STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

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NOTICE OF PUBLIC MEETING

February 18, 2010
10:00 a.m.
2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833

AGENDA

1. **OPEN SESSION** – Call to Order & Establishment of a Quorum
   Frederick Lerner, D.C. Chair
   Hugh Lubkin, D.C., Vice Chair
   Francesco Columbu, D.C., Secretary
   Jeffrey Steinhardt, D.C.
   Richard Tyler, D.C.
2. **Chair's Report**
3. **Public Comment**
4. **Department of Consumer Affairs' Consumer Health Care Enforcement Reform Act**
5. **Board of Chiropractic Examiners' Enhanced Enforcement Proposals**
6. **Public Comment**
7. **Future Agenda Items**
8. **Adjournment**

Meetings of the Board of Chiropractic Examiners are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. Public comments will be taken on agenda items at the time the specific item is raised. The Board 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.

ENFORCEMENT CHANGES FOR HEALTH BOARDS

Preface - Title & Intent Language

1. Information Provided on the Internet

2. Director's Authority to Audit Enforcement Programs of Health Boards

3. Cost Recovery for Actual Costs of Investigation and Enforcement and Probation Monitoring

4. Allow Boards to Contract with Collection Agency

5. Allow Health Boards to Hear Appeals of Citations and Fines

6. Authority for Health Boards to Contract for Investigative Services with Medical Board and Attorney General's Office

7. Create Within the Division of Investigation a Health Quality Enforcement Unit

8. Authority of Board of Registered Nursing to Hire Investigators, Nurse Consultants and Other Personnel

9. New Enforcement Article for all Health Care Boards

10. Authority for Executive Officers to Adopt Default Decisions and Stipulated Settlements

11. Authority for Health Boards to Enter Into Stipulated Settlements Without Filing an Accusation

12. Director's Authority to Immediately Suspend License

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14. Mandatory Revocation for Acts of Sexual Exploitation and Registration as Sex Offender

15. Prohibition of Gag Clauses in Civil Dispute Settlement Agreements

16. Access to Medical Records/Documents Pursuant to Investigations

17. Access to Records/Documents from Governmental Agencies

18. Payment to Agencies for Record/Documents Received

19. Employer of Health Care Practitioner Reporting Requirements

20. Annual Enforcement Reports by Boards to the Department and Legislature

21. Enforcement Timeframes for the Attorney General's Office

22. Misdemeanor for Violation of Article 10.1 – Healing Arts Licensing Enforcement Act

23. Deny License for Mental Illness or Chemical Dependency

24. Require Boards to Check Information Maintained by the National Practitioner Databank

25. Conviction of Sexual Misconduct – Crime Substantially Related

26. Unprofessional Conduct for Drug Related Offenses

27. Unprofessional Conduct for Failure to Cooperate with Investigation of Board

28. Reporting by Licensee of Arrest, Conviction or Disciplinary Action

29. Report of Crime or Personal Injury Judgment by Clerk of the Court

30. Report of Charges of Felony by DA, City Attorney, or Clerk of Court

31. Report of Preliminary Hearing Transcript of Felony by Clerk of Court

32. Notification of Future Arrests or Convictions from DOJ

33. Authority of Department to Adjust Fees Consistent with CPI

34. Unlicensed Practice – Public Crime

35. Sunset Dates for Diversion Programs

36. Requirement for a New Information Technology System

37. Adopt Vertical Enforcement/Prosecution Model for Health Boards

POSSIBLE FUTURE AMENDMENTS

1. Create Health Quality Hearing Panel at OAH to hear Health Care Cases

2. Eliminate Authority of Boards to Adopt or Non-Adopt ALJ Decision

3. Allow Boards to Conduct Disciplinary Hearings

4. No Transfer of Board's Special (Reserve) Funds to General Fund

5. Create Individual Board "Emergency Reserve Enforcement Fund" (use unencumbered/reserve funds for enforcement purposes only)

Title

This measure shall be known and may be cited as the Consumer Health Care Enforcement Reform Act.

Intent Language

Add the following to the bill to read:

(a) The Legislature finds and declares the following:

(1) In recent years, it has been reported that some of the healing arts boards within the Department of Consumer Affairs take on average more than three years to investigate and prosecute violations of law, a timeframe that does not adequately protect consumers.

(2) The excessive amount of time it takes healing arts boards to investigate and prosecute licensed professionals who have violated the law has been caused in part by legal and procedural impediments to the enforcement programs.

(3) Both consumers and licensees have an interest in the quick resolution of complaints and disciplinary actions—consumers need prompt action against licensees who do not comply with professional standards, and licensees have an interest in timely review of consumer complaints to keep the trust of their patients.

(b) It is the intent of the Legislature that the changes made by this bill improve efficiency and increase accountability within the boards of the Department of Consumer Affairs, and remain consistent with the long-held paramount goal of consumer protection.

(c) It is further the intent of the Legislature that the changes made by this bill provide the healing arts boards within the Department of Consumer Affairs with the regulatory tools and authorities necessary to reduce the average timeframe for investigating and prosecuting violations of law by healing arts practitioners to between 12 and 18 months.

(1) Information Provided on the Internet

Existing law (Section 27 of the B&P Code) requires certain specified boards within the Department of Consumer Affairs (DCA) to disclose on the Internet information on their respective licensees. This includes:

(1) The status of every license.
(2) Suspensions and revocations of licenses issued and other related enforcement action.
(3) Licensee's address of record. However, the licensee may provide a post office box number or other alternate address, instead of his or her home address as the address of record.

The information shall not include personal information, including home telephone number, date of birth or social security number.

Boards and Bureaus currently required to disclose this information on the Internet include:

(1) Acupuncture Board
(2) Board of Behavioral Sciences
(3) Dental Board'
(4) Board of Optometry
(5) Engineer's Board
(6) Structural Pest Control Board
(7) Bureau of Automotive Repair
(8) Bureau of Electronic and Appliance Repair
(9) Cemetery and Funeral Bureau
(10) Contractor's Board

Existing law also requires the Medical Board of California (MBC) to disclose on the Internet the following information regarding physicians and surgeons:

(1) With regard to the status of the license, whether or not the licensee is in good standing, or subject to a temporary restraining order, interim suspension order or to any enforcement actions as specified.
(2) With regard to prior discipline, whether or not the licensee has been subject to discipline by the board or by the board of another state or jurisdiction.
(3) Any felony convictions reported to the MBC after a specified date.
(4) All current accusations filed by the Attorney General as defined.
(5) Any malpractice judgment or arbitration award reported to the board after a specified date.
(6) Any hospital disciplinary actions that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason.
(7) Any misdemeanor convictions that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.
(8) Appropriate disclaimers and explanatory statements including an explanation of what types of information are not disclosed.

Generally allows this information to be posted for a period of 10 years, unless otherwise provided.

This bill will additionally require all the other specified healing arts boards to disclose the above information on the Internet by adding these boards to the existing list of boards under Section 27 of the B&P Code and adding a new section (Section 720.32 of the B&P Code) which is similar to similar to those disclosures provided under Section 2027 for physicians and surgeons.

Reason for this Change: There is no reason why all boards under the DCA should not be subject to same basic requirements for disclosure over the Internet that other boards and bureaus are currently required to disclose to the public. One of the issues raised by the LA Times is that the public is unaware of problem licensees; whether they have had prior disciplinary action taken against them or whether their license is currently in good standing. There were instances in which the LA Times looked up on the Internet or the Board's website and never saw prior disciplinary or criminal convictions of nurses. (It should be noted that most boards and bureaus under DCA have websites but there is not always consistency in information being provided by boards not listed under Section 27 of the B&P Code, or by boards not required to make disclosures similar to those required of the Medical Board under Section 2027.)

Concerns Raised: Some nurses organizations are concerned about making the "address of record" available on the Internet. Should nurses be the only health professional who does not have to provide an "address of record" to be made available to the public?

Amend Section 27 of the Business and Professions Code, 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 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 State 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 and Hearing Aid Dispensers 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 Naturopathic Medicine Committee shall disclose information on its licensees.

(23) The Physician Assistant Committee of the Medical Board of California shall disclose information on its licensees.

(24) The Dental Hygiene Committee of California 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.

Add Section 720.28 to the Business and Professions Code, to read:

720.28 (a) Unless otherwise provided, on or after July 1, 2013, the board shall post on the Internet the following information in its possession, custody, or control:

(1) With regard to the status of the license, whether or not the licensee is in good standing, subject to a temporary restraining order (TRO), subject to an interim suspension order (ISO), or subject to any of the enforcement actions as described in Section 803.1.

(2) With regard to prior discipline, whether or not the licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(3) Any felony convictions reported to the board after January 3, 1991.

(4) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" shall mean an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(5) Any malpractice judgment or arbitration award reported to the board after January 1, 1993.

(6) Any hospital disciplinary actions that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 805 or Section 720.18.

(7) Any misdemeanor conviction that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(8) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(b) (1) From July 1, 2013, the information described in paragraphs (1) (other than whether or not the licensee is in good standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain posted for a period of 10 years from the date the board obtains possession, custody, or control of the information, and after the end of that period shall be removed from being posted on the board's Internet Web site. Information in the possession, custody, or control of the board prior to July 1, 2013, shall be posted for a period of 10 years from July 1, 2013.

(2) The information described in paragraphs (3) and (6) of subdivision (a) shall not be removed from being posted on the board's Internet Web site. Notwithstanding the provisions of this paragraph, if a licensee's hospital staff privileges are restored and the licensee notifies the board of the restoration, the information pertaining to the termination or revocation of those privileges, as described in paragraph (6) of subdivision (a), shall remain posted for a period of 10 years from the restoration date of the privileges, and at the end of that period shall be removed from being posted on the board's Internet Web site.

(c) The board shall provide links to other Web sites on the Internet that provide information on board certifications that meet the requirements of subdivision (b) of Section 651. The board may provide links to other Web sites on the Internet that provide information on health care service plans, health insurers, hospitals, or other facilities. The board may also provide links to any other sites that would provide information on the affiliations of licensed practitioners.

(2) Director's Authority to Audit Enforcement Programs of Health Boards

Existing law (Section 116 of the B&P Code) authorizes the Director of DCA to audit and review, among other things, inquiries and complaints regarding licensees, dismissals of disciplinary cases, and discipline short of formal accusation by the Medical Board of California and the California Board of Podiatric Medicine.

This bill will additionally authorize the Director to audit and review the aforementioned activities by any of the healing arts boards.

Reason for this Change: There is no reason why the Director should only be limited to auditing and taking specific actions on behalf of consumers for only the Medical Board and the Podiatric Board. The Director should be authorized to take any of the aforementioned actions and audit any of the healing arts boards as necessary. This could be in addition to any reviews or audits by the Legislature and would allow the Director to make recommendations for changes to the board's disciplinary/enforcement system.

Concerns Raised: There have been no concerns raised about this change.

Amend Section 116 of the Business and Professions Code, to read:
116. (a) The director *or his or her designee* may audit and review, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by ~~the Medical Board of California, the allied health professional boards, and the California Board of Podiatric Medicine.~~ ***any of the healing arts boards established under Division 2 (commencing with Section 500) or under any initiative act referred to in that division*** The director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both.

(b) The director shall report to the Chairpersons of the Senate Business and Professions Committee and the Assembly Health Committee annually~~, commencing March 1, 1995,~~ regarding his or her findings from any audit, review, or monitoring and evaluation conducted pursuant to this section.

(3) Cost Recovery for Actual Costs of Investigation, Prosecution and Probation Monitoring

Existing law (Section 125.3 of the B&P Code) specifies that in any order issued in resolution of a disciplinary proceeding before any board (other than the Medical Board) with the DCA, the administrative law judge may direct the licensee found to have committed a violation of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General. Provides that the Medical Board shall not be able to collect from a physician and surgeon investigation and prosecution costs. However, an increase in the amount of the licensing fee shall compensate for any loss of revenue obtained from the costs resulting from investigation and prosecution of disciplinary cases.

This bill will allow boards (other than the Medical Board) to receive the actual costs of the investigation and enforcement of a disciplinary case or for a citation issued by the board. The board shall also be able to receive probation monitoring costs for a licensee who is placed on probation by the administrative law judge.

Reason for this Change: According to the DCA, current law allows boards to only collect reasonable costs of investigation. This can create a problem, as the reasonable cost is determined by an Administrative Law Judge, and is often significantly less than the actual cost of the investigation. This can be especially damaging to small boards, because one or two very expensive investigations can take up a significant amount of their appropriation and their fund reserves. Authorizing boards to collect the actual costs of an investigation will prevent boards from losing significant funds on drawn-out cases. Additionally, making the respondent responsible for the actual cost of an investigation is fairer to licensees who obey the law, as this can help prevent boards from paying for higher investigation costs by increased licensing fees.

Further, while some boards have explicit statutory authority to recover costs associated with probation monitoring, not all boards do. Such a requirement can be made a term of probation without statutory authority, but the statutory authority will give boards more explicit authority, lead to quicker resolution of probation terms, and authorize boards to refuse to renew the license of a licensee who has not paid probation costs.

Concerns Raised: There have been no concerns raised about these changes.

Amend Section 125.3 of the Business and Professions Code:

125.3. (a) *(1)* Except as otherwise provided by law, in any order issued in resolution of a ***penalty or*** disciplinary proceeding ***or hearing on a citation issued pursuant to section 125.9 or regulations adopted thereto***, before any board ***identified in section 101,*** ~~within the department or before the Osteopathic Medical Board, upon~~

~~request of the entity bringing the proceeding,~~ ***the board or*** the administrative law judge may direct ~~a licentiate~~ ***any licensee or applicant*** found to have committed a violation or violations of ~~the licensing act~~ ***law*** to *pay* ***to the entity*** a sum not to exceed the ~~reasonable~~ ***actual*** costs of the investigation***, prosecution*** and enforcement of the case.

(2) In an order issued pursuant to paragraph (1) of subdivision (a) that places a license on probation, the administrative law judge may direct a licensee to pay the board's actual cost of monitoring that licensee while he or she remains on probation, if so requested by the party bringing the proceeding. The board shall provide the administrative law judge with a good faith estimate of the probation monitoring costs at the time of the request.

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

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of ~~reasonable~~ ***actual*** costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of ~~reasonable~~ ***actual*** costs of investigation and prosecution of the case ***and probation monitoring costs*** when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase ~~the~~ ***any*** cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) If an order for recovery of costs is made***, payment is due and payable 30 days after the effective date of the order. If*** and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

(f) In any action for 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.

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

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

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

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

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

(k) Notwithstanding the provisions of this section, the Medical Board of California shall not request nor obtain from a physician and surgeon, investigation and prosecution costs for a disciplinary proceeding against the licentiate. The board shall ensure that this subdivision is revenue neutral with regard to it and that any loss of revenue or increase in costs resulting from this subdivision is offset by an increase in the amount of the initial license fee and the biennial renewal fee, as provided in subdivision (e) of Section 2435.

(l)For purposes of this chapter, costs of prosecution shall include, but not be limited to, costs of attorneys, expert consultants, witnesses, any administrative filing and service fees and any other cost associated with the prosecution of the case.

(4) Allow Boards to Contract with Collection Agency

This bill adds a new section (Section 125.4 of the B&P Code) which will allow a board to contract with a collection service for the purpose of collecting outstanding fees, fines, or cost recovery amounts.

Reason for this Change: All of the Department's boards are authorized to issue administrative citations, which may include an administrative fine, to licensees for violations of law, and to non-licensees for unlicensed activity. However, most boards come far from ever collecting all administrative fines due to them. In order to improve effectiveness in boards' fine collection efforts, the Department will procure a contract with a collection agency that can serve all boards. Legislation is needed to allow the department the ability to provide the collection agency with social security numbers.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 125.4 to the Business and Professions Code, to read:
125.4. Notwithstanding any other provision of law, the board may contract with a collection service for the purpose of collecting outstanding fees, fines, or cost recovery amounts, and may release personal information to the collection services, including the birth date, telephone number, and social security number of any applicant or licensee for this purpose. The contractual agreement shall provide that the collection service shall use or release personal information only as authorized by the contract, and shall provide safeguards to ensure that personal information is protected from unauthorized disclosure. The contractual agreement shall hold the collection service liable for unauthorized use or disclosure of personal information.

(5) Allow Health Boards to Hear Appeals of Citation and Fines

Existing law (Section 125.9 of the B&P Code) allows boards to establish by regulation a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board where the licensee is in violation of the applicable licensing act or any regulation. Specifies that in no event shall the fine assessed exceed $5,000 for each violation. In assessing the fine, the board shall give due consideration to the appropriateness of the amount of the fine with respect to such factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations. The licensee shall be provided an opportunity to contest the finding of a violation and the assessment of a fine at a hearing conducted in accordance with the Administrative Procedures Act (APA).

This bill will allow the healing arts boards to appoint two members of the board to conduct a hearing to hear an appeal of the citation decision and assessment of a fine, The board would not be required to conduct the hearing in accordance with the APA.

Reason for this Change: According to the Department, all boards are authorized to issue administrative citations, which may include an order of abatement or a fine of up to $5,000, so long as the board has regulations in place establishing a system for the issuance of the citations. Existing law permits a licensee who is issued a citation to appeal the citation and request a hearing pursuant to the APA. However, an administrative hearing can impose a large cost on a board; a board can spend $8,000 on legal costs to uphold a $600 fine.

In lieu of the APA hearing process, the Department proposes establishing an appeal process wherein a licensee who appeals the citation would be granted a hearing before the executive officer and two board members of the board that issued the citation. This process would still provide licensees with due process, but on a more appropriate—and less resource consuming—level than a full APA hearing.

The Department's proposed statutory amendments would allow boards to continue to utilize the APA hearing process, at their discretion. This is necessary because some boards issue many administrative citations, and hearing them all before board members would be unreasonable.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Amend Section 125.9 of the Business and Professions Code, to read:

125.9. (a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), and Chapter 11.6 (commencing with Section 7590) of Division 3, any board, bureau, or commission within the department, the board created by the Chiropractic Initiative Act, and the Osteopathic Medical Board of California, may

establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

(1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.

(2) Whenever appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

(3) In no event shall the administrative fine assessed by the board, bureau, or commission exceed five thousand dollars ($5,000) for each inspection or each investigation made with respect to the violation, or five thousand dollars ($5,000) for each violation or count if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the board, bureau, or commission shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations.

(4) A citation or fine assessment issued pursuant to a citation shall inform the licensee that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board, bureau, or commission within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code *or, at the discretion of the board, pursuant to subsection (5) below.*

(5) (A)If a hearing is requested from a healing arts board which is a board or committee, the executive officer and two members of such board or committee shall hear the appeal and issue a citation decision. A licensee desiring to appeal the citation decision shall file a written appeal of the citation decision with the board or committee within 30 days of issuance of the decision. The appeal shall be considered by the board or committee itself and thereafter it shall issue a written decision on the appeal. The members of the board or committee who issued the citation decision shall not participate in the appeal before the board unless one or both of the members are needed to establish a quorum to act on the appeal.

(B) If the healing arts board is a bureau, the director shall appoint a designee to hear the appeal and issue a citation decision. A licensee desiring to appeal the citation decision shall file a written appeal of the citation decision with the bureau within 30 days of issuance of the decision. The appeal shall be considered by the director or his or her designee, who will issue a written decision on the appeal.

(C) The hearings specified in subparagraphs (b)(5) are not subject to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(D) A healing arts board may adopt regulations to implement this subsection which may include the use of telephonic hearings.

~~(5)~~ *(6)* Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

(c) The system may contain the following provisions:

(1) A citation may be issued without the assessment of an administrative fine.

(2) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act.

(d) Notwithstanding any other provision of law, if a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

(e) Administrative fines collected pursuant to this section shall be deposited in the special fund of the particular board, bureau, or commission.

(6) Authority for Health Boards to Contract for Investigative Services with Medical Board and Attorney General's Office

Existing law (Section 155 of the B&P Code) specifies that the director may employ such investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law and that it is the intent of the Legislature that inspectors used by boards shall not be required to be employees of the Division of Investigation, but may be either employees, or under contract to the boards.

This bill will allow the healing arts boards to contract with either the Medical Board or with the Department of Justice to provide investigative services as determined necessary by the executive officer of the board.

Reason for this Change: Health boards should be provided with the greatest flexibility in obtaining investigative services and in completing cases in a timely manner. By allowing health boards to contract with the Medical Board or the Department of Justice, or to utilize the investigative services of the Division of Investigation, boards will be provided with the broadest opportunity to move cases forward in a more expeditious manner.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Amend Section 155 of the Business and Professions Code to read:
155. (a) In accordance with Section 159.5, the director may employ such investigators, inspectors, and deputies as are necessary properly to investigate and prosecute all violations of any law, the enforcement of which is charged to the department or to any board, agency, or commission in the department.

(b) It is the intent of the Legislature that inspectors used by boards, bureaus, or commissions in the department shall not be required to be employees of the Division of Investigation, but may either be employees of, or under contract to, the boards, bureaus, or commissions. Contracts for services shall be consistent with Article 4.5 (commencing with Section 19130) of Chapter 6 of Part 2 of Division 5 of Title 2 of the Government Code. All civil service employees currently employed as inspectors whose functions are transferred as a result of this section shall retain their positions, status, and rights in accordance with Section 19994.10 of the Government Code and the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

(c) ***It is the intent of the Legislature that investigators used by the healing arts boards as described in Section 720, shall not be required to be employees of the Division of Investigation and the healing arts boards may contract for investigative services provided by the Medical Board of California or provided by the Department of Justice.***

(d) Nothing in this section limits the authority of, or prohibits, investigators in the Division of Investigation in the conduct of inspections or investigations of any licensee, or in the conduct of investigations of any officer or employee of a board or the department at the specific request of the director or his or her designee.

(7) Create Within the Division of Investigation a Health Quality Enforcement Unit

Existing law (Section 159.5 of the B&P Code) specifies that within the DCA there is the Division of Investigation and that the Division is in charge of a person with the title of chief of the Division. Also provides that all personnel that provide investigative services shall have peace officer status.

This bill will create within the division a special unit titled the "Health Quality Enforcement Unit to focus on heath care quality cases and to work closely with the Attorney General's Health Quality Enforcement Section in investigation and prosecution of complex and varied disciplinary actions against licensees of the various healing arts boards.

Reason for this Change: It has been argued by the Center for Public Interest Law and others that because of the critical importance of the board's public health and safety functions, the complexity of cases involving misconduct of health care practitioners, and the evidentiary burden in the board's disciplinary cases, that using a vertical enforcement and prosecution model for those investigations could be more effective and efficient in pursuing disciplinary actions against health care licensees. (See discussion regarding vertical enforcement and prosecution under Item # 29.)

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Amend Section 159.5 of the Business and Professions Code to read:

159.5. There is in the department the Division of Investigation. The division is in charge of a person with the title of chief of the division. ***There is in the division the Health Quality Enforcement Unit. The primary responsibility of the unit is to investigate proceedings against licensees and applicants within the jurisdiction of the boards listed under Section 720.*** Except as provided in Section 16 of Chapter 1394 of the Statutes of 1970, all positions for the personnel necessary to provide investigative services, as specified in Section 160 of this code and in subdivision (b) of Section 830.3 of the Penal Code, ~~to the agencies in the department~~ shall be in the division and the personnel shall be appointed by the director. ~~However, if, pursuant to the Governor's Reorganization Plan No. 2 of the 1970 Regular Session, any agency has any investigative, inspectional, or auditing positions of its own, the agency shall retain those positions until the director determines, after consultation with, and consideration of, the views of the particular agency concerned, that the positions should be transferred to the division in the interests of efficient, economical, and effective service to the public, at which time they shall be so transferred.~~

(8) Authority of the Board of Registered Nursing to Hire Investigators, Nurse Consultants and Other Personnel

Existing law (Section 160 of the B&P Code) specifies that those investigators of the Division of Investigation of DCA, the Medical Board and the Dental Board shall have the authority and status of peace officers. Also provides that the Board of Registered Nursing (BRN) may employ personnel as it deems necessary (Section 2715 of the B&P Code).

This bill will allow the BRN to hire a certain number of investigators for the Board with the authority and status of peace officers rather than only being able to rely on those peace officer investigators under the Division of Investigation. Will also permit the BRN to employ investigators, nurse consultants, and other personnel as it deem necessary and that investigators employed by the Board provided appropriate training.

Reason for this Change: It is the opinion of the BRN and others that the Board could pursue investigations more quickly if they were able to hire both sworn (peace officer) and non-sworn investigators, as well as nurse consultants and not always have to rely on the Division of Investigation.

Concerns Raised: There have been no concerns raised about these changes.

Amend Section 160 of the Business and Professions Code to read:

160. *(a)* The Chief and ~~all~~ ***designated*** investigators of the Division of Investigation of the department, ~~and all~~ ***designated*** investigators of the Medical Board of California ~~and the Board of Dental Examiners~~***.designated investigators of the Dental Board of California and the Board of Registered Nursing*** have the authority of peace officers while engaged in exercising the powers granted or performing the duties imposed upon them or the division in investigating the laws administered by the various boards comprising the department or commencing directly or indirectly any criminal prosecution arising from any investigation conducted under these laws. All persons herein referred to shall be deemed to be acting within the scope of employment with respect to all acts and matters in this section set forth.

(b) The Division of Investigation, the Medical Board of California, the Dental Board of California and the California Board of Registered Nursing may employ individuals who are not peace officers to provide investigative services.

Amend Section 2715 of the Business and Professions Code to read:

2715. The board shall prosecute all persons guilty of violating the provisions of this chapter.

~~Except as provided by Section 159.5, the~~

The board, in accordance with the provisions of the Civil Service Law, may employ ~~such~~ ***investigators, nurse consultants, and other*** personnel as it deems

necessary to carry into effect the provisions of this chapter. ***Investigators employed by the board shall be provided special training in investigating nursing practice activities.***
The board shall have and use a seal bearing the name "Board of Registered Nursing." The board may adopt, amend, or repeal, in accordance with the provisions ***of*** Chapter 4.5 (commencing with Section 11371), ***of*** Part 1, *of* Division 3, ***of*** Title 2 of the Government Code, such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of this chapter.

Amend Section 830.3 of the Penal Code to read:
830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as specified by their employing agencies:

(a) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Medical Board of California, ~~and~~ the Board of Dental Examiners ***and the Board of Registered Nursing***, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(b) Voluntary fire wardens designated by the Director of Forestry and Fire Protection pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that code.

(c) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of this code.

(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(f) Inspectors of the food and drug section designated by the chief pursuant to subdivision (a) of Section 106500 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 106500 of that code.

(g) All investigators of the Division of Labor Standards Enforcement designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Section 95 of the Labor Code.

(h) All investigators of the State Departments of Health Care Services, Public Health, Social Services, Mental Health, and Alcohol and Drug Programs, the

Department of Toxic Substances Control, the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(i) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators designated by the chief, provided that the primary duty of those investigators shall be the enforcement of Section 550.

(j) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(k) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other law, except as authorized by the Controller, the peace officers designated pursuant to this subdivision shall not carry firearms.

(l) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be the enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(m) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(n) The Chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(o) Investigators of the office of the Secretary of State designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of, and Section 12172.5 of, the Government Code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(p) The Deputy Director for Security designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(q) Investigators employed by the Investigation Division of the Employment Development Department designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) The chief and assistant chief of museum security and safety of the California Science Center, as designated by the executive director pursuant to Section 4108 of the Food and Agricultural Code, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 4108 of the Food and Agricultural Code.

(s) Employees of the Franchise Tax Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of the law as set forth in Chapter 9 (commencing with Section 19701) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(t) Notwithstanding any other provision of this section, a peace officer authorized by this section shall not be authorized to carry firearms by his or her employing agency until that agency has adopted a policy on the use of deadly force by those peace officers, and until those peace officers have been instructed in the employing agency's policy on the use of deadly force.

Every peace officer authorized pursuant to this section to carry firearms by his or her employing agency shall qualify in the use of the firearms at least every six months.

(u) Investigators of the Department of Managed Health Care designated by the Director of the Department of Managed Health Care, provided that the primary duty of these investigators shall be the enforcement of the provisions of laws administered by the Director of the Department of Managed Health Care. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(v) The Chief, Deputy Chief, supervising investigators, and investigators of the Office of Protective Services of the State Department of Developmental Services, provided that the primary duty of each of those persons shall be the enforcement of the law relating to the duties of his or her department or office.

(9) New Enforcement Article for all Health Care Boards

This bill creates a new article (commencing with Section 720 of the B&P Code) that deals with health care licensing enforcement by all of the "healing arts boards." It lists all the boards which are considered as a "healing arts board."

Reason for this Change: Many of the requirements that now only apply to the Medical Board and the Podiatric Board will now have general application to all healing arts boards by creating a new article in the B&P Code and including those provisions which should apply to all health arts boards. This article will also include new provisions which will have general application to all healing arts boards.

Concerns Raised: There have been no concerns raised about this change.

Add Article 10.1 (commencing with Section 720) to Chapter 1 of Division 2 of the B&P Code, to read:
Article 10.1. Healing Arts Licensing Enforcement

Add Section 720 to the B&P Code, to read:
720. (a) Unless otherwise provided, as used in this article, the term "healing arts boards" shall include all of the following:
(1) The Dental Board of California.
(2) The Medical Board of California.
(3) The State Board of Optometry.
(4) The California State Board of Pharmacy.
(5) The Board of Registered Nursing.
(6) The Board of Behavioral Sciences.
(7) The Board of Vocational Nursing and Psychiatric Technicians of the State of California.
(8) The Respiratory Care Board of California.
(9) The Acupuncture Board.
(10) The Board of Psychology.
(11) The California Board of Podiatric Medicine.
(12) The Physical Therapy Board of California.
(13) The Physician Assistant Committee of the Medical Board of California.
(14) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.
(15) The California Board of Occupational Therapy.
(16) The Osteopathic Medical Board of California.
(17) The Naturopathic Medicine Committee of the Osteopathic Medical Board of California.
(18) The Dental Hygiene Committee of California.
(19) The State Board of Chiropractic Examiners
(20) The Veterinary Medical Board
(b) Unless otherwise provided, as used in this article, "board" means all healing arts boards described under subdivision (a) and "licensee" means a licensee of a board described in subdivision (a).

(10) Authority for Executive Officers to Adopt Default Decisions and Stipulated Settlements

This bill adds a new section (Section 720.2 of the B&P Code) that would authorize the executive officer of specified healing arts boards, where a disciplinary action has been filed by the board, to revoke the license of a licensee if they have failed to file a notice of defense, appear at the hearing, or has agreed to surrender his or her license, to adopt a proposed default decision or a proposed settlement agreement.

Reason for this Change: According to the Attorney General's Office (AG) a majority of filed cases settle and the receipt of a Notice of Defense can trigger either settlement discussions or the taking of a Default Decision. Stipulated settlements are a more expeditious and less costly method of case resolution. The executive officer of the board can provide summary reports of all settlements to the board and the board can provide constant review and feedback to the executive officer so that policies can be established and adjusted as necessary. Also, there have been instances of undue delays between when a fully-signed settlement has been forwarded to the board's headquarters and when it has been placed on the board's agenda for a vote. Delegating this authority to the executive officer will result in a final disposition of these matters much quicker. The fact that BRN, for example, has reduced the number of its annual meetings has only increased the need for this.

According to the Center for Public Interest Law (CPIL), it is taking the AG too long to prepare a proposed default decision. In 2004-2005, it was taking the AG almost 6 months to file a proposed default decision. In 2008-2009 it was down to about 2.5 months. As argued by CPIL, filing a proposed default decision is "not rocket science" and should only take a matter of hours.

Concerns Raised: There have been no concerns raised about this change.

Add Section 720.2 to the B&P Code, to read:

720.2. (a) The executive officer or executive director of a board may adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The executive officer or executive director of a board may adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to surrender his or her license.

(11) Authority for Health Boards to Enter Into Stipulated Settlements Without Filing an Accusation

This bill adds a new section (Section 720.4 of the B&P Code) that would authorize a healing arts board to enter into a settlement with a licensee or applicant prior to the board's issuance of an accusation or statement of issues against the licensee. Specifies that no person who enters into a settlement with the board may petition to modify the terms of the settlement or petition for early termination of probation if probation is part of the settlement and that any settlement shall be considered discipline and a public record and shall be posted on the board's Internet site.

Reason for this Change: According to the Department, the APA requires a board to file an accusation or statement of issues against a licensee before the board can reach a stipulated settlement with the licensee. While many licensees will not agree to a stipulated settlement without the pressure of a formal accusation having been filed, boards have experienced licensees who are willing to agree to a stipulated settlement earlier on in the investigation stage of the enforcement process.

Existing law would be clarified to ensure that a board can enter into a legally binding stipulated settlement prior to filing a formal accusation or drafting a statement of issues. Such a stipulated settlement could include revocation, surrender, probation, citation and fine, or any other form of discipline, and would be a public record. The Department's proposed legislative language would also provide that if the stipulation includes probation, that the terms and conditions may not be modified, nor can the respondent petition for early termination of probation.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 720.4 to the B&P Code, to read:

720.4. (a) Notwithstanding the provisions of Section 11415.60 of the Government Code, a healing arts board may enter into a settlement with a licensee or applicant prior to the board's issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) No person who enters a settlement pursuant to this section may petition to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(c) Any settlement executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet site.

(12) Director's Authority to Immediately Suspend License

This bill adds a new section (Section 720.6 of the B&P Code) that would authorize the director of DCA to issue a temporary order to suspend the license of a licensee if the director received evidence from a board that the licensee has engaged in conduct that poses an imminent risk of serious harm to the public health, safety, or welfare, or the licensee has failed to comply with a request to inspect or copy records made pursuant to (Section 720.16). Provides that the licensee shall have an opportunity to present oral or written arguments before the director and shall receive notice of the hearing before the director at least twenty-four hours in advance. Specifies that a licensee who fails or refuses to comply with an order of the director to cease practice would be subject to revocation or suspension of their license by the board and could be assessed an administrative fine not to exceed $25,000. Provides that the order to cease practice shall be vacated within 120 days or until the board files a petition for an interim suspension. Requires the board to review the basis for the suspension and determine if the suspension should be continued or vacated and provide such information to the director. The temporary suspension order of the director is subject to judicial review. The order to suspend practice shall be posted on the board's website.

Reason for this Change: According to the DCA, under existing law, the Interim Suspension Order (ISO) process provides boards with an avenue for expedited enforcement when action must be taken swiftly. Currently, the ISO process can take weeks to months to achieve, allowing licensees who pose an egregious risk to the public to continue to practice for an unacceptable amount of time. To ensure the public is protected, the DCA is proposing that the Director be given the authority to issue a cease practice or restricted practice order, upon the request of an executive officer. The order would be in effect for up to 180 days, giving the board more time to gather further evidence to support a petition for an ISO. This would allow boards to expeditiously remove licensees from practice if necessary to protect the public while the investigation continues forward.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 720.6 to the B&P Code, to read:

720.4. (a) Notwithstanding any other provision of law, upon receipt of evidence that there is a licensee of a board that has engaged in conduct that poses an imminent risk of serious harm to the public health, safety, or welfare, or has failed to comply with a request to inspect or copy records made pursuant to Section (720.16), the executive officer of that board may petition the director to issue a temporary order that the licensee cease all practice and activities that require a license by that board.

(b) (1) The executive officer of the board shall, to the extent practicable, provide telephonic, electronic mail, message, or facsimile written notice to the licensee of hearing of the petition at least twenty-four hours prior to the hearing. The licensee

and his or her counsel and the executive officer or his or her designee shall have the opportunity to present oral or written argument before the director. After presentation of the evidence and consideration of any arguments presented, the director may issue an order that the licensee cease all practice and activities that require a license by that health care license board when, in the opinion of the director, the action is necessary to protect the public health, safety or welfare.

(2) The hearing specified in this subdivision is not subject to the provisions of Chapter 5 (commencing with section 11500) of the Government Code.

(c) Any order to cease practice issued pursuant to this section shall automatically be vacated within 120 days of issuance, or until the board, pursuant to Section 494, files a petition for an interim suspension order and the petition is denied or granted, whichever occurs first.

(d) A licensee who fails or refuses to comply with an order of the director to cease practice pursuant to this section is subject to disciplinary action to revoke or suspend his or her license by his or her respective board and an administrative fine assessed by the board not to exceed twenty-five thousand dollars ($25,000). The remedies provided herein are in addition to any other authority of the board to sanction a licensee for practicing or engaging in activities subject to the jurisdiction of the board without proper legal authority.

(e) Upon receipt of new information, the executive officer for the board that requested the temporary suspension order shall review the basis for the license suspension to determine if the grounds for the suspension continue to exist. The executive officer shall notify immediately the director if the executive officer believes that the licensee no longer poses an imminent risk of serious harm to the public health, safety, or welfare or that the licensee has complied with the request to inspect or copy records pursuant to Section 720.16. The director shall review such information from the executive officer and may vacate the suspension order, if he or she believes that the suspension is no longer necessary to protect the public health, safety or welfare.

(f) Any petition and order to cease practice shall be displayed on the Internet site of the applicable board except that if the petition is not granted or the director vacates the suspension order pursuant to subdivision (e), the petition and order shall be removed from the respective board's Internet site.

(g) Should the position of Director of DCA be vacant the individual serving as Chief Deputy Director of DCA may fulfill the duties of this section.

(h) Temporary suspension orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in and for the Counties of Sacramento, San Francisco, Los Angeles, or San Diego.

(13) Automatic Suspension of License While Incarcerated

This bill adds a new section (Section 720.8 of the B&P Code) that would provide that the license of a licensee shall be suspended automatically if the licensee is incarcerated after the conviction of a felony, regardless of whether the conviction has been appealed, and would require the board to notify the licensee of the suspension and of his or her right to a specified (due process) hearing. The board would be required to review the license suspension immediately upon receipt of court documents regarding the conviction to determine if the felony of which the licensee was convicted was substantially related to the qualifications, functions, or duties of the licensee. Specifies that the conviction of certain serious crimes are conclusively presumed to be substantially related. Provides that the board may set aside or decline to impose suspension of the license when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the practice regulated by the board.

Reason for this Change: This new section is identical to Section 2236.1 of the B&P Code which is applicable to physicians and surgeons and podiatrists. There is no reason why other health professionals should not be subject to the same requirements regarding suspension of their license if they are convicted of a felony and incarcerated. Automatic license suspension is needed to prevent health care professional from practicing while in prison or while released pending appeal of their convictions. Years may pass before a convicted licensee's license can be revoked. According to the LA Times, "in some cases, nurses with felony records continue to have spotless licenses - - even while serving time behind bars." The LA Times gave examples of at least five nurses who had felony convictions and yet continued to have a license in good standing.

Concerns Raised:

Add Section 720.8 to the B&P Code, to read:

720.8. (a) The license of a licensee of a board shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Law it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the laws and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or 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 plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Law. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in the conviction, including a transcript of the testimony therein, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by a health care license board shall not apply to proceedings conducted pursuant to this section.

(14) Mandatory Revocation for Acts of Sexual Exploitation and Registration as Sex Offender

This bill adds a new section (Section 720.10 of the B&P Code) that a decision issued by an administrative law judge that contains a finding that a health care practitioner engaged in any act of sexual exploitation, as defined in Section 729 of the B&P Code, with a patient, or has committed an act of been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge. Also adds a new section (Section 720.12 of the B&P Code) that would require the board to deny a license to an applicant or revoke the license of a licensee who has been required to register as a sex offender.

Reason for this Change: The new section 720.10 is similar to language which currently exists for physicians (Section 2246 of the B&P Code), for psychologists (Section 2960.1 of the B&P Code), for respiratory care therapists (Section 3752.7 of the B&P Code), for marriage and family therapists (Section 4982.26 of the B&P Code), and for clinical social workers (Section 4992.33 of the B&P Code). The new section 720.12 is similar to language which currently exists for physicians (Section 2221 (d) and Section 2232 of the B&P Code), for dentists (Section 1687 of the B&P Code), for physical therapists (Section 2660.5 of the B&P Code) and for psychologists (Section 2964.3 of the B&P Code). There is no reason why other health professionals should not be subject to the same requirements for revoking a license for acts of sexual exploitation or conviction of a sex offense, or denying or revoking a license of a person who is a registered sex offender.

Concerns Raised: There were no concerns raised about language in SB 294 which dealt with revoking a license for acts of sexual misconduct or conviction of a sex offense by a licensee. The language to deny or revoke a license of a registered sex offender was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 720.10 to the B&P Code, to read:

720.8. Except as otherwise provided, any proposed decision or decision issued under this article in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge. Unless otherwise provided in the laws and regulations of the board, the patient shall no longer be considered a patient of the licensee when the order for medical services and procedures provided by the licensee is terminated, discontinued, or not renewed by the prescribing physician and surgeon.

Add Section 720.12 to the B&P Code, to read:

720.10. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under Division 2, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of theGovernment Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's licensure. The board shall not issue a stay of license denial and place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under other provisions of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

(15) Prohibition of Gag Clauses in Civil Dispute Settlement Agreements

This bill adds a new section (Section 720.14 of the B&P Code) that would prohibit a licensee from including, or permitting to be included, any provision in a civil dispute settlement agreement which would prohibit a person from contacting, cooperating with, or filing a complaint with a board based on any action arising from his or her practice. (This is known as a "gag clause" in a malpractice settlement.)

Reason for this Change: The new section 720.14 is similar to language which currently exists for physicians (Section 2220.7 of the B&P Code). AB 249 (Eng, 2007) would have extended this prohibition to all healing arts professionals but was vetoed by the Governor. There is no reason why other health professionals should not be subject to the same prohibition which would prevent them from including a "gag clause" in a malpractice settlement and thus preventing a board from receiving information about a practitioner who may have violated the law. The use of gag clauses still persists. Gag clauses are sometimes used to intimidate injured victims so they refuse to testify against a licensee in investigations. Gag clauses can cause delay and thwart a boards effort to investigate possible cases of misconduct, thereby preventing the board from performing its most basic function – protection of the public. Gag clauses increase costs to taxpayers, delay action by regulators, and tarnish the reputation of competent and reputable licensed health professionals. California should not allow repeat offenders who injure patients to hide their illegal acts from the authority that grants them their license to practice as a healthcare professional.

Concerns Raised: There were no concerns raised about language in SB 294 which dealt with providing a prohibition against gag clauses in civil dispute settlements.

Add Section 720.14 to the B&P Code, to read:

720.14. (a) A licensee of a board shall not include or permit to be included any of the following provisions in an agreement to settle a civil dispute arising from his or her practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting or cooperating with the board.

(2) A provision that prohibits another party to the dispute from filing a complaint with the board.

(3) A provision that requires another party to the dispute to withdraw a complaint he or she has filed with the board.

(b) A provision described in subdivision (a) is void as against public policy.

(c) A violation of this section constitutes unprofessional conduct and may subject the licensee to disciplinary action.

(d) If a board complies with Section 2220.7, that board shall not be subject to the requirements of this section.

(16) Access to Medical Records/Documents Pursuant to Investigations

This bill adds a new section (Section 720.16 of the B&P Code) that would authorize the Attorney General and his or her investigative agents and boards to inquire into any alleged violation of the laws under the board's jurisdiction and to inspect documents subject to specified procedures. Specifies that if a board complies with Section 2225 of the B&P Code they are not subject to this new section.

Adds new section (Section 720.18 of the B&P code) that would subject a licensee or a health facility to civil and criminal penalties if they fail to comply with a patient's medical record request, as specified, within 15 days, or if they fail or refuse to comply with a court order mandating release of record. Provides that this new section shall not apply to a licensee who does not have access to, or control over, certified medical records. Specifies that if a board complies with Section 2225.5 of the B&P Code they are not subject this new section.

Reason for this Change: New sections 720.16 and 720.18 are similar to language which currently exists for physicians and surgeons and podiatrists (Sections 2225 and 2225.5 of the B&P Code) and section 720.18 is also similar to language which currently exists for dentists and psychologists (Sections 1684.5 and 2969 of the B&P Code). When a board or the Attorney General is trying to obtain important documents and medical records pursuant to a disciplinary action of a licensee, requirements for obtaining these documents and records should be consistent with those of other health care practitioners. Language has been included which protects those licensees who may not be responsible for medical records or have no access or control over these records. Also, medical records can only be obtained under two circumstances: (1) The patient has given written authorization for release of the records to a board; and, (2) the board or the Attorney General have sought a court order and the court has issued a subpoena mandating the release of records. Under both circumstances penalties would apply if the records are not supplied by those who have both possession and control over the records.

Concerns Raised: (concerns which have been raised by nurses groups and others)

Add Section 720.16 to the B&P Code, to read:

720.16. (a) Notwithstanding any other provision of law making a communication between a licensee of a board and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by a board. Members of a board, deputies, employees, agents, the Attorney General's Office, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and a board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where patient consent is given.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, they shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the healing arts board.

(g) If a board complies with Section 2225, that board shall not be subject to the requirements of this section.

Add Section 720.18 to the B&P Code, to read:

720.18 (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient, that is accompanied by that patient's written authorization for release of records to a board, within 10 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 10th day, up to one hundred thousand dollars ($100,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide

the authorizing patient's certified medical records to the board within 10 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 10th day, up to one hundred thousand dollars ($100,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the boards in obtaining the patient's authorization. A board shall pay the reasonable costs of copying the certified medical records, but shall not be required to pay such cost prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by a board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to a board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to one hundred thousand dollars ($100,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a health care license board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be

punishable by a fine not to exceed five thousand dollars ($5,000) and shall be reported to the State Department of Public Health and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to or received by a board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.5, Section 2225.5 or Section 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records.

(17) Access to Records/Documents from Governmental Agencies

This bill adds a new section (Section 720.20 of the B&P Code) that would require a state agency upon receiving a request from a board to provide all records in the custody of the agency including but not limited to confidential reports, medical records and records related to closed or open investigations. A state agency shall also be required to notify the board if it is conducting an investigation against a licensee and shall cooperate with the board in providing all requested information.

Reason for this Change: According to the Department, when the Department's regulatory programs are conducting an investigation on one of their licensees, there can be significant delays caused by the amount of time it takes to secure records from various state agencies. This proposal would solve this problem by requiring these agencies to release information relevant to investigations, upon the request of a board.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 720.20 to the B&P Code, to read:

720.20. (a) Notwithstanding any other provision of law, a state agency shall, upon receiving a request in writing from a healing arts board, immediately provide to the board all records in the custody of the agency including, but not limited to, confidential records, medical records, and records related to closed or open investigations.

(b) Where a state agency has knowledge that a person it is investigating is licensed by a healing arts board, it shall notify the healing arts board that it is conducting an investigation against one of its licentiates. The notification of investigation to the healing arts board is to include the name, address, and if known, the professional licensure type and license number of the person being investigated and the name and address or telephone number of a person who can be contacted for further information about the investigation. The state agency shall cooperate with the healing arts board in providing all requested information.

(18) Payment to Agencies for Record/Documents Received

This bill adds a new section (Section 720.22 of the B&P Code) that would require all local and state law enforcement agencies, state and local governments, state agencies and licensed health care facilities, and employers of any licensee of a board to provide records requested prior to receiving payment from the board.

Reason for this Change: According to the Department, only a small number of external governmental agencies charge boards for producing records (i.e., Federal courts, several Los Angeles county agencies). However, under current practices, procedures involved in receiving approval for and completing the payment can delay delivery of the requested records.

The Department recommends a statutory mandate to compel any law enforcement agency, court, government entity, health facility, or employer who charges a fee for copies of any records to produce and deliver those copies prior to receiving payment from a board.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 720.22 to the B&P Code, to read:
720.22. Notwithstanding any other provision of law, all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and employers of any licensee of a board shall provide records to the boards upon request prior to receiving payment from the board.

(19) Employer of Health Care Practitioner Reporting Requirements

This bill adds a new section (Section 720.24 of the B&P Code) that would require any employer of a health care licensee to report to the respective board the suspension or termination for cause any health care licensee in its employ. This report shall be kept confidential except as provided under subdivision (c) of Section 800 of the B&P Code dealing with release of information within the central file of the licensee. This new provision shall also not be in conflict with nor change any of the current reporting requirements of a peer review body or licensed health care facility or clinic pursuant to Section 805 of the B&P Code.

Reason for this Change: This new section 720.24 is similar to language which currently exists for vocational nurses (Section 2878.1 of the B&P Code), psychiatric technicians (Section 4521.2 of the B&P Code) and respiratory care therapists (Section 3758 of the B&P Code). The Medical Board, the Board of Podiatric Medicine, Board of Behavioral Sciences, Board of Psychology and Dental Board also have more extensive reporting requirements for peer review bodies and hospitals which are specified in Section 805 of the B&P Code. There is no reason why the remaining health-related boards should not have similar reporting requirements for those licensees who have been suspended or terminated from employment for specified disciplinary reasons.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 720.24 to the B&P Code, to read:

720.24. (a) Any employer of a health care licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any health care licensee in its employ within five business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 of the Business and Professions Code and shall not be subject to discovery in civil cases.

(b) For purposes of the section, "suspension or termination for cause" is defined as suspension or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Falsification of medical records.

(5) Gross negligence or incompetence.

(6) Theft from patients or clients, other employees, or the employer.

(c) Failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(d) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this chapter.

(e) This section shall not apply to any of the reporting requirements under Section 805.

(20) Annual Enforcement Reports by Boards to the Department and Legislature

This bill adds a new section (Section 720.26 of the B&P Code) that would require the boards to report annually, by October 1, to the DCA and the Legislature certain information, including, but not limited to, the total number of consumer calls received by the board, the total number of complaint forms received by the board, the total number of convictions reported to the board, and the total number of licensees in diversion or on probation or alcohol or drug abuse.

Reason for this Change: The new section 720.26 is similar to language which currently exists for physicians and surgeons (Section 2313 of the B&P Code). There is no reason why other health-related boards should not be subject to the same requirements as the Medical Board in submitting an annual enforcement report both to the DCA and the Legislature.

Concerns Raised: There were no concerns raised about language in SB 294 which dealt with the requirement for annual enforcement reports by the boards.

Add Section 720.26 to the B&P Code, to read:
720.26. (a) Each board shall report annually to the department and the Legislature, not later than October 1 of each year, the following information:
(1) The total number of consumer calls received by the board and the number of consumer calls or letters designated as discipline-related complaints.
(2) The total number of complaint forms received by the board.
(3) The total number of reports received by the board pursuant to Section 801, 801.01, and 803, as applicable.
(4) The total number of coroner reports received by the board.
(5) The total number of convictions reported to the board.
(6) The total number of criminal filings reported to the board.
(7) If the board is authorized to receive reports pursuant to Section 805, the total number of Section 805 reports received by the board, by the type of peer review body reporting and, where applicable, the type of health care facility involved, and the total number and type of administrative or disciplinary actions taken by the board with respect to the reports, and their disposition.
(8) The total number of complaints closed or resolved without discipline, prior to accusation.
(9) The total number of complaints and reports referred for formal investigation.
(10) The total number of accusations filed and the final disposition of accusations through the board and court review, respectively.
(11) The total number of citations issued, with fines and without fines, and the number of public letters of reprimand, letters of admonishment, or other similar action issued, if applicable.
(12) The total number of final licensee disciplinary actions taken, by category.
(13) The total number of cases in process for more than six months, more than 12 months, more than 18 months, and more than 24 months, from receipt of a complaint by the board.

(14) The average and median time in processing complaints, from original receipt of the complaint by the board, for all cases, at each stage of the disciplinary process and court review, respectively.
(15) The total number of licensees in diversion or on probation for alcohol or drug abuse or mental disorder, and the number of licensees successfully completing diversion programs or probation, and failing to do so, respectively.
(16) The total number of probation violation reports and probation revocation filings, and their dispositions.
(17) The total number of petitions for reinstatement, and their dispositions.
(18) The total number of caseloads of investigators for original cases and for probation cases, respectively.
(b) "Action," for purposes of this section, includes proceedings brought by, or on behalf of, the board against licensees for unprofessional conduct that have not been finally adjudicated, as well as disciplinary actions taken against licensees.
(c) If a board complies with Section 2313, that board shall not be subject to the requirements of this section.

(21) Enforcement Timeframes for the Attorney General's Office

This bill adds a new section (Section 720.30 of the B&P Code) that would require the Office of the Attorney General to serve an accusation within 60 calendar days after receipt of a request for accusation from a board. Would also require the Attorney General to serve a default decision within five days following the time period allowed for the filing of a Notice of Defense and to set a hearing date within three days of receiving a Notice of Defense, unless instructed otherwise by the board.

Reason for this Change: There are delays in the prosecution of cases at the AG's Office that is contributing to the lengthy enforcement and disciplinary process that can take on average up to 2 to 3 years. According to statistics provided by the AG's Office, the average time for the AG to file an accusation for a board is taking from 5 to 8 months, and to complete prosecution can take on average about 400 days. There were also concerns raised about the time it takes the AG to prepare a proposed default decision. The filing of a default decision is made once a licensee has failed to file a "notice of defense" when an accusation has been served on him or her. If the licensee fails to file a notice of defense within a specified timeframe, he or she is subject to a default judgment because of a failure to appear or make a defense of their disciplinary case. In 2004-2005 it was taking the AG almost 6 months to file a proposed default decision. In 2008-2009 it was down to about 2.5 months. However, filing of a proposed default decision is "not rocket science" and should only take a matter of days.

Concerns Raised: There were no concerns raised about language in SB 294 which dealt with the requirement for annual enforcement reports by the boards.

Add Section 720.30 to the B&P Code, to read:

720.30. (a) The Office of the Attorney General shall serve an accusation within 60 calendar days of receipt from a board or bureau.

(b) The Office of the Attorney General shall serve a default decision within five days following the time period allowed for the filing of a Notice of Defense.

(c) The Office of the Attorney General shall set a hearing date within three days of receiving a Notice of Defense, unless board or bureau gives the Office of the Attorney General instruction otherwise.

(22) Misdemeanor for Violation of Article 10.1 – Healing Arts Licensing Enforcement Act

Existing Law Sections 2314 and 2315 for the Medical Practices Act, Section 2799 of the Nurses Practice Act, Sections 1700 and 1701 of the Dental Practice Act, Sections 4321 of the Pharmacy Act, and other healing arts licensing acts all specify that a violation of any of the provisions of their specific acts is a misdemeanor and provides specific penalties for a violation of any provision of their Practice Act or for specified provisions.

This bill adds a new section (Section 720.32 of the B&P Code) that makes a violation of these new enforcement provisions that apply to all healing arts boards (Article 10.1 of the B&P Code) a misdemeanor. This misdemeanor provision is similar to Sections in the Medical Practices Act and would provide for increased penalties for a violation of Section 736, for the use of a controlled substance, dangerous drugs or alcohol to extent that it would be dangerous or injurious to the licensee or the public or to the extent it would impair the ability of the licensee to practice safely.

Reason for this Change: Since the provisions in new Article 10.1 relate to similar enforcement provisions within different Practice Acts, a violation of any of these provisions should also be a misdemeanor with specific penalties that would be applicable. As a health care practitioner, the use of a controlled substance, dangerous drugs or alcohol is considered as a more egregious act since it directly jeopardizes the care of patients and therefore would carry a more severe penalty.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 720.32 to the B&P Code, to read:

720.32. (a) Unless it is otherwise expressly provided, any person, whether licensed pursuant to Division 2 or not, who violates any provision of this article is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars ($200) nor more than one thousand two hundred dollars ($1,200), or by imprisonment for a term of not less than 60 days no more than 180 days, or by both such fine and imprisonment.

(b) A violation of Section 736 is a misdemeanor punishable by a fine of up to ten thousand dollars ($10,000), imprisonment in the county jail of up to six months, or both the fine and imprisonment.

(23) Deny License for Mental Illness or Chemical Dependency

Existing Law (Section 480 of the B & P Code) allows a board to deny a license on various grounds, including conviction of a crime, commission of any crime involving dishonesty, fraud or deceit or any act if committed would be grounds for suspension or revocation of a license. Section 820 of the B & P Code also allows a licensing agency to order a licentiate to be examined by one of more physicians whenever it appears that any person holding a license, certificate, or permit may be unable to practice their profession safely because of a mental illness, or physical illness affecting competency.

This bill is similar to what Section 820 authorizes for existing licenses, adds a new section (Section 720.34 of the B&P Code) which would grant the healing arts boards the authority to deny a license, certificate or permit to an applicant who may be unable to practice his or her profession safely because of mental or physical illness. The bill would also provide the applicant an opportunity to appeal the board's denial by submitting to a board approved psychological or physical examination to evaluate his/her competency to practice.

Reason for this Change: Boards lack the authority to deny a license application or compel an applicant to submit to a psychological or physical examination when the applicant's fitness to practice is compromised based on suspected mental illness or chemical dependency. Boards have the authority to deny an applicant a license for criminal convictions, dishonesty, fraud or deceit, or any act if committed by a licensee would be grounds for disciplinary action. This proposed language would solidify the Board's authority to protect the public, given the potential harm/damage to public safety of a substance abusing licensee or one with mental illness or other physical illness.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 720.34 to the B&P Code, to read:

720.34. (a) Whenever it appears that any applicant for a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to subdivision (c).

(b) An applicant's failure to comply with an order issued under subsection (a) shall authorize the board to deny an applicant a license, certificate or permit.

(c) A health care licensing board shall not grant a license, certificate or permit until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

(24) Require Boards to Check Information Maintained by the National Practitioner Databank

Existing Federal Law, establishes the National Practitioner Data Bank (NPDB) which is a confidential repository of information related to the professional competence and conduct of physicians, dentists and other health care practitioner. The NPDB establishes reporting requirements for hospitals, health care entities, Boards of Medical Examiners, professional societies or physicians, dentists, or other health care practitioners which take adverse licensure of professional review actions, and entities making payments as a result of medical malpractice actions or claims. The NPDB also enable individuals or entities to obtain information from the NPDB. In enacting the NPDB, the United States Congress intended to improve the quality of health care by encouraging State licensing boards, hospitals, and other health care entities, and professional societies to identify and discipline those who engage in unprofessional behavior; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from State to State without disclosure or discovery of previous medical malpractice payment and adverse action history.

Existing law (Section 2310 of the B & P Code) provides that if a physician and surgeon possess a license or is otherwise authorized to practice medicine in California or by any agency of the federal government and that license or authority is suspended or is revoked outright and is reported to the NPDB, the physician and surgeon's certificate shall be suspended automatically for the duration or the suspension or the revocation.

This bill adds a new section (Section 820.36 of the B&P Code) which would require health care licensing boards to check the National Practitioner Data Bank, or any other national professional or council databases before issuing a license, certificate or permit to any applicant from another state or prior to renewing the license, certificate or permit of an individual who is also licensed in another state.

Reason for this Change: There is no reason for boards not to check the NPDB or other national professional or council databases to find out whether applicants or licensees have been sanctioned or disciplined by other states prior to granting or renewing of a license.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 820.36 of the B&P Code, to read:

820.36. (a) Each health care licensing board shall conduct a search on the National Practitioner Data Bank and any other national professional or council databases prior to granting a license, certificate, or permit to an applicant who is licensed by another state.

(b) Each health care licensing board shall conduct a search on the National Practitioner Data Bank or any other national professional or council databases prior

to granting renewal of a license, certificate, or permit, if the licensee holds a similar license, certificate, or permit in another state.

(c) Health care licensing boards may charge a fee to cover the actual cost to conduct the search on the National Practitioner Data Bank or any other national professional or council databases, as specified in subsection (a) and (b).

(25) Conviction of Sexual Misconduct – Crime Substantially Related

Existing Law provides in provisions related to physicians and surgeons, dentists and other health professionals that a conviction of sexual misconduct or a felony requiring registration as a registered sex offender shall be considered a crime substantially related to the qualifications, functions, or duties of a board licensee.

This bill amends Section 726 of the B&P Code so that it would apply these similar provisions to all health professionals.

Reason for this Change: There is no reason why other health professionals who have been convicted of sexual misconduct, or have been required to register as a sex offender pursuant to a felony conviction, should not be subject to the same standard and finding the such a crime is substantially related to the qualifications, functions, or duties of a board licensee.

Concerns Raised: There were no concerns raised about this language in SB 294.

Amend Section 726 to the B&P Code, to read:

726. *(a)* The commission of any act of sexual abuse~~,~~ misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division~~,~~ ***and*** under any initiative act referred to in this division ~~and under Chapter 17 (commencing with Section 9000) of Division 3~~.

(b) For purposes of Division 1.5 (commencing with Section 475), and the licensing laws and regulations of a healing arts board, the commission of, and conviction for, any act of sexual abuse, misconduct or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration pursuant to Section 290 of the Penal Code shall be considered a crime substantially related to the qualifications, functions, or duties of a healing arts board licensee.

~~This~~

(c) This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

(26) Unprofessional Conduct for Drug Related Offenses

This bill adds a new section (Section 734 of the B&P Code) that a conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct, and that the record of the conviction is conclusive evidence of such unprofessional conduct. Adds new section (Section 735 of the B&P Code) that a violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct. Adds new section (Section 736 of the B&P Code) that the use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner at to be dangerous or injurious to the licensee, or to any other person or the public, or to the extent that such use impairs the ability of the licensee to practice safely, or if a crime is committed regarding the use, consumption or self-administration of any substances specified, shall constitute unprofessional conduct.

Reason for this Change: These new sections are identical to Sections 2237, 2238 and 2239 of the B&P Code which are applicable to physicians and surgeons and podiatrists. There is no reason why other health professionals should not be subject to the same requirements regarding certain drug related offenses which would be considered as unprofessional conduct on the part of the practitioner.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 734 to the B&P Code, to read:

734. (a) The conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

(b) Discipline may be ordered against a licensee in accordance with the laws and regulations of the board or the board may order the denial of the 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 the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea 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.

***Add* Section 735 to the B&P Code, to read:**

735. A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

***Add* Section 736 to the B&P Code, to read:**

736. (a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice safely or any misdemeanor or felony involving the use, consumption, or self- administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. Discipline may be ordered against a licensee in accordance with the laws and regulations of the board or the board may order the denial of the 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 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea 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.

(27) Unprofessional Conduct for Failure to Cooperate With Investigation of Board

This bill adds a new section (Section 737 of the B&P Code) that a failure to furnish information in a timely manner to the board or cooperate in any disciplinary investigation constitutes unprofessional conduct.

Reason for this Change: This new section is similar to other state statutes and to Section 6068 (i) of the B&P Code. This statutory requirement was recommended by the Attorney General's Office. According to the AG, a significant factor preventing the timely completion of investigations is the refusal of some health care practitioners to cooperate with an investigation of the board. This refusal to cooperate routinely results in significant scheduling problems and delays, countless hours wasted serving and enforcing subpoenas, and delays resulting from the refusal to produce documents or answer questions during interviews. Other states have long required their licensees to cooperate with investigations being conducted by disciplinary authorities. (See listing of statutes provided by the AG's Office.) The AG argues that the enactment of a statutory requirement in California would significantly reduce the substantial delays that result of a practitioner's failure to cooperate during a board's investigation.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 737 to the B&P Code, to read:

737. It shall be unprofessional conduct for any licensee of a healing arts board who fails to comply with the following:

(a) Furnish information in a timely manner to the board or the board's investigators or representatives if legally requested by the board.

(b) Cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require an attorney to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorney's practice. Any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her.

(28) Reporting by Licensee of Arrest, Convictions or Disciplinary Action

Existing Law (Section 802.1 of the B&P Code) requires a physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine to report to his or her respective board when there is an indictment or information charging a felony against the licensee or he or she been convicted of a felony or misdemeanor.

This bill would expand that requirement to any licensee of a hearing arts board and require the licensee to submit a written report for the for the following reasons: (1) If there is bringing of an indictment or information charging a felony against the licensee. (2) The conviction of the licensee of any felony or misdemeanor. (3) Any disciplinary action taken by another health arts board of this state or a healing arts board of another state.

Reason for this Change: There is no reason why all health professionals should not be subject to the same reporting requirements as some of the other health professionals.

Concerns Raised: (concerns raised by nursing profession)

Amend Section 802.1 to the B&P Code, to read:
802.1. (a) (1) ~~A physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine~~ ***Any licensee of a board established under this division or under any initiative act referred to in this division shall submit a written*** report either of *any 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 arrest of the licensee.***
~~(B)~~ ***(C)*** The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.
(D) Any disciplinary action taken by another licensing entity or authority of this state or of another state.
(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 the charging a felony***, ***the arrest,*** ~~or information or of~~ the conviction, ***or the disciplinary action***.
(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).

(29) Report of Crime or Personal Injury Judgment by Clerk of Court

Existing Law (Section 803 of the B&P Code) requires the clerk of the court within 10 days after a judgment by a court that a crime has been committed by a licensee, or that a licensee is liable for any death or personal injury for an amount in excess of $30,000, to notify healing arts boards, as specified.

This bill amends Section 803 to require that the clerk of the court provide notice to any of the of the listed healing arts boards for which the licensee is licensed, if there is a judgment for a crime committed or for any death or personal injury in excess of $30,000, for which the licensee is responsible due to their negligence, error or omission in practice, or his or her rendering unauthorized professional services.

Reason for this Change: There is no reason the clerk of the court should not report a judgment for a crime or for personal injury to any other health arts boards as listed. Most healing arts boards are currently covered under this provision.

Concerns Raised: There were no concerns raised about this language in SB 294.

Amend Section 803 of the B&P Code, to read:

803. (a) Except as provided in subdivision (b), within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from ~~the Board of Behavioral Science Examiners or from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200))~~ ***any of the healing arts boards established under this division or under any initiative act referred to in this division*** has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars ($30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license, certificate, or other similar authority.

(b) For purposes of a physician and surgeon, osteopathic physician and surgeon, or doctor of podiatric medicine, who is liable for any death or personal injury resulting in a judgment of any amount caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license.

(30) Report of Charges of Felony by DA, City Attorney, or Clerk of Court

Existing Law (Section 803.5 of the B&P Code) requires the district attorney, city attorney, other prosecuting agency, or clerk of the court report to specified healing arts boards if the licensee has been charged with a felony immediately upon obtaining information that the defendant is a licensee of the board.

This bill amends Section 803.5 to require that the any filings of charges of a felony be reported to all appropriate healing arts boards for which the licensee is licensed.

Reason for this Change: There is no reason why all other healing arts boards should not receive notice that charges of a felony have been filed against the licensee of the board.

Concerns Raised: There were no concerns raised about this language in SB 294.

Amend Section 803.5 of the B&P Code, to read:

803.5. (a) The district attorney, city attorney, or other prosecuting agency shall notify ~~the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, or other appropriate allied health board,~~ ***the appropriate healing arts board established under this division or under any initiative act referred to in this division*** and the clerk of the court in which the charges have been filed, of any filings against a licensee of that board charging a felony immediately upon obtaining information that the defendant is a licensee of the board. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license from one of the boards described above.

(b) The clerk of the court in which a licensee of one of the boards is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the applicable board.

(31) Report of Preliminary Hearing Transcript of Felony by Clerk of Court

Existing Law (Section 803.6 of the B&P Code) requires the clerk of the court to transmit any felony preliminary hearing transcript report to specified healing arts boards if the licensee has been charged with a felony immediately upon obtaining information that the defendant is a licensee of the board.

This bill amends Section 803.6 to require that the any filings of charges of a felony be reported to all appropriate healing arts boards for which the licensee is licensed.

Reason for this Change: There is no reason why all other healing arts boards should not receive notice that charges of a felony have been filed against the licensee of the board.

Concerns Raised: There were no concerns raised about this language in SB 294.

Amend Section 803.6 of the B&P Code, to read:

803.6. (a) The clerk of the court shall transmit any felony preliminary hearing transcript concerning a defendant licensee to ~~the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, or other appropriate allied health board, as applicable,~~ ***any of the healing arts boards established under this division or under any initiative act referred to in this division*** where the total length of the transcript is under 800 pages and shall notify the appropriate board of any proceeding where the transcript exceeds that length.

(b) In any case where a probation report on a licensee is prepared for a court pursuant to Section 1203 of the Penal Code, a copy of that report shall be transmitted by the probation officer to the ***appropriate*** board.

(32) Notification of Future Arrests or Convictions from DOJ

This bill creates a new section (803.7 of the B&P Code) to require the Department of Justice to provide reports within 30 days of subsequent arrests, convictions or other updates of licensees.

Reason for this Change: According to the Department, while all new fingerprints are performed electronically, not all records at the DOJ are kept electronically for licensees who were fingerprinted in the past. Retrieving non-electronic records adds unnecessary time to investigations. The Department is not in a position to recommend how exactly the DOJ can reduce the amount of time it takes to complete subsequent arrest and conviction notices, but believes that a benchmark should be set. This would speed up the time it takes to receive some arrest and conviction notices, and will allow boards to take action against licensees sooner. unlicensed practice presents a serious threat to the public health and safety.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 803.7 to the B&P Code, to read:
803.7. The Department of Justice shall ensure that subsequent reports authorized to be issued to any board identified in section 101 are submitted to that board within 30 days from notification of subsequent arrests, convictions or other updates.

(33) Authority of Department to Adjust Fees Consistent with CPI

This bill creates a new article and section under Division 2 (Article 15, Section 870 of the B&P Code) to allow the department to annually establish a maximum fee amount for each board, adjusted consistent with the California Consumer Price Index.

Reason for this Change: According to the Department, in almost every instance, boards' fees are set at a specific dollar amount that does not adjust with inflation. Most boards have minimum and maximum fee amounts established in statute, and the exact amount is set by the board through regulations. Even though boards are able to adjust their fees by regulation to reflect inflation, licensee population increases, and increased workload due to legislative mandates, legislation is still required from time to time in order to increase the statutory maximum even if it is to keep up with inflation. Legislative fee increases are time consuming, can require more resources than a regulatory or administrative fee increase. Allowing boards to annually administratively adjust their statutory maximum in manner consistent with the California Consumer Price Index rather than through legislation will provide them with greater flexibility and allow them to better ensure that fees closely reflect the actual cost of administering their regulatory operations. . .

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Article 15 (commencing with Section 870) to Chapter 1 of Division 2 of the B&P Code, to read:

Article 15. Healing Arts Licensing Fees

Add Section 870 of the B&P Code, to read:

803.6. (a) Notwithstanding any provision of law establishing a fee or a fee range in this division, the department may annually establish a maximum fee amount for each board or bureau, adjusted consistent with the California Consumer Price Index.

(b) The department shall promulgate regulations pursuant to the Administrative Procedure Act to establish the maximum fee amount calculated pursuant to subdivision (a).

(c) A board or bureau shall establish, through regulations, the specific amount of all fees authorized by statute at a level that is at or below the amount established pursuant to subdivision (b).

(34) Unlicensed Practice – Public Crime

This bill creates a new article and section under Division 2 (Article 16, Section 880 of the B&P Code) to specify it is a public offense, punishable by a fine not to exceed $100,000 or imprisonment, to engage in any practice, including healing arts practice, without a current and valid license.

Reason for this Change: According to the Department, unlicensed practice presents a serious threat to the public health and safety. However, it can be difficult for a board to get a district attorney to prosecute these cases criminally because the penalties are often significantly less than the cost to prosecute the case. While district attorneys do prosecute the most egregious cases, the inconsistent prosecution of these cases diminishes the deterrent effect. If the penalty for unlicensed practice is substantially increased, the deterrent will be increased two-fold: not only will the punishment be more severe, but district attorneys will be more likely to prosecute these cases.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Article 16 (commencing with Section 870) to Chapter 1 of Division 2 of the B&P Code, to read:
Article 15. Unlicensed Practice Public Crime

Add Section 880 of the B&P Code, to read:
880. (a) It is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for a person to do any of the following:

(1) Any person who does not hold a current and valid license to practice a healing art under this Division, to engage in such practice.

(2) Any person who fraudulently buys, sells, or obtains a license to practice any healing art in Division 2 or to violate any provision of this Division.

(3) Any person who represents himself or herself as engaging or authorized to engage in a healing art of Division 2 who is not authorized to do so.

(b) Notwithstanding any other provision of law, any person who is licensed under Division 2, but who is not authorized to provide some or all services of another healing art, who practices or supervises the practice of those unauthorized services, is guilty of a public crime, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(35) Sunset Dates for Diversion Programs

Existing Law establishes diversion and recovery programs to identify and rehabilitate dentists, osteopathic physicians and surgeons, physical therapists, registered nurses, physician assistants, pharmacists and veterinarians whose competency may be impaired due to, among other things, alcohol and drug abuse. Subject a licensee to disciplinary action by his or her respective board for failure to comply with a diversion program's requirements.

This bill would place a sunset date on all diversion programs operated by boards for January 1, 2013.

Reason for this Change: In regard to the sunset dates placed on diversion programs, this will provide sufficient opportunity for these programs to be reviewed and audited by the Legislature to assure they are operating properly and monitoring those practitioners who participate in these programs. This is similar to action taken by the Legislature with the diversion program of the Medical Board which because of its deficiencies was allowed to sunset in 2008.

Concerns Raised:

(Dentists)

Add Section 1699.2 of the B&P Code, to read:

1699.2. This article 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.

(Osteopathic Physicians and Surgeons)

Add Section 2372 of the B&P Code, to read:

2372. This article 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.

(Physical Therapists and Physical Therapist Assistants)

Add Section 2669.2 of the B&P Code, to read:

2669.2. This article 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.

(Registered Nurses)

Add Section 2669.2 of the B&P Code, to read:

2770.18. This article 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.

(Physician Assistants)

***Add* Section 3534.12 of the B&P Code, to read:**

3534.12. This article 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.

(Pharmacists or Intern Pharmacists)

***Add* Section 4375 of the B&P Code, to read:**

4375. This article 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.

(Veterinarians and Registered Veterinarian Technicians)

***Add* Section 4873.2 of the B&P Code, to read:**

4873.2. This article 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.

(36) Requirement for a New Information Technology System

This bill provides that it is the intent of the Legislature that the DCA shall, on or before December 31, 2012, establish an enterprise information technology system necessary to electronically create and update healing arts license information, track enforcement cases, and allocate enforcement efforts pertaining to healing arts licensees.

Reasons for this Change: DCA's current licensing and enforcement database systems are antiquated and impede the boards' ability to meet their program goals and objectives. Over the past 25 years, these systems have been updated and expanded, but system design and documentation have deteriorated to such an extent that it has left the systems unstable and difficult to maintain. These systems have inadequate performance measurement, data quality errors, an inability to quickly adapt to changing laws and regulations, and a lack of available public self-service options. The CPEI relies on advanced workflow capabilities and cross-entity external system communications that the aging system's technology cannot provide.

The implementation of a replacement system is needed to support enforcement monitoring, automate manual processes, streamline processes, and integrate information about licensees. DCA intends to procure a Modifiable Commercial Off-The-Shelf (or "MOTS") enterprise licensing and enforcement case management system. DCA's research has shown various MOTS licensing and enforcement systems exist that can provide intelligent case management to reduce enforcement and licensing turnaround times, detailed performance measurements, increased data quality, advanced configurability, and robust web presences for public self-service.

The Governor's Budget authorizes DCA to redirect existing funds to begin implementation of this system in FY 2010-11.

Concerns Raised: There were no concerns raised about this language in SB 294.

Add Section to the Bill, to read:
(a) It is the intent of the Legislature that the Department of Consumer Affairs shall, on or before December 31, 2012, establish an enterprise information technology system necessary to electronically create and update healing arts license information, track enforcement cases, and allocate enforcement efforts pertaining to healing arts licensees. The Legislature intends the system to be designed as an integrated system to support all business automation requirements of the department's licensing and enforcement functions.
(b) The Legislature also intends the department to enter into contracts for telecommunication, programming, data analysis, data processing, and other services necessary to develop, operate, and maintain the enterprise information technology system.

(37) Adopt Vertical Enforcement and Prosecution Model for All Health Boards

Existing Law (Sections 12529, 12529.5 and 12529.6 of the Government Code) establishes in the Department of Justice the Health Quality Enforcement Section (HQES) to investigate and prosecute cases against licensees and applicants for the Medical Board (MBC), Board of Podiatric Medicine (BPM) and the Board of Psychology (BP), or any committee under the jurisdiction of these boards. Requires the Attorney General (AG) to ensure that the HQES is properly staffed with a sufficient number of experienced and able employees who are capable of handling the most complex and varied types of disciplinary actions against licensees. Requires attorneys for the AG to work closely with each major intake and investigatory unit of the specified boards, to assist in developing uniform standards and procedures for the handling of complaints and investigations. Also states that because of the critical importance of the board's public health and safety function, the complexity of cases involving alleged misconduct by physicians and surgeons, and the evidentiary burden in the board's disciplinary cases, the Legislature finds and declares that using a "vertical prosecution" model for those investigations is in the best interest of the people of California. Requires that each complaint that is referred to a district office of the board for investigation shall be simultaneously and jointly assigned to an investigator and the deputy AG in the HQES that is responsible for prosecuting the case if the investigation results in the filing of an accusation. States that the joint assignment of the investigator and the deputy AG shall exist for the duration of the disciplinary matter. States the during the assignment, the investigator assigned shall, under the direction but not the supervision of the deputy attorney advise the board on legal matters as specified. Sunsets these requirements regarding vertical prosecution on January 1, 2013, but requires by March 1, 2012 a report and recommendations to the Governor and the Legislature on the vertical enforcement model (VE).

This bill amends Section 12529, 12529.5 and 12529.6 to expand the use of the vertical enforcement and prosecution model for cases handled by all other health boards.

Reason for this Change: After a complaint has been investigated by a board (those boards not covered by VE) and there is a determination that the investigatory file contains sufficient evidence to justify disciplinary action, the board uses an attorney from the Licensing Section of the AG's Office to file and prosecute the disciplinary action against its licensee. Similar to DOI investigators, the Licensing Section attorneys are generalists who do not specialize in any particular type of disciplinary action. They prosecute all sorts of DCA licensees, from barbers to landscape architect to nurses. They have high caseloads and are not necessarily familiar with all of the practice acts of the health professions or their regulations.

In contrast, the investigators of the MBC and the HQES prosecutors work together from the time a complaint is referred for investigation in a VE model format. VE increases the efficiency of MBC investigators because the prosecutor is involved in the design of the investigation, reviews the evidence as it comes in, and is able to

direct the closure of cases in which proof of a violation by clear and convincing evidence is not surfacing. This is beneficial for both the accused licensee and the public: non-meritorious cases are closed more quickly (benefiting the licensee), thus allowing the investigator/prosecutor team to move on to attack meritorious cases more quickly to benefit the public. The DOI investigators do not work in VE format with HQES or the Licensing Section prosecutors. A generalist investigator completes an investigation with little or not legal guidance on the elements of the offense, and then hands off a "completed investigation" to a generalist prosecutor who has had not role in the design of the investigation and who thereafter has no investigative assistance. This creates enormous inefficiencies.

Pursuant to recent studies conducted by the MBC on the utilization of the VE model, the use of VE by investigators of the MBC and prosecutors of the HQES have had a positive effect on case processing times, shortening the actual prosecution of cases. Also it has been remarked that the actual quality and preparation of cases has improved as well, especially as to meeting the evidentiary requirements in prosecuting cases. The HQES attorneys are familiar with medical records required, use of medical experts, and other issues inherent in quality of care disciplinary matters in which health professionals may be involved. The Licensing Section and HQES should be restructured so that HQES serves not only MBC, BPM and Board of Psychology, but also the other health related boards such as the BRN, Dental Board, Board of Pharmacy and others which handle either complex or serious disciplinary matters. A special unit within DOI should also be created so that similar to MBC investigators, those investigators of DOI can work in a VE model with HQES attorneys and acquire more expertise in the investigation and handling of health care cases. It should be noted that unlike the Medical Board, however, not every case of the other healing arts boards would need to be subject to a VE model. Generally, cases which are considered as more complex and which would benefit from using the VE model should be referred to the new HQE unit of DOI which would work in a VE model with HQES.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Amend Section 12529 of the B&P Code, to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, ~~or~~ any committee under the jurisdiction of the Medical Board of California***, or any other healing arts boards described under subdivision (a) of Section 720 as requested by their executive officer.***.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative

disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, ~~and the~~ committees under the jurisdiction of the Medical Board of California, ***and any other healing arts boards described under subdivision (a) of Section 720,*** with the intent that the expenses be proportionally shared as to services rendered.

(e) 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.

Amend Section 12529.5 of the B&P Code, to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, or the Board of Psychology shall be made available to the Health Quality Enforcement Section. ***Complaints or relevant information may be referred to the Health Quality Enforcement Section as determined by the executive officer of any other healing arts boards described under subdivision (a) of Section 720.***

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to work on location at the intake unit of the ~~boards described in subdivision (d) of Section 12529~~ ***Medical Board of California, the California Board of Podiatric Medicine, or the Board of Psychology, and shall assign attorneys to work on location at the Health Quality Enforcement Unit of the Division of Investigation of the Department of Consumer Affairs*** to assist in evaluating and screening complaints and to assist in developing uniform standards and procedures for processing complaints.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, ~~or~~ committees ***and the Division of Investigation*** in designing and providing initial and in-service training programs for staff of the boards or committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the boards shall be made by the executive officer of the boards or committees as appropriate in consultation with the senior assistant.

(e) 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.

Amend ***Section 12529.6 of the B&P Code, to read:***

12529.6. (a) The Legislature finds and declares that the ***healing arts boards*** ~~Medical Board of California~~, by ensuring the quality and safety of ~~medical~~ health care, performs one of the most critical functions of state government. Because of the critical importance of the board's public health and safety function, the complexity of cases involving alleged misconduct by ***health care practitioners*** ~~physicians and surgeons~~, and the evidentiary burden in the board's disciplinary cases, the Legislature finds and declares that using a vertical enforcement and prosecution model for those investigations is in the best interests of the people of California.

(b) Notwithstanding any other provision of law, ~~as of January 1, 2006,~~ each complaint that is referred to a district office of the ~~board~~ ***Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, or the Health Quality Enforcement Unit*** for investigation shall be simultaneously and jointly assigned to an investigator and to the deputy attorney general in the Health Quality Enforcement Section responsible for prosecuting the case if the investigation results in the filing of an accusation. The joint assignment of the investigator and the deputy attorney general shall exist for the duration of the disciplinary matter. During the assignment, the investigator so assigned shall, under the direction but not the supervision of the deputy attorney general, be responsible for obtaining the evidence required to permit the Attorney General to advise the board on legal matters such as whether the board should file a formal accusation, dismiss the complaint for a lack of evidence required to meet the applicable burden of proof, or take other appropriate legal action.

(c) The Medical Board of California, the Department of Consumer Affairs, and the Office of the Attorney General shall, if necessary, enter into an interagency agreement to implement this section.

(d) This section does not affect the requirements of Section 12529.5 as applied to the Medical Board of California where complaints that have not been assigned to a field office for investigation are concerned, nor for complaints that have not been assigned to the Health Quality Enforcement Unit.

(e) It is the intent of the Legislature to enhance the vertical enforcement and prosecution model as set forth in subdivision (a). The Medical Board of California, other healing arts boards and the Division of Investigation shall do all of the following:

(1) Increase its computer capabilities and compatibilities with the Health Quality Enforcement Section in order to share case information.

(2) Establish and implement a plan to ~~locate~~ ***collocate, when feasible,*** its enforcement staff and the staff of the Health Quality Enforcement Section ~~in the same offices, as appropriate,~~ in order to carry out the intent of the vertical enforcement and prosecution model.

(3) Establish and implement a plan to assist in team building between its enforcement staff and the staff of the Health Quality Enforcement Section in order to ensure a common and consistent knowledge base.

(f) 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.

***Amend* Section 12529.7 of the B&P Code, to read:**

12529.7. By March 1, 2012, the ~~Medical Board of California~~ ***Department*** in consultation with the ***boards and the*** Department of Justice ~~and the Department of Consumer Affairs,~~ shall report and make recommendations to the Governor and the Legislature on the vertical enforcement and prosecution model created under Section 12529.6.