STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

Board of Chiropractic Examiners
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NOTICE OF PUBLIC MEETING

LEGISLATIVE COMMITTEE

May 22, 2008
9:30 a.m.
Hearing Room
1625 N. Market Blvd, Room S102
Sacramento, CA 95834

AGENDA

CALL TO ORDER

Approval of Minutes

- March 27, 2008

Discussion and Possible Action:

- Senate Bill 1402
- Any other legislative bills of interest to the Board.

PUBLIC COMMENT

NEW BUSINESS – Future Agenda Items

ADJOURNMENT

LEGISLATIVE 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 is accessible to persons with physical disabilities. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

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BOARD OF CHIROPRACTIC EXAMINERS
MEETING MINUTES
Legislative Committee
March 27, 2008
400 R Street, Room 101
Sacramento, CA 95814

Committee Members Present
Hugh Lubkin, D.C., Chair
Frederick Lerner, D.C.

Staff Present
Brian Stiger, Executive Officer
LaVonne Powell, Senior Legal Counsel
Thomas Rinaldi, Deputy Attorney General
Marlene Valencia, Staff Services Analyst

Call to Order

Dr. Lerner called the meeting to order at 8:35 a.m.

Roll Call

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

Assembly Bill 450 (Emmerson)

MOTION: DR. LERNER MOVED THAT THE BOARD TAKE A SUPPORT POSITION ON AB 450.
MOTION SECONDED: DR. LUBKIN SECONDED THE MOTION
VOTE: 2-0
MOTION CARRIED

Assembly Bill 1861 (Emmerson)

MOTION: DR. LERNER MOVED THAT THE BOARD TAKE A SUPPORT POSITION ON AB 1861.
MOTION SECONDED: DR. LUBKIN SECONDED THE MOTION
VOTE: 2-0
MOTION CARRIED

Senate Bill 1402 (Corbett)

MOTION: DR. LERNER MOVED THAT THE BOARD TAKE A WATCH POSITION ON THE BILL AND SUBMIT A LETTER TO THE AUTHOR'S OFFICE REQUESTING LANGUAGE THAT WOULD ASSIST THE BOARD RECEIVE RELEVANT INFORMATION FROM LIABILITY INSURANCE COMPANIES
MOTION SECONDED: DR. LUBKIN SECONDED THE MOTION
MOTION CARRIED

PUBLIC COMMENT:
Dr. Charles Davis, ICAC, spoke in support of AB 450 and expressed concerns about SB 1402 regarding the settlement amounts for chiropractors.

FUTURE AGENDA ITEMS

Mr. Stiger committed to providing a more comprehensive review and analysis of all relevant bills affecting the profession once resources are restored.

Ms. Powell recommended that the associations invite associations to come before the Board in early in August or September to present their legislative proposals for the coming year.

ADJOURNMENT:
Dr. Lubkin adjourned the meeting at approximately 9:00 a.m.

Bill Number: SB 1402 **Author: Corbett**
Introduced: February 21, 2008 **Vote: Majority**
Last Amended: April 10, 2008

Bill Summary:

This bill would require the Board of Chiropractic Examiners (BCE) to disclose, via the Internet, licensing status information, suspensions, and revocations. The bill would require a chiropractor to report to the BCE the bringing of an indictment or information of charges or convictions of any misdemeanor or felony against them. In addition, the bill would require an insurer providing professional liability insurance to a chiropractor to report to the BCE of any settlement or arbitration award of over $2,000 for certain damages.

Purpose of the Bill:

According to the Author, this bill is intended to increase consumer protection and provide the BCE with information in a timely manner to take appropriate action, if warranted.

Existing Law:

Certain entities within the Department of Consumer Affairs and the Department of Real Estate are required to provide information, excluding personal information, on the Internet relative to the status of every license issued. Insurers providing professional liability insurance to health care professionals are required to send reports to the appropriate licensing agency regarding any settlement or arbitration awards of $3,000. Certain health care providers are required to report to the appropriate licensing agency the bringing of an indictment and/or information charging or conviction of a felony or misdemeanor against a licensee.

Specifically, this bill would:

- Add the BCE to the entities required to provide licensing status information.

- Require insurers providing liability insurance to report to the BCE any settlement or arbitration award over $2,000 of a claim or action for damages for death or injury caused by the licensees' negligence, error, or omission in practice, or rendering of unauthorized professional services.

- Require a chiropractor to report to the BCE a bringing of an indictment, charging of a felony, or misdemeanor against the licensee, within 30 days from the date of an indictment or information of the charges. A licensee

that fails to comply with the reporting requirement is subject to a fine not to exceed $5,000.

Fiscal Impact:

The BCE currently provides licensing status information, suspensions, revocations, and other related enforcement actions, via the Internet. The BCE will experience an increase in workload associated with the review and, possible investigation of the settlement or arbitration reports received from insurance providers. However, the BCE staff believes this would not significantly increase workload, and should be able to be absorbed with existing staff.

AMENDED IN SENATE APRIL 10, 2008

AMENDED IN SENATE APRIL 1, 2008

SENATE BILL No. 1402

Introduced by Senator Corbett

February 21, 2008

An act to amend Sections 27, 801, 802.1, and 1005 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1402, as amended, Corbett. Reporting requirements.

Existing law provides for the licensure, registration, and regulation of healing arts practitioners by various boards and bureaus, including, but not limited to, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians of the State of California, the Veterinary Medical Board, the Physical Therapy Board of California, the California State Board of Pharmacy, the Speech-Language Pathology and Audiology Board, the Respiratory Care Board of California, the California Board of Occupational Therapy, and the Bureau of Naturopathic Medicine. Existing law, the Chiropractic Act, a statute enacted by initiative, creates the State Board of Chiropractic Examiners, which licenses and regulates the practice of chiropractic. Existing law requires certain entities within the Department of Consumer Affairs and the Department of Real Estate to provide information, excluding personal information, on the Internet relative to the status of every license issued by the entity, as specified. Existing law requires certain health care providers to report to their licensing boards the bringing of an indictment or information charging a felony against ~~them or their~~ *him or her or his or her* conviction of a felony or misdemeanor. Existing law requires insurers providing professional

liability insurance to certain health care professionals to send a complete report to the applicable licensing entity as to any settlement or arbitration award meeting certain criteria.

This bill would ~~expand the information that the specified licensing entities are required to disclose to the public on the Internet to include information regarding licensee's convictions of specified misdemeanors or felonies, and would~~ add the Board of Chiropractic Examiners and specified other healing arts boards and bureaus to the entities required to provide the licensing status information. The bill would require a chiropractor to report to the Board of Chiropractic Examiners the bringing of an indictment or information charging a felony against them or their conviction of any felony or misdemeanor. The bill would also require an insurer providing professional liability insurance to a chiropractor to send a complete report to the Chiropractic Examiners Board, as specified, of any settlement or arbitration award of over $2,000 of a claim or action for damages meeting certain criteria.

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

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

SECTION 1. Section 27 of the Business and Professions Code is amended to read:

27. (a) Every 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 ~~a misdemeanor conviction that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed, or a felony conviction that is reported to the entity by the courts pursuant to Section 803, unless otherwise provided by law, and shall include information on~~ suspensions and revocations of licenses issued by the entity and other related enforcement action taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. In providing information on the Internet, each entity shall comply with the

Department of Consumer Affairs Guidelines for Access to Public Records. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

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

(1) The Acupuncture Board shall disclose information on its licensees.

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

(10) The Cemetery and Funeral Bureau shall disclose information on its licensees, including embalmers, funeral establishments, and funeral directors.

(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 Board of Chiropractic Examiners shall disclose information on its licensees.

(14) The Board of Registered Nursing shall disclose information on its licensees.

(15) The Board of Vocational Nursing and Psychiatric Technicians of the State of California shall disclose information on its licensees.

(16) The Veterinary Medical Board shall disclose information on its licensees and registrants.

(17) The Physical Therapy Board of California shall disclose information on its licensees.

(18) The California State Board of Pharmacy shall disclose information on its licensees.

(19) The Speech-Language Pathology and Audiology Board shall disclose information on its licensees.

(20) The Respiratory Care Board of California shall disclose information on its licensees.

(21) The California Board of Occupational Therapy shall disclose information on its licensees.

(22) The Bureau of Naturopathic Medicine shall disclose information on its licensees.

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

SEC. 2. Section 801 of the Business and Professions Code is amended to read:

801. (a) Except as provided in Section 801.01 and subdivisions (b), (c), (d), and (e) of this section, every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency mentioned in subdivision (a) of Section 800 shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(c) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Dental Board of California as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing liability insurance to a veterinarian licensed pursuant to Chapter 11 (commencing with Section 4800) shall send a complete report to the Veterinary Medical Board of any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) Every insurer providing liability insurance to a chiropractor licensed pursuant to the Chiropractic Act shall send a complete report to the Board of Chiropractic Examiners of any settlement or arbitration award over two thousand dollars ($2,000) of a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(f) The insurer shall notify the claimant, or if the claimant is represented by counsel, the insurer shall notify the claimant's attorney, that the report required by this section has been sent to the agency. If the attorney has not received this notice within 45 days after the settlement was reduced to writing and signed by all of the parties, the arbitration award was served on the parties, or the date of entry of the civil judgment, the attorney shall make the report to the agency.

(g) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer.

SEC. 3. Section 802.1 of the Business and Professions Code is amended to read:

802.1. (a) (1) A physician and surgeon, an osteopathic physician and surgeon, a doctor of podiatric medicine, and a chiropractor shall report either of the following to the entity that issued his or her license:

(A) The bringing of an indictment or information charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or information or of the conviction.

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars ($5,000).

SEC. 4. Section 1005 of the Business and Professions Code is amended to read:

1005. The provisions of Sections 12.5, 23.9, 27, 29.5, 30, 31, 35, 104, 114, 115, 119, 121, 121.5, 125, 125.6, 136, 137, 140, 141, 143, 163.5, 461, 462, 475, 480, 484, 485, 487, 489, 490, 490.5, 491, 494, 495, 496, 498, 499, 510, 511, 512, 701, 702, 703, 704, 710, 716, 730.5, 731, 801, 802.1, and 851 are applicable to persons licensed by the State Board of Chiropractic Examiners under the Chiropractic Act.

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Bill Number: AB 2969 **Author: Lieber**
Introduced: February 22, 2008 **Vote: Majority**

Bill Summary:

This bill would require all physicians including chiropractors performing workers' compensation utilization review to be licensed in California.

Purpose of the Bill:

The 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.

Existing Law:

Establishes a comprehensive system of workers' compensation benefits for workers injured on the job, including medical benefits; 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; provides that no other person other than a licensed physician may modify, delay, or deny requests for authorization of medical treatment. By regulation, this has been interpreted to mean a physician licensed in any state.

Specifically, this bill would:

Require any licensed physician who is conducting a utilization review evaluation to be licensed in California.

Fiscal Impact:

There is no fiscal impact associated with this bill.

ASSEMBLY BILL No. 2969

Introduced by Assembly Member Lieber
(Coauthors: Assembly Members Beall and Ruskin)

February 22, 2008

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2969, as introduced, Lieber. Workers' compensation: medical treatment utilization reviews.

Existing law establishes a workers' compensation system to compensate an employee for injuries sustained in the course of his or her employment, and requires an employer to pay for all reasonable costs of medical services necessary to care for or relieve work-related injuries. 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 that any licensed physician who is conducting such an evaluation be licensed in California.

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

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

SECTION 1. 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 ~~licensed~~ physician *licensed in California* 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.

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Bill Number: SB 1441 **Author: Ridley-Thomas**
Introduced: February 21, 2008 **Vote: Majority**
Last Amended: May 7, 2008

Bill Summary:

This bill establishes within the Department of Consumer Affairs (DCA) the Diversion Coordination Committee (DCC) and the Licensee Drug and Alcohol Addiction Coordination Committee (LDAACC) to establish guidelines and recommendations relating to healing arts licensees with alcohol and drug problems. The Committees would be required to meet periodically and issue a set of best practices and recommendations to govern healing arts licensing boards' diversion programs or diversion evaluation committees, effective January 1, 2010.

Purpose of the Bill:

According to the author's office, this bill is necessary to ensure that public safety remains the paramount mission of healing arts licensing boards when dealing with licensees who are suffering from drug or alcohol abuse or dependency problems.

Existing Law:

Requires various healing arts licensing boards within the DCA to establish and administer diversion programs or diversions evaluation committees for the rehabilitation of healing arts practititioners whose competency is impaired due to the abuse of drugs or alcohol.

Specifically, this bill would:

- Establishes within the DCA the DCC and LDAACC to establish best practices and recommendations to govern those healing arts licensing boards' diversion programs or diversion evaluation committees effective January 1, 2010.

- The committees will be comprised of the executive officers of the various healing arts licensing boards, and the DCA shall act as the chair of the committee.

- The committees shall provide best practices, change in law, as necessary, and recommendations addressing; when a licensee is to be irrevocably terminated from the programs and referred for disciplinary action; audits of the programs; if a licensee shall continue to practice while in the programs; how to ensure drug tests are random, accurate, and reliable;

criteria for the programs; criteria for probation requirements; and criteria for restoration of a license.

Fiscal Impact:

AMENDED IN SENATE MAY 7, 2008

AMENDED IN SENATE APRIL 7, 2008

SENATE BILL No. 1441

Introduced by Senator Ridley-Thomas

February 21, 2008

An act to add Article 3.6 (commencing with Section 315) to Chapter 4 of Division 1 of the Business and Professions Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1441, as amended, Ridley-Thomas. Healing arts practitioners: alcohol and drug abuse.

Existing law requires various healing arts licensing boards to establish and administer diversion programs or diversion evaluation committees for the rehabilitation of healing arts practitioners whose competency is impaired due to the abuse of drugs or alcohol.

This bill would establish in the Department of Consumer Affairs the Diversion Coordination Committee, which would be comprised of the executive officers of those healing arts *licensing* boards, as specified, that establish and maintain a diversion program or diversion evaluation committee, and would establish in the department the Licensee Drug and Alcohol Addiction Coordination Committee, which would be comprised of the executive officers of all other healing arts *licensing* boards. The bill would require these committees to meet periodically at the discretion of the department and to each issue, ~~by an unspecified date~~ *no later than January 1, 2010*, a set of best practices and recommendations, as specified.

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

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

~~SECTION 1. It is the intent of the Legislature that the Bureau of State Audits conduct a thorough performance audit of the diversion programs created pursuant to this act in order to evaluate the effectiveness and efficiency of the programs and the providers chosen by the Department of Consumer Affairs to manage the programs, and to make recommendations regarding the continuation of the programs and any changes or reforms required to ensure that individuals participating in the programs are appropriately monitored, and the public is protected from health practitioners who are impaired due to alcohol or drug abuse or mental or physical illness. The department and its staff shall cooperate with the audit, and shall provide data, information, and case files as requested by the auditor to perform all of his or her duties. The provision of confidential data, information, and case files from health care related boards to the auditor shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files.~~

~~SEC. 2.~~

SECTION 1. Article 3.6 (commencing with Section 315) is added to Chapter 4 of Division 1 of the Business and Professions Code, to read:

Article 3.6 Healing Arts Licensee Addiction and Diversion

315. (a) There is established in the Department of Consumer Affairs the Diversion Coordination Committee. The committee shall be comprised of the executive officers of those healing arts licensing boards within the department that establish and maintain diversion programs or diversion evaluation committees. The Director of Consumer Affairs shall act as the chair of the committee.

(b) The committee shall meet periodically at the discretion of the director and shall, no later than—— *January 1, 2010*, issue a set of best practices and recommendations to govern those healing arts licensing boards' diversion programs or diversion evaluation committees. These recommendations shall propose best practices, regulations, or changes in law, as are necessary, and shall include,

but shall not be limited to, recommendations addressing all of the following issues:

(1) When a licensee is to be irrevocably terminated from the diversion program and referred for disciplinary action.

(2) Periodic audits of the program.

(3) Whether a licensee enrolled in the program who may pose a risk to patients may continue to practice while in the program without the knowledge or consent of patients.

(4) How best to ensure that drug tests are random, accurate, and reliable, and that results for those tests are obtained quickly.

(5) Whether there should be criteria for entry into the program, such as criteria that differentiate between licensees who the board has reason to believe pose a risk to patients and those where the risk is speculative.

316. (a) There is established in the Department of Consumer Affairs the Licensee Drug and Alcohol Addiction Coordination Committee. The committee shall be comprised of the executive officers of the healing arts licensing boards within the department that do not establish and maintain diversion programs or diversion evaluation committees. The Director of Consumer Affairs shall act as the chair of the committee.

(b) The committee shall meet periodically at the discretion of the department and shall, no later than ~~——~~ *January 1, 2010*, issue a set of best practices and recommendations to govern those healing arts licensing boards' disciplinary programs as they relate to disciplinary matters relating to drug or alcohol addiction. These recommendations shall propose best practices, regulations, or changes in law, as are necessary, and shall include, but shall not be limited to, recommendations addressing all of the following issues, related to drug or alcohol abuse:

(1) Criteria for placing a licensee on probation and related criteria for reporting and monitoring the probation.

(2) Criteria for refusing a request for probation.

(3) Criteria for imposition of discipline and the level of discipline.

(4) Criteria for restoration of a license.

317. For purposes of this article, "healing arts licensing board" means any board established pursuant to Division 2 (commencing

with Section 500), the State Board of Chiropractic Examiners, or the Osteopathic Medical Board of California.

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