BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

NOTICE OF PUBLIC MEETING
LEGISLATION/REGULATION COMMITTEE

May 12, 2011
10:00 a.m.
Holiday Inn LAX
9901 La Cienega Blvd.
Los Angeles, CA 90045
(310) 649-5151

AGENDA

1. **CALL TO ORDER**

2. **Approval of Minutes**
   July 8, 2010

3. **Legislative Update**
   A. AB 25 (Hayashi) – Athletics: Concussions and Head Injuries
   B. AB 72 (Eng) – Acupuncture
   C. AB 127 (Logue) – Regulations: Effective Date
   D. AB 584 (Fong) – Workers' Compensation Utilization Review
   E. AB 783 (Hayashi) – Professional Corporations: Licensed Physical Therapists
   F. SB 206 (Kehoe) – Appropriations
   G. SB 352 (Huff) – Chiropractors
   H. SB 366 (Calderon) – Regulations: Agency Review
   I. SB 396 (Huff) – Regulations: Review Process
   J. SB 400 (Dutton) – Regulations: Impact on Businesses
   K. SB 401 (Fuller) – Regulations: Repeal Provisions
   L. SB 541 (Price) – Expert Consultants
   M. SB 544 (Price) – Regulatory Boards
   N. SB 560 (Wright) – Regulations: Small Businesses
   O. SB 591 (Gaines) – Regulations: Reductions
   P. SB 628 (Yee) - Acupuncture
   Q. SB 924 (Wyland) – Physical Therapists: Direct Access to Services

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Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
www.chiro.ca.gov

4. PUBLIC COMMENT

5. FUTURE AGENDA ITEMS

6. ADJOURNMENT

LEGISLATION/REGULATION COMMITTEE
Frederick Lerner, D.C., Chair
Francesco Columbu, D.C.

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at **www.chiro.ca.gov.**

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or e-mail marlene.valencia@chiro.ca.gov or send a written request to the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

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BOARD OF CHIROPRACTIC EXAMINERS
MEETING MINUTES
LEGISLATION/REGULATION COMMITTEE
July 8, 2010
2525 Natomas Park Drive, Suite 100
Sacramento, CA 95833

DRAFT

Committee Members Present
Frederick Lerner, D.C., Chair
Francesco Columbu, D.C., Board Member
Hugh Lubkin, D.C., Board Member

Staff Present
Robert Puleo, Interim Executive Officer
Linda Shaw, Staff Services Manager
Dixie Van Allen, Associate Program Analyst
Valerie James, Office Technician

Call to Order

Dr. Lerner called the meeting to order at 11:15 a.m.

Roll Call

Dr. Columbu called the roll. All committee members were present.

Satellite Office Proposed Regulations

Dr. Lerner discussed the cost to issue a Satellite Office Certificate. The Committee discussed the possibility of eliminating satellite offices. Dr. Lerner requested to have a cost analysis done to find out how much it costs the Board to issue a Satellite Office Certificate and the possibility to have the cost changed.

The Committee discussed practicing while traveling. It was determined that it was not necessary to have a Satellite Office Certificate for each location when doing "house calls" or traveling with sports teams. Dr. Lerner stated the purpose of the pocket license was for such reasons.

Review CCR Section 302 (Practice of Chiropractic)

The Board reviewed Section 302 - Scope of Practice. The Committee requested a legal review of Section 302 for further clarification.

Informed Consent

The Committee had a discussion on informed consent. Dr. Lerner felt that it should be set as a standard in chiropractic. He also suggested that this topic be brought up at the next Board meeting.

MOTION: DR. LUBKIN MOVED TO HAVE THIS TOPIC DISCUSSED AT THE NEXT BOARD MEETING
SECOND: DR. LERNER SECONDED THE MOTION.
VOTE: 3-0
MOTION CARRIED

Public Comment

None

Future Agenda Items

Dr. Lubkin requested to have excessive treatment placed on the agenda at the next committee meeting, specifically CCR Section 317 & 318.

Adjournment

Dr. Lerner adjourned the meeting at approximately 11:55 a.m.

DRAFT

Board of Chiropractic Examiners
Bill Analysis

Bill Number: AB 25
Author: Assembly Member: Mary Hayashi
Bill Date: Amended March 25, 2011
Subject: Athletics: concussions and head injuries
Sponsor: The National Football League

STATUS OF BILL: Passed Assembly Committee on March 23, 2011 (9 – 0). Pending in Assembly Appropriations Committee, referred to suspense file.

SUMMARY:

This bill would amend provisions of the Education Code to impose additional medical clearance requirements for competitive student athletes and youth relating to concussions and head injuries resulting from participation in supervised recreational activities which take place on public school facilities.

EXISTING LAW:

- Authorizes the governing board of a school district to grant the use of school facilities or grounds for specified purposes, including supervised recreational activities.
- Authorizes the governing board of a school district to authorize the use of any school facilities or grounds under its jurisdiction to non-profit organizations, and clubs and associations organized to promote youth and school activities, when an alternative location is not available.

THIS BILL WOULD:

- Amend provisions of the Education Code to impose additional medical clearance requirements for competitive student athletes relating to concussions and head injuries resulting from participation in supervised recreational activities which take place on public school facilities.

- Require any non-profit group or organization using public school facilities or grounds to comply with the policies for the management of concussion and head injury in athletics set forth in subdivisions (a) and (b) of Section 49475 of the Education Code.

- Provide authority for the governing board of any school district to charge a religious organization or church, which arranges for and supervises sports league

activities for youths as described in paragraph (6) of subdivision (b) of Section 38131of the Education Code.

- Require a school district that offers an athletic program to remove an athlete who is suspected of sustaining a concussion or head injury in an athletic activity for the remainder of the day and shall not permit the athlete to return to the activity until they provide written clearance from a licensed health care provider who is trained in the management of concussions.

- Require a concussion and head injury information sheet to be signed and returned by the athlete and their parents annually prior to participation in practice or competition.

BACKGROUND:

The proponents assert that according to the Centers for Disease Control, upwards of 3 million sports and recreation related concussions occur in the United States each year. Football is the leading cause for high school males and soccer is the leading cause for high school females. Youth are particularly at risk from head injuries due to their developing brains. Studies indicate that high school athletes are at risk of suffering from sleep disorders, memory loss, mental fatigue, depression or even suicide as a result of head injuries sustained in sports. The California Interscholastic Federation and ten states currently have laws governing when student athletes can return to play following a head injury.

The sponsors believe this bill would build upon existing medical clearance requirements for youth sports which take place at public school facilities in an effort to prevent further health related complications by ensuring participants in youth sports have been evaluated and cleared to return to the sports activity by a licensed healthcare professional who has been trained in treating concussions.

FISCAL IMPACT:

None to this Board.

SUPPORT & OPPOSITION:

Support:

The National Football League
Alameda County Superintendent of Schools, Sheila Jordan
American Federation of State, County and Municipal Employees (AFSCME)
American Red Cross, California Chapters
California Athletic Trainers' Association
California Chiropractic Association
California School Employees Association

California State Parent Teacher Association
California Teachers Association
Consumer Attorneys of California

Opposition:

None on record

ARGUMENTS:

Pro: The sponsors argue that this bill would serve as a protective measure on behalf of participants of youth sports activities against further complications resulting from returning to play too soon after suffering a concussion. This bill would ensure that the youth, parents and coaches are aware of the signs of a concussion and head injury and seek proper medical evaluation and clearance prior to allowing the youth to return to the sports activity. This bill would also serve as a protective measure against liability on behalf of a school district for injuries which occur from youth activities that are held at public school facilities.

Con: None

STAFF RECOMMENDED POSITION: Support

AMENDED IN ASSEMBLY MARCH 25, 2011

AMENDED IN ASSEMBLY JANUARY 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 25

Introduced by Assembly Member Hayashi
(Coauthors: Assembly Members Buchanan, Hill, Ma, Nestande, John A. Pérez, and Smyth)
(Coauthors: Senators Padilla, Steinberg, and Strickland)

December 6, 2010

An act to amend Sections 38131 and 38134 of, and to add Section 49475 to, the Education Code, relating to athletics.

LEGISLATIVE COUNSEL'S DIGEST

AB 25, as amended, Hayashi. Athletics: concussions and head injuries.

(1) Existing law authorizes the governing board of a school district to grant the use of school facilities or grounds as a civic center for specified purposes, including ~~sports league~~ *supervised recreational* activities. Existing law authorizes the governing board of a school district to authorize the use of any school facilities or grounds under its control, when an alternative location is not available, to nonprofit organizations, and clubs or associations organized to promote youth and school activities.

This bill would require any organization that uses school facilities or grounds for ~~youth athletic~~ *supervised recreational* activities pursuant to these provisions to provide a statement of compliance with the policies for the management of concussion and head injury, as specified.

(2) Existing law authorizes school districts to provide specified medical services in connection with athletic events that are under the jurisdiction of, or sponsored or controlled by, school districts. These services include medical or hospital insurance for pupils injured while participating in athletic activities and ambulance service for pupils, instructors, spectators, and other individuals in attendance at athletic activities.

This bill would require a school district that elects to offer athletic programs to immediately remove from a school-sponsored athletic activity *for the remainder of the day* an athlete who is suspected of sustaining a concussion or head injury during that activity~~, and~~. *The bill* would prohibit the return of the athlete to that activity until he or she is evaluated by, and receives written clearance from, a licensed health care provider, as specified. The bill would require, on a yearly basis, a concussion and head injury information sheet to be signed and returned by the athlete and the athlete's parent or guardian prior to the athlete's initiating practice or competition.

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 38131 of the Education Code is amended
2 to read:
3 38131. (a) There is a civic center at each and every public
4 school facility and grounds within the state where the citizens,
5 parent teacher associations, Camp Fire girls, Boy Scout troops,
6 veterans' organizations, farmers' organizations, school-community
7 advisory councils, senior citizens' organizations, clubs, and
8 associations formed for recreational, educational, political,
9 economic, artistic, or moral activities of the public school districts
10 may engage in supervised recreational activities, and where they
11 may meet and discuss, from time to time, as they may desire, any
12 subjects and questions that in their judgment pertain to the
13 educational, political, economic, artistic, and moral interests of
14 the citizens of the communities in which they reside. For purposes
15 of this section, "veterans' organizations" are those groups included
16 within the definition of that term as specified in subdivision (a) of
17 Section 1800 of the Military and Veterans Code.

(b) The governing board of any school district may grant the use of school facilities or grounds as a civic center upon the terms and conditions the board deems proper, subject to the limitations, requirements, and restrictions set forth in this article, for any of the following purposes:

(1) Public, literary, scientific, recreational, educational, or public agency meetings.

(2) The discussion of matters of general or public interest.

(3) The conduct of religious services for temporary periods, on a one-time or renewable basis, by any church or religious organization that has no suitable meeting place for the conduct of the services, provided the governing board charges the church or religious organization using the school facilities or grounds a fee as specified in subdivision (d) of Section 38134.

(4) Child care or day care programs to provide supervision and activities for children of preschool and elementary schoolage.

(5) The administration of examinations for the selection of personnel or the instruction of precinct board members by public agencies.

(6) Supervised recreational activities, including, but not limited to, sports league activities for youths that are arranged for and supervised by entities, including religious organizations or churches, and in which youths may participate regardless of religious belief or denomination, provided that any group using the school facilities or grounds pursuant to this paragraph provides a statement of compliance with the policies for the management of concussion and head injury in athletics set forth in subdivisions (a) and (b) of Section 49475.

(7) A community youth center.

(8) A ceremony, patriotic celebration, or related educational assembly conducted by a veterans' organization.

(9) Other purposes deemed appropriate by the governing board.

SEC. 2. Section 38134 of the Education Code is amended to read:

38134. (a) The governing board of any school district shall authorize the use of any school facilities or grounds under its control, when an alternative location is not available, to nonprofit organizations, and clubs or associations organized to promote youth and school activities, including, but not limited to:

(1) Girl Scouts, Boy Scouts, Camp Fire, Inc.

(2) Parent-teachers' associations.

(3) School-community advisory councils.

This subdivision shall not apply to any group that uses school facilities or grounds for fundraising activities that are not beneficial to youth or public school activities of the district, as determined by the governing board.

(b) Except as otherwise provided by law, the governing board may charge an amount not to exceed its direct costs for use of its school facilities. Each governing board that decides to levy these charges shall first adopt a policy specifying which activities shall be charged an amount not to exceed direct costs.

(c) The governing board of any school district may charge an amount not to exceed its direct costs for use of its school facilities by any entity, including a religious organization or church, that arranges for and supervises sports league activities for youths as described in paragraph (6) of subdivision (b) of Section 38131.

(d) The governing board of any school district that authorizes the use of school facilities or grounds for the purpose specified in paragraph (3) of subdivision (b) of Section 38131 shall charge the church or religious denomination an amount at least equal to the district's direct costs.

(e) In the case of entertainments or meetings where admission fees are charged or contributions are solicited and the net receipts are not expended for the welfare of the pupils of the district or for charitable purposes, a charge shall be levied for the use of school facilities or grounds which charge shall be equal to fair rental value.

(f) If any group activity results in the destruction of school property, the group may be charged for an amount necessary to repay the damages, and further use of facilities may be denied.

(g) As used in this section, "direct costs" to the district for the use of school facilities or grounds means those costs of supplies, utilities, janitorial services, services of any other district employees, and salaries paid school district employees necessitated by the organization's use of the school facilities and grounds of the district.

(h) As used in this section, "fair rental value" means the direct costs to the district, plus the amortized costs of the school facilities or grounds used for the duration of the activity authorized.

(i) Any school district authorizing the use of school facilities or grounds under subdivision (a) shall be liable for any injuries resulting from the negligence of the district in the ownership and maintenance of those facilities or grounds. Any group using school facilities or grounds under subdivision (a) shall be liable for any injuries resulting from the negligence of that group during the use of those facilities or grounds. The district and the group shall each bear the cost of insuring against its respective risks, and shall each bear the costs of defending itself against claims arising from those risks. Any group using school facilities or grounds pursuant to subdivision (a) for the purpose of any ~~youth athletic activity~~ *recreational activities pursuant to paragraph (6) of subdivision (b) of Section 38131* shall provide a statement of compliance with the policies for the management of concussion and head injury set forth in subdivisions (a) and (b) of Section 49475. Notwithstanding any other provision of law, this subdivision shall not be waived. Nothing in this subdivision shall be construed to limit or affect the immunity or liability of a school district under Division 3.6 (commencing with Section 810) of Title 1 of the Government Code for injuries caused by a dangerous condition of public property.

SEC. 3. Section 49475 is added to the Education Code, to read:

49475. If a school district elects to offer an athletic program, the school district shall comply with both of the following:

(a) An athlete who is suspected of sustaining a concussion or head injury in an athletic activity shall be immediately removed from the activity *for the remainder of the day*, and shall not be permitted to return to the activity until he or she is evaluated by a licensed health care provider, trained in the management of concussions, acting within the scope of his or her practice. The athlete shall not be permitted to return to the activity until he or she receives written clearance to return to the activity from that licensed health care provider.

(b) On a yearly basis, a concussion and head injury information sheet shall be signed and returned by the athlete and the athlete's parent or guardian prior to the athlete's initiating practice or competition.

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Board of Chiropractic Examiners
Bill Analysis

Bill Number: AB 72
Author: Assemblyman Mike Eng
Bill Version: Amended April 4, 2011
Subject: Health care coverage: Acupuncture
Sponsors: Council of Acupuncture and Oriental Medicine Association
California Acupuncture Medical Association

STATUS OF BILL: Passed Assembly Health Committee (13-5); referred to Committee on Appropriations.

SUMMARY:

This bill would require every health care service plan and health insurer, unless specifically excluded, to provide coverage for treatment by acupuncturists.

EXISTING LAW:

- Requires health care plans, which are not HMO's or plans which enter exclusively into specialized health care service plan contracts, and health insurers issuing policies on a groupwide basis, to offer acupuncture coverage under the terms and conditions agreed upon by the parties.
- Provides that a plan or insurer is not required to offer that coverage as part of a contract or policy covering public employees.
- Requires disability insurance policies to expressly include acupuncture as a benefit in order for a licensed acupuncturist to be paid under the policy.

THIS BILL WOULD:

- Require every health care service plan, except a plan that enters exclusively into contracts that are accident-only, specified disease, hospital indemnity, Medicare supplement, or specialized heath care service plan contracts, to provide acupuncture coverage under the terms and conditions as may be agreed upon between the health care service plan and the group contract holder.
- Require every health insurer issuing policies on a groupwide basis, except for policies that are accident-only, specified disease, hospital indemnity, Medicare supplement, or specialized health insurance policies, to provide acupuncture coverage under those terms and conditions as may be agreed upon between the group policyholder and the insurer.
- Eliminate the requirement that a disability insurance policy expressly include acupuncture as a benefit in order for an acupuncturist to be paid under the policy.

BACKGROUND:

The author asserts that there are 5 million Asian Americans living in California, accounting for approximately 14 percent of the populations, the second fastest growing group of people in the state behind Latinos. Many of these individuals value

acupuncture as a means of health care treatment. California accounts for one-third of the total U.S. acupuncture workforce with approximately 6,300 acupuncturists licensed and regulated by the California Board of Acupuncture.

Private health care plans and insurers, except for Health Maintenance Organizations, are currently required to offer acupuncture benefits to a group purchaser, with the exception of a health care service plan contract covering employees of a public agency. However, no purchaser is required to accept such coverage, and HMO's are not required to provide or offer such coverage. Because acupuncturists are the providers of choice for several ethnic minorities prominent in this state, denying coverage for acupuncture across the board raises issues of cultural fairness.

This bill would make acupuncture a part of the basic health plan benefit package by ensuring that all health service plans and health insurers cover acupuncture.

FISCAL IMPACT:

The overall fiscal impact is unknown. This bill does not present a fiscal impact upon our Board.

SUPPORT & OPPOSITION:

Support:

1) Council of Acupuncture and Oriental Medical Associations (Co-sponsor)
2) California Acupuncture Medical Association (Co-sponsor)
3) California State Board of Equalization Member Betty Yee
4) Acupuncture and Herbal Care of Los Altos
5) American Traditional Chinese Medicine Society
6) Association of Korean Asian Medicine and Acupuncture of California
7) Best Eastern Acupuncture & Herbal Clinic
8) California Certified Acupuncturists Association
9) California Chinese Engineer Association
10) California State Oriental Medical Association
11) CNA Medical Group, Inc.
12) Emperor Medical Group
13) Golden Life Medical Group
14) National Alliance of Korean Asian Medicine & Acupuncture
15) National Certification Commission for Acupuncture and Oriental Medicine
16) National Guild of Acupuncture and Oriental Medicine
17) Oakmead Acupuncture Center
18) Rejuvenation & Longevity Clinic
19) United California Practitioners of Chinese Medicine
20) Numerous licensed acupuncturists
21) Numerous individuals

Opposition:

1) American Health Insurance Plans
2) Association of California Life & Health Insurance Companies
3) California Association of Health Plans
4) California Association of Health Underwriters
5) California Association of Joint Powers Authorities
6) California Chamber of Commerce
7) Health Net

ARGUMENTS:

Pro: The sponsors argue that acupuncture can be an effective treatment for a number of conditions and is typically more cost effective than surgeries for which it is used as an alternative.

Con:

- This bill is too specialized and should include access to other types of alternative health care treatments for which a professional license or certificate is required, including chiropractic and naturopathic medicine.
- Health care insurance plans argue that it is the wrong time for the Legislature to consider enacting new benefit mandates since, starting in 2014, many Californians can enroll in health coverage through the newly created insurance Exchange established under PPACA.
- Mandate bills, such as this, are counterproductive to industry efforts to make health insurance more affordable and available.

STAFF RECOMMENDED POSITION: Neutral

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 72

Introduced by Assembly Member Eng
(Coauthors: Assembly Members Dickinson, Fong, Ma, Nielsen, and Swanson)
(Coauthor: Senator Huff)

December 21, 2010

An act to amend Section 1373.10 of the Health and Safety Code, and to amend Sections 10127.3 and 10176 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 72, as amended, Eng. Health care coverage: acupuncture.

Existing law requires a health care service plan, that is not a health ~~care~~ maintenance organization or is not a plan that enters exclusively into specialized health care service plan contracts, and a ~~disability~~ *health* insurer issuing policies on a groupwide basis, to offer acupuncture coverage under those terms and conditions as may be agreed upon by the parties~~, with specified exceptions~~. *Existing law provides that a plan or insurer is not required to offer "that Coverage as" part of a contract or policy covering public employees.* A willful violation of the laws regulating health care service plans is a crime.

This bill would instead require every health care service plan, except a plan that enters exclusively into *contracts that are accident-only, specified disease, hospital indemnity, Medicare supplement, or* specialized health care service plan contracts, and every ~~disability~~ *health* insurer issuing policies on a groupwide basis, *except for policies that are accident-only, specified disease, hospital indemnity, Medicare*

supplement, or specialized health insurance policies, to provide acupuncture coverage under those terms and conditions as may be agreed upon by the parties.

Because a violation of this bill's requirements with respect to a health care service plan would be a crime, this bill would impose a state-mandated local program by creating a new crime.

Existing law authorizing a disability insurance policy to provide payment for acupuncture services requires that the disability insurance policy or contract expressly include acupuncture as a benefit in order for a licensed or certified acupuncturist to be paid or reimbursed under the policy for his or her services.

This bill would delete the requirement conditioning the payment and reimbursement of a certified or licensed acupuncturist, for his or her services, on the express inclusion of acupuncture as a benefit in a disability insurance policy or contract. This bill would also make technical and conforming changes.

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 1373.10 of the Health and Safety Code
2 is amended to read:
3 1373.10. (a) On and after January 1, 1985, every health care
4 service plan, that is not a health maintenance organization or is
5 not a plan that enters exclusively into specialized health care
6 service plan contracts, as defined by subdivision (o) of Section
7 1345, that provides coverage for hospital, medical, or surgical
8 expenses, shall offer coverage to group contractholders for
9 expenses incurred as a result of treatment by holders of certificates
10 under Section 4938 of the Business and Professions Code, under
11 terms and conditions as may be agreed upon between the health
12 care service plan and the groupcontract holder.
13 (b) *(1)* On and after January 1, 2012, *except as provided in*
14 *paragraph (2),* every health care service ~~plan, that is not a plan~~

~~that enters exclusively into specialized health care service plan contracts, as defined by subdivision (o) of Section 1345,~~ *plan* that provides coverage for hospital, medical, or surgical expenses, shall provide coverage to group contractholders for expenses incurred as a result of treatment by holders of certificates under Section 4938 of the Business and Professions Code, under terms and conditions as may be agreed upon between the health care service plan and the group contractholder.

(2) This subdivision shall not apply to plan contracts that are accident-only, specified disease, hospital indemnity, Medicare supplement, or specialized health care service plan contracts, as defined in subdivision (o) of Section 1345.

SEC. 2. Section 10127.3 of the Insurance Code is amended to read:

10127.3. (a) On and after January 1, 1985, every insurer issuing group disability insurance that covers hospital, medical, or surgical expenses shall offer coverage for expenses incurred as a result of treatment by holders of certificates under Section 4938 of the Business and Professions Code, under terms and conditions as may be agreed upon between the group policyholder and the insurer.

(b) *(1)* On and after January 1, 2012, *except as provided in paragraph (2),* every insurer issuing group ~~disability insurance that covers hospital, medical, or surgical expenses~~ *health insurance* shall provide coverage for expenses incurred as a result of treatment by holders of certificates under Section 4938 of the Business and Professions Code, under terms and conditions as may be agreed upon between the group policyholder and the insurer.

(2) This subdivision shall not apply to insurance policies that are accident-only, specified disease, hospital indemnity, Medicare supplement insurance, or specialized health insurance policies, as defined in subdivision (c) of Section 106.

SEC. 3. Section 10176 of the Insurance Code is amended to read:

10176. In disability insurance, the policy may provide for payment of medical, surgical, chiropractic, physical therapy, speech pathology, audiology, acupuncture, professional mental health, dental, hospital, or optometric expenses upon a reimbursement basis, or for the exclusion of any of those services, and provision may be made therein for payment of all or a portion of the amount

of charge for these services without requiring that the insured first pay the expenses. The policy shall not prohibit the insured from selecting any psychologist or other person who is the holder of a certificate or license under Section 1000, 1634, 2050, 2472, 2553, 2630, 2948, 3055, or 4938 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, the certificate holder or licensee being expressly authorized by law to perform those services.

Nor shall the policy prohibit the insured, upon referral by a physician and surgeon licensed under Section 2050 of the Business and Professions Code, from selecting any licensed clinical social worker who is the holder of a license issued under Section 4996 of the Business and Professions Code or any occupational therapist as specified in Section 2570.2 of the Business and Professions Code, or any marriage and family therapist who is the holder of a license under Section 4980.50 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, or from selecting any speech-language pathologist or audiologist licensed under Section 2532 of the Business and Professions Code or any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing or any advanced practice registered nurse certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code who participates in expert clinical practice in the specialty of psychiatric-mental health nursing, or any respiratory care practitioner certified pursuant to Chapter 8.3 (commencing with Section 3700) of Division 2 of the Business and Professions Code to perform services deemed necessary by the referring physician, that certificate holder, licensee or otherwise regulated person, being expressly authorized by law to perform the services.

Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training, and experience. For the purposes of this section, "marriage and family therapist" means a licensed marriage and family therapist who has

1 received specific instruction in assessment, diagnosis, prognosis,
2 and counseling, and psychotherapeutic treatment of premarital,
3 marriage, family, and child relationship dysfunctions that is
4 equivalent to the instruction required for licensure on January 1,
5 1981.
6 An individual disability insurance policy, which is issued,
7 renewed, or amended on or after January 1, 1988, and which
8 includes mental health services coverage may not include a lifetime
9 waiver for that coverage with respect to any applicant. The lifetime
10 waiver of coverage provision shall be deemed unenforceable.
11 SEC. 4. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.

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3. Legislative Update

C. AB 127 (Logue) – Regulations: Effective Date

Failed passage in Assembly Business and Professions

Board of Chiropractic Examiners
Bill Analysis

Bill Number: AB 584
Author: Fong
Bill Date: Amended April 6, 2011
Subject: Workers' compensation: utilization review
Sponsor: Author

STATUS OF BILL: Passed by Senate. Pending in the Assembly

SUMMARY: Would require a physician who is conducting utilization review to be licensed in California.

EXISTING LAW:

- Provides for a comprehensive system of workers' compensation benefits for workers injured on the job, including medical benefits.
- Requires medical treatment to be provided in most cases consistent with the American College of Occupational and Environmental Medicine (ACOEM) Guidelines, subject to certain exceptions.
- Authorizes employers or insurers to conduct "utilization review" of proposed medical treatment in order to determine the appropriateness of that treatment and its compliance with the applicable guidelines.
- Specifies that "no person other than a licensed physician who is competent to evaluate the specific clinical issues involved may modify, delay or deny requests" for medical treatment. By regulation, this has been interpreted to mean a physician licensed in any state.
- Defines "physician" as including physicians and surgeons holding an M.D. or D.O. degree, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners licensed by California state law and within the scope of their practice as defined by California state law.

THIS BILL WOULD:

- Require a "physician," as defined in the workers' compensation law, who is conducting utilization review of the proposed treatment for an injured worker, to be licensed in California.
- Make a technical change in the definition of "psychologist" for purposes of the workers' compensation law.
- Conform the law governing disability determinations by the Employment Development Department (EDD) for purposes of the State Disability Insurance Program (SDI) to the changes being made to the workers' compensation law.

BACKGROUND:

Because the California Medical Board deems the performance of utilization review to be the practice of medicine, and because the treatment at issue is to be provided (in most

cases) to a California resident, many people have argued that by operation of the Medical Practice Act only a California-licensed physician can lawfully perform the utilization review function. The Division of Workers' Compensation declined to adopt this interpretation of the law when it adopted regulations to implement the utilization review statute. Because there is logic to this analysis, it must be inferred that the DWC concluded that the new Labor Code provision constituted a statutory exception to the general Medical Practice Act rule. That issue has never been litigated, but many supporters believe there was no intent in the 2004 workers' compensation reforms to modify the general rules governing the practice of medicine. In this light, they argue that this bill is clarifying existing statutory law that has been misconstrued by a regulation.

AB 2969 (Lieber) of 2008 and AB 933 (Fong) of 2010 proposed the same rule being proposed by this bill. Each bill was passed by the Legislature, but vetoed by Governor Schwarzenegger. The veto message for AB 2969 states that "... This bill would require a physician conducting utilization review in the workers' compensation system to be licensed in California. Such a requirement would be inconsistent with how utilization review is conducted in other areas of medicine and is not in line with best practices nationwide. The proponents of this measure have not demonstrated a need for this disparity in treatment."

FISCAL IMPACT: Unknown

SUPPORT & OPPOSITION:

Support:

- California Chiropractic Association
- American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO
- California Nurses Association (CNA)
- California Society of Industrial Medicine and Surgery (CSIMS)
- California Society of Physical Medicine and Rehabilitation (CSPMR)
- Pfizer
- Union of American Physicians and Dentists (UAPD)/AFSCME Local 206
- Western Occupational and Environmental Medical Association

Opposition:

- Acclamation Insurance Management Services (AIMS)
- Allied Managed Care (AMC)
- Alpha Fund
- American Insurance Association (AIA)
- Association of California Insurance Companies (ACIC)
- Association of California Water Agencies (ACWA)
- California Association of Joint Powers Authorities (CAJPA)
- California Chamber of Commerce
- California Coalition on Workers' Compensation (CCWC)

- California Special Districts Association (CSDA)
- California State Association of Counties (CSAC)
- CSAC Excess Insurance Authority (CSAC-EIA)
- Insurance Brokers & Agents of the West (IBA West)
- League of California Cities (LCC)
- Liberty Mutual Insurance Group
- Regional Council of Rural Counties (RCRC)

ARGUMENTS:

Pro:

Proponents of this bill argue that:

- Under existing law, out-of-state utilization review physicians are making inappropriate decisions at least in part because there is no regulatory structure to hold them accountable. This bill is intended to ensure that there is a regulatory oversight body that can discipline a utilization physician in the event the physician violates practice standards.
- Requiring a California license will make it easier for the reviewing doctor and treating doctor to communicate, thereby enhancing the chances of a re-evaluation of any decision to deny or modify treatment requests. According to proponents, many treating physicians have complained about the difficulty of communicating with reviewers three time zones away, and supporters believe this bill will improve the situation (although it should be noted that just because a physician holds a California license, it does not mean s/he is based in California.
- Many utilization review companies already employ only California-licensed physicians, and assert that there is no shortage of these physicians.

Con:

Opponents argue that:

- Utilization review was one of the most important provisions for employers in the 2004 workers' compensation reform and that this bill undermines their ability to effectively conduct utilization review by causing delays and increasing costs.
- Medical treatment issues are not unique to California in law or practice, as the ACOEM Guidelines have been used in many states for far longer than they have been used in California. Thus, there is no reason to think that non-California physicians are less able to review California treatment, and some reason to expect out of state physicians may be more experienced with the ACOEM Guidelines.
- The requirement that the physician be competent to evaluate the specific clinical issues involved in the case is sufficient.
- No specific knowledge is unique to California-licensed physicians, and to limit utilization reviews to these physicians would only have the effect of limiting the number of available reviewing physicians, which would drive up costs.

STAFF RECOMMENDED POSITION: Support

AMENDED IN ASSEMBLY APRIL 6, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 584

Introduced by Assembly Member Fong

February 16, 2011

An act to amend Sections 3209.3 and 4610 of the Labor Code, *and to amend Section 2708 of the Unemployment Insurance Code,* relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 584, as amended, Fong. Workers' compensation: utilization review.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.

Existing law, for purposes of workers' compensation, defines "psychologist" to mean a licensed psychologist with a doctoral degree in psychology, or a doctoral degree deemed equivalent for licensure by the Board of Psychology, as specified, and who either has at least two years of clinical experience in a recognized health setting or has met the standards of the National Register of the Health Service Providers in Psychology.

This bill would require the psychologist to be licensed by California state law.

Existing law requires every employer to establish a medical treatment utilization review process, in compliance with specified requirements, either directly or through its insurer or an entity with which the employer or insurer contracts for these services. Existing law provides that no

person other than a licensed physician who is competent to evaluate the specific clinical issues involved in the medical treatment services, and where these services are within the scope of the physician's practice, requested by the physician may modify, delay, or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve.

This bill would require the physician to be licensed by California state law.

Existing law authorizes the Employment Development Department to administer the disability compensation program. Existing law requires a claim for disability benefits to be supported by a certification of a treating physician or practitioner. Existing law defines physician by reference to the above provision and defines a practitioner as a person duly licensed or certified in California acting within the scope of his or her license or certification who is a dentist, podiatrist, or nurse practitioner, as specified, or, as to normal pregnancy or childbirth, a midwife, nurse midwife, or a nurse practitioner.

This bill would provide that claim for disability benefits may also be supported by a health professional as defined, and as specified.

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 3209.3 of the Labor Code is amended to
2 read:
3 3209.3. (a) "Physician" means physicians and surgeons holding
4 an M.D. or D.O. degree, psychologists, acupuncturists,
5 optometrists, dentists, podiatrists, and chiropractic practitioners
6 licensed by California state law and within the scope of their
7 practice as defined by California state law.
8 (b) "Psychologist" means a psychologist licensed by California
9 state law with a doctoral degree in psychology, or a doctoral degree
10 deemed equivalent for licensure by the Board of Psychology
11 pursuant to Section 2914 of the Business and Professions Code,
12 and who either has at least two years of clinical experience in a
13 recognized health setting or has met the standards of the National
14 Register of the Health Service Providers in Psychology.

(c) When treatment or evaluation for an injury is provided by a psychologist, provision shall be made for appropriate medical collaboration when requested by the employer or the insurer.

(d) "Acupuncturist" means a person who holds an acupuncturist's certificate issued pursuant to Chapter 12 (commencing with Section 4925) of Division 2 of the Business and Professions Code.

(e) Nothing in this section shall be construed to authorize acupuncturists to determine disability for the purposes of Article 3 (commencing with Section 4650) of Chapter 2 of Part 2~~, or under Section 2708 of the Unemployment Insurance Code.~~.

SEC. 2. Section 4610 of the Labor Code is amended to read:

4610. (a) For purposes of this section, "utilization review" means utilization review or utilization management functions that prospectively, retrospectively, or concurrently review and approve, modify, delay, or deny, based in whole or in part on medical necessity to cure and relieve, treatment recommendations by physicians, as defined in Section 3209.3, prior to, retrospectively, or concurrent with the provision of medical treatment services pursuant to Section 4600.

(b) Every employer shall establish a utilization review process in compliance with this section, either directly or through its insurer or an entity with which an employer or insurer contracts for these services.

(c) Each utilization review process shall be governed by written policies and procedures. These policies and procedures shall ensure that decisions based on the medical necessity to cure and relieve of proposed medical treatment services are consistent with the schedule for medical treatment utilization adopted pursuant to Section 5307.27. Prior to adoption of the schedule, these policies and procedures shall be consistent with the recommended standards set forth in the American College of Occupational and Environmental Medicine Occupational Medical Practice Guidelines. These policies and procedures, and a description of the utilization process, shall be filed with the administrative director and shall be disclosed by the employer to employees, physicians, and the public upon request.

(d) If an employer, insurer, or other entity subject to this section requests medical information from a physician in order to determine whether to approve, modify, delay, or deny requests for

authorization, the employer shall request only the information reasonably necessary to make the determination. The employer, insurer, or other entity shall employ or designate a medical director who holds an unrestricted license to practice medicine in this state issued pursuant to Section 2050 or Section 2450 of the Business and Professions Code. The medical director shall ensure that the process by which the employer or other entity reviews and approves, modifies, delays, or denies requests by physicians prior to, retrospectively, or concurrent with the provision of medical treatment services, complies with the requirements of this section. Nothing in this section shall be construed as restricting the existing authority of the Medical Board of California.

(e) No person other than a physician licensed by California state law who is competent to evaluate the specific clinical issues involved in the medical treatment services, and where these services are within the scope of the physician's practice, requested by the physician may modify, delay, or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve.

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

(1) Developed with involvement from actively practicing physicians.

(2) Consistent with the schedule for medical treatment utilization adopted pursuant to Section 5307.27. Prior to adoption of the schedule, these policies and procedures shall be consistent with the recommended standards set forth in the American College of Occupational and Environmental Medicine Occupational Medical Practice Guidelines.

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

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

(5) Available to the public upon request. An employer shall only be required to disclose the criteria or guidelines for the specific procedures or conditions requested. An employer may charge members of the public reasonable copying and postage expenses related to disclosing criteria or guidelines pursuant to this paragraph. Criteria or guidelines may also be made available

through electronic means. No charge shall be required for an employee whose physician's request for medical treatment services is under review.

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

(1) Prospective or concurrent decisions shall be made in a timely fashion that is appropriate for the nature of the employee's condition, not to exceed five working days from the receipt of the information reasonably necessary to make the determination, but in no event more than 14 days from the date of the medical treatment recommendation by the physician. In cases where the review is retrospective, the decision shall be communicated to the individual who received services, or to the individual's designee, within 30 days of receipt of information that is reasonably necessary to make this determination.

(2) When the employee's condition is such that the employee faces an imminent and serious threat to his or her health, including, but not limited to, the potential loss of life, limb, or other major bodily function, or the normal timeframe for the decisionmaking process, as described in paragraph (1), would be detrimental to the employee's life or health or could jeopardize the employee's ability to regain maximum function, decisions to approve, modify, delay, or deny requests by physicians prior to, or concurrent with, the provision of medical treatment services to employees shall be made in a timely fashion that is appropriate for the nature of the employee's condition, but not to exceed 72 hours after the receipt of the information reasonably necessary to make the determination.

(3) (A) Decisions to approve, modify, delay, or deny requests by physicians for authorization prior to, or concurrent with, the provision of medical treatment services to employees shall be communicated to the requesting physician within 24 hours of the decision. Decisions resulting in modification, delay, or denial of all or part of the requested health care service shall be communicated to physicians initially by telephone or facsimile, and to the physician and employee in writing within 24 hours for concurrent review, or within two business days of the decision for prospective review, as prescribed by the administrative director. If the request is not approved in full, disputes shall be resolved in

accordance with Section 4062. If a request to perform spinal surgery is denied, disputes shall be resolved in accordance with subdivision (b) of Section 4062.

(B) In the case of concurrent review, medical care shall not be discontinued until the employee's physician has been notified of the decision and a care plan has been agreed upon by the physician that is appropriate for the medical needs of the employee. Medical care provided during a concurrent review shall be care that is medically necessary to cure and relieve, and an insurer or self-insured employer shall only be liable for those services determined medically necessary to cure and relieve. If the insurer or self-insured employer disputes whether or not one or more services offered concurrently with a utilization review were medically necessary to cure and relieve, the dispute shall be resolved pursuant to Section 4062, except in cases involving recommendations for the performance of spinal surgery, which shall be governed by the provisions of subdivision (b) of Section 4062. Any compromise between the parties that an insurer or self-insured employer believes may result in payment for services that were not medically necessary to cure and relieve shall be reported by the insurer or the self-insured employer to the licensing board of the provider or providers who received the payments, in a manner set forth by the respective board and in such a way as to minimize reporting costs both to the board and to the insurer or self-insured employer, for evaluation as to possible violations of the statutes governing appropriate professional practices. No fees shall be levied upon insurers or self-insured employers making reports required by this section.

(4) Communications regarding decisions to approve requests by physicians shall specify the specific medical treatment service approved. Responses regarding decisions to modify, delay, or deny medical treatment services requested by physicians shall include a clear and concise explanation of the reasons for the employer's decision, a description of the criteria or guidelines used, and the clinical reasons for the decisions regarding medical necessity.

(5) If the employer, insurer, or other entity cannot make a decision within the timeframes specified in paragraph (1) or (2) because the employer or other entity is not in receipt of all of the information reasonably necessary and requested, because the employer requires consultation by an expert reviewer, or because

the employer has asked that an additional examination or test be performed upon the employee that is reasonable and consistent with good medical practice, the employer shall immediately notify the physician and the employee, in writing, that the employer cannot make a decision within the required timeframe, and specify the information requested but not received, the expert reviewer to be consulted, or the additional examinations or tests required. The employer shall also notify the physician and employee of the anticipated date on which a decision may be rendered. Upon receipt of all information reasonably necessary and requested by the employer, the employer shall approve, modify, or deny the request for authorization within the timeframes specified in paragraph (1) or (2).

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

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

SEC. 3. Section 2708 of the Unemployment Insurance Code is amended to read:

2708. (a) (1) In accordance with the director's authorized regulations, and except as provided in subdivision (c) and Sections 2708.1 and 2709, a claimant shall establish medical eligibility for each uninterrupted period of disability by filing a first claim for disability benefits supported by the certificate of a treating physician, *health professional,* or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee. For subsequent periods of uninterrupted disability after the period covered by the initial certificate or any preceding continued claim,

a claimant shall file a continued claim for those benefits supported by the certificate of a treating physician, *health professional,* or practitioner. A certificate filed to establish medical eligibility for the employee's own sickness, injury, or pregnancy shall contain a diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, where no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) A certificate filed to establish medical eligibility of the employee's own sickness, injury, or pregnancy shall also contain a statement of medical facts including secondary diagnoses when applicable, within the physician's, *health professional's,* or practitioner's knowledge, based on a physical examination and a documented medical history of the claimant by the physician, *health professional,* or practitioner, indicating the physician's or practitioner's conclusion as to the claimant's disability, and a statement of the physician's, *health professional's,* or practitioner's opinion as to the expected duration of the disability.

(b) An employee shall be required to file a certificate to establish eligibility when taking leave to care for a family member with a serious health condition. The certificate shall be developed by the department. In order to establish medical eligibility of the serious health condition of the family member that warrants the care of the employee, the information shall be within the physician's, *health professional's,* or practitioner's knowledge and shall be based on a physical examination and documented medical history of the family member and shall contain all of the following:

(1) A diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, where no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) The date, if known, on which the condition commenced.

(3) The probable duration of the condition.

(4) An estimate of the amount of time that the physician, *health professional,* or practitioner believes the employee is needed to care for the child, parent, spouse, or domestic partner.

(5) (A) A statement that the serious health condition warrants the participation of the employee to provide care for his or her child, parent, spouse, or domestic partner.

(B) "Warrants the participation of the employee" includes, but is not limited to, providing psychological comfort, and arranging

"third party" care for the child, parent, spouse, or domestic partner, as well as directly providing, or participating in, the medical care.

(c) The department shall develop a certification form for bonding that is separate and distinct from the certificate required in subdivision (a) for an employee taking leave to bond with a minor child within the first year of the child's birth or placement in connection with foster care or adoption.

(d) The first and any continuing claim of an individual who obtains care and treatment outside this state shall be supported by a certificate of a treating physician, *health professional,* or practitioner duly licensed or certified by the state or foreign country in which the claimant is receiving the care and treatment. If a physician, *health professional,* or practitioner licensed by and practicing in a foreign country is under investigation by the department for filing false claims and the department does not have legal remedies to conduct a criminal investigation or prosecution in that country, the department may suspend the processing of all further certifications until the physician, *health professional,* or practitioner fully cooperates, and continues to cooperate with the investigation. A physician, *health professional's,* or practitioner licensed by and practicing in a foreign country who has been convicted of filing false claims with the department may not file a certificate in support of a claim for disability benefits for a period of five years.

(e) For purposes of this part:

(1) "Health professional" means a psychologist, optometrist, dentist, podiatrist, or chiropractor, provided that he or she is duly licensed on any state or foreign country, or in a territory or possession of a country, in which care and treatment was provided to the employee or the employee's family member with a serious health condition. The care and treatment shall be within the scope of his or her practice, as defined by the laws of the licensing jurisdiction. For purposes of this part, all references to a physician shall be also deemed to apply to a health professional.

~~(1)~~

(2) "Physician" ~~has the same meaning as defined in Section 3209.3 of the Labor Code~~ *means a physician and surgeon holding an M.D. or D.O. degree, provided that he or she is duly licensed in any state or foreign country, or in a territory or possession of any country, in which care and treatment was provided to the*

employee or the employee's family member with a serious health condition. The care and treatment shall be within the scope of his or her practice, as defined by the laws of the licensing jurisdiction.

~~(2)~~

(3) (A) "Practitioner" means a ~~person duly licensed or certified in California acting within the scope of his or her license or certification who is a dentist, podiatrist, or a nurse practitioner, and in the case of a nurse practitioner, after performance of a physical examination by a nurse practitioner and collaboration with a physician and surgeon, or as to normal pregnancy or childbirth, a midwife or nurse midwife, or nurse practitioner~~ *nurse practitioner who is duly licensed or certified in any state or foreign country, or in a territory or possession of any country, in which he or she has provided care and treatment to the employee or the employee's family member with a serious health condition. The care and treatment shall be within the scope of his or her practice, as defined by the laws of the licensing or certifying jurisdiction and the nurse practitioner shall have performed a physical examination and collaborated with a physician and surgeon holding an M.D. or D.O. degree.*

(B) For purposes of normal pregnancy or childbirth, "practitioner" means a midwife, nurse midwife, or a nurse practitioner operating within the scope of his or her practice, as determined by the laws of the licensing or certifying jurisdiction, who is duly licensed or certified in any state or foreign country, or a territory or possession of a country, in which he or she has provided care to the employee or the employee's family member with a serious health condition.

(f) For a claimant who is hospitalized in or under the authority of a county hospital in this state, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart, and the certificate is signed by the hospital's registrar. For a claimant hospitalized in or under the care of a medical facility of the United States government, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart, and the certificate is signed by a medical officer of the facility duly authorized to do so.

(g) ~~Nothing in this~~ *This* section shall *not* be construed to preclude the department from requesting additional medical evidence to supplement the first or any continued claim if the additional evidence can be procured without additional cost to the claimant. The department may require that the additional evidence include any or all of the following:

(1) Identification of diagnoses.

(2) Identification of symptoms.

(3) A statement setting forth the facts of the claimant's disability. The statement shall be completed by any of the following individuals:

(A) The physician, *health professional,* or practitioner treating the claimant.

(B) The registrar, authorized medical officer, or other duly authorized official of the hospital or health facility treating the claimant.

(C) An examining physician or other representative of the department.

O

3. Legislative Update

E. AB 783 (Hayashi) – Professional Corporations: Licensed Physical Therapists

Bill Analysis will be handed out at Committee Meeting

AMENDED IN ASSEMBLY APRIL 7, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 783

Introduced by Assembly Member Hayashi

February 17, 2011

An act to amend Section 2406 of the Business and Professions Code, and to amend Section 13401.5 of the Corporations Code, relating to ~~professional corporations, and declaring the urgency thereof, to take effect immediately.~~ *professional corporations.*

LEGISLATIVE COUNSEL'S DIGEST

AB 783, as amended, Hayashi. Professional corporations: licensed physical *therapists and occupational* therapists.

Existing law regulating professional corporations provides that certain healing arts practitioners may be shareholders, officers, directors, or professional employees of a medical corporation ~~or a~~, podiatric medical corporation, *or a chiropractic corporation,* subject to certain limitations.

This bill would add licensed physical therapists *and licensed occupational therapists* to the list of healing arts practitioners who may be shareholders, officers, directors, or professional employees of those corporations. The bill would also make conforming changes to a related provision.

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: ~~2/3~~ *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 2406 of the Business and Professions
2 Code is amended to read:
3 2406. A medical corporation or podiatry corporation is a
4 corporation that is authorized to render professional services, as
5 defined in Sections 13401 and 13401.5 of the Corporations Code,
6 so long as that corporation and its shareholders, officers, directors,
7 and employees rendering professional services who are physicians
8 and surgeons, psychologists, registered nurses, optometrists,
9 podiatrists, chiropractors, acupuncturists, naturopathic doctors,
10 physical therapists, or, in the case of a medical corporation only,
11 physician assistants, marriage and family therapists, or clinical
12 social workers are in compliance with the Moscone-Knox
13 Professional Corporation Act, the provisions of this article and all
14 other statutes and regulations now or hereafter enacted or adopted
15 pertaining to the corporation and the conduct of its affairs.
16 With respect to a medical corporation or podiatry corporation,
17 the governmental agency referred to in the Moscone-Knox
18 Professional Corporation Act is the board.
19 SEC. 2. Section 13401.5 of the Corporations Code is amended
20 to read:
21 13401.5. Notwithstanding subdivision (d) of Section 13401
22 and any other provision of law, the following licensed persons
23 may be shareholders, officers, directors, or professional employees
24 of the professional corporations designated in this section so long
25 as the sum of all shares owned by those licensed persons does not
26 exceed 49 percent of the total number of shares of the professional
27 corporation so designated herein, and so long as the number of
28 those licensed persons owning shares in the professional
29 corporation so designated herein does not exceed the number of
30 persons licensed by the governmental agency regulating the
31 designated professional corporation:
32 (a) Medical corporation.
33 (1) Licensed doctors of podiatric medicine.
34 (2) Licensed psychologists.
35 (3) Registered nurses.
36 (4) Licensed optometrists.
37 (5) Licensed marriage and family therapists.
38 (6) Licensed clinical social workers.

(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(10) Naturopathic doctors.
(11) Licensed physical therapists.
(12) Licensed occupational therapists.
(b) Podiatric medical corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(8) Licensed physical therapists.
(9) Licensed occupational therapists.
(c) Psychological corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed chiropractors.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.
(d) Speech-language pathology corporation.
(1) Licensed audiologists.
(e) Audiology corporation.
(1) Licensed speech-language pathologists.
(f) Nursing corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.

1 (10) Naturopathic doctors.
2 (g) Marriage and family therapy corporation.
3 (1) Licensed physicians and surgeons.
4 (2) Licensed psychologists.
5 (3) Licensed clinical social workers.
6 (4) Registered nurses.
7 (5) Licensed chiropractors.
8 (6) Licensed acupuncturists.
9 (7) Naturopathic doctors.
10 (h) Licensed clinical social worker corporation.
11 (1) Licensed physicians and surgeons.
12 (2) Licensed psychologists.
13 (3) Licensed marriage and family therapists.
14 (4) Registered nurses.
15 (5) Licensed chiropractors.
16 (6) Licensed acupuncturists.
17 (7) Naturopathic doctors.
18 (i) Physician assistants corporation.
19 (1) Licensed physicians and surgeons.
20 (2) Registered nurses.
21 (3) Licensed acupuncturists.
22 (4) Naturopathic doctors.
23 (j) Optometric corporation.
24 (1) Licensed physicians and surgeons.
25 (2) Licensed doctors of podiatric medicine.
26 (3) Licensed psychologists.
27 (4) Registered nurses.
28 (5) Licensed chiropractors.
29 (6) Licensed acupuncturists.
30 (7) Naturopathic doctors.
31 (k) Chiropractic corporation.
32 (1) Licensed physicians and surgeons.
33 (2) Licensed doctors of podiatric medicine.
34 (3) Licensed psychologists.
35 (4) Registered nurses.
36 (5) Licensed optometrists.
37 (6) Licensed marriage and family therapists.
38 (7) Licensed clinical social workers.
39 (8) Licensed acupuncturists.
40 (9) Naturopathic doctors.

(10) Licensed physical therapists.
(11) Licensed occupational therapists.
(*l*) Acupuncture corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed physician assistants.
(9) Licensed chiropractors.
(10) Naturopathic doctors.
(m) Naturopathic doctor corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed physician assistants.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Licensed physical therapists.
(8) Licensed doctors of podiatric medicine.
(9) Licensed marriage, family, and child counselors.
(10) Licensed clinical social workers.
(11) Licensed optometrists.
(n) Dental corporation.
(1) Licensed physicians and surgeons.
(2) Dental assistants.
(3) Registered dental assistants.
(4) Registered dental assistants in extended functions.
(5) Registered dental hygienists.
(6) Registered dental hygienists in extended functions.
(7) Registered dental hygienists in alternative practice.

~~SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:~~

~~In order to authorize licensed physical therapists to be shareholders, officers, directors, or professional employees of~~

1 ~~medical corporations and podiatric medical corporations as soon~~
2 ~~as possible, it is necessary that this act take effect immediately.~~

O

3. Legislative Update

F. SB 206 (Kehoe) – Appropriations

Bill Analysis will be handed out at Committee Meeting

AMENDED IN SENATE MARCH 15, 2011

SENATE BILL No. 206

Introduced by Senator Kehoe

February 8, 2011

An act relating to the payment of claims against the state, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 206, as amended, Kehoe. Claim against the state: appropriation.

~~Existing law requires the Attorney General to pay certain judgments against the state.~~

~~This bill would appropriate an unspecified amount from the General Fund to the Attorney General to pay a specific judgment.~~

Existing law establishes the State Board of Chiropractic Examiners' Fund for use by the State Board of Chiropractic Examiners for all necessary and proper expenses carried out by the board. Existing law authorizes a procedure for the payment of claims against the state.

This bill would appropriate $600,000 from the State Board of Chiropractic Examiners' Fund to the State Board of Chiropractic Examiners to pay for a specified settlement.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ⅔. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

1 ~~SECTION 1. The sum of ____ ($____) is hereby appropriated~~
2 ~~from the General Fund to the Attorney General to pay for the~~
3 ~~judgment in the case of ____.~~
4 ~~Any funds appropriated in excess of the amounts actually~~
5 ~~required for the payment of this judgment shall revert to the~~
6 ~~General Fund on June 30 of the fiscal year in which the final~~
7 ~~payment is made.~~
8 *SECTION 1. The sum of six hundred thousand dollars*
9 *($600,000) is hereby appropriated from the State Board of*
10 *Chiropractic Examiners' Fund to the State Board of Chiropractic*
11 *Examiners to pay for the settlement in the case of Catherine Hayes*
12 *v. Board of Chiropractic Examiners (Sacramento County Superior*
13 *Court, Case No. 34-2008-0000647). Any funds appropriated in*
14 *excess of the amounts required for the payment of this claim shall*
15 *revert to the State Board of Chiropractic Examiners' Fund on June*
16 *30 of the fiscal year in which the final payment is made.*
17 SEC. 2. This act is an urgency statute necessary for the
18 immediate preservation of the public peace, health, or safety within
19 the meaning of Article IV of the Constitution and shall go into
20 immediate effect. The facts constituting the necessity are:
21 In order to pay judgment and settlement claims against the state
22 and end hardship to claimants as quickly as possible, it is necessary
23 for this act to take effect immediately.

O

SENATE BILL No. 352

Introduced by Senator Huff

February 15, 2011

An act to amend Section 650.3 of the Business and Professions Code, relating to chiropractors.

LEGISLATIVE COUNSEL'S DIGEST

SB 352, as introduced, Huff. Chiropractors.

Existing law provides for the licensure and regulation of chiropractors by the State Board of Chiropractic Examiners. Existing law authorizes a person to participate in or operate a group advertising and referral service for chiropractors under specified circumstances.

This bill would make nonsubstantive, technical changes to those provisions.

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 650.3 of the Business and Professions
2 Code is amended to read:
3 650.3. (a) Notwithstanding ~~the provisions of~~ Section 650 or
4 any other provision of law, it shall not be unlawful for a person
5 licensed pursuant to the Chiropractic Act, or any other person, to
6 participate in or operate a group advertising and referral service
7 for chiropractors if all of the following conditions are met:
8 (1) Patient referrals by the service are the result of patient
9 initiated responses to service advertising.
10 (2) The service advertises, if at all, in conformity with Section
11 651.

(3) The service does not employ a solicitor.

(4) The service does not impose a fee on the member chiropractors that is dependent upon the number of referrals or amount of professional fees paid by the patient to the chiropractor.

(5) Participating chiropractors charge no more than their usual and customary fees to any patient referred.

(6) The service registers with the State Board of Chiropractic Examiners, providing its name and address.

(7) The service files with the State Board of Chiropractic Examiners a copy of the standard form contract that regulates its relationship with member chiropractors, which contract shall be confidential and not open to public inspection.

(8) If more than 50 percent of its referrals are made to one individual, association, partnership, corporation, or group of three or more chiropractors, the service discloses that fact in all public communications, including, but not limited to, communication by means of television, radio, motion picture, newspaper, book, or list or directory of healing arts practitioners.

(b) The State Board of Chiropractic Examiners may adopt regulations necessary to enforce and administer this section.

(c) The State Board of Chiropractic Examiners or 10 individual licensed chiropractors may petition the superior court of any county for the issuance of an injunction restraining any conduct ~~which~~ *that* constitutes a violation of this section.

(d) It is unlawful and shall constitute a misdemeanor for a person to operate a group advertising and referral service for chiropractors without providing its name and address to the State Board of Chiropractic Examiners.

(e) It is the intent of the Legislature in enacting this section not to otherwise affect the prohibitions provided in Section 650. The Legislature intends to allow the pooling of resources by chiropractors for the purpose of advertising.

(f) This section shall not be construed in any manner ~~which~~ *that* would authorize a service to engage in the practice of chiropractic.

O

Board of Chiropractic Examiners
Bill Analysis

Bill Number: SB 366
Author: Ron Calderon and Fran Pavley
Bill Version: February 15, 2011
Subject: Regulations: Agency Review
Sponsor: None

STATUS OF BILL: Pending in Senate Committee on Governmental Organization, hearing set for May 10, 2011.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would set forth three provisions relating to the regulatory and permitting process. First, this bill would direct state agencies to review their own regulations and identify any duplicative, overlapping, inconsistent, or outdated provisions, to notice and hold a public hearing and receive comments, and to eliminate those provisions identified via adoption of an emergency regulation within 180 days of the effective date of this chapter. This bill would also direct agency secretaries to conduct a similar review process of conflicting regulations adopted by the various departments or boards within that agency's jurisdiction.

Second, this bill would establish a Streamlined Permit Review Team comprised of agencies and departments involved in the permitting process. This team would be charged with the duty to collaborate to make the permit application process more efficient and to determine the completeness of an application within a specified timeframe.

Lastly, this bill would affirm the Legislature's intent to ensure state agencies focus the use of public dollars more efficiently while achieving equal or improved economic or public benefits.

PURPOSE OF THE BILL:

This bill adds Chapter 3.6 commencing with Section 11366 of the Government Code to declare the necessity of this bill's purpose to, within 180 days of the effective date of this chapter, require all state agencies, except those described in Section 11340.9 to identify, review publicly, and eliminate overlapping, inconsistent, duplicative, or out-of-date regulations through the emergency regulation process for efficiency. This bill further requires state agencies to report their proposed revisions to regulations to the appropriate policy and fiscal committees of each Legislative house at least 60 days prior to a noticed public hearing and at least 60 days prior to the proposed adoption, amendment or repeal of regulations for purposes of a Legislative review and hearings on the revisions. This bill further requires state agencies to submit a compliance report to the Governor and the Legislature on their regulatory actions required in this chapter.

Within 60 days of the effective date of this chapter, this bill requires agencies specified in Section 12800 to review, identify and notify the entities under their jurisdiction of overlapping, duplicative, or inconsistent regulations. At least 60 days prior to a noticed public hearing departments, boards or commissions will be required to notify their agency of proposed adoption, amendment or repeal of regulations, thereby giving their agency the opportunity to review and make recommendations on the regulations regarding any duplication, overlapping, or inconsistent regulation of another department, board or commission within the agency causing the entities to provide notification and work together on regulations for improved efficiency.

This bill adds Section 11366.5 to the Government Code to repeal this chapter after January 1, 2013 unless another statute is enacted prior to this date that deletes or extends this date.

Lastly, this bill adds Article 5.5 commencing with Section 65958 to the Government Code to declare the necessity for enacting this bill is to provide a more efficient and streamlined process for state permit applicants so that the creation of jobs will occur in a timelier manner. This bill orders the formation of the Streamlined Permit Review Team, consisting of the Secretary of Business, Transportation and Housing; the Secretary for Environmental Protection; and the Secretary of the Natural Resources Agency, whose duty shall be to convene in a public hearing with permitting agencies to coordinate actions on the permitting process to expedite the creation of new jobs. The permitting process will require permitting agencies to determine completeness of an application within 30 days of receipt of the application for a permit and deems an application which is not reviewed within the timeframe specified in this chapter approved. Section 65958.7 is added to the Government Code to repeal the reporting requirements of this section, with the exception of subdivision (b) on January 1, 2013.
This section requires the Streamlined Permit Review Team to report to the Governor and the Legislature on or before March 1, 2014 regarding the number and types of development projects for which the permitting process was used.

BACKGROUND:

Currently, the Administrative Procedures Act (APA) requires agencies and the Office of Administrative Law to review regulations to ensure their consistency with law and consider their impact on the state's economy and businesses. However, the APA does not require agencies to individually review their regulations to identify overlapping, inconsistent, duplicative, or out-of-date regulations that may exist.

In an effort to address the fiscal emergency declared and reaffirmed by Governor Brown on January 20, 2011, the authors of this bill propose to assist applicants for state permits by streamlining the process which will allow permits to be issued in a more efficient manner and will help the economy by allowing businesses with the proper permits to create jobs.

FISCAL IMPACT:

None

SUPPORT & OPPOSITION:

Support: None on record.

Opposition: None on record.

ARGUMENTS:

Pro:

- The authors assert that this bill would cause state agencies to eliminate existing regulations that are duplicative, overlapping, redundant or out-of-date to simplify the CCR's and provide an opportunity for those affected by the regulations to comment directly to those agencies promulgating regulations on any proposed additions, deletions or changes to the regulations.
- The authors also claim that this bill would create a more efficient process for the review and issuance of state permits to businesses, thereby allowing businesses to operate sooner causing a reduction in the state's unemployment numbers.

Con:

- State entities have suffered tremendous losses during this fiscal crisis, including significant cuts in positions, as well as an inability to fill vacant positions due to the hiring freeze. These cuts have forced state employees to compensate by increasing their workload to meet their mandates. This bill would add to the workload strain that state entities face by requiring them to continue to meet their mandates in addition to using valuable staff time to review all of their existing regulations for compliance with this bill and engage in a public rulemaking process.
- The rulemaking process can be extremely time consuming and costly when staff time and facility costs for public hearings are factored in.
- At a time when state entities are struggling to use their limited time and resources to continue to serve the needs of the public, this bill could potentially further reduce the agency's ability to serve the public by mandating that their limited resources be used to review regulations which may not be adversely affecting the public at this point in time.
- It is not clear how state entities will determine whether they have regulations that duplicate, overlap or conflict with other licensing or regulatory departments, particularly if they are not under the jurisdiction of an agency.

RECOMMENDED POSITION: Oppose

SENATE BILL No. 366

Introduced by Senators Calderon and Pavley

February 15, 2011

An act to add and repeal Article 5.5 (commencing with Section 65958) of Chapter 4.5 of Division 1 of Title 1 of, and to add and repeal Chapter 3.6 (commencing with Section 11366) of Part 1 of Division 3 of Title 2 of, the Government Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 366, as introduced, Calderon. Regulations: agency review.

(1) Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Existing law creates the State and Consumer Services; Business, Transportation and Housing; California Emergency Management; California Environmental Protection; California Health and Human Services; Labor and Workforce Development; Natural Resources; and Youth and Adult Correctional Agencies in state government with various duties to oversee the actions of state departments that are within those agencies.

This bill would, until January 1, 2013, require each state agency, defined, to mean every state office, officer, department, division, bureau, board, and commission, except the California State University within 180 days of the effective date of the bill, to undertake specified actions in regards to the regulations that have been adopted by the state agency, including, among others, identifying any regulations that are duplicative, overlapping, inconsistent, or out of date, and adopting, amending, or repealing regulations to reconcile or eliminate any duplication, overlap, inconsistency, or out-of-date provisions, after conducting a publicly

noticed hearing, as specified, and using procedures for adopting emergency regulations.

The bill would also require each of the overseeing agencies listed above, until January 1, 2013, and within 60 days of the effective date of the bill, to notify any state department, board, or commission within that state agency of any regulations adopted by those entities that the agency has determined may be duplicative, overlapping, or inconsistent with a regulation adopted by another state department, board, or commission within the agency. The bill would also require a state department, board, or commission within an agency to notify that state agency of revisions to regulations that the entity proposes to make at least 60 days prior to the required noticed public hearing and adoption of the emergency regulation, as specified.

(2) Existing law sets forth generally the procedures for the review and approval of permits for development projects in the state.

This bill would, until January 1, 2013, establish the Streamlined Permit Review Team in state government, consisting of the Secretary of Business, Transportation and Housing, the Secretary for Environmental Protection, and the Secretary of the Natural Resources Agency. The bill would require the team, upon the request of a permit applicant, to convene permitting agencies, as defined, to perform various activities in making the application process more efficient. The bill would require the permitting agencies to determine the completeness of an application complete and act upon the application within specified time periods, subject to certain conditions. This bill would require the team, on or before March 1, 2014, to submit a report to the Governor and to the Legislature with prescribed information relating to the permitting activities of the team.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.

This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ⅔. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Chapter 3.6 (commencing with Section 11366)
2 is added to Part 1 of Division 3 of Title 2 of the Government Code,
3 to read:
4
5 CHAPTER 3.6. REGULATORY REFORM
6
7 Article 1. Findings and Declarations
8
9 11366. The Legislature finds and declares all of the following:
10 (a) The Administrative Procedure Act (Chapter 3.5 (commencing
11 with Section 11340)) requires agencies and the Office of
12 Administrative Law to review regulations to ensure their
13 consistency with law and to consider impacts on the state's
14 economy and businesses, including small businesses.
15 (b) However, the act does not require agencies to individually
16 review their regulations to identify overlapping, inconsistent,
17 duplicative, or out-of-date regulations that may exist.
18 (c) At a time when the state's economy is struggling,
19 unemployment is at historic levels, and state government is in
20 historic fiscal distress, state agencies should identify, review
21 publicly, and eliminate overlapping, inconsistent, duplicative, or
22 out-of-date regulations, both to ensure they more efficiently
23 implement and enforce laws and to reduce unnecessary and
24 outdated rules and regulations.
25
26 Article 2. Definitions
27
28 11366.1. For the purpose of this chapter, the following
29 definitions shall apply:
30 (a) "State agency" means a state agency, as defined in Section
31 11000, except those state agencies or activities described in Section
32 11340.9.

(b) "Regulation" has the same meaning as provided in Section 11342.600.

Article 3. State Agency Duties

11366.2. Within 180 days of the effective date of this chapter, each state agency shall do all of the following:

(a) Review all provisions of the California Code of Regulations applicable to, or adopted by, that agency.

(b) Identify any regulations that are duplicative, overlapping, inconsistent, or out of date.

(c) Adopt, amend, or repeal regulations to reconcile or eliminate any duplication, overlap, inconsistencies, or out of date provisions.

(d) Hold at least one noticed public hearing, which shall also be noticed on the Internet Web site of the agency, for the purposes of accepting public comment on proposed revisions to its regulations.

(e) Notify the appropriate policy and fiscal committees of each house of the Legislature of the revisions to regulations that the state agency proposes to make at least 60 days prior to a noticed public hearing pursuant to subdivision (d) and at least 60 days prior to the proposed adoption, amendment, or repeal of the regulations pursuant to subdivision (f), for the purpose of allowing those committees to review, and hold hearings on, the proposed revisions to the regulations.

(f) Adopt as emergency regulations, consistent with Section 11346.1, those changes, as provided for in subdivision (c), to a regulation identified by the agency as duplicative, overlapping, inconsistent, or out of date.

(g) Report to the Governor and the Legislature on its compliance with this chapter, including the number and content of regulations it identifies as duplicative, overlapping, inconsistent, or out of date, and the actions by the agency to address those regulations.

11366.3. (a) Within 60 days of the effective date of this chapter, each agency included in Section 12800 shall notify a department, board, or commission within that agency of any existing regulations adopted by that department, board, or commission that the agency has determined may be duplicative, overlapping, or inconsistent with a regulation adopted by another department, board, or commission within that agency.

(b) A department, board, or commission within an agency shall notify that agency of revisions to regulations that it proposes to make at least 60 days prior to a noticed public hearing pursuant to subdivision (d) of Section 11366.2 and at least 60 days prior to adoption, amendment, or repeal of the regulations pursuant to subdivision (f) of Section 11366.2. The agency shall review the proposed regulations and make recommendations to the department, board, or commission within 30 days of receiving the notification regarding any duplicative, overlapping, or inconsistent regulation of another department, board or commission within the agency.

11366.4. A state agency included in Section 12800 shall notify another state agency of any existing regulations adopted by that state agency that may duplicate, overlap, or be inconsistent with the other state agency's regulations.

11366.45. Nothing in this chapter shall be construed to weaken or undermine in any manner any human health, public or worker rights, public welfare, environmental, or other protection established under statute. Nothing in this chapter shall be construed to effect the authority or requirement for an agency to adopt regulations as provided by statute. Rather, it is the intent of the Legislature to ensure state agencies focus more efficiently and directly on their duties as prescribed by law so as to use scarce public dollars more efficiently to implement the law, while achieving equal or improved economic and public benefits.

Article 4. Chapter Repeal

11366.5. This chapter shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 2. Article 5.5 (commencing with Section 65958) is added to Chapter 4.5 of Division 1 of Title 7 of the Government Code, to read:

Article 5.5. Streamlined Permit Review

65958. The Legislature finds and declares as follows:

(a) It is in the state's interest to assist those applicants needing state permits or approvals by providing a consolidated, unified, and coordinated state permit process whereby, upon request by a permit applicant, agencies with lead and ancillary responsibilities can be convened in a single process to coordinate and expedite permit reviews and disposition of those permits.

(b) Bipartisan legislation enacted in 2006 applicable to emergency flood protection levee repairs, and in 2009 relating to "shovel ready" transportation projects, ensured that there was coordination and sequencing of approvals to reduce or eliminate delays and to ensure that all key regulatory approvals were made.

(c) It is the intent of the Legislature in enacting this article to ensure that state agencies focus more directly on their duties as prescribed by law so as to use scarce public dollars to more efficiently implement the law, while achieving the same or greater economic and public benefits, and to help ensure that state government is working in a coordinated fashion to help get businesses that create jobs a response so that they can proceed with that job creation.

65958.2. (a) As used in this article, the term "Permitting agency" means any agency, department, office, board, or commission within the Business, Transportation and Housing Agency, the California Environmental Protection Agency, or the Natural Resources Agency.

(b) The definitions contained in Article 2 (commencing with Section 65925) shall also govern this article.

65958.5. (a) The Streamlined Permit Review Team is created in state government, consisting of the following officials, one of whom shall be designated chairperson by the Governor:

(1) The Secretary of Business, Transportation and Housing.

(2) The Secretary for Environmental Protection.

(3) The Secretary of the Natural Resources Agency.

(b) Upon the request of a permit applicant, the team shall convene, in a duly noticed public hearing, those permitting agencies with jurisdiction over the project in question to coordinate actions on permits, help reduce or eliminate unnecessary inconsistencies, delay, duplication, overlap, or paperwork associated with issuance of multiple permits, and assist in ensuring that permitting agencies and the public have the information necessary to deem permit

applications complete and to act upon permits at the earliest feasible date in accordance with the requirements of this chapter.

(c) A permitting agency for a project, no later than 30 days after receiving an application for a permit, shall determine the completeness of an application in accordance with the requirements of this chapter or request additional information necessary to determine the completeness of an application. The project applicant shall provide to the permitting agency the requested additional information.

(d) (1) A permitting agency for a project shall act on a permit as soon as reasonably possible, but in any case no later than the time permitted in accordance with the requirements of this chapter.

(2) If a permitting agency fails to act on a complete permit application for a project as soon as reasonably possibly, but in any case no later than the time permitted in accordance with the requirements of this chapter, the failure to act shall be deemed approval of the permit application for the project in accordance with the requirements of this chapter. However, the permitting agency shall provide public notice when the project is approved pursuant to this paragraph, in the same form and manner as it would provide that notice under existing law.

(e) The time limits specified in this section may be extended upon mutual written agreement of the lead agency and a permitting agency.

(f) The time limits specified in this section shall not apply if federal statutes, regulations, or delegation agreements establish time schedules that differ from those time limits, and failure to comply with federal time schedules could affect the disposition of the project.

(g) Except as otherwise provided by this section, this section does not affect in any manner the requirements, duties, or authority of a permitting agency established by statute.

(h) Nothing in this chapter shall be construed to effect the authority or requirement for an agency to adopt regulations as provided by statute.

65958.7. (a) Except for the reporting requirement described in subdivision (b), the provisions of this article shall become inoperative on January 1, 2013.

(b) On or before March 1, 2014, the Streamlined Permit Review Team shall report to the Governor and to the Legislature on the

number and types of development projects for which the process established by this article was used, and the disposition of those development projects.

(c)This article shall remain in effect only until March 15, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before March 15, 2014, deletes or extends that date.

SEC. 3. This act addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation on January 20, 2011, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to more efficiently focus the efforts of state agencies on implementing the law and to reduce or eliminate superfluous or unnecessary regulations that are not authorized by law, in order to allow state agencies to amend or repeal duplicative, overlapping, inconsistent, or out of date regulations from the California Code of Regulations and to streamline the state permit review process for development projects at the earliest possible time, it is necessary that this bill take effect immediately.

O

3. Legislative Update

I. SB 396 (Huff) – Regulations: Review Process

Discussion Only

T (916) 263-5355
F (916) 263-5369
TT/TOD (800) 735-2929
Consumer Complaint Hotline
(866) 543-1311

Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
www.chiro.ca.gov

3. Legislative Update

J. SB 400 (Dutton) – Regulations: Impact on Businesses

Discussion Only

3. Legislative Update

K. SB 401 (Fuller) – Regulations: Repeal Provisions

Discussion Only

Board of Chiropractic Examiners
Bill Analysis

Bill Number: SB 541
Author: Senator Curren Price
Bill Version: Amended April 13, 2011
Subject: Contractors' State License Regulatory boards: expert consultants
Sponsor: Contractors State License Board
Medical Board of California

STATUS OF BILL: Passed Senate Committee on B. P. & E.D (8-0), referred to Committee on Appropriations.

SUMMARY:

This bill would allow boards and bureaus within the Department of Consumer Affairs, the State Board of Chiropractic Examiners and the Osteopathic Medical Board of California to utilize expert reviewers, without going through a formal contracting process.

EXISTING LAW:

- Provides for the licensure and regulation of various professions and businesses within the Department of Consumer Affairs
- The Chiropractic Initiative Act of California provides for the licensure and regulation of the chiropractors.
- The Osteopathic Act provides for the licensure and regulation of osteopathic physicians and surgeons.
- Requires persons who apply for licensure under the various licensing acts to pass an examination approved by the board/bureau and investigate complaints and violations of the law, as well as take disciplinary action against licensees for violations of the law.
- Establishes standards relating to personal service contracts in state employment.

THIS BILL WOULD:

- Authorize these boards and bureaus to enter into an agreement with an expert consultant, subject to the standards regarding personal service contracts, to provide enforcement and examination assistance.
- Require each board/bureau to establish policies and procedures for the selection of these consultants.
- Declare that it is an urgency statute and is to take effect immediately.

BACKGROUND:

According to the sponsors, Public Contract Code requires state agencies to go through the formal contracting process for utilization of consultants. The boards and bureaus named in this bill utilize consultants for critical components of their regulatory authority including enforcement and examinations. Going through the formal contracting process would create a backlog for the boards and bureaus which would significantly impact the time required to complete the initial review and investigate complaints filed with

boards/bureaus. This process would severely limit a board's/bureau's ability to take disciplinary actions against licensees and the delay imposed by this process could also result in losing cases due to expiration of the statute of limitations.

FISCAL IMPACT: This bill will have a positive fiscal impact upon our Board, if any. The number of cases referred to experts and the amount paid to experts would not change as a result of this bill. However, if this bill does not take effect, the board will have to start entering into formal contracts with the 35 consultants it utilizes. Some of these consultants are only utilized on rare occasion due to their geographical location and/or area of expertise. Nonetheless, the board would have to spend significant time and resources preparing and executing a formal contract. If this bill is not enacted, the board will likely need additional funding and staff to absorb the increased workload.

SUPPORT & OPPOSITION:

Support:

Contractors State License Board
Medical Board of California
Court Reporters Board of California

Opposition:

None on record

ARGUMENTS:

Pro:

The proponents argue that:

- This bill will enable licensing and regulatory boards/bureaus to continue enlisting the expertise of their licensees to assist with evaluation of investigation documents, applications, educational and examination materials on an as-needed basis, primarily based on an hourly fee for services rendered.
- This bill will exempt specific boards and bureaus from formal contract requirements, which are laborious, cumbersome and time-consuming to execute.
- This bill will protect consumers by reducing the delays in enforcement cases by allowing these boards/bureaus to enter into an agreement directly with the consultant.
- Consultants are utilized for various purposes which depend greatly upon their area of expertise and the types of enforcement cases; therefore, it is difficult for a board/bureau to estimate a dollar amount for execution of a contract for each consultant.
- It is difficult to anticipate the extent to which the board will utilize an individual expert, and, therefore, the contract amount for each expert may not meet the board's needs. Under current law, the board will need to enter into a contract for a specified dollar amount with each expert without yet knowing the frequency with which we'll need the expert or the difficulty of the cases that will be referred to the expert. If the board underestimates the contract amount, we will have to cease utilizing an individual expert or go through the time-consuming process of amending the contract. If the board overestimates the contract, we will be encumbering funds that are needed for other essential board functions.

Con:

None

STAFF RECOMMENDED POSITION: Support

AMENDED IN SENATE APRIL 13, 2011

SENATE BILL No. 541

Introduced by Senator Price

February 17, 2011

An act to ~~amend Sections 7000.5 and 7011 of~~ *add Section 40 to* the Business and Professions Code, relating to ~~contractors~~ *profession and vocations, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 541, as amended, Price. Contractors' State License ~~Board.~~ *Regulatory boards: expert consultants.*

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law, the Chiropractic Act, enacted by initiative, provides for the licensure and regulation of chiropractors by the State Board of Chiropractic Examiners. Existing law, the Osteopathic Act, requires the Osteopathic Medical Board of California to regulate osteopathic physicians and surgeons. Existing law generally requires applicants for a license to pass an examination and authorizes boards to take disciplinary action against licensees for violations of law. Existing law establishes standards relating to personal service contracts in state employment.

This bill would authorize these boards to enter into an agreement with an expert consultant, subject to the standards regarding personal service contracts described above, to provide enforcement and examination assistance. The bill would require each board to establish policies and procedures for the selection and use of these consultants.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law establishes within the Department of Consumer Affairs, until January 1, 2012, the Contractors' State License Board and a registrar of contractors, for purposes of the licensure and regulation of contractors. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.~~

~~This bill would extend the operation of those provisions until January 1, 2016, and would specify that the board would be subject to review by the appropriate policy committees of the Legislature.~~

Vote: ~~majority~~ ~~2/3~~. 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 40 is added to the Business and*
2 *Professions Code, to read:*
3 *40. (a) Subject to the standards described in Section 19130*
4 *of the Government Code, any board, as defined in Section 22, the*
5 *State Board of Chiropractic Examiners, or the Osteopathic Medical*
6 *Board of California may enter into an agreement with an expert*
7 *consultant to do any of the following:*
8 *(1) Provide an expert opinion on enforcement-related matters,*
9 *including providing testimony at an administrative hearing.*
10 *(2) Assist the board as a subject matter expert in examination*
11 *development, examination validation, or occupational analyses.*
12 *(3) Evaluate the mental or physical health of a licensee or an*
13 *applicant for a license as may be necessary to protect the public*
14 *health and safety.*
15 *(b) An executed contract between a board and an expert*
16 *consultant shall be exempt from the provisions of Part 2*
17 *(commencing with Section 10100) of Division 2 of the Public*
18 *Contract Code.*
19 *(c) Each board shall establish policies and procedures for the*
20 *selection and use of expert consultants.*
21 *SEC. 2. This act is an urgency statute necessary for the*
22 *immediate preservation of the public peace, health, or safety within*
23 *the meaning of Article IV of the Constitution and shall go into*
24 *immediate effect. The facts constituting the necessity are:*
25 *To ensure that licensees engaging in certain professions and*
26 *vocations are adequately regulated at the earliest possible time*

in order to protect and safeguard consumers and the public in this state, it is necessary that this act take effect immediately.

~~SECTION 1. Section 7000.5 of the Business and Professions Code is amended to read:~~

~~7000.5. (a) There is in the Department of Consumer Affairs a Contractors' State License Board, which consists of 15 members.~~

~~(b) Notwithstanding any other provision of law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.~~

~~(c) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.~~

~~SEC. 2. Section 7011 of the Business and Professions Code is amended to read:~~

~~7011. (a) The board, by and with the approval of the director, shall appoint a registrar of contractors and fix his or her compensation.~~

~~(b) The registrar shall be the executive officer and secretary of the board and shall carry out all of the administrative duties as provided in this chapter and as delegated to him or her by the board.~~

~~(c) For the purpose of administration of this chapter, there may be appointed a deputy registrar, a chief reviewing and hearing officer, and, subject to Section 159.5, other assistants and subordinates as may be necessary.~~

~~(d) Appointments shall be made in accordance with the provisions of civil service laws.~~

~~(e) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.~~

O

3. Legislative Update

M. SB 544 (Price) – Regulatory Boards

Discussion Only

3. Legislative Update

N. SB 560 (Wright) – Regulations: Small Businesses

Discussion Only

3.Legislative Update

O. SB 591 (Gaines) – Regulations: Reductions

Discussion Only

Board of Chiropractic Examiners
Bill Analysis

Bill Number: SB 628
Author: Leland Yee
Bill Version: Amended April 25, 2011
Subject: Acupuncture: regulation
Sponsor: Author

STATUS OF BILL: Passed Senate Committee on B., P. & E.D. (5-2); referred to Senate Committee on Appropriations.

SUMMARY:

This bill would change the name of the Acupuncture Board to the Traditional Chinese Medicine Board and create a process by which traumatologists, as defined, are able to obtain certification.

EXISTING LAW:

- The Acupuncture Licensure Act establishes the Acupuncture Board and makes it responsible for enforcing and administering the act, including licensing persons who meet specified licensure requirements.
- The Acupuncture Licensure Act refers to licensees as "acupuncturists" and defines the scope of practice as "the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping, and moxibustion.
- California Code of Regulations, Section 302(a)(1) defines the chiropractic scope of practice, in part, as, "manipulate and adjust the spinal column and other joints of the human body and in the process thereof a chiropractor may manipulate the muscle and connective tissue related thereto."

THIS BILL WOULD:

- Amend various provisions of the Business and Professions Code to replace all references to the "Acupuncture Board" with the "Traditional Chinese Medicine Board" and change the designation of a person who achieves licensure as an "acupuncturist" as a licensed "Traditional Chinese Medicine Practitioner."
- Create a process by which currently practicing traumatologists would be able to obtain certification as a traumatologist by demonstrating expertise in traumatology in accordance with established standards and criteria. Describe the performance of traumatology as including:
    1. A range of treatments to address both acute and chronic musculoskeletal conditions, as well as many nonmusculoskeletal conditions.
    2. Techniques, including but not limited to, brushing, kneading, rolling, pressing, and rubbing the areas between each of the joints to open the body's defensive chi and stimulate the energy movement in both

meridians and the muscles so that the licensee is able to use range of motion, traction, and massage with the stimulation of acupuncture points.

- Establish a Traumatology Advisory Committee whose duties shall include the determination of standards to qualify for certification in traumatology.
- Define traumatology as:
    1. Treating both acute and chronic musculoskeletal conditions through stimulation of acupressure points using a range of hands-on body treatment including tractions and massage.
    2. Traumatology addresses pain associated with the muscles, joints, and skeletal system.
    3. Traumatology also involves manipulation techniques to realign the musculoskeletal and ligamentous relationships, a technique called bone-setting.
- Include traumatology in the authorized activities of an Acupuncturist.

BACKGROUND:

According to the author, Traditional Chinese Medicine (TCM) comprises a system of health care that originated in China more than 5,000 years ago and has been provided in the United States for more than 150 years. TCM is a comprehensive system for the assessment and treatment of acute and chronic disorders, as well as preventative health care and maintenance.

Currently in California, practitioners of TCM are recognized as licensed acupuncturists; however, acupuncture is only one of the many modalities within TCM. This nomenclature is misleading and problematic as the scope of practice of a licensed acupuncturist includes other modalities of TCM, and not just acupuncture. Traumatology is a very important modality that constitutes TCM which includes a range of treatments to address both acute and chronic musculoskeletal conditions, as well as many non-muskuloskeletal conditions.

Prior to systemizing the health care system in China, individuals acquired mastery of traumatology through a master-apprentice relationship which entailed hands-on training. It is extremely difficult for these practitioners, who migrated to the U.S., to obtain proof of their training to qualify for the existing requirements for licensure in California as an acupuncturist. As a result, traumatologists have been treating patients in this state without governmental oversight, leaving no recourse for patients who have been harmed.

The author asserts that the purpose of this bill is not to pursue a Practice Act, but rather to pursue a Title Act to appropriately reflect traumatology and acupuncture as modalities included in The Practice of Chinese Medicine and provide appropriate oversight over the small population of traumatologists in California for consumer protection. This bill will provide a short timeframe for traumatologists who were trained prior to systemized health care in China, to apply for certification in order to legally and safely treat patients in this state.

FISCAL IMPACT: The overall fiscal impact is unknown at this time. This bill may have a fiscal impact on the BCE's enforcement program as we may receive complaints regarding traumatologists who are using chiropractic modalities.

SUPPORT & OPPOSITION:

Support:

United California Practitioners of Chinese Medicine (UCPCM)
30 individuals

Opposition:

CA Orthopedic Association*
The National Guild of Acupuncture and Oriental Medicine (NGAOM)
Association of Korean Asian Medicine & Acupuncture of California
30 individuals

ARGUMENTS:

Pro:

The proponents argue that this bill would:

- Ensure the health and safety of patients who are treated by traumatologists by ensuring traumatologists meet the certification requirements set forth in this bill.
- Protect consumers by requiring certified traumatologists to maintain a relationship with an orthopedic surgeon during the performance of a bone-setting technique.
- Accurately portray the practice of Traditional Chinese Medicine which consists of multiple modalities, including acupuncture and traumatology.

Con:

- The definition of "traumatology" is vague and overly broad.
- This bill would potentially authorize non-chiropractors to perform chiropractic manipulation. The definition describes manipulation techniques which sound similar to the practice of chiropractic. (i.e. Traumatology – "manipulation techniques to realign the musculoskeletal and ligamentous relationships" vs. Chiropractic – "manipulate and adjust the spinal column and other joints of the human body and in the process thereof a chiropractor may manipulate the muscle and connective tissue related thereto".
- It is not clear how the Board of Acupuncture would adequately regulate traumatologists.
- A $75 fee once every five years is not sufficient to cover enforcement of these provisions.
- Complaints would likely be directed to the Board of Chiropractic Examiners; however, we would have minimal jurisdiction over traumatologists and would have little likelihood of recovering enforcement costs.
- It is not clear whether the Board of Acupuncture can assert jurisdiction over a treatment modality which may encompass chiropractic manipulation.

STAFF RECOMMENDED POSITION: Oppose

* According to the author, The CA Orthopedic Association is in negotiations with the author to amend this bill and their position may change.

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 22, 2011

SENATE BILL No. 628

Introduced by Senator Yee

February 18, 2011

An act to amend Sections 27, 101, 130, 144, 149, 205, 730.5, 800, 4925, 4927, 4928, 4928.1, 4935, 4937, 4955, 4955.1, 4955.2, 4956, 4959, 4960.2, 4961, 4965, 4966, 4967, 4969, 4970, 4974, and 4975 of, to add Section 4964.5 to, and to add Article 3 (commencing with Section 4950) to Chapter 12 of Division 2 of, the Business and Professions Code, relating to acupuncture.

LEGISLATIVE COUNSEL'S DIGEST

SB 628, as amended, Yee. Acupuncture: regulation.

Existing law, the Acupuncture Licensure Act, establishes the Acupuncture Board and makes it responsible for enforcing and administering the act, including licensing persons who meet specified licensure requirements. Under the act, licensees are titled "acupuncturists," and are authorized to perform designated activities pursuant to their license. The unlawful practice of acupuncture is a crime.

This bill would retitle the act as the Traditional Chinese Medicine Licensure Act, would change the designation of "acupuncturist" to "Traditional Chinese Medicine Practitioner," and would define the term "Traditional Chinese Medicine" to be identical to the term "acupuncture." The bill would expand the scope of authorized activities for these practitioners under their license to include the performance of traumatology, as defined. The bill would also ~~create a process for the certification of traumatologists who would be authorized to practice~~

~~traumatology without a license as an acupuncturist if practicing traumatology on or before a specified date, and would create a subcommittee within the board to implement the certification of traumatologists, subject to specified criteria. The bill would set forth procedures for the renewal of an unexpired or expired certificate to practice traumatology, and set forth provisions related to unprofessional conduct and disciplinary action of a traumatologist.~~*, commencing May 1, 2012, require the board to issue a certificate for certified traumatology, as defined, to applicants who meet certain training and clinical experience, pass an examination, and pay a specified fee. The bill would limit the submittal of applications to the period between January 1, 2012, until December 15, 2012, and would prohibit the board from issuing a certificate after December 15, 2012. The bill would require the board to establish the traumatology advisory committee to advise the board about the certification processes for traumatologists. The bill would set forth procedures for the renewal of an unexpired or expired certificate to perform traumatology and would establish specified fees in that regard.* The bill would ~~provide that the practice of traumatology without a certificate to practice traumatology or a license to practice acupuncture is a crime~~ *make it a crime to use the title of "certified traumatologist" without meeting these certification requirements and to fraudulently buy or sell a certificate for traumatology*, thereby imposing 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. The Legislature finds and declares all of the
2 following:
3 (a) Traditional Chinese Medicine (TCM) comprises a system
4 of health care that originated in China more than 5,000 years ago
5 and has been provided in the United States for more than 150 years.
6 TCM is a comprehensive system for the assessment and treatment

of acute and chronic disorders, as well as preventative health care and maintenance.

(b) The first written documentation on TCM is the Hung-Di Nei-Jing, known as the Yellow Emperor's Canon of Internal Medicine. Hung-Di Nei-Jing is the oldest medical textbook in the world; different opinions date the book back to between 800 BCE and 200 BCE. The Yellow Emperor's Canon of Internal Medicine lays a primary foundation for the theories of Chinese medicine, which extensively summarizes and systematizes the previous experience of treatment and theories of medicine, such as the meridian theory, as well as many other issues, including, but not limited to, physiology, pathology, prevention, diagnosis, treatment, acupuncture, moxibustion, and tui na.

(c) The Chinese medical text that first describes acupuncture was in this book. Forms of acupuncture also include Chimsul, which is part of traditional Korean medicine, and Kampo, which is part of traditional Japanese medicine. Ancient Chinese text also reveals that the medical benefits of massage therapy were recognized early on. The tradition of massage therapy in China evolved from the knowledge and approaches of doctors practicing TCM to include the beliefs of martial artists, Buddhists, and Taoists.

(d) Traditional Chinese Medicine was formally systemized in the 1950s under the People's Republic of China. Government researchers were sent throughout China to collect and document the practices and theories of TCM. The Traditional Chinese Medicine we know today is the official Chinese medicine practice that was derived from this research.

(e) Currently in California, practitioners of TCM are recognized as licensed acupuncturists. Acupuncture is one of the many modalities within TCM. This nomenclature is misleading and problematic as the scope of practice of a licensed acupuncturist includes other modalities of TCM and not just acupuncture.

(f) Further, traumatology is one of the modalities that constitutes TCM. It is a very important part of TCM science with a complete theoretical system. Traumatology, like orthopedics, includes a range of treatments to address both acute and chronic musculoskeletal conditions, as well as many nonmusculoskeletal conditions.

(g) Before China systemized its health care system, individuals acquired their mastery of traumatology through a master-apprentice relationship. Individuals learned from a master through hands-on training. Although highly skilled, it is extremely difficult for these practitioners to obtain proof of their training to qualify for the existing requirement for licensure as an acupuncturist. A group of these practitioners reside in the State of California.

(h) Accordingly, it is the intent of the Legislature in enacting this measure to do the following:

(1) Change the name of the Acupuncture Board to the Traditional Chinese Medicine Board and change the designation of an individual who achieves licensure as an acupuncturist as a licensed Traditional Chinese Medicine Practitioner.

(2) Create a process by which a currently practicing traumatologist is able to obtain ~~licensure~~ *certification* as a traumatologist by demonstrating expertise in traumatology in accordance with established standards and criteria, to be administered by ~~a subcommittee under~~ the Traditional Chinese Medicine Board.

SEC. 2. Section 27 of the Business and Professions Code is amended to read:

27. (a) Each entity specified in subdivision (b) shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. In providing information on the Internet, each entity shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of

record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

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

(1) The Traditional Chinese Medicine Board shall disclose information on its licensees.

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

(3) The Dental Board of California shall disclose information on its licensees.

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

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

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

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

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

(9) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, cemetery managers, crematory managers, cemetery authorities,

crematories, cremated remains disposers, embalmers, funeral establishments, and funeral directors.

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

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

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

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

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

SEC. 3. Section 101 of the Business and Professions Code is amended to read:

101. The department is comprised of:

(a) The Dental Board of California.

(b) The Medical Board of California.

(c) The State Board of Optometry.

(d) The California State Board of Pharmacy.

(e) The Veterinary Medical Board.

(f) The California Board of Accountancy.

(g) The California Architects Board.

(h) The Bureau of Barbering and Cosmetology.

(i) The Board for Professional Engineers and Land Surveyors.

(j) The Contractors' State License Board.

(k) The Bureau for Private Postsecondary Education.

(*l*) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.

(m) The Board of Registered Nursing.

(n) The Board of Behavioral Sciences.

(o) The State Athletic Commission.

(p) The Cemetery and Funeral Bureau.

(q) The State Board of Guide Dogs for the Blind.

(r) The Bureau of Security and Investigative Services.
(s) The Court Reporters Board of California.
(t) The Board of Vocational Nursing and Psychiatric Technicians.
(u) The Landscape Architects Technical Committee.
(v) The Division of Investigation.
(w) The Bureau of Automotive Repair.
(x) The Respiratory Care Board of California.
(y) The Traditional Chinese Medicine Board.
(z) The Board of Psychology.
(aa) The California Board of Podiatric Medicine.
(ab) The Physical Therapy Board of California.
(ac) The Arbitration Review Program.
(ad) The Physician Assistant Committee.
(ae) The Speech-Language Pathology and Audiology Board.
(af) The California Board of Occupational Therapy.
(ag) The Osteopathic Medical Board of California.
(ah) The Naturopathic Medicine Committee.
(ai) The Dental Hygiene Committee of California.
(aj) The Professional Fiduciaries Bureau.
(ak) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 4. Section 130 of the Business and Professions Code is amended to read:

130. (a) Notwithstanding any other provision of law, the term of office of any member of an agency designated in subdivision (b) shall be for a term of four years expiring on June 1.

(b) Subdivision (a) applies to the following boards or committees:
(1) The Medical Board of California.
(2) The California Board of Podiatric Medicine.
(3) The Physical Therapy Board of California.
(4) The Board of Registered Nursing.
(5) The Board of Vocational Nursing and Psychiatric Technicians.
(6) The State Board of Optometry.
(7) The California State Board of Pharmacy.
(8) The Veterinary Medical Board.
(9) The California Architects Board.
(10) The Landscape Architect Technical Committee.

(11) The Board for Professional Engineers and Land Surveyors.
(12) The Contractors' State License Board.
(13) The State Board of Guide Dogs for the Blind.
(14) The Board of Behavioral Sciences.
(15) The Court Reporters Board of California.
(16) The State Athletic Commission.
(17) The Osteopathic Medical Board of California.
(18) The Respiratory Care Board of California.
(19) The Traditional Chinese Medicine Board.
(20) The Board of Psychology.

SEC. 5. Section 144 of the Business and Professions Code is amended to read:

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

(b) Subdivision (a) applies to the following:
(1) California Board of Accountancy.
(2) State Athletic Commission.
(3) Board of Behavioral Sciences.
(4) Court Reporters Board of California.
(5) State Board of Guide Dogs for the Blind.
(6) California State Board of Pharmacy.
(7) Board of Registered Nursing.
(8) Veterinary Medical Board.
(9) Registered Veterinary Technician Committee.
(10) Board of Vocational Nursing and Psychiatric Technicians.
(11) Respiratory Care Board of California.
(12) Hearing Aid Dispensers Advisory Commission.
(13) Physical Therapy Board of California.
(14) Physician Assistant Committee of the Medical Board of California.
(15) Speech-Language Pathology and Audiology Board.
(16) Medical Board of California.
(17) State Board of Optometry.
(18) Traditional Chinese Medicine Board.
(19) Cemetery and Funeral Bureau.

(20) Bureau of Security and Investigative Services.
(21) Division of Investigation.
(22) Board of Psychology.
(23) The California Board of Occupational Therapy.
(24) Structural Pest Control Board.
(25) Contractors' State License Board.
(26) Bureau of Naturopathic Medicine.
(27) The Professional Fiduciaries Bureau.

(c) The provisions of paragraph (24) of subdivision (b) shall become operative on July 1, 2004. The provisions of paragraph (25) of subdivision (b) shall become operative on the date on which sufficient funds are available for the Contractors' State License Board and the Department of Justice to conduct a criminal history record check pursuant to this section or on July 1, 2005, whichever occurs first.

SEC. 6. Section 149 of the Business and Professions Code is amended to read:

149. (a) If, upon investigation, an agency designated in subdivision (e) has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with the agency to offer or perform those services, the agency may issue a citation under Section 148 containing an order of correction that requires the violator to do both of the following:

(1) Cease the unlawful advertising.

(2) Notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(b) This action is stayed if the person to whom a citation is issued under subdivision (a) notifies the agency in writing that he or she intends to contest the citation. The agency shall afford an opportunity for a hearing, as specified in Section 125.9.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after that order is final, the agency shall inform the Public Utilities Commission of the violation and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

(e) Subdivision (a) shall apply to the following boards, bureaus, committees, commissions, or programs:

(1) The Bureau of Barbering and Cosmetology.

(2) The Cemetery and Funeral Bureau.

(3) The Veterinary Medical Board.

(4) The Landscape Architects Technical Committee.

(5) The California Board of Podiatric Medicine.

(6) The Respiratory Care Board of California.

(7) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.

(8) The Bureau of Security and Investigative Services.

(9) The Bureau of Automotive Repair.

(10) The California Architects Board.

(11) The Speech-Language Pathology and Audiology Board.

(12) The Board for Professional Engineers and Land Surveyors.

(13) The Board of Behavioral Sciences.

(14) The Structural Pest Control Board within the Department of Pesticide Regulation.

(15) The Traditional Chinese Medicine Board.

(16) The Board of Psychology.

(17) The California Board of Accountancy.

(18) The Naturopathic Medicine Committee.

(19) The Physical Therapy Board of California.

(20) The Bureau for Private Postsecondary Education.

SEC. 7. Section 205 of the Business and Professions Code is amended to read:

205. (a) There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:

(1) Accountancy Fund.

(2) California Architects Board Fund.

(3) Athletic Commission Fund.

(4) Barbering and Cosmetology Contingent Fund.

(5) Cemetery Fund.

(6) Contractors' License Fund.

(7) State Dentistry Fund.
(8) State Funeral Directors and Embalmers Fund.
(9) Guide Dogs for the Blind Fund.
(10) Home Furnishings and Thermal Insulation Fund.
(11) California Architects Board-Landscape Architects Fund.
(12) Contingent Fund of the Medical Board of California.
(13) Optometry Fund.
(14) Pharmacy Board Contingent Fund.
(15) Physical Therapy Fund.
(16) Private Investigator Fund.
(17) Professional Engineers' and Land Surveyors' Fund.
(18) Consumer Affairs Fund.
(19) Behavioral Sciences Fund.
(20) Licensed Midwifery Fund.
(21) Court Reporters' Fund.
(22) Veterinary Medical Board Contingent Fund.
(23) Vocational Nurses Account of the Vocational Nursing and Psychiatric Technicians Fund.
(24) Electronic and Appliance Repair Fund.
(25) Geology and Geophysics Fund.
(26) Dispensing Opticians Fund.
(27) Traditional Chinese Medicine Fund.
(28) Physician Assistant Fund.
(29) Board of Podiatric Medicine Fund.
(30) Psychology Fund.
(31) Respiratory Care Fund.
(32) Speech-Language Pathology and Audiology Fund.
(33) Board of Registered Nursing Fund.
(34) Psychiatric Technician Examiners Account of the Vocational Nursing and Psychiatric Technicians Fund.
(35) Animal Health Technician Examining Committee Fund.
(36) State Dental Hygiene Fund.
(37) State Dental Assistant Fund.
(38) Hearing Aid Dispensers Account of the Speech-Language Pathology and Audiology Fund.

(b) For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account or fund shall be available for

expenditure only for the purposes as are now or may hereafter be provided by law.

SEC. 8. Section 730.5 of the Business and Professions Code is amended to read:

730.5. (a) It is unprofessional conduct and a crime, as provided in Section 4935, for a physician and surgeon, osteopathic physician, dentist, or podiatrist to direct or supervise the performance of acupuncture involving the application of a needle to the body of a human being by a person licensed under this division who is not licensed pursuant to the Traditional Chinese Medicine Licensure Act established by Chapter 12 (commencing with Section 4925).

(b) It is unprofessional conduct and a crime, as provided in Section 4935, for a person licensed under this division who is not licensed pursuant to the Traditional Chinese Medicine Licensure Act established by Chapter 12 (commencing with Section 4925) to perform acupuncture involving the application of a needle to the body of a human being at the direction or under the supervision of a physician and surgeon, osteopathic physician, dentist, or podiatrist.

SEC. 9. Section 800 of the Business and Professions Code is amended to read:

800. (a) The Medical Board of California, the Board of Psychology, the Dental Board of California, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, the Physical Therapy Board of California, the California State Board of Pharmacy, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, the California Board of Occupational Therapy, and the Traditional Chinese Medicine Board shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to the following information:

(1) Any conviction of a crime in this or any other state that constitutes unprofessional conduct pursuant to the reporting requirements of Section 803.

(2) Any judgment or settlement requiring the licensee or his or her insurer to pay any amount of damages in excess of three thousand dollars ($3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802.

(3) Any public complaints for which provision is made pursuant to subdivision (b).

(4) Disciplinary information reported pursuant to Section 805, including any additional exculpatory or explanatory statements submitted by the licentiate pursuant to subdivision (f) of Section 805. If a court finds, in a final judgment, that the peer review resulting in the 805 report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, the board shall include that finding in the central file. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.

(5) Information reported pursuant to Section 805.01, including any explanatory or exculpatory information submitted by the licensee pursuant to subdivision (b) of that section.

(b) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

Notwithstanding this subdivision, the Board of Psychology, the Board of Behavioral Sciences, and the Respiratory Care Board of California shall maintain complaints or reports as long as each board deems necessary.

(c) The contents of any central file that are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the

material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications. The information required to be disclosed pursuant to Section 803.1 shall not be considered among the contents of a central file for the purposes of this subdivision.

The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information that the board shall include in the central file.

Each board may permit any law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.

These disclosures shall effect no change in the confidential status of these records.

SEC. 10. Section 4925 of the Business and Professions Code is amended to read:

4925. (a) This chapter constitutes the chapter on acupuncture of the Business and Professions Code.

This chapter shall be known and may be cited as the Traditional Chinese Medicine Licensure Act. Whenever a reference is made to the Traditional Chinese Medicine Licensure Act or the Acupuncture Licensure Act by the provisions of any statute, it is to be construed as referring to the provisions of this chapter.

(b) Any reference in this chapter, or to the regulations pertaining thereto, to "certificate" or "certification" shall hereafter mean "license" or "licensure." ~~Any~~ *Except as to a certified traumatologist, any* reference to the term "certifying" means "licensing," and the term "certificate holder" means ~~"licensee." Any reference to "licensee" in Article 4 (commencing with Section 4955) shall also mean a traumatologist who holds a certificate pursuant to Article 3 (commencing with Section 4950).~~ *"licensee."*

Any reference to the "Acupuncture Committee" or "committee" means the "Traditional Chinese Medicine Board" or "board."

(c) The title "acupuncturist," as applied to an individual to whom a license has been issued to practice acupuncture pursuant to this chapter that is in effect and is not suspended or revoked, is renamed Traditional Chinese Medicine Practitioner. Any reference by the provisions of this chapter, this code or other codes, or in any statute or regulation to an acupuncturist shall be deemed a reference to a Traditional Chinese Medicine Practitioner.

SEC. 11. Section 4927 of the Business and Professions Code is amended to read:

4927. As used in this chapter, unless the context otherwise requires:

(a) "Board" means the Traditional Chinese Medicine Board.

(b) "Person" means any individual, organization, or corporate body, except that only individuals may be licensed under this chapter.

(c) "Acupuncturist" means an individual to whom a license has been issued to practice acupuncture pursuant to this chapter, which is in effect and is not suspended or revoked. Any reference to "acupuncturist" in this chapter, this code or other codes, or in any statute or regulation shall be deemed to mean a Traditional Chinese Medicine Practitioner.

(d) "Acupuncture" or "the practice of Traditional Chinese Medicine" means the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping, and moxibustion.

SEC. 12. Section 4928 of the Business and Professions Code is amended to read:

4928. The board, which consists of seven members, shall enforce and administer this chapter.

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

The repeal of this section renders the board subject to the review required by Article 7.5 (commencing with Section 9147.7) of Chapter 1.5 of Part 1 of Division 2 of the Government Code.

SEC. 13. Section 4928.1 of the Business and Professions Code is amended to read:

4928.1. Protection of the public shall be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

SEC. 14. Section 4935 of the Business and Professions Code is amended to read:

4935. (a) (1) It is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) and not more than two thousand five hundred dollars ($2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person who does not hold a current and valid license to practice acupuncture under this chapter ~~or~~ to hold himself or herself out as practicing or engaging in the practice of ~~acupuncture, or to engage in the practice of traumatology without a current or valid certificate as a traumatologist or a current or valid license as an acupuncturist or to hold himself or herself out as practicing or engaging in the practice of traumatology without a certificate or license under this chapter.~~ *acupuncture, or to hold himself or herself out as a certified traumatologist or use the title of "certified traumatologist" without meeting the requirements of this chapter.*

(2) It is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) and not more than two thousand five hundred dollars ($2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person to fraudulently buy, sell, or obtain a license to practice acupuncture or a certificate ~~to practice~~ *for* traumatology, or to violate the provisions of this chapter.

(b) Notwithstanding any other provision of law, any person, other than a physician and surgeon, a dentist, or a podiatrist, who is not licensed under this article but is licensed under Division 2 (commencing with Section 500), who practices acupuncture ~~or traumatology~~ involving the application of a needle to the human body, performs any acupuncture ~~or traumatology~~ technique or method involving the application of a needle to the human body, or directs, manages, or supervises another person in performing

acupuncture ~~or traumatology~~ involving the application of a needle to the human body is guilty of a misdemeanor.

(c) A person holds himself or herself out as engaging in the practice of acupuncture by the use of any title or description of services incorporating the words "acupuncture," "acupuncturist," "certified acupuncturist," "licensed acupuncturist," "Asian medicine," "oriental medicine," "Traditional Chinese Medicine," or any combination of those words, phrases, or abbreviations of those words or phrases, by representing that he or she is trained, experienced, or an expert in the field of acupuncture, Asian medicine, or Chinese medicine, or by representing that he or she is trained, experienced, or an expert in the field of traumatology.

(d) Subdivision (a) shall not prohibit a person from administering acupuncture treatment as part of his or her educational training if he or she:

(1) Is engaged in a course or tutorial program in acupuncture, as provided in this chapter; or

(2) Is a graduate of a school of acupuncture approved by the board and participating in a postgraduate review course that does not exceed one year in duration at a school approved by the board.

SEC. 15. Section 4937 of the Business and Professions Code is amended to read:

4937. (a) An acupuncturist's license authorizes the holder thereof:

(1) To engage in the practice of acupuncture.

(2) To perform or prescribe the use of Asian massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements to promote, maintain, and restore health. Nothing in this section prohibits any person who does not possess an acupuncturist's license or another license as a healing arts practitioner from performing, or prescribing the use of any modality listed in this subdivision.

(3) To ~~practice~~ *perform* traumatology~~. Traumatology~~*, which* includes a range of treatments to address both acute and chronic musculoskeletal conditions, as well as many nonmusculoskeletal conditions. Techniques include, but are not limited to, brushing, kneading, rolling, pressing, and rubbing the areas between each of the joints to open the body's defensive chi and stimulate the energy movement in both meridians and the muscles so that the

licensee is able to use range of motion, traction, and massage with the stimulation of acupuncture points.

(b) For purposes of this section, a "magnet" means a mineral or metal that produces a magnetic field without the application of an electric current.

(c) For purposes of this section, "plant, animal, and mineral products" means naturally occurring substances of plant, animal, or mineral origin, except that it does not include synthetic compounds, controlled substances or dangerous drugs as defined in Sections 4021 and 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(d) For purposes of this section, "dietary supplement" has the same meaning as defined in subsection (ff) of Section 321 of Title 21 of the United States Code, except that dietary supplement does not include controlled substances or dangerous drugs as defined in Section 4021 or 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

SEC. 16. Article 3 (commencing with Section 4950) is added to Chapter 12 of Division 2 of the Business and Professions Code, to read:

Article 3. Traumatologists

~~4950. (a) On or before February 1, 2012, the board shall establish a traumatology subcommittee within the board.~~

~~(b) The traumatology subcommittee shall consist of six members composed of representatives from the clinical and academic settings of traumatology.~~

~~(c) The traumatology subcommittee shall, on or before March 1, 2012, review the scope of practice of traumatology and shall create a certification process for the certification of individuals as traumatologists, on and after March 1, 2012, who meet a minimum level of training and expertise.~~

~~(d) (1) The standards and criteria the subcommittee shall utilize in determining whether an individual may be issued a certificate pursuant to subdivision (c) shall be based upon training and expertise in traumatology that includes, but is not limited to, the following:~~

~~(A) Knowledge of the practice and theories of traumatology.~~

~~(B) Experience in practicing traumatology.~~

~~(C) Clinical or practical experience in treating fractures, dislocations, injuries of muscles and tendons, and internal traumatic syndrome.~~

~~(D) Treatment of qi injuries.~~

~~(E) Treatment through the use of therapeutic principles of motion and quiescence.~~

~~(F) Treatment in orthopedics through the use of traumatology.~~

~~(G) Treatment through manipulation or fixation and functional exercise.~~

~~(H) Competent use of topically applied medicines in orthopedics and traumatology.~~

~~(I) Basic manipulations in tendon-smoothing, such as deep massage, kneading manipulation, scrubbing manipulation, rolling manipulation, striking manipulation, or grasping and pinching manipulation.~~

~~(2) The subcommittee shall also take into consideration whether the applicant was trained through an apprenticeship program and how long the individual has practiced traumatology.~~

~~(e) On and after March 1, 2012, the traumatology subcommittee shall issue a certificate to practice traumatology only to a person who satisfies the standards set forth in subdivisions (c) and (d) and who was engaged in the practice of traumatology on or before January 1, 2012.~~

~~(f) An applicant for certification as a traumatologist under this section shall apply for certification on a form to be developed by the board, and shall pay an application fee in the amount of seventy-five dollars ($75) when submitting his or her application to the subcommittee.~~

~~(g) Moneys received under this section shall be deposited into the Traditional Chinese Medicine Fund for purposes of this chapter.~~

~~(h) An applicant engaged in the practice of traumatology on or before January 1, 2012, shall have until March 1, 2013, to file an application for a certificate to lawfully practice traumatology in this state. On and after March 1, 2013, the subcommittee shall not issue an initial license to any applicant. On and after March 1, 2013, the subcommittee may issue only a renewal of a certificate under this section or as specified. An individual who is not qualified to receive a certificate under this section, or who fails to~~

~~apply for certification under this section by March 1, 2013, shall be required to be licensed as an acupuncturist in order to practice traumatology.~~

~~(i) (1) Pursuant to Section 4965, the renewal of an unexpired certificate issued under this section shall be required every five years and the same application requirements and applicant fee described under subdivision (f), and the same criteria and standards specified in subdivisions (c) and (d), shall apply to renewal of an unexpired certificate.~~

~~(2) Renewal of an expired certificate shall be governed by the procedures specified in Sections 4966, 4967, and 4969.~~

~~(j) An applicant who is denied a certificate under this section may appeal that denial to the board pursuant to the same procedures that apply to an applicant for licensure as an acupuncturist.~~

~~(k) A licensee under this section shall be subject to the disciplinary provisions set forth in Article 4 (commencing with Section 4955), subject to enforcement by the board.~~

~~(*l*) For purposes of this section, "traumatology" has the same meaning as used in Section 4937.~~

~~(m) The practice of traumatology without a certificate issued pursuant to this section or a license to practice acupuncture is the unlawful practice of acupuncture as set forth in Section 4935.~~

~~(n) The subcommittee from time to time, and no less than every five years, shall review and update or modify the standards that apply for renewal of a certificate with regard to the standards set forth in subdivisions (c) and (d).~~

4950. (a) On or before March 1, 2012, the board shall establish a Traumatology Advisory Committee within the board.

(b) The committee shall consist of six members composed of representatives from the clinical settings of traumatology.

(c) (1) Subject to subdivision (d), the committee shall determine the certification standards, including the level of experience and training needed for an individual to qualify for traumatology certification.

(2) The committee shall advise the board in developing the application form and the written examination for certification.

(d) Commencing May 1, 2012 until December 15, 2012, the board shall issue a certificate for certified traumatology to any person who makes an application and meets all of the following requirements:

(1) Is at least 18 years of age.

(2) Furnishes satisfactory evidence of training and clinical experience which meets the standards established by the committee and confirmed by the board.

(3) Passes a written examination administered by the board that tests the applicant's ability, competency, and knowledge of traumatology. The written examination shall be developed by the Office of Professional Examination Services of the Department of Consumer Affairs.

(4) Is not subject to denial pursuant to Division 1.5 (commencing with Section 475).

(e) An applicant for traumatology certification shall, commencing January 1, 2012, until December 15, 2012, file an application for a certificate for traumatology in this state. On and after December 15, 2012, the board shall not issue an initial license to any applicant. On and after December 15, 2012, the board may issue only a renewal of a certificate under this section. An individual who is not qualified to receive a certificate under this section, or who fails to apply for certification under this section by December 15, 2012, shall not hold himself or herself out as a certified traumatologist pursuant to this section.

(f) Traumatology is defined as treating both acute and chronic musculoskeletal conditions through stimulation of acupressure points using a range of hands-on body treatment, including traction and massage. Traumatology addresses pain associated with the muscles, joints, and skeletal system. Traumatology involves manipulation techniques to realign the musculoskeletal and ligamentous relationships, a technique called bone-setting.

(g) A certified traumatologist shall maintain a relationship with an orthopedic surgeon when involved in manipulation techniques to realign the musculoskeletal and ligamentous relationships, a technique called bone setting. The extent of the relationship between a traumatologist and orthopedic surgeon in the case of bone-setting shall be determined by the board in consultation with the Medical Board of California.

(h) An applicant for certification as a traumatologist shall pay an application fee in the amount of seventy-five dollars ($75) when submitting his or her application to the board.

(i) A certified traumatologist shall renew his or her certificate every five years.

(j) An expired certificate may be renewed at any time within three years after its expiration. The holder of the certificate shall pay all accrued and unpaid renewal fees, plus a delinquency fee.

(1) The renewal fee shall be seventy-five dollars ($75).

(2) The delinquency fee shall be twenty-five dollars ($25).

(3) The fee for a duplicate or replacement engraved wall certificate shall be fifteen dollars ($15).

(4) The fee for a duplicate or replacement renewal receipt/pocket certificate shall be ten dollars ($10).

(k) Moneys received under this section shall be deposited in the Traditional Chinese Medicine Fund for purposes of this chapter.

(l) It is an unfair business practice for any person to hold himself or herself out as a certified traumatologist or use the title of "certified traumatologist" without meeting the requirements of this chapter.

SEC. 17. Section 4955 of the Business and Professions Code is amended to read:

4955. The board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist or *certificate of any* traumatologist if he or she is guilty of unprofessional conduct.

Unprofessional conduct shall include, but not be limited to, the following:

(a) Using or possessing any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public, and to an extent that the use impairs his or her ability to engage in the practice of acupuncture or traumatology with safety to the public.

(b) Conviction of a crime substantially related to the qualifications, functions, or duties of an acupuncturist or *certified* traumatologist, the record of conviction being conclusive evidence thereof.

(c) False or misleading advertising.

(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly, the violation of the terms of this chapter or any regulation adopted by the board pursuant to this chapter.

(e) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board,

thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(f) The use of threats or harassment against any patient or licensee for providing evidence in a disciplinary action, other legal action, or in an investigation contemplating a disciplinary action or other legal action.

(g) Discharging an employee primarily for attempting to comply with the terms of this chapter.

(h) Disciplinary action taken by any public agency for any act substantially related to the qualifications, functions, or duties of an acupuncturist, *certified* traumatologist, or any professional health care licensee.

(i) Any action or conduct that would have warranted the denial of the acupuncture license or the traumatology certificate.

(j) The violation of any law or local ordinance on an acupuncturist's or *certified* traumatologist's business premises by an acupuncturist's or *certified* traumatologist's employee or a person who is working under the acupuncturist's or *certified* traumatologist's professional license or business permit, that is substantially related to the qualifications, functions, or duties of an acupuncturist or *certified* traumatologist. These violations shall

subject the acupuncturist or *certified* traumatologist who employed the individuals, or under whose acupuncture license or traumatology certificate the employee is working, to disciplinary action.

(k) The abandonment of a patient by the licensee *or certified traumatologist* without written notice to the patient that treatment is to be discontinued and before the patient has had a reasonable opportunity to secure the services of another practitioner.

(*l*) The failure to notify the board of the use of any false, assumed, or fictitious name other than the name under which he or she is licensed as an individual to practice acupuncture or *as an individual certified in* traumatology.

SEC. 18. Section 4955.1 of the Business and Professions Code is amended to read:

4955.1. The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist or *certified* traumatologist if he or she is guilty of committing a fraudulent act, including, but not limited to, any of the following:

(a) Securing a license by fraud or deceit.

(b) Committing a fraudulent or dishonest act as an acupuncturist or *certified* traumatologist.

(c) Committing any act involving dishonesty or corruption with respect to the qualifications, functions, or duties of an acupuncturist or *certified* traumatologist.

(d) Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record.

(e) Failing to maintain adequate and accurate records relating to the provision of services to his or her patients.

SEC. 19. Section 4955.2 of the Business and Professions Code is amended to read:

4955.2. The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist or *certified* traumatologist if he or she is guilty of committing any one of the following:

(a) Gross negligence.

(b) Repeated negligent acts.

(c) Incompetence.

SEC. 20. Section 4956 of the Business and Professions Code is amended to read:

4956. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge that is substantially related to the qualifications, functions, or duties of an acupuncturist or *certified* traumatologist is deemed to be a conviction within the meaning of this chapter.

The board may order a license suspended or revoked, or may deny a license, or may impose probationary conditions upon a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her pleas of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

SEC. 21. Section 4959 of the Business and Professions Code is amended to read:

4959. (a) The board may request the administrative law judge, under his or her proposed decision in resolution of a disciplinary proceeding before the board, to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed actual and reasonable costs of the investigation and prosecution of the case.

(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in any event be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of any costs assessed in the proposed decision.

(c) When the payment directed in the board's order for payment of costs is not made by the licensee, the board may enforce the order for payment in the superior court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

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

(e) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the Traditional Chinese Medicine Fund.

SEC. 22. Section 4960.2 of the Business and Professions Code is amended to read:

4960.2. The board in all cases of revocation shall certify the fact of the revocation, under the seal of the board, to the business licensing entity of the cities or counties in which the license of the acupuncturist or *certificate of the* traumatologist has been revoked. The record of the revocation made by the county or city clerk shall be sufficient evidence of the revocation, and of the regularity of all proceedings of the board in the matter of the revocation.

SEC. 23. Section 4961 of the Business and Professions Code is amended to read:

4961. (a) Every person who is now or hereafter licensed to practice acupuncture or *certified in* traumatology in this state shall register, on forms prescribed by the board, his or her place of practice, or, if he or she has more than one place of practice, all of the places of practice. If the licensee *or certificate holder* has no place of practice, he or she shall notify the board of that fact. A person licensed *or certified* by the board shall register within 30 days after the date of his or her licensure *or certification.*

(b) A licensee *or certificate holder* shall post his or her license *or certificate* in a conspicuous location in his or her place of practice at all times. If an acupuncturist or *certified* traumatologist has more than one place of practice, he or she shall obtain from the board a duplicate license *or certificate* for each additional location and post the duplicate license *or certificate* at each location.

(c) Any licensee *or certificate holder* that changes the location of his or her place of practice shall register each change within 30 days of making that change. In the event a licensee *or certificate holder* fails to notify the board of any change in the address of a place of practice within the time prescribed by this section, the board may deny renewal of licensure *or certification.* An applicant for renewal of licensure *or certification* shall specify in his or her application whether or not there has been a change in the location of his or her place of practice and, if so, the date of that change. The board may accept that statement as evidence of the change of address.

SEC. 24. Section 4964.5 is added to the Business and Professions Code, to read:

4964.5. The provisions of this article apply to both acupuncture and ~~traumatology licensees~~ *certified traumatologists*.

SEC. 25. Section 4965 of the Business and Professions Code is amended to read:

4965. (a) (1) A license to practice acupuncture issued pursuant to this chapter shall expire on the last day of the birth month of the licensee during the second year of a two-year term, if not renewed.

(2) The board shall establish and administer a birth date renewal program for purposes of this subdivision.

(3) To renew an unexpired license, the holder shall apply for renewal on a form provided by the board and pay the renewal fee fixed by the board.

~~(b) A certificate to practice traumatology issued pursuant to~~

(b) A certificate for traumatology issued pursuant to this chapter shall expire five years after the date of issuance, if not renewed. To renew an unexpired certificate, the holder shall apply for renewal on a form provided by the board and pay the renewal fee set forth in Section 4950.

SEC. 26. Section 4966 of the Business and Professions Code is amended to read:

4966. (a) Except as provided in Section 4969, a license to practice acupuncture that has expired may be renewed at any time within three years after its expiration by filing an application for renewal on a form provided by the board, paying all accrued and unpaid renewal fees, and providing proof of completing continuing education requirements. If the license is not renewed prior to its expiration, the acupuncturist, as a condition precedent to renewal, shall also pay the prescribed delinquency fee.

(b) Except as provided in Section 4969, a certificate ~~to practice~~ *for* traumatology that has expired may be renewed at any time within three years after its expiration by filing an application for renewal on a form provided by the board, and paying all accrued and unpaid renewal fees. If the certificate is not renewed prior to its expiration, the traumatologist, as a condition precedent to renewal, shall also pay a delinquency fee, to be set in accordance with Section 163.5.

(c) Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date the delinquency fee is paid, whichever occurs last. If so renewed, the license or certificate shall continue in effect through the expiration date provided in Section 4965, after the effective date of the renewal, when it shall expire and become invalid if it is not again renewed.

SEC. 27. Section 4967 of the Business and Professions Code is amended to read:

4967. A person who fails to renew his or her license or certificate within three years after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter, but that person may apply for and obtain a new license or certificate if he or she meets all of the following requirements:

(a) Has not committed any acts or crimes constituting grounds for denial of licensure or certification under Division 1.5 (commencing with Section 475).

(b) If an acupuncturist, takes and passes the examination, if any, which would be required of him or her if an initial application for licensure was being made, or, if an acupuncturist or *certified* traumatologist, otherwise establishes to the satisfaction of the board that, with due regard for the public interest, he or she is qualified to practice as an acupuncturist or *certified* traumatologist.

(c) Pays all of the fees that would be required if an initial application for licensure or certification was being made.

(d) The board may provide for the waiver or refund of all or any part of an examination fee in those cases in which a license to practice acupuncture is issued without an examination pursuant to this section.

SEC. 28. Section 4969 of the Business and Professions Code is amended to read:

4969. (a) A suspended license or certificate is subject to expiration and shall be renewed as provided in this article, but the renewal does not entitle the acupuncturist or *certified* traumatologist, while the license or certificate remains suspended, and until it is reinstated, to engage in the practice of acupuncture or traumatology, or in any other activity or conduct in violation of the order or judgment by which the license or certificate was suspended.

(b) A revoked license or certificate is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the former licensee or certificate holder, as a condition to reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the license or certificate was reinstated, plus the delinquency fee, if any, accrued at the time of its expiration.

SEC. 29. Section 4970 of the Business and Professions Code is amended to read:

4970. The amount of fees prescribed for licensed acupuncturists shall be those set forth in this section unless a lower fee is fixed by the board in accordance with Section 4972:

(a) The application fee shall be seventy-five dollars ($75).

(b) The examination and reexamination fees shall be the actual cost to the board for the development and writing of, grading, and administering of each examination.

(c) The initial license fee shall be three hundred twenty-five dollars ($325), except that if the license will expire less than one year after its issuance, then the initial license fee shall be an amount equal to 50 percent of the initial license fee.

(d) The renewal fee shall be three hundred twenty-five dollars ($325) and in the event a lower fee is fixed by the board, shall be an amount sufficient to support the functions of the board in the administration of this chapter. The renewal fee shall be assessed on an annual basis until January 1, 1996, and on and after that date the board shall assess the renewal fee biennially.

(e) The delinquency fee shall be set in accordance with Section 163.5.

(f) The application fee for the approval of a school or college under Section 4939 shall be three thousand dollars ($3,000).

(g) The duplicate wall license fee is an amount equal to the cost to the board for the issuance of the duplicate license.

(h) The duplicate renewal receipt fee is ten dollars ($10).

(i) The endorsement fee is ten dollars ($10).

(j) The fee for a duplicate license for an additional office location as required under Section 4961 shall be fifteen dollars ($15).

SEC. 30. Section 4974 of the Business and Professions Code is amended to read:

4974. The board shall report to the Controller at the beginning of each month for the month preceding the amount and source of all revenue received by it pursuant to this chapter, and shall pay the entire amount thereof to the Treasurer for deposit in the Traditional Chinese Medicine Fund, which fund is created to carry out the provisions of this chapter.

SEC. 31. Section 4975 of the Business and Professions Code is amended to read:

4975. An acupuncture corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are acupuncturists are in compliance with the Moscone-Knox Professional Corporation Act, this article and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its affairs.

With respect to an acupuncture corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the board.

SEC. 32. 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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Board of Chiropractic Examiners
Bill Analysis

Bill Number: SB 924
Author: Senator Mimi Walters
Bill Version: March 30, 2011
Subject: Physical Therapists: direct access to services
Sponsor: California Physical Therapy Association

STATUS OF BILL: Passed Committee on Senate B., P. & E.D. (5-2); referred to Committee on Appropriations.

SUMMARY:

This bill would allow patients direct access to physical therapy treatment and require physical therapists to refer patients to other health care practitioners for treatment outside of the physical therapy scope of practice.

EXISTING LAW:

- The Physical Therapy Practice Act (Act) creates the Physical Therapy Board of California and makes it responsible for the licensure and regulation of physical therapists.
- Defines physical therapy as the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person by the use of the physical, chemical, or other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise, and shall include physical therapy evaluation, treatment planning, instruction and consultative services.
- Indicates that a physical therapy license issued pursuant to the Act does not authorize the diagnosis of disease.
- The Act makes it a crime to violate any of its provisions and authorizes the board to suspend, revoke, or impose probationary conditions on a license, certificate, or approval issued under the act for unprofessional conduct, as specified.

THIS BILL WOULD:

- Allow patients direct access to physical therapy treatment by a licensed physical therapist.
- Require physical therapists to refer these patients to another healing arts practitioner for conditions requiring treatment or services beyond the scope of physical therapy.
- Require the physical therapist to disclose to patients any financial interests he or she has in treating the patient.
- Require the physical therapist to notify the patient's physician or surgeon, if any, that the physical therapist is treating the patient.
- Define violations of these provisions as unprofessional conduct subject to disciplinary action by the board.

- Provide that this bill shall not be construed to require a health care service plan or insurer to provide coverage for direct access to treatment by physical therapists.

BACKGROUND:

According to the sponsor, physical therapy education and training requirements have changed dramatically in the last 46 years. The minimum educational standard to become a physical therapist in California today is a Master's Degree. In 2015, all physical therapy programs will end in a Doctoral Degree and a Doctorate will be the new educational standard. In addition, physical therapists must pass a state and national licensing program and complete continuing education.

The sponsor further asserts that in 36 other states, patients have the ability to go to a physical therapist directly for treatment. Additionally, Medicare pays for direct treatment by physical therapists before a formal diagnosis is determined by a physician.

In California, a patient must obtain an initial diagnosis for a medical condition by a physician and surgeon, or another practitioner who is authorized to diagnose.

The sponsor states that this bill is needed to streamline health care delivery and to increase consumer choice and access to needed care.

FISCAL IMPACT: The overall fiscal impact is unknown at this time. This bill will have no fiscal impact upon the BCE.

SUPPORT & OPPOSITION:

Support:

California Physical Therapy Association (Sponsor)
California Advocates for Nursing Home Reform
California Senior Legislature
Numerous Individuals

Opposition:

California Association of Joint Powers Authorities
California Chiropractic Association
California Medical Association
California Orthopaedic Association
California Society of Anesthesiologists

ARGUMENTS:

Pro:

The proponents argue that:

- This bill would afford Californians with the same opportunity to save costs and have reduced waiting times before receiving physical therapy treatment
- Physical therapists in states that allow direct access take the same licensing exam, are trained by the same colleges and universities adhering to the same national educational standards, which include teaching for independent practice.

- Physical therapists are well trained to provide treatment for musculoskeletal conditions and impairments and are able to provide direct treatment in neighboring states such as Arizona, Hawaii, Nevada and Oregon.

Con:

- The California Medical Association argues that this bill will unnecessarily expose patients to risk as physical therapists begin treatments without the advantage of proper laboratory or radiological testing, or lack of understanding of an underlying medical condition.
- The California Orthopaedic Association argues that there is no compelling argument as to why physical therapists should be allowed to initiate a regimen of rehabilitation services on a patient who has not been seen and evaluated by a physician and assert that a physical therapist cannot order or interpret x-rays, MRI scans, or blood tests, and consequently a physical therapist's ability to assess a patient's condition is severely limited.
- The California Chiropractic Association argues that this bill will increase workers' compensation utilization review costs for referrals, lead to higher litigation costs when disputes arise over treatment, and has the potential to create serious medical problems for the injured worker if their physician is not directing all their care.
- The California Association of Joint Powers Authorities argue that this bill will increase workers compensation utilization review costs for referrals, lead to higher litigation costs when disputes arise regarding treatment, and has the potential to create serious medical problems for the injured worker if their physician is not directing all their care.
- The referral or notification to a treating physician or surgeon is broad and subjective and does not specify a period of time in which the referral or notification should occur (i.e. 30 or 60 days), similar to other states which allow direct access.
- The disclosure of financial interest in treating a patient should be amended to include provisions requiring a physical therapist to comply with Section 650 of the Business and Professions Code which embodies state and federal policy relating to the prohibitions against receiving payments or some other form of compensation for referring patients for health care services.

STAFF RECOMMENDED POSITION: Neutral

AMENDED IN SENATE MARCH 30, 2011

SENATE BILL No. 924

Introduced by Senator ~~Wyland~~ *Walters*
(Coauthors: Senators Emmerson, Runner, and Strickland)
(Coauthors: Assembly Members Galgiani, Knight, Morrell, Norby, and Silva)

February 18, 2011

~~An act to amend Section 2620 of the Business and Professions Code, relating to healing arts.~~ *An act to amend Section 2660 of, and to add Section 2620.1 to, the Business and Professions Code, relating to physical therapists.*

LEGISLATIVE COUNSEL'S DIGEST

SB 924, as amended, ~~Wyland~~ *Walters*. Physical ~~therapy.~~ *therapists: direct access to services.*

Existing law, the Physical Therapy Practice Act, creates the Physical Therapy Board of California and makes it responsible for the licensure and regulation of physical therapists. The act defines the term "physical therapy" for its purposes and makes it a crime to violate any of its provisions. The act authorizes the board to suspend, revoke, or impose probationary conditions on a license, certificate, or approval issued under the act for unprofessional conduct, as specified.

This bill would specify that patients may access physical therapy treatment directly, and would, in those circumstances, require a physical therapist to refer his or her patient to another specified healing arts practitioner if the physical therapist has reason to believe the patient has a condition requiring treatment or services beyond that scope of practice, to disclose to the patient any financial interest he or she has in treating the patient, and, with the patient's written authorization, to

notify the patient's physician and surgeon, if any, that the physical therapist is treating the patient. The bill would provide that failure to comply with these provisions constitutes unprofessional conduct subject to disciplinary action by the board.

Because the bill would specify additional requirements under the Physical Therapy Practice Act, the violation of which would be a crime, it would impose a state-mandated local program.

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

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

~~Existing law, the Physical Therapy Practice Act, provides for the licensure and regulation of physical therapists by the Physical Therapy Board of California within the Department of Consumer Affairs. Existing law defines "physical therapy" to mean, among other things, the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

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. The Legislature finds and declares that an*
2 *individual's access to early intervention to physical therapy*
3 *treatment may decrease the duration of a disability, reduce pain,*
4 *and lead to a quicker recovery.*
5 *SEC. 2. Section 2620.1 is added to the Business and Professions*
6 *Code, to read:*
7 *2620.1. (a) In addition to receiving wellness and evaluation*
8 *services from a physical therapist, a person may initiate physical*
9 *therapy treatment directly from a licensed physical therapist*
10 *provided that the treatment is within the scope of practice of*

physical therapists as defined in Section 2620, and that all the following conditions are met:

(1) If, at any time, the physical therapist has reason to believe that the patient has signs or symptoms of a condition that requires treatment beyond the scope of practice of a physical therapist, the physical therapist shall refer the patient to a person holding a physician and surgeon's certificate issued by the Medical Board of California or by the Osteopathic Medical Board of California or to a person licensed to practice dentistry, podiatric medicine, or chiropractic.

(2) The physical therapist shall disclose to the patient any financial interest he or she has in treating the patient.

(3) With the patient's written authorization, the physical therapist shall notify the patient's physician and surgeon, if any, that the physical therapist is treating the patient.

(b) The conditions in paragraphs (1), (2), and (3) of subdivision (a) do not apply to a physical therapist when providing evaluation or wellness physical therapy services to a patient as described in subdivision (a) of Section 2620.

(c) Nothing in this section shall be construed to expand or modify the scope of practice for physical therapists set forth in Section 2620, including the prohibition on a physical therapist diagnosing a disease.

(d) Nothing in this section shall be construed to require a health care service plan or insurer to provide coverage for direct access to treatment by a physical therapist.

SEC. 3. Section 2660 of the Business and Professions Code is amended to read:

2660. The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

(a) Advertising in violation of Section 17500.

(b) Fraud in the procurement of any license under this chapter.

(c) Procuring or aiding or offering to procure or aid in criminal abortion.

(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a physical therapist or

physical therapist assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

(e) Habitual intemperance.

(f) Addiction to the excessive use of any habit-forming drug.

(g) Gross negligence in his or her practice as a physical therapist or physical therapist assistant.

(h) Conviction of a violation of any of the provisions of this chapter or of the Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the Medical Practice Act.

(i) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.

(j) The aiding or abetting of any person to engage in the unlawful practice of physical therapy.

(k) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a physical therapist or physical therapist assistant.

(*l*) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians of the State of California, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized

safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(m) The commission of verbal abuse or sexual harassment.

(n) Failure to comply with the provisions of Section 2620.1.

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.

~~SECTION 1. Section 2620 of the Business and Professions Code is amended to read:~~

~~2620. (a) Physical therapy shall mean the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise, and shall include physical therapy evaluation, treatment planning, instruction and consultative services. The practice of physical therapy includes the promotion and maintenance of physical fitness to enhance the bodily movement related health and wellness of individuals through the use of physical therapy interventions. The use of roentgen rays and radioactive materials, for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term "physical therapy" as used in this chapter, and a license issued pursuant to this chapter does not authorize the diagnosis of disease.~~

~~(b) Nothing in this section shall be construed to restrict or prohibit other healing arts practitioners licensed or registered under this division from practice within the scope of their license or registration.~~

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