 (g) Notwithstanding the other subdivisions of this section or
35 any other provision of law, the payment or receipt of consideration
36 for advertising, wherein a licensee offers or sells services through
37 a third-party advertiser, shall not constitute a referral of patients
38 when the third-party advertiser does not itself recommend, endorse,
39 or otherwise select a licensee. The fee paid to the third-party
40 advertiser shall be commensurate with the service provided by the

1 third-party advertiser. If the licensee determines, after consultation
 2 with the purchaser of the service, that the service provided by the
 3 licensee is not appropriate for the purchaser or if the purchaser
 4 elects not to receive the service for any reason and requests a
 5 refund, the purchaser shall receive a refund of the full purchase
 6 price as determined by the terms of the advertising service
 7 agreement between the third-party advertiser and the licensee. The
 8 licensee shall disclose in the advertisement that a consultation is
 9 required and that the purchaser will receive a refund if not eligible
 10 to receive the service. This subdivision shall not apply to basic
 11 health care services, as defined in subdivision (b) of Section 1345
 12 of the Health and Safety Code, or essential health benefits, as
 13 defined in Section 1367.005 of the Health and Safety Code and
 14 Section 10112.27 of the Insurance Code. The entity that provides
 15 the advertising shall be able to demonstrate that the licensee
 16 consented in writing to the requirements of this subdivision. A
 17 third-party advertiser shall make available to prospective purchasers
 18 advertisements for services of all licensees then advertising through
 19 the third-party advertiser in the applicable geographic region. In
 20 any advertisement offering a discount price for a service, the
 21 licensee shall also disclose the regular, nondiscounted price for
 22 that service.

23 (h) A violation of this section is a public offense and is
 24 punishable upon a first conviction by imprisonment in a county
 25 jail for not more than one year, or by imprisonment pursuant to
 26 subdivision (h) of Section 1170 of the Penal Code, or by a fine not
 27 exceeding fifty thousand dollars (\$50,000), or by both that
 28 imprisonment and fine. A second or subsequent conviction is
 29 punishable by imprisonment pursuant to subdivision (h) of Section
 30 1170 of the Penal Code, or by that imprisonment and a fine of fifty
 31 thousand dollars (\$50,000).

32 SEC. 2. Section 654.4 is added to the Business and Professions
 33 Code, to read:

34 654.4. (a) A healing arts licensee who receives remuneration
 35 from a drug or device company shall disclose the amount and
 36 source orally and in writing to each patient before the intended
 37 use or prescription of a drug or device manufactured or distributed.
 38 A healing arts licensee shall also obtain a signature from the patient
 39 on the written disclosure.

1 (b) For purposes of this section, “drug or device company”
2 means a manufacturer, developer, or distributor of a pharmaceutical
3 drug or device used in the context of the licensed person’s practice.

4 SEC. 3. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

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9B14 - AB 2631 (Cunningham)
License Fees: Military Partners and Spouses

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ASSEMBLY BILL

No. 2631

Introduced by Assembly Member Cunningham
(Coauthors: Assembly Members Boerner Horvath, Fong, Lackey,
and Mayes)
(Coauthors: Senators Jones and Wilk)

February 20, 2020

An act to amend Section 115.5 of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2631, as introduced, Cunningham. License fees: military partners and spouses.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law provides for the issuance of reciprocal licenses in certain fields where the applicant, among other requirements, has a license to practice within that field in another jurisdiction, as specified. Existing law requires a board within the department to expedite the licensure process for an applicant who holds a current license in another jurisdiction in the same profession or vocation and who supplies satisfactory evidence of being married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders.

This bill would prohibit a board from charging an initial or original license fee to an applicant who meets these expedited licensing 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 115.5 of the Business and Professions
2 Code is amended to read:
3 115.5. (a) A board within the department shall expedite the
4 licensure process for an applicant who meets both of the following
5 requirements:
6 (1) Supplies evidence satisfactory to the board that the applicant
7 is married to, or in a domestic partnership or other legal union
8 with, an active duty member of the Armed Forces of the United
9 States who is assigned to a duty station in this state under official
10 active duty military orders.
11 (2) Holds a current license in another state, district, or territory
12 of the United States in the profession or vocation for which the
13 applicant seeks a license from the board.
14 (b) *A board shall not charge an applicant who meets the*
15 *requirements in subdivision (a) an initial or original license fee.*
16 ~~(b)~~
17 (c) A board may adopt regulations necessary to administer this
18 section.

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9B15 - AB 2704 (Ting)

Healing Arts: Licensees: Data Collection

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AMENDED IN ASSEMBLY MAY 14, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 2704

**Introduced by Assembly Member Ting
(Coauthor: Assembly Member Rodriguez)**

February 20, 2020

An act to add Section 502 to, and to repeal Sections 2717, 2852.5, 3518.1, 3770.1, and 4506 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2704, as amended, Ting. Healing arts: licensees: data collection.

Existing law requires the Board of Registered Nursing, the Physician Assistant Board, the Respiratory Care Board of California, and the Board of Vocational Nursing and Psychiatric Technicians of the State of California to regulate and oversee the practice of healing arts within their respective jurisdictions and to, among other things, collect and report specific demographic data relating to their licensees, subject to a licensee's discretion to report their race or ethnicity, to the Office of Statewide Health Planning and Development. Existing law requires these boards to collect this data at least biennially, at the times of both issuing an initial license and issuing a renewal license. Existing law also authorizes the Board of Registered Nursing to expend \$145,000 to implement these provisions.

This bill would repeal the provisions applicable only to the licensees of those boards and, instead, would require all boards that oversee healing arts licensees to ~~collect~~, *collect at the time of electronic application for a license and license renewal*, or at least biennially, specified demographic ~~information~~, *information and to post the*

information on the internet websites that they each ~~maintain, and maintain.~~ *The bill would also require each board, or the Department of Consumer Affairs on its behalf, beginning on July 1, 2021, to provide the information annually to the Office of Statewide Health Planning and Development. The bill would require these boards to maintain the confidentiality of the information they receive from licensees and to only release information in aggregate form, as specified.*

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

This bill would make legislative findings to that effect.

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

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

- 1 SECTION 1. Section 502 is added to the Business and
- 2 Professions Code, to read:
- 3 502. (a) A board that supervises healing arts licensees under
- 4 this division shall collect ~~and analyze~~ workforce data from its
- 5 licensees as specified in subdivision (b) for future workforce
- 6 planning. The data may be collected at the time of *electronic*
- 7 *application for a license and* license renewal, or at least biennially
- 8 from a scientifically selected random sample of licensees.
- 9 (b) (1) The workforce data collected by each board about its
- 10 licensees shall include, at a minimum, information concerning all
- 11 of the following:
- 12 (A) City, county, and ZIP Code of practice.
- 13 (B) Type of employer or classification of primary practice site
- 14 among the types of practice sites specified by the board, including,
- 15 but not limited to, clinic, hospital, managed care organization, or
- 16 private practice.
- 17 (C) Work hours.
- 18 (D) Titles of positions held.
- 19 (E) Time spent in direct patient care.
- 20 (F) Clinical practice area.
- 21 (G) Race or ethnicity, subject to paragraph (2).
- 22 (H) ~~Gender.~~ *Gender or gender identity.*

1 (I) Languages spoken.

2 (J) Educational background.

3 (K) Future work intentions.

4 (L) Job satisfaction ratings.

5 (2) A licensee may, but is not required to, report their race or
6 ethnicity to the board.

7 (c) Each board shall maintain the confidentiality of the
8 information it receives from licensees under this section and shall
9 only release information in an aggregate form that cannot be used
10 to identify an individual.

11 (d) Each board shall produce reports containing the workforce
12 data it collects pursuant to this section, at a minimum, on a biennial
13 basis. Aggregate information collected pursuant to this section
14 shall be posted on each board's internet website.

15 (e) ~~Each board shall annually~~ *board, or the Department of*
16 *Consumer Affairs on its behalf, shall, beginning on July 1, 2021,*
17 *and annually thereafter,* provide the data it collects pursuant to
18 this section to the Office of Statewide Health Planning and
19 Development in a manner directed by the office that allows for
20 inclusion of the data into the annual report it produces pursuant to
21 Section 128052 of the Health and Safety Code.

22 SEC. 2. Section 2717 of the Business and Professions Code is
23 repealed.

24 SEC. 3. Section 2852.5 of the Business and Professions Code
25 is repealed.

26 SEC. 4. Section 3518.1 of the Business and Professions Code
27 is repealed.

28 SEC. 5. Section 3770.1 of the Business and Professions Code
29 is repealed.

30 SEC. 6. Section 4506 of the Business and Professions Code is
31 repealed.

32 SEC. 7. The Legislature finds and declares that Section 1 of
33 this act, which adds Section 502 of the Business and Professions
34 Code, imposes a limitation on the public's right of access to the
35 meetings of public bodies or the writings of public officials and
36 agencies within the meaning of Section 3 of Article I of the
37 California Constitution. Pursuant to that constitutional provision,
38 the Legislature makes the following findings to demonstrate the
39 interest protected by this limitation and the need for protecting
40 that interest:

- 1 In order to protect the privacy of licensees, while also gathering
- 2 useful workforce data, it is necessary that some information
- 3 collected from licensees only be released in aggregate form.

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9B16 - AB 2748 (Fong)

Consumer credit reports: Security Freezes:
Protected Consumers

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AMENDED IN ASSEMBLY MAY 4, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 2748

Introduced by Assembly Member Fong

February 20, 2020

An act to amend Section ~~1798.15~~ of the Civil Code, relating to ~~information practices~~. ~~1785.11.9~~ of the Civil Code, relating to consumer credit reports.

LEGISLATIVE COUNSEL'S DIGEST

AB 2748, as amended, Fong. ~~Public agencies: information practices.~~
Consumer credit reports: security freezes: protected consumers.

Existing law requires a consumer credit reporting agency to place a security freeze for a protected consumer, defined as an individual who is under 16 years of age at the time a request for the placement of a security freeze is made, an incapacitated person or a protected individual for whom a guardian or conservator has been appointed, or a person under the jurisdiction of a county welfare department or county probation department who has been placed in a foster care setting and is under 16 years of age at the time a request for a security freeze is made, upon that consumer's representative's request and compliance with certain requirements.

This bill instead would include in the definition of protected consumer an individual who is under the jurisdiction of a county probation department, has been placed in a foster care setting, and is under 19 years of age at the time of the request for placement of a security freeze is made.

~~Existing law, the Information Practices Act of 1977, prescribes a set of requirements, prohibitions, and remedies applicable to public~~

~~agencies, as defined, with regard to their collection, storage, and disclosure of personal information. The act specifically requires an agency to collect personal information to the greatest extent practicable from the individual who is the subject of the information rather than from another source.~~

~~This bill would require a public agency subject to the Information Practices Act of 1977 to collect the least amount of personal information required to fulfill the purposes of its collection. The bill also would require an agency able to fulfill its requirements by collecting nonpersonal information instead of personal information to do so.~~

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

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

1 SECTION 1. Section 1785.11.9 of the Civil Code is amended
 2 to read:
 3 1785.11.9. For purposes of Sections 1785.11.10 and
 4 1785.11.11, the following terms shall have the following meanings:
 5 (a) “Protected consumer” means an individual who is any of
 6 the following:
 7 (1) Under 16 years of age at the time a request for the placement
 8 of a security freeze is made.
 9 (2) An incapacitated person or a protected person for whom a
 10 guardian or conservator has been appointed.
 11 (3) Under the jurisdiction of a county welfare department or
 12 county probation department, has been placed in a foster care
 13 setting, and is under ~~16~~ 19 years of age at the time a request for
 14 placement of a security freeze is made.
 15 (b) “Record” means a compilation of information that:
 16 (1) Identifies a protected consumer.
 17 (2) Was created by a consumer credit reporting agency solely
 18 for the purpose of complying with this section.
 19 (3) Is not otherwise authorized to be created or used to consider
 20 the protected consumer’s creditworthiness, credit standing, credit
 21 capacity, character, general reputation, personal characteristics,
 22 or mode of living.
 23 (c) (1) “Representative” means a person who provides to a
 24 consumer credit reporting agency sufficient proof of authority to
 25 act on behalf of a protected consumer.

- 1 (2) For a protected consumer who has been placed in a foster
2 care setting, “representative” means either of the following:
- 3 (A) A county welfare department or its agent or designee.
 - 4 (B) A county probation department or its agent or designee.
- 5 (3) For a protected consumer who has been placed in a foster
6 care setting, “representative” does not mean a foster parent.
- 7 (d) “Security freeze” means:
- 8 (1) If a consumer credit reporting agency does not have a file
9 pertaining to a protected consumer, a restriction that:
 - 10 (A) Is placed on the protected consumer’s record in accordance
11 with this section.
 - 12 (B) Prohibits the consumer credit reporting agency from
13 releasing the protected consumer’s record except as authorized in
14 this section.
 - 15 (2) If a consumer credit reporting agency has a file pertaining
16 to a protected consumer, a restriction that:
 - 17 (A) Is placed on the protected consumer’s consumer credit report
18 in accordance with this section.
 - 19 (B) Prohibits the consumer credit reporting agency from
20 releasing the protected consumer’s consumer credit report or any
21 information derived from the protected consumer’s consumer credit
22 report except as authorized in this section.
 - 23 (e) “Sufficient proof of authority” means documentation that
24 shows that a representative has authority to act on behalf of a
25 protected consumer in a financial matter. This documentation
26 includes, but is not limited to:
 - 27 (1) A court order or relevant enabling document issued by a
28 court.
 - 29 (2) A legally sufficient and valid power of attorney, or a durable
30 power of attorney.
 - 31 (3) A written, notarized statement signed by a representative
32 that expressly describes the authority of the representative to act
33 on behalf of a protected consumer, including a temporary
34 conservator or temporary guardian.
 - 35 (4) A written communication from a county welfare department
36 or its agent or designee or a county probation department or its
37 agent or designee certifying that the protected consumer is a foster
38 youth under its jurisdiction.
 - 39 (f) “Sufficient proof of identification” means information or
40 documentation that identifies a protected consumer or a

1 representative of a protected consumer. This information or
2 documentation includes, but is not limited to:

3 (1) A social security number or a copy of a social security card
4 issued by the Social Security Administration.

5 (2) A certified copy or official copy of a birth certificate issued
6 by the entity authorized to issue the birth certificate.

7 (3) A copy of a driver’s license, an identification issued by the
8 Department of Motor Vehicles, or any other government-issued
9 identification.

10 (4) A copy of a bill for telephone, sewer, septic tank, water,
11 electric, oil, or natural gas services that shows a name and a home
12 address.

13 (5) A written communication from a county welfare department
14 or its agent or designee or a county probation department or its
15 agent or designee certifying that the protected consumer is a foster
16 youth under its jurisdiction.

17 ~~SECTION 1. Section 1798.15 of the Civil Code is amended~~
18 ~~to read:~~

19 ~~1798.15. Each agency shall collect personal information to the~~
20 ~~greatest extent practicable directly from the individual who is the~~
21 ~~subject of the information rather than from another source. Each~~
22 ~~agency shall collect the least amount of personal information that~~
23 ~~is required to fulfill the purposes for which it is being collected.~~
24 ~~If an agency is able to fulfill its requirements by collecting~~
25 ~~nonpersonal information, it shall collect nonpersonal information~~
26 ~~instead of personal information.~~

9B17 - AB 2978 (Ting)

Department of Justice: Arrest and Conviction
Records: Review

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ASSEMBLY BILL

No. 2978

Introduced by Assembly Member Ting

February 21, 2020

An act to amend Sections 851.93 and 1203.425 of the Penal Code, relating to criminal justice records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2978, as introduced, Ting. Department of Justice: arrest and conviction records: review.

Existing law, commencing January 1, 2021, and subject to an appropriation in the annual Budget Act, requires the Department of Justice, on a monthly basis, to review the records in the statewide criminal justice databases and to identify persons who are eligible for arrest record relief or automatic conviction record relief by having their arrest records, or their criminal conviction records, withheld from disclosure or modified, as specified. Under existing law, an arrest or conviction record is eligible for this relief if, among other criteria, the arrest or conviction occurred on or after January 1, 2021.

This bill would instead require that an arrest or conviction have occurred on or after January 1, 1973, in order to be considered for relief.

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 851.93 of the Penal Code is amended to
2 read:

1 851.93. (a) (1) On a monthly basis, the Department of Justice
 2 shall review the records in the statewide criminal justice databases,
 3 and based on information in the state summary criminal history
 4 repository, shall identify persons with records of arrest that meet
 5 the criteria set forth in paragraph (2) and are eligible for arrest
 6 record relief.

7 (2) A person is eligible for relief pursuant to this section, if the
 8 arrest occurred on or after January 1, ~~2021~~, 1973, and meets any
 9 of the following conditions:

10 (A) The arrest was for a misdemeanor offense and the charge
 11 was dismissed.

12 (B) The arrest was for a misdemeanor offense, there is no
 13 indication that criminal proceedings have been initiated, at least
 14 one calendar year has elapsed since the date of the arrest, and no
 15 conviction occurred, or the arrestee was acquitted of any charges
 16 that arose, from that arrest.

17 (C) The arrest was for an offense that is punishable by
 18 imprisonment pursuant to paragraph (1) or (2) of subdivision (h)
 19 of Section 1170, there is no indication that criminal proceedings
 20 have been initiated, at least three calendar years have elapsed since
 21 the date of the arrest, and no conviction occurred, or the arrestee
 22 was acquitted of any charges arising, from that arrest.

23 (D) The person successfully completed any of the following,
 24 relating to that arrest:

25 (i) A prefiling diversion program, as defined in Section 851.87,
 26 administered by a prosecuting attorney in lieu of filing an
 27 accusatory pleading.

28 (ii) A drug diversion program administered by a superior court
 29 pursuant to Section 1000.5, or a deferred entry of judgment
 30 program pursuant to Section 1000 or 1000.8.

31 (iii) A pretrial diversion program, pursuant to Section 1000.4.

32 (iv) A diversion program, pursuant to Section 1001.9.

33 (v) ~~Any~~ A diversion program described in Chapter 2.8
 34 (commencing with Section 1001.20), Chapter 2.8A (commencing
 35 with Section 1001.35), Chapter 2.81 (commencing with Section
 36 1001.40), Chapter 2.9 (commencing with Section 1001.50), Chapter
 37 2.9A (commencing with Section 1001.60), Chapter 2.9B
 38 (commencing with Section 1001.70), Chapter 2.9C (commencing
 39 with Section 1001.80), Chapter 2.9D (commencing with Section

1 1001.81), or Chapter 2.92 (commencing with Section 1001.85),
2 of Title 6.

3 (b) (1) The department shall grant relief to a person identified
4 pursuant to subdivision (a), without requiring a petition or motion
5 by a party for that relief if the relevant information is present in
6 the department's electronic records.

7 (2) The state summary criminal history information shall
8 include, directly next to or below the entry or entries regarding the
9 person's arrest record, a note stating "arrest relief granted," listing
10 the date that the department granted relief, and this section. This
11 note shall be included in all statewide criminal databases with a
12 record of the arrest.

13 (3) Except as otherwise provided in subdivision (d), an arrest
14 for which arrest relief has been granted is deemed not to have
15 occurred, and a person who has been granted arrest relief is released
16 from any penalties and disabilities resulting from the arrest, and
17 may answer any question relating to that arrest accordingly.

18 (c) On a monthly basis, the department shall electronically
19 submit a notice to the superior court having jurisdiction over the
20 criminal case, informing the court of all cases for which a
21 complaint was filed in that jurisdiction and for which relief was
22 granted pursuant to this section. Commencing on February 1, 2021,
23 for any record retained by the court pursuant to Section 68152 of
24 the Government Code, except as provided in subdivision (d), the
25 court shall not disclose information concerning an arrest that is
26 granted relief pursuant to this section to any person or entity, in
27 any format, except to the person whose arrest was granted relief
28 or a criminal justice agency, as defined in Section 851.92.

29 (d) Relief granted pursuant to this section is subject to the
30 following conditions:

31 (1) Arrest relief does not relieve a person of the obligation to
32 disclose an arrest in response to a direct question contained in a
33 questionnaire or application for employment as a peace officer, as
34 defined in Section 830.

35 (2) Relief granted pursuant to this section has no effect on the
36 ability of a criminal justice agency, as defined in Section 851.92,
37 to access and use records that are granted relief to the same extent
38 that would have been permitted for a criminal justice agency had
39 relief not been granted.

1 (3) This section does not limit the ability of a district attorney
2 to prosecute, within the applicable statute of limitations, an offense
3 for which arrest relief has been granted pursuant to this section.

4 (4) Relief granted pursuant to this section does not affect a
5 person’s authorization to own, possess, or have in the person’s
6 custody or control ~~any~~ a firearm, or the person’s susceptibility to
7 conviction under Chapter 2 (commencing with Section 29800) of
8 Division 9 of Title 4 of Part 6, if the arrest would otherwise affect
9 this authorization or susceptibility.

10 (5) Relief granted pursuant to this section does not affect any
11 prohibition from holding public office that would otherwise apply
12 under law as a result of the arrest.

13 (6) Relief granted pursuant to this section does not affect the
14 authority to receive, or take adverse action based on, criminal
15 history information, including the authority to receive certified
16 court records received or evaluated pursuant to Section 1522,
17 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or
18 pursuant to any statutory or regulatory provisions that incorporate
19 the criteria of those sections.

20 (e) This section ~~shall~~ *does* not limit petitions, motions, or orders
21 for arrest record relief, as required or authorized by any other law,
22 including, but not limited to, Sections 851.87, 851.90, 851.91,
23 1000.4, and 1001.9.

24 (f) The department shall annually publish statistics for each
25 county regarding the total number of arrests granted relief pursuant
26 to this section and the percentage of arrests for which the state
27 summary criminal history information does not include a
28 disposition, on the OpenJustice Web portal, as defined in Section
29 13010.

30 (g) This section shall be operative commencing January 1, 2021,
31 subject to an appropriation in the annual Budget Act.

32 SEC. 2. Section 1203.425 of the Penal Code is amended to
33 read:

34 1203.425. (a) (1) On a monthly basis, the Department of
35 Justice shall review the records in the statewide criminal justice
36 databases, and based on information in the state summary criminal
37 history repository and the Supervised Release File, shall identify
38 persons with convictions that meet the criteria set forth in paragraph
39 (2) and are eligible for automatic conviction record relief.

1 (2) A person is eligible for automatic conviction relief pursuant
2 to this section if they meet all of the following conditions:

3 (A) The person is not required to register pursuant to the Sex
4 Offender Registration Act.

5 (B) The person does not have an active record for local, state,
6 or federal supervision in the Supervised Release File.

7 (C) Based upon the information available in the department's
8 record, including disposition dates and sentencing terms, it does
9 not appear that the person is currently serving a sentence for any
10 offense and there is no indication of any pending criminal charges.

11 (D) Except as otherwise provided in clause (iii) of subparagraph
12 (E), there is no indication that the conviction resulted in a sentence
13 of incarceration in the state prison.

14 (E) The conviction occurred on or after January 1, ~~2021~~, 1973,
15 and meets either of the following criteria:

16 (i) The defendant was sentenced to probation and, based upon
17 the disposition date and the term of probation specified in the
18 department's records, appears to have completed their term of
19 probation without revocation.

20 (ii) The defendant was convicted of an infraction or
21 misdemeanor, was not granted probation, and, based upon the
22 disposition date and the term specified in the department's records,
23 the defendant appears to have completed their sentence, and at
24 least one calendar year has elapsed since the date of judgment.

25 (b) (1) Except as specified in subdivision (h), the department
26 shall grant relief, including dismissal of a conviction, to a person
27 identified pursuant to subdivision (a), without requiring a petition
28 or motion by a party for that relief if the relevant information is
29 present in the department's electronic records.

30 (2) The state summary criminal history information shall
31 include, directly next to or below the entry or entries regarding the
32 person's criminal record, a note stating "relief granted," listing the
33 date that the department granted relief and this section. This note
34 shall be included in all statewide criminal databases with a record
35 of the conviction.

36 (3) Except as otherwise provided in subdivision (d) and in
37 Section 13555 of the Vehicle Code, a person granted conviction
38 relief pursuant to this section shall be released from all penalties
39 and disabilities resulting from the offense of which the person has
40 been convicted.

1 (c) On a monthly basis, the department shall electronically
2 submit a notice to the superior court having jurisdiction over the
3 criminal case, informing the court of all cases for which a
4 complaint was filed in that jurisdiction and for which relief was
5 granted pursuant to this section. Commencing on February 1, 2021,
6 for any record retained by the court pursuant to Section 68152 of
7 the Government Code, except as provided in subdivision (d), the
8 court shall not disclose information concerning a conviction granted
9 relief pursuant to this section or Section 1203.4, 1203.4a, 1203.41,
10 or 1203.42, to any person or entity, in any format, except to the
11 person whose conviction was granted relief or a criminal justice
12 agency, as defined in Section 851.92.

13 (d) Relief granted pursuant to this section is subject to the
14 following conditions:

15 (1) Relief granted pursuant to this section does not relieve a
16 person of the obligation to disclose a criminal conviction in
17 response to a direct question contained in a questionnaire or
18 application for employment as a peace officer, as defined in Section
19 830.

20 (2) Relief granted pursuant to this section does not relieve a
21 person of the obligation to disclose the conviction in response to
22 ~~any a~~ direct question contained in ~~any a~~ questionnaire or
23 application for public office, or for contracting with the California
24 State Lottery Commission.

25 (3) Relief granted pursuant to this section has no effect on the
26 ability of a criminal justice agency, as defined in Section 851.92,
27 to access and use records that are granted relief to the same extent
28 that would have been permitted for a criminal justice agency had
29 relief not been granted.

30 (4) Relief granted pursuant to this section does not limit the
31 jurisdiction of the court over ~~any a~~ subsequently filed motion to
32 amend the record, petition or motion for postconviction relief, or
33 collateral attack on a conviction for which relief has been granted
34 pursuant to this section.

35 (5) Relief granted pursuant to this section does not affect a
36 person's authorization to own, possess, or have in the person's
37 custody or control ~~any a~~ firearm, or the person's susceptibility to
38 conviction under Chapter 2 (commencing with Section 29800) of
39 Division 9 of Title 4 of Part 6, if the criminal conviction would
40 otherwise affect this authorization or susceptibility.

1 (6) Relief granted pursuant to this section does not affect ~~any~~
2 a prohibition from holding public office that would otherwise
3 apply under law as a result of the criminal conviction.

4 (7) Relief granted pursuant to this section does not affect the
5 authority to receive, or take adverse action based on, criminal
6 history information, including the authority to receive certified
7 court records received or evaluated pursuant to Section 1522,
8 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or
9 pursuant to any statutory or regulatory provisions that incorporate
10 the criteria of those sections.

11 (8) Relief granted pursuant to this section does not make eligible
12 a person who is otherwise ineligible to provide, or receive payment
13 for providing, in-home supportive services pursuant to Article 7
14 (commencing with Section 12300) of Chapter 3 of Part 3 of
15 Division 9 of the Welfare and Institutions Code, or pursuant to
16 Section 14132.95, 14132.952, or 14132.956 of the Welfare and
17 Institutions Code.

18 (9) In ~~any~~ a subsequent prosecution of the defendant for any
19 other offense, the prior conviction may be pleaded and proved and
20 shall have the same effect as if the relief had not been granted.

21 (e) This section shall not limit petitions, motions, or orders for
22 relief in a criminal case, as required or authorized by any other
23 law, including, but not limited to, Sections 1203.4 and 1204.4a.

24 (f) The department shall annually publish statistics for each
25 county regarding the total number of convictions granted relief
26 pursuant to this section and the total number of convictions
27 prohibited from automatic relief pursuant to subdivision (h), on
28 the OpenJustice Web portal, as defined in Section 13010.

29 (g) Subdivisions (a) to (f), inclusive, shall be operative
30 commencing January 1, 2021, subject to an appropriation in the
31 annual Budget Act.

32 (h) (1) The prosecuting attorney or probation department may,
33 no later than 90 calendar days before the date of a person's
34 eligibility for relief pursuant to this section, file a petition to
35 prohibit the department from granting automatic relief pursuant
36 to this section, based on a showing that granting ~~such~~ that relief
37 would pose a substantial threat to the public safety.

38 (2) The court shall give notice to the defendant and conduct a
39 hearing on the petition within 45 days after the petition is filed.

1 (3) At a hearing on the petition pursuant to this subdivision, the
2 defendant, the probation department, the prosecuting attorney, and
3 the arresting agency, through the prosecuting attorney, may present
4 evidence to the court. Notwithstanding Sections 1538.5 and 1539,
5 the hearing may be heard and determined upon declarations,
6 affidavits, police investigative reports, copies of state summary
7 criminal history information and local summary criminal history
8 information, or any other evidence submitted by the parties that
9 is material, reliable, and relevant.

10 (4) The prosecutor or probation department has the initial burden
11 of proof to show that granting conviction relief would pose a
12 substantial threat to the public safety. In determining whether
13 granting ~~such~~ relief would pose a substantial threat to the public
14 safety, the court may consider any relevant factors including, but
15 not limited to, either of the following:

16 (A) Declarations or evidence regarding the offense for which a
17 grant of relief is being contested.

18 (B) The defendant's record of arrests and convictions.

19 (5) If the court finds that the prosecutor or probation department
20 has satisfied the burden of proof, the burden shifts to the defendant
21 to show that the hardship of not obtaining relief outweighs the
22 threat to the public safety of providing ~~such~~ relief. In determining
23 whether the defendant's hardship outweighs the threat to the public
24 safety, the court may consider any relevant factors including, but
25 not limited to, either of the following:

26 (A) The hardship to the defendant that has been caused by the
27 conviction and that would be caused if relief is not granted.

28 (B) Declarations or evidence regarding the defendant's good
29 character.

30 (6) If the court grants a petition pursuant to this subdivision,
31 the court shall furnish a disposition report to the Department of
32 Justice pursuant to Section 13151, stating that relief pursuant to
33 this section was denied, and the department shall not grant relief
34 pursuant to this section.

35 (7) A person denied relief pursuant to this section may continue
36 to be eligible for relief pursuant to Section 1203.4 or 1203.4a. If
37 the court subsequently grants relief pursuant to one of those
38 sections, the court shall furnish a disposition report to the
39 Department of Justice pursuant to Section 13151, stating that relief

1 was granted pursuant to the applicable section, and the department
2 shall grant relief pursuant to that section.
3 (i) At the time of sentencing, the court shall advise a defendant,
4 either orally or in writing, of the provisions of this section and of
5 the defendant's right, if any, to petition for a certificate of
6 rehabilitation and pardon.

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9B18 - AB 3045 (Gray)

Department of Consumer Affairs: Boards:
Veterans: Military Spouses: Licenses

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ASSEMBLY BILL

No. 3045

**Introduced by Assembly Member ~~Gray~~ Members *Gray and Patterson*
(Principal coauthor: *Assembly Member Gallagher*)
(Coauthors: *Assembly Members Fong, Gipson, Grayson, and Obernolte*)**

February 21, 2020

An act to add Section 115.7 to the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 3045, as introduced, Gray. Department of Consumer Affairs: boards: veterans: military spouses: licenses.

Under existing law, the Department of Consumer Affairs, under the control of the Director of Consumer Affairs, is comprised of various boards that license and regulate various professions and vocations. Existing law requires an applicant seeking a license from a board within the department to meet specified requirements and to pay certain licensing fees. Existing law requires a board within the department to issue, after appropriate investigation, certain types of temporary licenses to an applicant if the applicant meets specified requirements, including that the applicant supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders and the applicant holds a current, active, and unrestricted license that confers upon the applicant the authority to practice, in another state, district, or territory of the United States, the profession

or vocation for which the applicant seeks a temporary license from the board. Existing law requires these temporary licenses to expire 12 months after issuance. Under existing law, some of the funds within the jurisdiction of a board consist of revenue from fees that are continuously appropriated.

This bill would require boards not subject to the temporary licensing provisions described above to issue licenses to an applicant if the applicant meets specified requirements, including that the applicant supplies evidence satisfactory to the board that the applicant is an honorably discharged veteran of the Armed Forces of the United States or is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States, as provided. The bill would require an application for a license to include a signed affidavit attesting to the fact that the applicant meets all requirements for a license. By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program. The bill's expansion of the requirement to issue licenses would result in revenues from fees for certain licenses being deposited into continuously appropriated funds. By establishing a new source of revenue for those continuously appropriated funds, the bill would make an appropriation.

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

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

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

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

- 1 SECTION 1. Section 115.7 is added to the Business and
- 2 Professions Code, to read:
- 3 115.7. (a) A board not specified in subdivision (a) of Section
- 4 115.6 shall, after appropriate investigation, issue a license to an
- 5 applicant if the applicant meets all of the following requirements:
- 6 (1) The applicant shall supply evidence satisfactory to the board
- 7 that the applicant is an honorably discharged veteran of the Armed
- 8 Forces of the United States or is married to, or in a domestic
- 9 partnership or other legal union with, an active duty member of

1 the Armed Forces of the United States who is assigned to a duty
2 station in this state under official active duty military orders.

3 (2) The applicant shall hold a current, active, and unrestricted
4 license that confers upon the applicant the authority to practice,
5 in another state, district, or territory of the United States, the
6 profession or vocation for which the applicant seeks a license from
7 the board.

8 (3) The applicant shall submit an application to the board that
9 shall include a signed affidavit attesting to the fact that the
10 applicant meets all of the requirements for the license and that the
11 information submitted in the application is accurate, to the best of
12 the applicant's knowledge. The application shall also include
13 written verification from the applicant's original licensing
14 jurisdiction stating that the applicant's license is in good standing
15 in that jurisdiction.

16 (4) The applicant shall not have committed an act in any
17 jurisdiction that would have constituted grounds for denial,
18 suspension, or revocation of the license under this code at the time
19 the act was committed. A violation of this paragraph may be
20 grounds for the denial or revocation of a license issued by the
21 board.

22 (5) The applicant shall not have been disciplined by a licensing
23 entity in another jurisdiction and shall not be the subject of an
24 unresolved complaint, review procedure, or disciplinary proceeding
25 conducted by a licensing entity in another jurisdiction.

26 (6) The applicant shall, upon request by a board, furnish a full
27 set of fingerprints for purposes of conducting a criminal
28 background check.

29 (b) A board may adopt regulations necessary to administer this
30 section.

31 SEC. 2. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within
38 the meaning of Section 6 of Article XIII B of the California
39 Constitution.

1		_____
2	REVISIONS:	
3	Heading—Lines 1 and 2.	
4		_____

9B19 - AB 3298 (Brough)

Frauds of Medical Credentials: Penalty

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ASSEMBLY BILL

No. 3298

Introduced by Assembly Member Brough

February 21, 2020

An act to amend Section 585 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 3298, as introduced, Brough. Frauds of medical credentials: penalty.

Existing law prohibits, among other specified acts, a person, company, or association from selling or offering to sell any medical or other healing arts degree, or any other writing, made or purporting to be made pursuant to any laws regulating the licensing and registration or issuing of a certificate to physicians and surgeons or other healing arts professionals. Under existing law, any person, company, or association engaging in these prohibited acts is guilty of a felony, which is punishable by imprisonment, as provided, or by a fine of not less than \$2,000 but not more than \$6,000.

This bill would increase the maximum fine to \$10,000.

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 585 of the Business and Professions Code
- 2 is amended to read:
- 3 585. Any person, company, or association violating the
- 4 provisions of this article is guilty of a felony and upon conviction

1 thereof shall be punishable by a fine of not less than two thousand
2 dollars (\$2,000) nor more than ~~six~~ *ten* thousand dollars ~~(\$6,000);~~
3 ~~(\$10,000)~~, or by imprisonment pursuant to subdivision (h) of
4 Section 1170 of the Penal Code. The enforcement remedies
5 provided under this article are not exclusive and shall not preclude
6 the use of any other criminal, civil, or administrative remedy.

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9B20 - SB 878 (Jones)

Department of Consumer Affairs Licensing:
Applications: Wait Times

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AMENDED IN SENATE JUNE 18, 2020

SENATE BILL

No. 878

Introduced by Senator Jones

January 22, 2020

An act to add Section 139.5 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 878, as amended, Jones. Department of Consumer ~~Affairs~~ Licensing: applications: wait times. *Affairs: license: application: processing timeframes.*

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs.

This ~~bill~~ *bill*, beginning July 1, 2021, would require each board within the department that issues ~~licenses~~ *licenses, on at least a quarterly basis*, to prominently display *on its internet website either the current timeframe average timeframes for processing initial and renewal license applications on its internet website, as provided, or the combined current average timeframe for processing both initial and renewal license applications. The bill would also require each board to prominently display on its internet website either the current average timeframes for processing each license type that the board administers or the combined current average timeframe for processing all license types that the board administers.*

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 139.5 is added to the Business and
- 2 Professions Code, to read:
- 3 139.5. ~~Each~~ *Beginning July 1, 2021, each* board, as defined in
- 4 ~~section~~ *Section 22*, within the department that issues a license shall
- 5 do both of the ~~following~~; *following on at least a quarterly basis:*
- 6 (a) ~~Prominently display~~ *the on its internet website one of the*
- 7 *following:*
- 8 (1) ~~The current timeframe~~ *average timeframes* for processing
- 9 initial and renewal license ~~applications on its internet website.~~
- 10 *applications.*
- 11 (2) *The combined current average timeframe for processing*
- 12 *both initial and renewal license applications.*
- 13 (b) ~~With respect to the information displayed on the website,~~
- 14 ~~specify the~~ *Prominently display on its internet website one of the*
- 15 *following:*
- 16 (1) ~~The current average timeframe~~ *timeframes* for processing
- 17 each license ~~category.~~ *type that the board administers.*
- 18 (2) *The combined current average timeframe for processing all*
- 19 *license types that the board administers.*

9B21 - SB 937 (Hill)

State Agencies: Web Accessibility

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Introduced by Senator HillFebruary 6, 2020

An act to amend Section 11546.7 of the Government Code, relating to state agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 937, as introduced, Hill. State agencies: web accessibility.

Existing law establishes, within the Government Operations Agency, the Department of Technology under the supervision of the Director of Technology, who also serves as the State Chief Information Officer.

Existing law requires, before July 1, 2019, and before July 1 biennially thereafter, the director of each state agency or entity and the chief information officer of that state agency or entity to post on the home page of the agency's or entity's internet website a signed certification that the agency's or entity's internet website is in compliance with specified accessibility standards. Existing law requires the Director of Technology to create a standard form for use to determine compliance with these standards.

This bill would authorize a state agency to temporarily remove public documents from digital access if a justifiable impediment exists and the Director of Technology verifies the impediment prohibits full compliance and the state agency complies with certain requirements, including citing the reason for the document's removal and listing options and instructions for how to access the document offline. The bill would make any file or document removed after October 14, 2017, subject to these requirements.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the

interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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

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

1 SECTION 1. Section 11546.7 of the Government Code is
 2 amended to read:

3 11546.7. (a) Before July 1, 2019, and before July 1 biennially
 4 thereafter, the director of each state agency or state entity, as
 5 defined in subdivision (e) of Section 11546.1, and each chief
 6 information officer appointed under Section 11546.1, shall post
 7 on the home page of the state agency’s or state entity’s ~~Internet~~
 8 ~~Web site~~ *internet website* a signed certification from the state
 9 agency’s or state entity’s director and chief information officer
 10 that they have determined that the ~~Internet Web site~~ *internet*
 11 *website* is in compliance with Sections 7405 and 11135, and the
 12 Web Content Accessibility Guidelines 2.0, or a subsequent version,
 13 published by the Web Accessibility Initiative of the World Wide
 14 Web Consortium at a minimum Level AA success criteria.

15 (b) The Director of Technology shall create a standard form
 16 that each state agency’s or state entity’s chief information officer
 17 shall use to determine whether the state agency’s or state entity’s
 18 ~~Internet Web site~~ *internet website* is in compliance with the
 19 accessibility standards specified in subdivision (a).

20 (c) *If a justifiable impediment exists that prevents a state agency*
 21 *from bringing all documents into compliance with subdivision (a),*
 22 *and the Director of Technology verifies the impediment prohibits*
 23 *full compliance, a state agency may temporarily remove public*
 24 *documents from digital access if they do all of the following:*

- 25 (1) *Cite the reason for the document’s removal.*
- 26 (2) *List the type, title, data, and number of pages or file size of*
 27 *each removed document on the agency’s internet website in an*
 28 *Americans with Disabilities Act (ADA)-compliant digital format*
 29 *so that users are aware of what public documents have been*
 30 *removed from public view.*

1 (3) List options and instructions on the site for how to access
2 the document offline and how to contact the agency with further
3 questions through use of an ADA compliant platform and channel.

4 (4) Provide information about when or if the agency will be
5 converting the removed document and restoring it to a digitally
6 accessible, ADA compliant site.

7 (d) Any file or document removed after October 14, 2017, is
8 subject to the requirements in subdivision (c).

9 SEC. 2. The Legislature finds and declares that Section 2 of
10 this act, which amends Section 11546.7 of the Government Code,
11 imposes a limitation on the public's right of access to the meetings
12 of public bodies or the writings of public officials and agencies
13 within the meaning of Section 3 of Article I of the California
14 Constitution. Pursuant to that constitutional provision, the
15 Legislature makes the following findings to demonstrate the interest
16 protected by this limitation and the need for protecting that interest:

17 In order to ensure that there is an adequate paper trail when state
18 documents are removed on a temporary basis, and to further state
19 government transparency with respect to the removal and ongoing
20 access to state documents, it is necessary to protect these public
21 interests.

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9B22 - SB 1097 (Durazo)
Medical Services: Credit or Loan

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Introduced by Senator DurazoFebruary 19, 2020

An act to amend Section 654.3 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1097, as introduced, Durazo. Medical services: credit or loan.

Existing law prohibits a healing arts licensee, as defined, or an employee or agent of that licensee, from charging treatment or costs to a open-end credit or loan extended by a third party that is arranged for or established in the licensee's office without first providing a specified written or electronic notice and a specified list of which treatment and services are being charged. Existing law requires a licensee, or an employee or agent of that licensee, to refund the lender of any payment received through credit or a loan extended by a third party that is arranged for or established in the licensee's office for treatment that has not been rendered or costs that have not been incurred. Existing law also requires a licensee to give a patient a specified written treatment plan before arranging for, or establishing credit or a loan extended by a third party, as provided.

This bill would remove the condition that the open-end credit or loan be arranged for or established in the licensee's office in order for the provisions described above to apply. The bill, among other things, would also require the licensee to give a patient that treatment plan before referring to establishing credit or a loan extended by a third party. The bill would define "refer to," for these purposes, as giving a patient information about a specific open-end credit product or company.

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 654.3 of the Business and Professions
2 Code, as added by Section 2 of Chapter 856 of the Statutes of
3 2019, is amended to read:

4 654.3. (a) For purposes of this section, the following
5 definitions shall apply:

6 (1) “Arrange for” and “establish” mean the act of a licensee, or
7 an employee or agent of that licensee, receiving application
8 information from the applicant and submitting it to the lender for
9 approval or rejection.

10 (2) “Deferred interest provision” means a contractual provision
11 that allows for interest to be charged on portions of the original
12 balance that have already been paid off.

13 (3) “Licensee” means an individual, firm, partnership,
14 association, corporation, limited liability company, or cooperative
15 association licensed under this division or under any initiative act
16 or division referred to in this division.

17 (4) “Licensee’s office” means either of the following:

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

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

24 (5) “Open-end credit” means credit extended by a creditor under
25 a plan in which the creditor reasonably contemplates repeated
26 transactions, the creditor may impose a finance charge from time
27 to time on an outstanding unpaid balance, and the amount of credit
28 that may be extended to the debtor during the term of the plan, up
29 to any limit set by the creditor, is generally made available to the
30 extent that any outstanding balance is repaid.

31 (6) (A) “Patient” includes, but is not limited to, the patient’s
32 parent or other legal representative.

33 (B) In veterinary medical settings, “patient” means one of the
34 following, as indicated by context:

35 (i) If the patient is receiving the services, the owned animal of
36 a client.

37 (ii) If the patient is agreeing to or paying for services, the client
38 owner of an animal patient.

1 (7) “Refer to” means to give a patient information about a
2 specific open-end credit product or company.

3 (b) (1) It is unlawful for a licensee, or employee or agent of
4 that licensee, to arrange for or establish an open-end credit or loan
5 that contains a deferred interest provision.

6 (2) This subdivision shall not be construed as prohibiting a
7 licensee, or employee or agent of a licensee, from doing any of
8 the following:

9 (A) Charging treatment or costs to an open-end credit or loan
10 that is lawfully extended by a third party, including those that
11 contain deferred interest provisions.

12 (B) Arranging for or establishing an open-end credit or loan
13 that does any of the following:

14 (i) Offers a promotional period during which a debtor may avoid
15 the payment of interest in connection with an open-end credit plan.

16 (ii) At the end of a promotional period, charges interest on any
17 unpaid balance remaining at that time.

18 (iii) Imposes a late fee on a debtor who fails to pay the minimum
19 amount due during any payment period.

20 (c) (1) It is unlawful for a licensee, or employee or agent of
21 that licensee, to charge treatment or costs to an open-end credit or
22 loan, that is extended by a third party ~~and that is arranged for, or~~
23 ~~established in, that licensee’s office,~~ more than 30 days before the
24 date upon which the treatment is rendered or costs are incurred.

25 (2) This subdivision does not apply to orthodontic treatment
26 provided by a licensed dentist who may charge incremental fees
27 throughout the course of treatment.

28 (d) It is unlawful for a licensee, or employee or agent of that
29 licensee, to charge treatment or costs to an open-end credit or loan
30 that is extended by a third party ~~and that is arranged for, or~~
31 ~~established in, that licensee’s office~~ without first providing the
32 patient with a treatment plan, as required by subdivision (h), and
33 a list of which treatment and services are being charged in advance
34 of rendering treatment or incurring costs.

35 (e) It is unlawful for a licensee, or employee or agent of a
36 licensee, to complete any portion of an application for credit or a
37 loan extended by a third party for the patient or otherwise arrange
38 for or establish an application that is not completely filled out by
39 the patient.

1 (f) A licensee shall, within 15 business days of a patient's
2 request, refund to the lender any payment received through credit
3 or a loan extended by a third party ~~that is arranged for, or~~
4 ~~established in, that licensee's office~~ for treatment that has not been
5 rendered or costs that have not been incurred.

6 (g) A licensee, or an employee or agent of that licensee, shall
7 not *refer to*, ~~arrange for~~ *for*, or establish credit or a loan extended
8 by a third party for a patient without first providing the following
9 written or electronic notice, on one page or screen, respectively,
10 in at least 14-point type, and obtaining a signature from the patient:

11 "Credit or Loan for Health Care Services

12 The attached application and information is for a credit card or
13 loan to help you pay for your health care treatment. You should
14 know that:

15 You are applying for a ____ credit card or a ____ loan for \$ ____.

16 You do not have to apply for the credit card or the loan. You
17 may request a different place and additional time to review, fill
18 out, and sign the application. You may pay your health care
19 provider for treatment in another manner.

20 This credit card or loan is not a payment plan with the provider's
21 office. It is credit with, or a loan made by, [name of company
22 issuing the credit card or loan]. Your health care provider does not
23 work for this company.

24 Before applying for this credit card or loan, you have the right
25 to a written treatment plan from your health care provider. This
26 plan must include the expected treatment to be provided and the
27 estimated costs of each service. If you have insurance, the treatment
28 plan must tell you how much your insurance is expected to cover.
29 If you are a Medi-Cal patient seeking services from a Medi-Cal
30 provider, your treatment plan must tell you if Medi-Cal will cover
31 a different service to treat your condition. If you only want services
32 covered by Medi-Cal, you should not sign up for this credit card
33 or loan.

34 Your health care provider cannot charge your credit card or loan
35 account before you start treatment.

36 You have the right to have your credit card or loan account
37 refunded for any charges for treatment you did not get. However,
38 your provider does not have to refund the amount they spent to
39 prepare for your treatment. Your health care provider must refund
40 the amount of the charges to the lender within 15 business days

1 of your request. The lender must take refunded charges off your
2 account.

3 Please read carefully the terms and conditions of this credit card
4 or loan.

5 You may be required to pay interest rates on the amount charged
6 to the credit card or the amount of the loan. If you pay late, you
7 may have to pay a penalty and a higher interest rate.

8 You may use this credit card or loan to pay for future health care
9 services.

10 If you do not pay the money that you owe on the credit card or
11 loan, your missed payments can be reported and could hurt your
12 credit rating. You could also be sued.

13 [Patient’s Signature]”

14 (h) Before *referring to*, *arranging for*, or establishing credit
15 or a loan extended by a third party, a licensee shall give a patient
16 a written treatment plan that complies with all of the following:

17 (1) The treatment plan shall include each anticipated service to
18 be provided and the estimated cost of each service.

19 (2) If a patient is covered by a private or government medical
20 benefit plan or medical insurance from which the licensee takes
21 assignment of benefits, the treatment plan shall indicate the
22 patient’s private or government-estimated share of cost for each
23 service.

24 (3) If the licensee accepts Medi-Cal, the treatment plan for a
25 Medi-Cal patient shall indicate if Medi-Cal would cover an
26 alternate, medically necessary service as defined in Section 14059.5
27 of the Welfare and Institutions Code. The treatment plan shall
28 indicate that the Medi-Cal patient has a right to ask for only
29 services covered by Medi-Cal and that the licensee agrees to follow
30 Medi-Cal rules to secure Medi-Cal covered services before
31 treatment.

32 (4) If the licensee does not take assignment of benefits from a
33 patient’s medical benefit plan or insurance, the treatment plan shall
34 indicate that the treatment may or may not be covered by a patient’s
35 medical benefit or insurance plan, and that the patient has the right
36 to confirm medical benefit or insurance information from the
37 patient’s plan, insurer, or employer before beginning treatment.

38 (i) A licensee, or an employee or agent of that licensee, shall
39 not *refer to*, *arrange for*, or establish credit or a loan extended
40 by a third party for a patient with whom the licensee, or an

1 employee or agent of that licensee, communicates primarily in a
2 language other than English that is one of the Medi-Cal threshold
3 languages, unless the written notice information required by
4 subdivision (g) is also provided in that language.

5 (j) (1) A licensee, or an employee or agent of that licensee,
6 shall not *refer to*, ~~arrange for~~ *for*, or establish credit or a loan that
7 is extended by a third party for a patient under either of the
8 following circumstances:

9 (A) The patient has been administered or is under the influence
10 of general anesthesia, conscious sedation, or nitrous oxide.

11 (B) The patient is in a treatment area, including, but not limited
12 to, an exam room, surgical room, or other area where medical
13 treatment is administered, unless the patient agrees to fill out and
14 sign the application to arrange for or establish credit or a loan in
15 the treatment area.

16 (2) Paragraph (1) shall not apply to veterinary medicine. Any
17 credit or loan application offered to an owner of an animal shall
18 be filled out by the owner.

19 (k) A patient who suffers any damage as a result of the use or
20 employment by any person of a method, act, or practice that
21 willfully violates this section may seek the relief provided by
22 Chapter 4 (commencing with Section 1780) of Title 1.5 of Part 4
23 of Division 3 of the Civil Code.

24 (l) The rights, remedies, and penalties set forth in this article
25 are cumulative, and shall not supersede the rights, remedies, or
26 penalties established under other laws.

27 (m) This section shall become operative on July 1, 2020.

9B23 - SB 1432 (Glazer)
Clinical Laboratories

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Introduced by Senator Glazer

February 21, 2020

An act to amend Sections 1220.5 and 1288.3 of the Business and Professions Code, relating to clinical laboratories.

LEGISLATIVE COUNSEL'S DIGEST

SB 1432, as introduced, Glazer. Clinical laboratories.

Existing law provides for the licensure, registration, and regulation of clinical laboratories and various clinical laboratory personnel by the State Department of Public Health. Existing law requires the State Department of Public Health to develop and provide to all licensed clinical laboratories a form in triplicate to be used by employees, agents, and couriers of licensed clinical laboratories to give notice when a specimen storage container has been improperly secured. Existing law requires the notice to be provided to the licensee by attaching the appropriate copy of the form to the unlocked storage container and mailed to the Department of Consumer Affairs.

This bill would also require the notice of improper storage to be emailed to the Department of Consumer Affairs. The bill would require the Department of Consumer Affairs to make a copy of the form available on its internet website.

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 1220.5 of the Business and Professions
- 2 Code is amended to read:

1 1220.5. (a) The ~~State Department of Health Services~~ *Public*
 2 *Health* shall develop, and provide to all licensed clinical
 3 laboratories, a form in triplicate to be used by employees, agents,
 4 and couriers of licensed clinical laboratories to give notice when
 5 a specimen storage container has been improperly secured pursuant
 6 to Section 681. *The Department of Consumer Affairs shall make*
 7 *a copy of the form available on its internet website.*

8 (b) The three copies of the triplicate form shall each contain
 9 instructions so that one copy is to be attached to the unlocked
 10 specimen storage container, one copy is mailed *and emailed* to the
 11 Department of Consumer Affairs to be forwarded to the appropriate
 12 licensing entity pursuant to Section 1288.3, and one copy is kept
 13 by the licensed clinical laboratory for its records.

14 (c) This form shall be provided to all licensed clinical
 15 laboratories on and after January 1, 2001.

16 SEC. 2. Section 1288.3 of the Business and Professions Code
 17 is amended to read:

18 1288.3. (a) (1) If a clinical laboratory employee, agent, or
 19 courier retrieves biological specimens located in a public place
 20 outside of the custodial control of a licensee, or ~~his or her~~ *their*
 21 employee, agent, or contractor, and those specimens are not secured
 22 in a locked container, the clinical laboratory employee, agent, or
 23 courier, utilizing the form provided by the State Department of
 24 ~~Health Services~~ *Public Health* pursuant to Section 1220.5, shall
 25 ~~(1) notify~~ *do all of the following:*

26 (A) *Notify* the licensee by attaching the appropriate copy of the
 27 form to the unlocked storage ~~container,~~ and ~~(2) mail~~ *container.*

28 (B) *Mail* the appropriate copy of the form to the Department of
 29 Consumer Affairs. ~~The~~

30 (C) *Email a copy of the form to the Department of Consumer*
 31 *Affairs.*

32 (2) *The Department of Consumer Affairs shall forward all forms*
 33 *received pursuant to paragraph (1) to the appropriate licensing*
 34 *entity.*

35 (b) This section shall not apply where the biological specimens
 36 have been received by mail in compliance with all applicable laws
 37 and regulations.

38 (c) For purposes of this section: ~~(1) "locked~~

1 (1) “*Locked* container” means a secure container that is fully
2 enclosed and locked by a padlock, key lock, combination lock, or
3 similar locking device.

4 (2) “Licensee” means a person licensed pursuant to this division
5 ~~2 (commencing with Section 500)~~, who collects human biological
6 specimens for clinical testing or examination.

7 (d) A violation of this section is not subject to Section 1287.

8 (e) This section shall become operative on January 1, 2001.
9 Nothing in this section shall be construed to require clinical
10 laboratory employees, agents, or couriers to notify licensees or the
11 Department of Consumer Affairs of an unsecured specimen if the
12 State Department of ~~Health Services~~ *Public Health* has not
13 provided the appropriate forms.

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Acupuncture Board Regulatory Update

Updated: June 26, 2020

In the table below is a list of the Board’s regulations proposed for rulemaking packages in the 2020 calendar year.

Pending Regulations					
	Subject	Title 16, California Code of Regulations (CCR) Section referred	Original authorizing vote date/ subsequent vote	Current Status	Filing Dates / Anticipated Filing Date
1	AB 2138: Denial of Application, Revocation or Suspension of Licensure for a Criminal Conviction	Adopt Sections: 1399.469.4, 1399.469.5, 1399.469.6	3/28/19	Original rulemaking package under initial review with OAL. Bringing new language back to the Board for review.	<u>Jan 31, 2020</u>
2	SB 1441: Implement Uniform Standards Related to Substance Abusing Licensees and Update of Disciplinary Guidelines	Create newly titled Article 6.1 and 6.2 of Division 13.7 of Title 16 Amend Section 1399.469	3/28/19	Rulemaking package under staff development	Dec 2020
3	SB 1448: Disclosure of Probation Status to Patients	(Implementation through Disciplinary Guidelines)	3/28/19	Rulemaking package under staff development	Dec 2020
4	SB 1246: Align Curriculum Standards and Approval Related Regulations with Statutes	Amend Sections: 1399.415, 1399.416, 1399.434, 1399.435, 1399.437, 1399.438, 1399.439 Retitle Article 3.5	8/15/19	Rulemaking package under staff development	Dec 2020
5	AB 2190: Application Process, Criteria, and Procedures for Approval of a Credential Evaluation Service	Amend Sections: 1399.411, 1399.413, 1399.414, 1399.415, 1399.416 Adopt Sections:	TBD	Language drafted and under review. Proposed regulatory language expected to be presented at next Lic/Exam Comm mtg	TBD

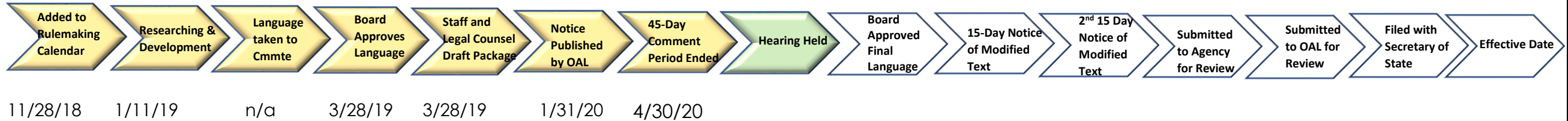
		1399.416.1 & 1399.416.2			
6	Increase Board Fees	Amend Sections: 1399.460 & 1399.462	8/15/19	Rulemaking package under staff development	<i>Dec 2020</i>
7	Application for Retired Status; Retired Status; Restoration	Adopt Section 1399.419.3	8/16/19	Rulemaking package under staff development	<i>Dec 2020</i>

10B - Acupuncture Board
Regulations Progress Tracker

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2020 Rulemaking Tracking Form

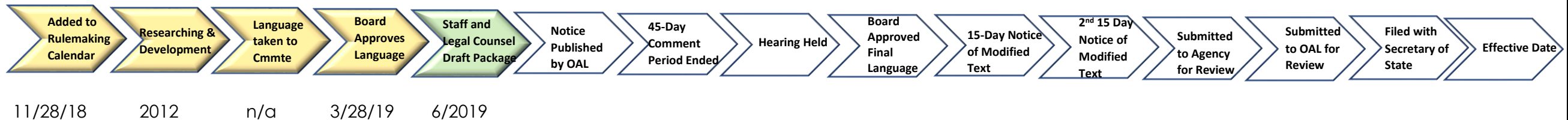
AB 2138: Denial of Application, Revocation or Suspension of Licensure for a Criminal Conviction



OAL No.: Z2020-0116-01

Notes: A rulemaking package was filed with Office of Administrative Law (OAL) on January 31, 2020 and is under review. New language for implementation is being taken to the Board for consideration June 26, 2020.

SB 1441: Implement Uniform Standards Related to Substance Abusing Licensees and Update of Disciplinary Guidelines

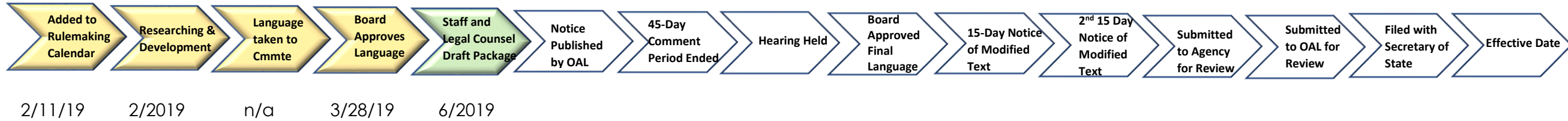


OAL No.:

Notes: Proposed regulatory language was presented at the March 2019 Board meeting. The Board approved the proposed language and directed staff to initiate the formal rulemaking process. Staff and DCA Legal Counsel are working on preparing the initial rulemaking package.

2020 Rulemaking Tracking Form

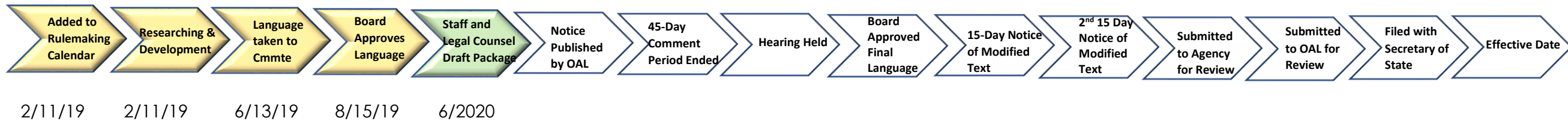
SB 1448: Disclosure of Probation Status to Patients



OAL No.:

Notes: Proposed probationary language within the Disciplinary Guidelines incorporated by reference in the proposed regulatory language was presented at the March 2019 Board meeting. The Board approved the proposed language and directed staff to initiate the formal rulemaking process. Staff and DCA Legal Counsel are working on preparing the initial rulemaking package.

SB 1246: Align Curriculum Standards and Approval Related Regulations with the Statutes



OAL No.:

Notes: Proposed regulatory language and amendments previously recommended by the Education and Research Committee were brought to the August 2019 Board meeting for discussion. The Board approved the proposed language and directed staff to initiate the formal rulemaking process. Staff and DCA Legal Counsel are working on preparing the initial rulemaking package.

2020 Rulemaking Tracking Form

AB 2190: Application Process, Criteria, and Procedures for Approval of a Credential Evaluation Service



11/28/18 2018/2019 TBD

OAL No.:

Notes: Staff has developed proposed regulatory language and drafted applications for the process. Staff has met with more than one NACES member and discussed operations of the evaluation of foreign applicants for the California Acupuncture Licensing Exam. Staff plans to bring proposed regulatory language to the next Licensing and Examination Committee.

Increase Board Fees



1/2020 7/2019 n/a 8/15/19 2/2020

OAL No.:

Notes: Proposed regulatory language and amendments were brought to the August 2019 Board meeting for discussion. The Board approved the proposed language and directed staff to initiate the formal rulemaking process. Staff and DCA Legal Counsel are working on preparing the initial rulemaking package.

2020 Rulemaking Tracking Form

Application for Retired Status; Retired Status; Restoration														
Added to Rulemaking Calendar	Researching & Development	Language taken to Cmte	Board Approves Language	Staff and Legal Counsel Draft Package	Notice Published by OAL	45-Day Comment Period Ended	Hearing Held	Board Approved Final Language	15-Day Notice of Modified Text	2 nd 15 Day Notice of Modified Text	Submitted to Agency for Review	Submitted to OAL for Review	Filed with Secretary of State	Effective Date
1/2020	4/2019	6/13/19	8/16/19	TBD										
OAL No.:														
Notes: Proposed regulatory language and amendments previously recommended by the Licensing and Examination Committee were brought to the August 2019 Board meeting for discussion. The Board approved the proposed language and directed staff to initiate the formal rulemaking process. Staff and DCA Legal Counsel will begin developing the initial rulemaking package later in the year.														

Goal 1: Licensing

Establishes and maintains licensing requirements that protect consumers through improving standards in licensing examination, continuing education, and access to the profession.

- 1.1 Develop and implement a computerized licensing examination to increase access and facilitate entry into the profession.

Status: Completed October 2018

- 1.2 Seek legislative or regulatory authority to require a passing Test of English as a Foreign Language (TOEFL) score for applicants who have completed their education in a language other than English to enhance communication with the healthcare industry.

Status: Pending start

- 1.3 Research the feasibility of establishing a clinical inspection program to promote compliance with the laws and regulations governing the practice of acupuncture in California.

Status: Pending start

- 1.4 Improve pocket license material quality to reduce fraudulent activity.

Status: Pending start

Goal 2: Enforcement

Protects the health and safety of consumers through the enforcement of the laws and regulations governing the practice of acupuncture.

- 2.1 Develop and implement the continuing education provider audit process to increase compliance.

Status: In progress – Commenced FY 19/20 Q3

- 2.2 Recruit additional Subject Matter Experts (SMEs) to meet the needs of the Examination, Enforcement, and Education Units to increase enforcement resources.

Status: In progress

- 2.3 Research the feasibility of requiring licensees to maintain medical records in English to facilitate enforcement efforts and increase accessibility.

Status: Pending

- 2.4 Update the Board's Disciplinary Guidelines to preserve consistency, fairness, and ensure effective consumer protection when taking disciplinary actions against licensees.

Status: In progress. Board has approved language.

- 2.5 Amend regulations to implement the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, developed pursuant to Senate Bill No. 1441 (2007-2008 Sess.), to safeguard the health and safety of licensees and consumers.

Status: In progress. Board has approved language.

Goal 3: Education

Advance education standards to increase the quality of education and ensure consumer protection.

- 3.1 Research and develop transfer credit evaluation policies and procedures to ensure compliance with education requirements.

Status: In Progress.

- 3.2 Conduct a cost analysis on training program curriculum application reviews to properly allocate costs and ensure training program compliance.

Status: Completed in 2019 Fee Study.

- 3.3 Review current curriculum standards to ensure it prepares licensees for entry level practice and consumer safety.

Status: Pending completion of the 2020/2021 Occupational Analysis.

- 3.4 Define what constitutes "live continuing education courses" to ensure that hands-on training for continuing education in treatment methods is received in the proper setting with the appropriate supervision to practice on the public.

Status: Pending.

Goal 4: Legislation and Regulation

Advocates for statutes and adopts regulations, policies, and procedures that strengthen and support its mandate, mission, and vision.

- 4.1 Recommend legislation relating to the number of times an applicant can take the examination for licensure to reduce fraud and enhance qualification of licensees.
Status: Pending.
- 4.2 Investigate the feasibility of obtaining site inspection authority of licensees to increase enforcement resources and access.
Status: Pending.
- 4.3 Seek legislative citation authority over curriculum violations of training programs to enforce existing curriculum requirements established in regulation.
Status: Pending.
- 4.4 Review and update regulations to align with existing statutory requirements.
Status: In progress.
- 4.5 Research and seek amendments to Business and Professions Code section 4935, subdivision (a)(2) to increase the penalty for violations to be equivalent with the penalty provided by Business and Professions Code section 585 and to further deter violations and enhance consumer protection.
Status: Pending.
- 4.6 Implement a continuing education course and monitoring fee structure pursuant to Business and Professions Code section 4945, subdivision (b) to allocate the cost of the process to the continuing education provider applicant.
Status: In Progress.

Goal 5: Outreach

Educates consumers, licensees, and stakeholders about the practice and regulation of the acupuncture profession.

5.1 Develop and implement a communication plan to inform the public about the practice and regulation of the acupuncture profession.

Status: In progress.

5.2 Develop and release a digital newsletter to inform, educate, and update the public on the practice of acupuncture in California.

Status: Pending.

5.3 Determine and communicate licensing reciprocity to and from California to convey California's standards to the public and ensure consumer protection.

Status: Completed. Presented at the October 2018 Board meeting.

5.4 Update and publish an informational brochure to educate the public on the standards of practice.

Status: In Progress. Under staff review.

Goal 6: Board Administration

Continues to build and maintain an excellent organization through the development of staff, responsible management, strong leadership, and effective Board governance.

- 6.1 Conduct a yearly workload study to ensure adequate staffing levels.
Status: 2018 – Completed for Business Modernization BCP
2019 – Completed. Analysis conducted during 2019 Fee Study
2020 – Pending

- 6.2 Map the Board’s business processes to procure an information technology system that addresses the Board’s functions.
Status: Licensing and enforcement processes mapped by Spring 2018.
Administrative processes currently being mapped.

- 6.3 Conduct a feestudy at the appropriate time to address the Board’s budgetary structural imbalance.
Status: Completed. Presented at the August 2019 Board Meeting.

- 6.4 Respond to the Department of Consumer Affairs’ routine internal audit to address any findings.
Status: 360-day follow-up report submitted to DCA Audit Office in February 2020.

- 6.5 Expand targeted training and materials to educate Board members on Board governance and subject matter.
Status: Ongoing



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DATE	June 26, 2020
TO	Board Members, Acupuncture Board
FROM	Kristine Brothers, Policy Coordinator
SUBJECT	Discussion and Possible Action Regarding the Repeal of Title 16 Division 13.7 Article 1.5 (Free & Sponsored Health Care Events)

Background

In response to a lack of affordable healthcare available to California's low-income population and a shortage of volunteer health care practitioners, AB 2699 (Bass, Chapter 270, Statutes of 2010), was signed into law, enacting Business and Professions Code (BPC) section 901, which took effect January 1, 2011.

BPC section 901 provided a narrow, time limited exemption to the state licensure act in order to allow out-of-state licensees to participate in Free and Sponsored Healthcare events. Healthcare practitioners were permitted to provide care at these events in compliance with the following: (1) to uninsured or underinsured persons, (2) on a short-term voluntary basis, (3) in association with a sponsoring entity that registers with the applicable healing arts board, and (4) without charge to the recipient or a 3rd party on behalf of the recipient.

Section 901 also provided the regulatory framework for the approval of an out-of-state health care practitioner and a sponsoring entity to seek approval from the applicable healing arts boards. Pursuant to the new authority and requirements, the Acupuncture Board (Board) adopted Article 1.5. Sponsored Free Health Care Events – Requirements for Exemption, sections 1399.407, 1399.407.1, 1399.407.2, and 1399.407.3 of Title 16 of the California Code of Regulations, and Forms 901A and 901B incorporated by reference and the regulations became effective October 1, 2017.

BPC section 901 specified that the exemption from licensure and regulation requirements for health care practitioners who offered or provided health care services through a sponsored event lasted until January 1, 2018.

Discussion

The Board’s Sponsored Free Health Care Events regulations are now deemed ineffective due to the repeal of its authority under BPC section 901. Therefore, it is necessary the Board take the regulatory steps required to repeal its relevant regulations.

Repealing the regulations is deemed a Section 100 subdivision (a)(2) of Title 1 of the California Code of Regulations change in that removing the regulations makes a change without a regulatory effect. In order for staff to move forward with a Section 100 rulemaking package, the Board must make a motion to authorize the Executive Officer to initiate the rulemaking process for the deletion of the regulations.

Motion

Article 1.5. Sponsored Free Health Care Events – Requirements for Exemption

(1) Delete Article 1.5 of Division 13.7 of Title 16 of the California Code of Regulations, inclusive of Sections 1399.407, 1399.407.1, 1399.407.2, and 1399.407.3.

Option 1:

Motion to delete Article 1.5 of Division 13.7 of Title 16 of the California Code of Regulations, inclusive of Sections 1399.407, 1399.407.1, 1399.407.2, and 1399.407.3, direct staff to submit the text to the Director of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for hearing.

Option 2:

Motion to approve the deletion as amended:

(2) Delete Form 901-A (DCA/2016 - revised), “SPONSORED FREE HEALTH CARE EVENTS Registration of Sponsoring Entity Under Business & Professions Code Section 901,” incorporated by reference into Title 16, CCR § 1399.407.1.

Option 1:

Motion to delete Form 901-A (DCA/2016 - revised), "SPONSORED FREE HEALTH CARE EVENTS Registration of Sponsoring Entity Under Business & Professions Code Section 901," incorporated by reference into Title 16, CCR § 1399.407.1, direct staff to submit the text to the Director of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for hearing.

Option 2:

Motion to approve the deletion as amended:

(3) Delete Form 901-B (CAB/2016), "Request for Authorization To Practice Without a California License at a Registered Free Health Care Event," incorporated by reference into Title 16, CCR § 1399.407.2.

Option 1:

Motion to delete Form 901-B (CAB/2016), "Request for Authorization To Practice Without a California License at a Registered Free Health Care Event," incorporated by reference into Title 16, CCR § 1399.407.2, direct staff to submit the text to the Director of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for hearing.

Option 2:

Motion to approve the deletion as amended:

Acupuncture Board

Statement of Explanation for Section 100 Filing

California Code of Regulations
Title 16, Division 13.7

Article 1.5. Sponsored Free Health Care Events – Requirements for Exemption

The Acupuncture Board (Board) proposes to make changes without regulatory effect to sections 1399.407, 1399.407.1, 1399.407.2, and 1399.407.3 of Title 16 of the California Code of Regulations, and Forms 901A and 901B incorporated by reference, as follows:

(1) Delete Article 1.5 of Division 13.7 of Title 16 of the California Code of Regulations, inclusive of Sections 1399.407, 1399.407.1, 1399.407.2, and 1399.407.3.

(2) Delete Form 901-A (DCA/2016 - revised), "SPONSORED FREE HEALTH CARE EVENTS Registration of Sponsoring Entity Under Business & Professions Code Section 901," incorporated by reference into Title 16, CCR § 1399.407.1.

(3) Delete Form 901-B (CAB/2016), "Request for Authorization To Practice Without a California License at a Registered Free Health Care Event," incorporated by reference into Title 16, CCR § 1399.407.2.

These deletions are necessary to reflect the repeal of underlying statutory authority for these regulatory provisions. Specifically, Business and Professions Code section 901, the statutory authority for the regulatory provisions the Board proposes to delete, was repealed, operative January 1, 2018. (Assem. Bill No. 512 Stats. 2013, ch. 111, § 1).

Accordingly, this action is authorized pursuant to Section 100, subdivision (a)(2) of Title 1 of the California Code of Regulations, and these deletions do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision.

Documents relied upon

Assem. Bill No. 512 Stats. 2013, ch. 111, § 1.

12B - Language on Repeal of Free and Sponsored Health Care Events

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Acupuncture Board

Proposed Deletions

Proposed deletions of regulatory provisions are shown in ~~single strikethrough~~.

(1) Delete Article 1.5 of Division 13.7 of Title 16 of the California Code of Regulations, inclusive of Sections 1399.407, 1399.407.1, 1399.407.2, and 1399.407.3, as follows:

~~Article 1.5. Sponsored Free Health Care Events—Requirements for Exemption~~

~~§ 1399.407. Definitions.~~

(a) ~~For the purposes of section 901 of the Code:~~

~~(1) "Community based organization" means a public or private nonprofit organization that is representative of a community or a significant segment of a community, and is engaged in meeting human, educational, environmental, or public safety community needs.~~

~~(2) "Out of state practitioner" means a person who is not licensed in California to engage in the practice of acupuncture but who holds a current valid license or certificate in good standing in another state, district, or territory of the United States to practice acupuncture.~~

~~(3) "In good standing" means the person:~~

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

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

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

NOTE: Authority cited: Sections 901 and 4933, Business and Professions Code.
Reference: Section 901, Business and Professions Code.

~~§ 1399.407.1 Sponsoring Entity Registration and Recordkeeping Requirements.~~

~~(a) Registration. A sponsoring entity that wishes to provide, or arrange for the provision of, health care services at a sponsored event under section 901 of the Code shall register with the board not later than 90 calendar days prior to the date on which the sponsored event is scheduled to begin. A sponsoring entity shall register with the board by submitting to the board a completed "Registration of Sponsoring Entity Under Business & Professions Code Section 901" Form 901-A (DCA/2016-revised), which is hereby incorporated by reference.~~

~~(b) Determination of Completeness of Form. The board may, by resolution, delegate to the Department of Consumer Affairs the authority to receive and process Form 901-A on behalf of the board. The board or its delegatee shall inform the sponsoring entity within 15 calendar days of receipt of Form 901-A in writing that the form is either complete and the sponsoring entity is registered or that the form is deficient and what specific information or documentation is required to complete the form and be registered. The board or its delegatee shall reject the registration if all of the identified deficiencies have not been corrected at least 30 days prior to the commencement of the sponsored event.~~

~~(c) Recordkeeping Requirements. Regardless of where it is located, a sponsoring entity shall maintain at a physical location in California a copy of all records required by section 901 as well as a copy of the authorization for participation issued by the board to an out of state practitioner. The sponsoring entity shall maintain these records for a period of at least five years after the date on which a sponsored event ended. The records may be maintained in either paper or electronic form. The sponsoring entity shall notify the board at the time of registration as to the form in which it will maintain the records. In addition, the sponsoring entity shall keep a copy of all records required by section 901(g) of the Code at the physical location of the sponsored event until that event has ended. These records shall be available for inspection and copying during the operating hours of the sponsored event upon request of any representative of the board.~~

~~(d) Requirement for Prior Board Approval of Out of State Practitioner. A sponsoring entity shall not permit an out of state practitioner to participate in a sponsored event unless and until the sponsoring entity has received written approval from the board.~~

~~(e) Report. Within 15 calendar days after a sponsored event has concluded, the sponsoring entity shall file a report with the board summarizing the details of the sponsored event. This report may be in a form of the sponsoring entity's choosing, but shall include, at a minimum, the following information:~~

~~(1) The date(s) of the sponsored event;~~

~~(2) The location(s) of the sponsored event;~~

~~(3) The type(s) and general description of all health care services provided at the sponsored event; and~~

~~(4) A list of each out-of-state practitioner granted authorization pursuant to this article who participated in the sponsored event, along with the license number of that practitioner.~~

~~NOTE: Authority cited: Sections 901 and 4933, Business and Professions Code. Reference: Section 901, Business and Professions Code.~~

~~**§ 1399.407.2. Out-of-State Practitioner Authorization to Participate in Sponsored Events.**~~

~~(a) Request for Authorization to Participate. An out-of-state practitioner ("applicant") may request authorization from the board to participate in a sponsored event and provide such health care services at the sponsored event as would be permitted if the applicant were licensed by the board to provide those services. An applicant shall request authorization by submitting to the board a completed "Request For Authorization To Practice Without a California License at a Registered Free Health Care Event" Form 901-B (CAB/2016), which is hereby incorporated by reference, accompanied by a non-refundable processing fee of \$25. The applicant shall also furnish either a full set of fingerprints or submit a Live Scan inquiry to establish the identity of the applicant and to permit the board to conduct a criminal history record check.~~

~~(b) Response to Request for Authorization to Participate. Within 20 calendar days of receiving a completed request for authorization, the board shall notify the sponsoring entity whether that request is approved or denied.~~

~~(c) Denial of Request for Authorization to Participate.~~

~~(1) The board shall deny a request for authorization to participate if:~~

~~(A) The submitted Form 901-B is incomplete and the applicant has not responded within 7 calendar days to the board's request for additional information; or~~

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

~~(C) The applicant does not possess a current valid license in good standing as defined in Section 1399.407~~

~~(2) The board may deny a request for authorization to participate if:~~

~~(A) The request is received less than 20 calendar days before the date on which the sponsored event will begin; or~~

~~(B) The applicant has been previously denied a request for authorization by the board to participate in a sponsored event; or~~

~~(C) The applicant has previously had authorization to participate in a sponsored event terminated by the board; or~~

~~(D) The applicant has already participated in four (4) or more sponsored events during the 12 month period immediately preceding the date the current authorization is received by the board.~~

~~(d) Appeal of Denial. An applicant requesting authorization to participate in a sponsored event may appeal the denial of such request by following the procedures set forth in section 1399.407.3.~~

~~NOTE: Authority cited: Sections 901 and 4933, Business and Professions Code. Reference: Sections 144 and 901, Business and Professions Code.~~

~~§ 1399.407.3. Termination of Authorization and Appeal.~~

~~(a) Grounds for Termination. The board may terminate an out of state practitioner's authorization to participate in a sponsored event for any of the following reasons:~~

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

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

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

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

~~(c) Consequences of Termination. An out-of-state practitioner shall immediately cease his or her participation in a sponsored event upon receipt of the written notice of termination. Termination of authority to participate in a sponsored event shall be deemed a disciplinary measure reportable to the national practitioner data banks. In addition, the board shall provide a copy of the written notice of termination to the licensing authority of each jurisdiction in which the out-of-state practitioner is licensed.~~

~~(d) Appeal of Termination. An out-of-state practitioner may appeal the board's decision to terminate an authorization in the manner provided by section 901(j)(2) of the Code. The request for an appeal shall be considered a request for an informal hearing under the Administrative Procedure Act pursuant to the provisions of Chapter 4.5 (commencing with Section 11445.10) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(e) Informal Conference Option. In addition to requesting a hearing, the out-of-state practitioner may request an informal conference with the Executive Officer regarding the reasons for the termination of authorization to participate. The Executive Officer shall, within 30 days from receipt of the request, hold an informal conference with the out-of-state practitioner. At the conclusion of the informal conference, the Executive Officer may affirm or dismiss the termination of authorization to participate. The Executive Officer shall state in writing the reasons for his or her action and mail a copy of his or her findings and decision to the out-of-state practitioner within ten days from the date of the informal conference. The out-of-state practitioner does not waive his or her request for a hearing to contest a termination of authorization by requesting an informal conference. If the termination is dismissed after the informal conference, the request for a hearing shall be deemed to be withdrawn.~~

~~NOTE: Authority cited: Sections 901 and 4933, Business and Professions Code.
Reference: Section 901, Business and Professions Code.~~



~~SPONSORED FREE HEALTH CARE EVENTS~~

~~REGISTRATION OF SPONSORING ENTITY UNDER BUSINESS & PROFESSIONS CODE SECTION 901~~

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

PART 1 – ORGANIZATIONAL INFORMATION

~~1. Organization Name: _____~~

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

~~_____~~ ~~_____~~
 Address Line 1 Phone Number of Principal Office

~~_____~~ ~~_____~~
 Address Line 2 Alternate Phone

~~_____~~ ~~_____~~
 City, State, Zip Website

~~_____~~
 County

~~—Organization Contact Information in California (if different):~~

~~_____~~ ~~_____~~
 Address Line 1 Phone Number

~~_____~~ ~~_____~~
 Address Line 2 Alternate Phone

~~_____~~
 City, State, Zip

~~_____~~
 County

~~3. Type of Organization:~~

~~Is the organization operating pursuant to section 501(c)(3) of the Internal Revenue Code? _____ Yes _____ No~~

If not, is the organization a community-based organization*?

Yes No

Organization's Tax Identification Number _____

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

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

PART 2 – RESPONSIBLE ORGANIZATION OFFICIALS

Please list the following information for each of the principal individual(s) who is the officer(s) or official(s) of the organization responsible for operation of the sponsoring entity.

Individual 1:

Name _____ Title _____

Address Line 1 _____ Phone _____

Address Line 2 _____ Alternate Phone _____

City, State, Zip _____ E-mail address _____

County _____

Individual 2:

Name _____ Title _____

Address Line 1 _____ Phone _____

Address Line 2 _____ Alternate Phone _____

City, State, Zip _____ E-mail address _____

County _____

Individual 3:

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

(Attach additional sheet(s) if needed to list additional principal organizational individuals)

PART 3 – EVENT DETAILS

1. Name of event, if any: _____

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

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

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

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

____ Check here to indicate that list is attached.

Note:

- Each individual out-of-state practitioner must request authorization to participate in the event by submitting an application to the applicable licensing Board or Committee.
- The organization will be notified in writing whether authorization for an individual out-of-state practitioner has been granted.

This form, any attachments, and all related questions shall be submitted to:

Department of Consumer Affairs

Attn: ~~Sponsored Free Health Care Events~~

Division of Programs and Policy Review
1625 North Market Blvd., Ste. S-308
Sacramento, CA 95834

Tel: (916) 574-7970

Fax: (916) 574-8613

E-mail: CRP2@dca.ca.gov

- I understand that I must maintain records in either electronic or paper form both at the sponsored event and for five (5) years in California, per the recordkeeping requirements imposed by California Business and Professions Code section 901 and the applicable sections of Title 16, California Code of Regulations, for the regulatory bodies with jurisdiction over the practice to be engaged in by out-of-state practitioners
- I understand that our organization must file a report with each applicable Board or Committee within fifteen (15) calendar days of the completion of the event.

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

Name Printed

Title

Signature

Date

PERSONAL INFORMATION COLLECTION, ACCESS AND DISCLOSURE

Disclosure of your personal information is mandatory. The information on this form is required pursuant to Business and Professions Code section 901. Failure to provide any of the required information will result in the form being rejected as incomplete. The information provided will be used to determine compliance with the requirements promulgated pursuant to Business and Professions Code section 901. The information collected may be transferred to other governmental and enforcement agencies. Individuals have a right of access to records containing personal information pertaining to that individual that are maintained by the applicable Board or Committee, unless the records are exempted from disclosure by section 1798.40 of the Civil Code. An individual may obtain information regarding the location of his or her records by contacting the Division of Programs and Policy Review at the address and telephone number listed above.

ACUPUNCTURE BOARD

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



**REQUEST FOR AUTHORIZATION TO PRACTICE WITHOUT A CALIFORNIA
LICENSE AT A REGISTERED FREE HEALTH CARE EVENT**

In accordance with California Business and Professions Code Section 901, any acupuncturist who is licensed or certified and in good standing in another state, district, or territory in the United States may request authorization from the Acupuncture Board (Board) to participate in a free health care event offered by a sponsoring entity, registered with the Board pursuant to Section 901, for a period not to exceed ten (10) days.

PART 1 – APPLICATION INSTRUCTIONS

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

- A processing fee of \$25 made payable to the Board (check or money order only).
- A copy of each valid and current license and/or certificate authorizing the applicant to engage in the practice of acupuncture issued by any state, district, or territory of the United States.
- A copy of a valid photo identification of the applicant issued by one of the jurisdictions in which the applicant holds a license or certificate to practice.
- A full set of fingerprints on hard cards or a Live Scan inquiry. This will be used to establish your identity and to conduct a criminal history record check. However, this requirement shall apply only to the first application for authorization that you submit.

Live Scan is only available in California for residents or visitors. A listing of California Live Scan sites can be found at <http://ag.ca.gov/fingerprints/publications/contact.php> Only Live Scan fingerprints completed in California can be accepted. You must fill out a *Request for Live Scan Service* form, which can be obtained from the Board's website at www.acupuncture.ca.gov/pubsandforms/index or by calling the Board at 916-515-5200.

Procedure: You must take the completed form to the service location, pay a fee and your fingerprints will be taken on a glass without ink. The fee for the Live Scan depends upon the vendor. The fingerprints will then be transmitted electronically to the Department of Justice, who then forwards a report to the Board. Keep a copy of the Live Scan form for your records.

Ink on Fingerprint Cards (hard cards). If you are unable to get your fingerprints completed in California via Live Scan, you must contact the Board to obtain 8" x 8" fingerprint cards (FD-258). Other States' resident cards will not be accepted. Be sure to type or print legibly in black ink in all the areas on the card asking for personal information, that the card is dated and signed by the official taking the fingerprints, and that your signature is on the card.

Procedure: You must take the hard cards to a qualified fingerprint office, e.g., law enforcement, pay a fee, and your prints will be rolled. Include the completed card with

~~enforcement agencies. Individuals have a right of access to records containing personal information pertaining to that individual that are maintained by the Board, unless the records are exempted from disclosure as per Civil Code Section 1798.40. Individuals may obtain information regarding the location of his or her records by contacting the Executive Officer at the Board at the address and telephone number listed above.~~

PART 3 – LICENSURE INFORMATION

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

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

Yes If yes, list every license, certificate, and registration authorizing you to engage in the practice of acupuncture in the following table. If there are not enough boxes to include all of the relevant information, please attach an addendum to this form. Please also attach a copy of each of your current licenses, certificates, and registrations.

State/ Jurisdiction	Issuing Agency/Authority	License Number	Expiration Date
-		-	-
-		-	-
-		-	-
-		-	-

2. Have you ever had a license or certification to practice acupuncture revoked or suspended?
 ___ Yes ___ No

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

4. Are you currently the subject of any investigation by any governmental entity?
 ___ Yes ___ No

5. Have you ever been convicted of any crime, including an infraction, misdemeanor or felony?
 ___ Yes ___ No

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

7. Have you ever allowed any license or certification to practice acupuncture to cancel or to remain in expired status without renewal?
___ Yes ___ No

8. If you answered "Yes" to any of questions 2-6, please explain (*attach additional page(s) if necessary*): _____

PART 4 – SPONSORED EVENT

1. Name of non-profit or community-based organization hosting the free healthcare event (the "sponsoring entity"): _____

2. Name of event: _____

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

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

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

6. Name and phone number of contact person with sponsoring entity: _____

PART 5 – ACKNOWLEDGMENT/CERTIFICATION

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

- I have not committed any act or been convicted of a crime constituting grounds for denial of licensure by the Board.
- I hold a current valid license or certificate in good standing in another state, district, or territory of the United States to practice acupuncture.
- I will comply with all applicable practice requirements required of licensed acupuncturists and all regulations of the Board.

- ~~In accordance with Business and Professions Code Section 901(i), I will only practice within the scope of my licensure and/or certification and within the scope of practice for California-licensed acupuncturists.~~
- ~~I will provide the services authorized by this request and Business and Professions Code Section 901 to uninsured and underinsured persons only and shall receive no compensation for such services.~~
- ~~I will provide the services authorized by this request and Business and Professions Code Section 901 only in association with the sponsoring entity listed herein and only on the dates and at the locations listed herein for a period not to exceed 10 calendar days.~~
- ~~I am responsible for knowing and complying with California law and practice standards while participating in a sponsored event located in California.~~
- ~~Practice of a regulated profession in California without proper licensure and/or authorization may subject me to potential administrative, civil and/or criminal penalties.~~
- ~~The Board may notify the licensing authority of my home jurisdiction and/or other appropriate law enforcement authorities of any potential grounds for discipline associated with my participation in the sponsored event.~~
- ~~All information provided by me in this application is true and complete to the best of my knowledge. By submitting this application and signing below, I am granting permission to the Board to verify the information provided and to perform any investigation pertaining to the information I have provided as the Board deems necessary.~~

 Signature _____ Date _____

 Name Printed

NOTE: Authorization will not be issued until clearance has been received from the California Department of Justice and the Federal Bureau of Investigation.

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Assembly Bill No. 512

CHAPTER 111

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

[Approved by Governor August 16, 2013. Filed with
Secretary of State August 16, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 512, Rendon. Healing arts: licensure exemption.

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

Existing law provides, until January 1, 2014, an exemption from the licensure and regulation requirements for a health care practitioner, as defined, licensed or certified in good standing in another state or states, who offers or provides health care services for which he or she is licensed or certified through a sponsored event, as defined, (1) to uninsured or underinsured persons, (2) on a short-term voluntary basis, (3) in association with a sponsoring entity that registers with the applicable healing arts board, as defined, and provides specified information to the county health department of the county in which the health care services will be provided, and (4) without charge to the recipient or a 3rd party on behalf of the recipient, as specified. Existing law also requires an exempt health care practitioner to obtain prior authorization to provide these services from the applicable licensing board, as defined, and to satisfy other specified requirements, including payment of a fee as determined by the applicable licensing board.

This bill would delete the January 1, 2014, date of repeal, and instead allow the exemption to operate until January 1, 2018.

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

SECTION 1. Section 901 of the Business and Professions Code is amended to read:

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

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

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

(3) “Sponsored event” means an event, not to exceed 10 calendar days, administered by either a sponsoring entity or a local government, or both, through which health care is provided to the public without compensation to the health care practitioner.

(4) “Sponsoring entity” means a nonprofit organization organized pursuant to Section 501(c)(3) of the Internal Revenue Code or a community-based organization.

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

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

(1) Prior to providing those services, he or she does all of the following:

(A) Obtains authorization from the board to participate in the sponsored event after submitting to the board a copy of his or her valid license or certificate from each state in which he or she holds licensure or certification and a photographic identification issued by one of the states in which he or she holds licensure or certification. The board shall notify the sponsoring entity, within 20 calendar days of receiving a request for authorization, whether that request is approved or denied, provided that, if the board receives a request for authorization less than 20 days prior to the date of the sponsored event, the board shall make reasonable efforts to notify the sponsoring entity whether that request is approved or denied prior to the date of that sponsored event.

(B) Satisfies the following requirements:

(i) The health care practitioner has not committed any act or been convicted of a crime constituting grounds for denial of licensure or registration under Section 480 and is in good standing in each state in which he or she holds licensure or certification.

(ii) The health care practitioner has the appropriate education and experience to participate in a sponsored event, as determined by the board.

(iii) The health care practitioner shall agree to comply with all applicable practice requirements set forth in this division and the regulations adopted pursuant to this division.

(C) Submits to the board, on a form prescribed by the board, a request for authorization to practice without a license, and pays a fee, in an amount determined by the board by regulation, which shall be available, upon appropriation, to cover the cost of developing the authorization process and processing the request.

(2) The services are provided under all of the following circumstances:

(A) To uninsured or underinsured persons.

(B) On a short-term voluntary basis, not to exceed a 10-calendar-day period per sponsored event.

(C) In association with a sponsoring entity that complies with subdivision (d).

(D) Without charge to the recipient or to a third party on behalf of the recipient.

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

(d) A sponsoring entity seeking to provide, or arrange for the provision of, health care services under this section shall do both of the following:

(1) Register with each applicable board under this division for which an out-of-state health care practitioner is participating in the sponsored event by completing a registration form that shall include all of the following:

(A) The name of the sponsoring entity.

(B) The name of the principal individual or individuals who are the officers or organizational officials responsible for the operation of the sponsoring entity.

(C) The address, including street, city, ZIP Code, and county, of the sponsoring entity's principal office and each individual listed pursuant to subparagraph (B).

(D) The telephone number for the principal office of the sponsoring entity and each individual listed pursuant to subparagraph (B).

(E) Any additional information required by the board.

(2) Provide the information listed in paragraph (1) to the county health department of the county in which the health care services will be provided, along with any additional information that may be required by that department.

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

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

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

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

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

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

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

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

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

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



DATE	June 26, 2020
TO	Board Members, Acupuncture Board
FROM	Alex Dodge, Policy Analyst
SUBJECT	Discussion and Possible Action Regarding Assembly Bill 2138 and Substantial Relationship Criteria Rulemaking Package

Summary

This proposal would initiate an ongoing rulemaking action implementing additional changes to the text of Assembly Bill 2138 (Chiu, Chapter 995, Statutes of 2018) that have been negotiated between the Department of Consumer Affairs (DCA) and the Office of Administrative Law (OAL).

Background

Existing law (Business and Professions Code section 480) presently authorizes the Acupuncture Board (Board) to deny an application for licensure based on a conviction for a crime or act that is substantially related to the licensed business or profession. Likewise, Section 490 authorizes the Board to suspend or revoke a license on the basis that the licensee was convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession.

The Legislature's intent in enacting AB 2138 was "to reduce licensing and employment barriers for people who are rehabilitated." Section 480 was amended to restrict the Board's ability to use prior convictions or acts when denying licenses. Beginning July 1, 2020, the Board may not deny a license to an applicant because the applicant was convicted of a crime, or due to acts underlying the conviction, if the applicant has a certificate of rehabilitation, was granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged.

At its March 2019 Board Meeting, The Acupuncture Board (Board) approved regulatory language to implement AB 2138 (Chiu, Chapter 995, Statutes of 2018). Key provisions of that Bill, which become effective July 1, 2020, are as follows:

- Only Permits a board to deny a license on grounds that an applicant has been convicted of a crime or has been subject to formal discipline if either of these are met (Business and Professions Code (BPC) §480(a):
 1. The conviction was within 7 years of the date of the application and is substantially related to the qualifications, functions, or duties of the profession. The 7-year limit does not apply to convictions for a serious felony (defined in Penal Code §1192.7), or for those who must register as a sex offender as described in Penal Code §290(d)(2) or (3).

2. The applicant has been subject to formal discipline by a licensing board within the past 7 years for professional misconduct that would have been cause for disciplinary action by the Board and is substantially related to the profession (the prior disciplinary action cannot be used to deny if it was based on a dismissed or expunged conviction).
- Prohibits a board from requiring that an applicant for licensure disclose information about his or her criminal history. However, a board is permitted to request it for the purpose of determining substantial relationship or evidence of rehabilitation. In such a case, the applicant must be informed that the disclosure is voluntary and failure to disclose will not be a factor in a board's decision to grant or deny an application. (BPC §480(f)(2)).
 - Requires each board to develop criteria to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession. These criteria will aid the board when considering the denial, suspension, or revocation of a license. The criteria must include all of the following (BPC §481):
 1. The nature and gravity of the offense.
 2. The number of years elapsed since the date of the offense.
 3. The nature and duties of the profession in which the applicant seeks licensure or is licensed.
 - Prohibits a board from denying a license based on a conviction without considering evidence of rehabilitation (BPC §481).
 - Requires each board to develop criteria to evaluate rehabilitation when considering denying, suspending, or revoking a license. A showing of rehabilitation shall be considered if the applicant or licensee has completed their criminal sentence without a violation of parole or probation, or if the board finds its criteria for rehabilitation has been met (BPC §482).

Status of the Regulatory Proposal

The Board's current AB 2138 rulemaking package does not meet the procedural requirements of the Administrative Procedure Act. Additionally, it requires changes to the text that require new Board action. Staff recommends that an amended rulemaking package be put forward in place of the current package.

Because the AB 2138 regulations must be completed by each board and bureau under DCA, DCA Legal prepared a basic template of the required amendments for all boards and bureaus to use. DCA Legal recommended boards and bureaus use the template as a starting point, making modifications as needed to meet each practice act's unique needs. Board staff used the DCA template to draft the regulations, making modifications as needed.

The Veterinary Medical Board's (VMB) AB 2138 regulation package was the first to go to OAL for final review. However, upon review of the VMB's package, OAL advised the VMB that it would require several text changes in order for the package to go through. OAL advised the VMB that while several of the required changes are likely non-substantive, other recommended revisions may be considered substantive (which would mean they would need to go back to their board for approval, and then to a 15-day public comment period.)

The VMB ended up withdrawing their AB 2138 regulations from OAL and took text changes negotiated between DCA Legal and OAL back to their board for consideration. The revised VMB regulations were resubmitted in June 2020 to OAL for reconsideration.

This proposal accounts for the items that VMB was advised to address.

Modifications to the AB 2138 Regulatory Text

Based on reviewing the changes Veterinary Medical Board's AB 2138 regulations and consultation with DCA Legal, staff made the following changes to the Board's AB 2138 regulation text:

1. Section 1399.469.4 (a):

- a. A reference to Sections 4955, 4955.1, and 4955.2 was added. These sections authorize the Board to deny, suspend, or revoke, or impose probationary conditions upon the license of any acupuncturist for acts that the Board's Practice Act considers unprofessional conduct.

2. Section 1399.469.4 (b):

- a. Make a technical revision to use the appropriate term "subsection" in place of "subdivision".
- b. Make a technical correction to replace semi-colons with periods at the end of (b)(1) and (b)(2) and removing "and" from (b)(2) to accommodate that change.

3. Section 1399.469.4 (c):

Add a subsection listing actual substantially related crimes, professional misconduct, and acts the Board has determined are cause for denial, suspension or revocation of a license for purposes of BPC Section 1399.469.4(a). It also specifies the list of crimes, professional misconduct, and acts are included, but are not limited to, just those listed. Therefore, the regulation does not serve as a comprehensive list.

- a. Adds listed crimes as subparagraphs as follows:
 - i. Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Acupuncture Licensure Act (BPC Division 2, Chapter 12) or other state or federal laws governing the practice of acupuncture.
 - ii. A conviction of a crime involving fiscal dishonesty

4. Section 1399.469.5 (a):

- a. Make a grammatical correction to use the appropriate conjugation "has been" in place of "was".
- b. Strike "and is presently eligible for a license," to resolve OAL's concern that this phrase could be misinterpreted.

5. Section 1399.469.5 (b):

- a. Remove and restate the subsection to clarify the circumstances under which the Board will apply rehabilitation criteria to applicants who have not completed a criminal sentence without a violation, the applicant with a criminal conviction did not make a showing of rehabilitation based on the criteria shown in subsection (a),

the denial is based on professional misconduct (as that term is used under the new BPC §480), or the denial is based on one or more of the grounds specified in the Board's practice acts applicable to denials, suspensions, or revocations of a license issued by the Board. This clarifying amendment is necessary to inform the public, applicants, and Board staff that rehabilitation criteria will be considered for all application denials, regardless of whether the grounds for denial stem from BPC §480. The clarifications promote equity and fairness to all applicants in keeping with the legislative intent of AB 2138.

- b. Subparagraph (1): Replace the term "severity" with "gravity" to align with the language used in the new version of BPC §481(b)(1).
- c. Subparagraphs (1), (2), and (3): Add "professional misconduct" to include the conduct described under the new BPC §480 as grounds for denial.
- d. Subparagraph (2): Delete "under Section 480 of the Business and Professions Code", as this subparagraph is applicable to all statutory grounds for denial, as specified, not just grounds under BPC §480.
- e. Subparagraph (3): Delete incorrect reference to "subdivision" (1) or (2) and make the correct reference to "paragraph" instead.
- f. Subparagraph (5): Delete incorrect reference to "subdivision" (b) (1) through (5) and make the correct reference to "subsection" instead.

6. Section 1399.469.6 (a):

- a. Clarify that the conditions for applying rehabilitation criteria for suspension or revocation of a license for criminal convictions are pursuant to BPC §490.
- b. Strike "and is presently eligible for a license," to resolve OAL's concern that this phrase could be misinterpreted.
- c. Subparagraphs (1), (2), (3), and (4): Make a technical revision to replace semicolons with periods.
- d. Subparagraph (4): Make a technical revision to remove "and" to correspond with the removal of semi-colons.

7. Section 1399.469.6 (b):

- a. Remove and restate the subsection to clarify the circumstances under which the Board will apply rehabilitation criteria to licensees who have not completed a criminal sentence without a violation, the licensee with a criminal conviction did not make a showing of rehabilitation based on the criteria shown in subsection (a), the suspension or revocation is based on a disciplinary action as defined in BPC section 141, or the suspension or revocation is based on one or more of the grounds specified in the Board's practice acts applicable to denials, suspensions, or revocations of a license issued by the Board (BPC 4955, 4955.1, and 4955.2.) This clarifying amendment is necessary to inform the public, licensees, and Board staff that rehabilitation criteria will be considered for all license suspensions and revocations, regardless of whether the grounds for discipline stem from BPC §490. The clarifications promote equity and fairness to all licensees in keeping with the legislative intent of AB 2138.

- b. Subparagraph (1): Replace the term “severity” with the term “gravity” to align with the language used in the new version of BPC §481(b)(1).
 - c. Subparagraph (2): Delete “under Section 490 of the Code”, as this subparagraph is applicable to all statutory grounds for suspension and revocation, as specified, not just grounds under BPC §490.
 - d. Subparagraphs (1), (2), and (3): Add “disciplinary action(s)” in order to include the conduct described under BPC §141 as grounds for suspension or revocation.
 - e. Subparagraph (3): Delete incorrect reference to “subdivision” (1) or (2) and make the correct reference to “paragraph” instead.
 - f. Subparagraph (4): Replace the term “such person” with the term “the licensee” for clarity.
 - g. Subparagraph (5): Delete incorrect reference and numbering for “subdivision (a) (1) through (5)” and instead make the correct reference to “subsection (b) (1)-(5)”.
 - h. Subparagraphs (1), (2), (3), (4), (5), and (6): Make a technical revision to replace semicolons with periods.
 - i. Subparagraph (6): Make a technical revision to remove “and” to correspond with the removal of semi-colons
8. Section 1399.469.6 (c):
- a. Add reference to reinstatement petition evaluations, specifying the use of criteria in subsection (b) of this section when the Board evaluates evidence of rehabilitation under the provisions of Business and Professions Code Section 4960.5.
9. Section 1399.469 Authority and Reference
- a. Make minor revision to delete inapplicable authority sections and add to the reference section statutes that relate to rehabilitation criteria (BPC §475).

Recommendation

All of the listed changes correspond to those negotiated between OAL and DCA. The new language largely provides additional clarity over the previous iterations. The Board has the option to list additional crimes it deems appropriate in CCR 1399.469.4(c) for purposes of listing crimes that are substantially related for the purpose of denial, suspension, or revocation of a license pursuant to Section 141, Division 1.5, or BPC Section 4955 (Unprofessional Conduct).

Motion

If the language is approved as is, the motion is as follows:

Approve the proposed regulatory text for Title 16, CCR section 1399.469.4, 1399.469.5, and 1399.469.6, and direct staff to submit the text to the Director of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review, and, if no adverse comments are received, authorize the Executive Officer to take all steps necessary to amend the preceding rulemaking package, initiate a revised rulemaking process, make any non-substantive technical or grammatical changes to the package, and set the matter for hearing.

Attachments:

Attachment A: Proposed Regulatory Amendments

Attachment B: Text of AB 2138 (Chapter 995, Statutes of 2018)

Attachment C: Memos to the California Acupuncture Board regarding Substantial Relationship Criteria (AB 2138, Dated March 29, 2019)

13B - AB 2138
Regulatory Language

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Acupuncture Board
AB 2138 Implementation – Proposed Regulation for
Substantial Relationship Criteria

Changes proposed are underlined to denote new text.

Modifications to the proposed regulatory language are shown is double underlined for new text and ~~double strikethrough~~ for deleted text.

Adopt new section under Article 6 Miscellaneous Provisions of Chapter 13.7 of Title 16 of the California Code of Regulations:

§ 1399.469.4 Substantial Relationship Criteria.

(a) For the purpose of denial, suspension, or revocation of a license pursuant to Section 141, ~~or~~ Division 1.5 (commencing with Section 475), or Sections 4955, 4955.1, or 4955.2 of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions or duties of a licensee if, to a substantial degree, it evidences present or potential unfitness of a licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare.

(b) In making the substantial relationship determination required under ~~subsection~~ ~~subdivision~~ (a) for a crime, the board shall consider the following criteria:

- (1) The nature and gravity of the offense.
- (2) The number of years elapsed since the date of the offense, ~~and~~
- (3) The nature and duties of an acupuncturist.

(c) For purposes of subsection (a), a substantially related crime, professional misconduct, or act shall include, but is not limited to, the following:

(1) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 12, Division 2 of the Business and Professions Code or other state or federal laws governing the practice of acupuncture.

(2) Conviction of a crime involving fiscal dishonesty.

Note: Authority cited: Sections 481, 493, 4933, Business and Professions Code.
Reference: Sections 141, 480, 481, 490, 493, 4955(b), 4955(h), 4955(j), and 4956, Business and Professions Code.

Acupuncture Board
AB 2138 Implementation – Proposed Regulation for
Criteria for Rehabilitation for Denials

Changes proposed are underlined to denote new text.

Modifications to the proposed regulatory language are shown is double underlined for new text and ~~double strikethrough~~ for deleted text.

Adopt new section under Article 6 Miscellaneous Provisions of Chapter 13.7 of Title 16 of the California Code of Regulations:

§ 1399.469.5 Criteria for Rehabilitation – Denial of Licensure.

(a) When considering the denial of a license under Section 480 of the Business and Professions Code on the ground that the applicant ~~was~~ has been convicted of a crime, the board shall consider whether the applicant made a showing of rehabilitation and is presently eligible for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria:

- (1) The nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(b) If the applicant has not completed the criminal sentence at issue without a violation of parole or probation, the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subsection (a), the denial is based on professional misconduct, or the denial is based on one or more of the grounds specified in Sections 4955, 4955.1, and 4955.2 of the Business and Professions Code, the board shall apply the following criteria in evaluating an applicant's rehabilitation: ~~If subdivision (a) is inapplicable, or the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the board shall apply the following criteria in evaluating an applicant's rehabilitation. The board shall find that the~~

~~applicant made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the applicant is rehabilitated:~~

(1) The nature and ~~severity~~ gravity of the act(s), professional misconduct or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s), professional misconduct or crime(s) committed subsequent to the act(s), professional misconduct or crime(s) under consideration as grounds for denial ~~under Section 480 of the Business and Professions Code.~~

(3) The time that has elapsed since commission of the act(s), professional misconduct or crime(s) referred to in ~~subdivision~~ paragraphs (1) or (2).

(4) ~~The extent to which~~ Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(5) The criteria in ~~subdivision~~ subsection (a)(1) to (5), as applicable.

(6) Evidence, if any, of rehabilitation submitted by the applicant.

Note: Authority cited: Sections 482 and 4933, Business and Professions Code.

Reference: Sections 480, 481, 482, 488, 493, 4938, 4944, 4955, 4955.1, 4955.2, and 4956, Business and Professions Code.

Acupuncture Board
AB 2138 Implementation – Proposed Regulation for
Criteria for Rehabilitation for Suspensions or Revocations

Changes proposed are underlined to denote new text.

Modifications to the proposed regulatory language are shown is double underlined for new text and ~~double strikethrough~~ for deleted text.

Adopt new section under Article 6 Miscellaneous Provisions of Chapter 13.7 of Title 16 of the California Code of Regulations:

§ 1399.469.6 Criteria for Rehabilitation – Suspensions or Revocations.

(a) When considering the suspension or revocation of a license under Section 490 of the Business and Professions Code on the ground that a person holding a license under the Acupuncture Licensure Act has been convicted of a crime, the board shall consider whether the licensee made a showing of rehabilitation ~~and is presently eligible for a license.~~ if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria:

- (1) The nature and gravity of the crime(s).‡
- (2) The length(s) of the applicable parole or probation period(s).‡
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.‡
- (4) The terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation.‡ ~~and~~
- (5) The extent to which the terms or conditions of parole or probation were modified and the reason(s) for the modification.

(b) If the licensee has not completed the criminal sentence at issue without a violation of parole or probation, the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subsection (a), the suspension or revocation is based on a disciplinary action as described in Section 141 of the Business and Professions Code, or the suspension or revocation is based on or more of the grounds specified in Sections 4955, 4955.1, or 4955.2 of the Business and Professions Code, the board shall apply the following criteria in evaluating the licensee's rehabilitation:‡
~~subdivision (a) is inapplicable, or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (a), the board shall~~

~~apply the following criteria in evaluating a licensee's rehabilitation. The board shall find that the licensee made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the licensee is rehabilitated:~~

- ~~(1) The nature and severity gravity of the act(s), disciplinary action(s) or crime(s).;~~
- ~~(2) The total criminal record.;~~
- ~~(3) The time that has elapsed since commission of the act(s), disciplinary action(s) or crime(s).;~~
- ~~(4) The extent to which Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person licensee.;~~
- ~~(5) The criteria in subsection subdivision (a)(1) to (5), as applicable.;~~
- ~~(6) If applicable, evidence of dismissal proceedings pursuant to section 1203.4 of the Penal Code.;~~~~and~~
- ~~(7) Evidence, if any, of rehabilitation submitted by the licensee.~~

(c) When considering a petition for reinstatement of a license under the provisions of Section 4960.5 of the Business and Professions Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in subsection (b) of this section.

Note: Authority cited: ~~Sections 482 and~~ 4933, Business and Professions Code.
Reference: Sections 141, 475, 480, 481, 482, 488, 493, 4955, 4955.1, 4955.2, and 4956, 4960.5, Business and Professions Code.

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