BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

NOTICE OF TELECONFERENCE
ENFORCEMENT COMMITTEE MEETING
October 24, 2013
1:00 p.m.
901 P Street, Suite 142A
Sacramento, CA 95814
(916) 263-5355

Teleconference Locations with Public Access

Dr. Francesco Columbu, D.C.
2265 Westwood Blvd, Ste A
Los Angeles, CA 90064
(310) 234-1160

Dr. Sergio Azzolino, D.C.
1545 Broadway St, Ste 1A
San Francisco, CA 94109
(415) 563-3800

AGENDA

1. **Call to Order**
2. **Approval of Minutes**
   July 2, 2013
3. **Section 317 (w) Failure to Refer - Continuation of Discussion**
4. **Discussion Regarding Pursuing Regulations to Require Continuing Education Providers to Notify Licensees of Frequent Violations and Significant Laws**
5. **Coupon or Voucher Based Advertising; CCR Section 650**
6. **Continuation of the Disciplinary Guidelines Review**
7. **Guidelines of Utilization Review**
8. **Public Comment**
9. **Future Agenda Items**
10. **Adjournment**

ENFORCEMENT COMMITTEE
Sergio Azzolino, D.C., Chair
Francesco Columbu, D.C.
Hugh Lubkin, D.C.

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, 901 P Street, Suite 142A, Sacramento, CA 95814. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

Board of Chiropractic Examiners
TELECONFERENCE MEETING MINUTES
Enforcement Committee
July 2, 2013
901 P Street, Suite 142-A
Sacramento, CA 95814

Teleconference Locations with Public Access

Dr. Francesco Columbu, D.C.
2265 Westwood Blvd, Ste A
Los Angeles, CA 90064
(310) 234-1160

Dr. Sergio Azzolino, D.C.
1545 Broadway St, Ste 1A
San Francisco, CA 94109
(415) 563-3800

Committee Members Present
Sergio Azzolino, D.C., Chair
Francesco Columbu, D.C.
Hugh Lubkin, D.C.,

Staff Present
Robert Puleo, Executive Officer
Spencer Walker, Attorney III
Sandra Walker, Compliance Manager
Linda Shaw, Licensing/CE Manager
Christina Bell, Associate Governmental Program Analyst

Call to Order
Dr. Azzolino called the meeting to order at 1:03 p.m.

Roll Call
Dr. Lubkin called roll. All committee members were present.

Approval of April 18, 2013 Minutes

MOTION: DR. LUBKIN MOVED TO APPROVE THE MINUTES
SECOND: DR. COLUMBU SECONDED THE MOTION
VOTE: 3-0
MOTION CARRIED

CCR Section 317(w) Failure to Refer-Discussion Regarding When a Referral to a Physician is Required
The Committee had a lengthy discussion to address ambiguities and lack of clarity in current law for referrals made during treatment to appropriate specialist.

Committee members requested Mr. Walker report back with research from other Board's provisions regarding Failure to Refer. To assist with further clarity, Dr. Lubkin and Dr. Azzolino plan to decrease the language in this section by 25%.

Dr. Charles Davis, D.C., representing the International Chiropractors Association of California, (ICAC), spoke on having this issue provided in the Board's expert training class.

Pre-Paid Plans for Chiropractic and Adjunctive Services
Mr. Puleo stated the Board has no legal authority over this subject and Mr. Walker agreed.

Committee members and Mr. Walker requested we place links on the Board's web site as resources:
The Department of Managed Health Care, (DMHC) Knox-Keene laws, the interpretiveopinion@dmhc.ca.gov link provided by DMHC counsel and the Exhibit 4, page 1 attachment from this committee meeting.

Division of Workers' Compensation Qualified Medical Examiner Regulations
It was determined by Mr. Walker is not within the Board's jurisdiction. Our letter was sent to Division of Workers' Compensation, (DWC) by Mr. Puleo. Recent statute changes would mean this would have to be addressed legislatively.

Dr. Kassie Donoghue, D.C., representing the California Chiropractic Association, (CCA) spoke on CCA's meeting with DWC.

BCE Jurisdiction Over Chiropractors Who Perform Utilization Review
Dr. Lubkin would like to make this a future agenda item and Dr. Azzolino will assist working on specific items to bring forward for this topic.

Dr. Davis provided ICAC thoughts on utilization review to the committee members.

Legality of Offering Gifts and Incentives for Patient Referrals
Since any offering of gifts or incentives, regardless of the amount, is in violation of Business and Professions Code 650. The Board does not need a regulation or policy.

After lengthy discussion, Committee members agree to work together to provide Mr. Walker with specific language to review concerning infractions which can be posted on the Board's web site.

Continuation of the Disciplinary Guidelines Review & Incorporation of SB 1441
The Committee approved all of the changes brought forward. Mr. Walker requested a few additional changes to incorporate into a future draft which will be introduced at the next Enforcement Committee Meeting and discussed along with the Model Disciplinary Orders section.

Public Comment
No public comments were brought forward.

Future Agenda Items
Section 317(w) – failure to refer
Continuing education mandatory Ethic and Law courses to discuss law violations within the course content
Guidelines of utilization review
Continuation of Disciplinary Guidelines

Adjournment
Dr. Azzolino adjourned the meeting at 2:35 p.m.

Failure to Refer Survey – contact within DCA

Board, Bureau or Committee Contacted	Have Failure to Refer reference in current law	Where is closest (failure to refer) law reference as a negligence, incompetence or standard of quality, standard of care-practice violation
DENTAL	NO	
NATUROPATHIC	NO	
OPTOMETRY	NO	
PHYSICAL THERAPY	See Next Column	Under B&P 2234 and 2660(h), as incompetence for quality of care or lack training issue when treatment or service is beyond the credential holder's scope of practice.
ACCUPUNCTURE	See Next Column	A violation of CCR 1399.451 could either be a violation of B&P 4955 or 4955.2.
BEHAVIORIAL	See Next Column	Specifically handled as gross negligence and/or incompetence for licensee failure to refer for continuing care under most appropriate B&P section for licensee [MFT under B&P 4982(d), LCSW under B&P 4992.3(d) and 4992, LPCC under B&P 4990.90(d)]
PHYSICIAN ASSISTANT	See Next Column	Under Medical Services Performable B&P 1399.541(g) it states to Initiate and facilitate the referral of patients to the appropriate health facilities, agencies, and resources of the community. These might be useful as well; CCR 1399.525 & 1399.542
MEDICAL	See Next Column	See under B&P 2234 a failure to refer is addressed as Standard of Care/Practice violation
PODIATRY	See Next Column	No law that specifically references failure to refer. This would fall under negligence or unprofessional conduct. B&P Codes 802.5-807 and 2234.

2234.

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

(d) Incompetence.

(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(f) Any action or conduct which would have warranted the denial of a certificate.

(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview scheduled by the mutual agreement of the certificate holder and the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

2660.

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

(a) Advertising in violation of Section 17500.

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

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

(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapist assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

(e) Habitual intemperance.

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

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

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

1399.451. Treatment Procedures.

In treating a patient, an acupuncturist shall adhere to the following procedures:

1. (a) The acupuncturist's hands shall be brush-scrubbed with soap and warm water immediately before examining patients or handling acupuncture needles and other instruments, and between patients.
2. (b) All instruments shall be sterilized before and between uses in a manner which will destroy all microorganisms. All needle trays which contain sterile needles shall also be sterile. Each time instruments are sterilized, the acupuncturist shall use a tape or strip indicator which shows that sterilization is complete.
3. (c) Acupuncture points, where needles are to be inserted, shall be cleaned with an appropriate antiseptic before insertion of the needle.
4. (d) In the event an acupuncture needle inserted in a patient breaks subcutaneously, the treating acupuncturist shall immediately consult a physician. An acupuncturist shall not sever or penetrate the tissues in order to excise such a needle.
5. (e) Any complication, including but not limited to, hematoma, peritonitis or pneumothorax arising out of acupuncture treatment shall be referred immediately to a physician or dentist or podiatrist, if appropriate, if immediate medical treatment is required.
6. (f) Acupuncture shall not be performed using hypodermic needles.
7. (g)All instruments to be discarded shall be disposed of safely.
8. (h) Needles shall be disposed of by placing them in a sealed, unbreakable container marked "Hazardous Waste" and disposed of in accordance with state and local law.

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

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

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

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

(c) False or misleading advertising.

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

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

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

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

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

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

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

(j) The violation of any law or local ordinance on an acupuncturist's business premises by an acupuncturist's employee or a person who is working under the acupuncturist's professional license

or business permit, that is substantially related to the qualifications, functions, or duties of an acupuncturist. These violations shall subject the acupuncturist who employed the individuals, or under whose acupuncturist license the employee is working, to disciplinary action.

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

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

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

(a) Gross negligence.

(b) Repeated negligent acts.

(c) Incompetence.

4982.

The board may deny a license or registration or may suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4022, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage and family therapy services.

(d) Gross negligence or incompetence in the performance of marriage and family therapy.

4992.3.

The board may deny a license or a registration, or may suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter is a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022 or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license. The board shall deny an application for a registration or license or revoke the license or registration of any person who uses or offers to use drugs in the course of performing clinical social work. This provision does not apply to any person also licensed as a physician and surgeon under Chapter 5 (commencing with Section 2000) or the Osteopathic Act who lawfully prescribes drugs to a patient under his or her care.

(d) Incompetence in the performance of clinical social work.

4992.

Every applicant for a license under this chapter shall file an application with the board accompanied by the application fee prescribed by this chapter. Every application received after January 1, 1988, shall also be accompanied by the examination fee prescribed by this chapter.

The application shall contain information showing that the applicant has all the qualifications required by the board for admission to the examination.

(Amended by Stats. 1987, Ch. 826, Sec. 1.)

imprisonment in a county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that fine and imprisonment.

§4999.88. ISSUANCE OF AN INJUNCTION TO RESTRAIN CONDUCT

In addition to other proceedings provided in this chapter, whenever any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, an offense against this chapter, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining that conduct on application of the board, the Attorney General, or the district attorney of the county. The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

§4999.90. UNPROFESSIONAL CONDUCT

The board may refuse to issue any registration or license, or may suspend or revoke the registration or license of any intern or licensed professional clinical counselor, if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing licensed professional clinical counseling services.

(d) Gross negligence or incompetence in the performance of licensed professional clinical counseling services.

1399.541. Medical Services Performable.
Because physician assistant practice is directed by a supervising physician, and a physician assistant acts as an agent for that physician, the orders given and tasks performed by a physician assistant shall be considered the same as if they had been given and performed by the supervising physician. Unless otherwise specified in these regulations or in the delegation or protocols, these orders may be initiated without the prior patient specific order of the supervising physician. In any setting, including for example, any licensed health facility, out-patient settings, patients' residences, residential facilities, and hospices, as applicable, a physician assistant may, pursuant to a delegation and protocols where present:
(a) Take a patient history; perform a physical examination and make an assessment and diagnosis therefrom; initiate, review and revise treatment and therapy plans including plans for those services described in Section 1399.541(b) through Section 1399.541(i) inclusive; and record and present pertinent data in a manner meaningful to the physician.
(b) Order or transmit an order for x-ray, other studies, therapeutic diets, physical therapy, occupational therapy, respiratory therapy, and nursing services.
(c) Order, transmit an order for, perform, or assist in the performance of laboratory procedures, screening procedures and therapeutic procedures.
(d) Recognize and evaluate situations which call for immediate attention of a physician and institute, when necessary, treatment procedures essential for the life of the patient.
(e) Instruct and counsel patients regarding matters pertaining to their physical and mental health. Counseling may include topics such as medications, diets, social habits, family planning, normal growth and development, aging, and understanding of and long-term management of their diseases.
(f) Initiate arrangements for admissions, complete forms and charts pertinent to the patient's medical record, and provide services to patients requiring continuing care, including patients at home.
(g) Initiate and facilitate the referral of patients to the appropriate health facilities, agencies, and resources of the community.

1399.525. Substantial Relationship Criteria.
For the purposes of the denial, suspension or revocation of a license pursuant to division 1.5 (commencing with section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license under the Physician Assistant Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding such a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include, but are not limited to, the following:
(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Medical Practice Act.
(b) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Physician Assistant Practice Act.
(c) A conviction of child abuse.
(d) Conviction as a sex offender.
(e) Any crime or act involving the sale, gift, administration, or furnishing of narcotics or dangerous drugs or dangerous devices, as defined in Section 4022 of the code.
(f) Conviction for assault and/or battery.
(g) Conviction of a crime involving lewd conduct.
(h) Conviction of a crime involving fiscal dishonesty.
(i) Conviction for driving under the influence of drugs or alcohol.

1399.542. Delegated Procedures.
The delegation of procedures to a physician assistant under Section 1399.541, subsections (b) and (c) shall not relieve the supervising physician of primary continued responsibility for the welfare of the patient.

802.5.
(a) When a coroner receives information that is based on findings that were reached by, or documented and approved by a board-certified or board-eligible pathologist indicating that a death may be the result of a physician and surgeon's, podiatrist's, or physician assistant's gross negligence or incompetence, a report shall be filed with the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, or the Physician Assistant Board. The initial report shall include the name of the decedent, date and place of death, attending physicians or podiatrists, and all other relevant information available. The initial report shall be followed, within 90 days, by copies of the coroner's report, autopsy protocol, and all other relevant information.
(b) The report required by this section shall be confidential. No coroner, physician and surgeon, or medical examiner, nor any authorized agent, shall be liable for damages in any civil action as a result of his or her acting in compliance with this section. No board-certified or board-eligible pathologist, nor any authorized agent, shall be liable for damages in any civil action as a result of his or her providing information under subdivision (a).
(Amended by Stats. 2012, Ch. 332, Sec. 4. Effective January 1, 2013.)

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 Sciences or from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200)) 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, doctor of podiatric medicine, or physician assistant, 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.
(Amended by Stats. 2012, Ch. 332, Sec. 5. Effective January 1, 2013.)

803.1.
(a) Notwithstanding any other provision of law, the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall disclose to an inquiring member of the public information regarding any enforcement actions taken against a licensee, including a former licensee, by the board or by another state or jurisdiction, including all of the following:
(1) Temporary restraining orders issued.
(2) Interim suspension orders issued.

(3) Revocations, suspensions, probations, or limitations on practice ordered by the board, including those made part of a probationary order or stipulated agreement.
(4) Public letters of reprimand issued.
(5) Infractions, citations, or fines imposed.
(b) Notwithstanding any other provision of law, in addition to the information provided in subdivision (a), the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall disclose to an inquiring member of the public all of the following:
(1) Civil judgments in any amount, whether or not vacated by a settlement after entry of the judgment, that were not reversed on appeal and arbitration awards in any amount of a claim or action for damages for death or personal injury caused by the physician and surgeon's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services.
(2) (A) All settlements in the possession, custody, or control of the board shall be disclosed for a licensee in the low-risk category if there are three or more settlements for that licensee within the last 10 years, except for settlements by a licensee regardless of the amount paid where (i) the settlement is made as a part of the settlement of a class claim, (ii) the licensee paid in settlement of the class claim the same amount as the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in the context of a case where the complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action. All settlements in the possession, custody, or control of the board shall be disclosed for a licensee in the high-risk category if there are four or more settlements for that licensee within the last 10 years except for settlements by a licensee regardless of the amount paid where (i) the settlement is made as a part of the settlement of a class claim, (ii) the licensee paid in settlement of the class claim the same amount as the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in the context of a case where the complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action. Classification of a licensee in either a "high-risk category" or a "low-risk category" depends upon the specialty or subspecialty practiced by the licensee and the designation assigned to that specialty or subspecialty by the Medical Board of California, as described in subdivision (f). For the purposes of this paragraph, "settlement" means a settlement of an action described in paragraph (1) entered into by the licensee on or after January 1, 2003, in an amount of thirty thousand dollars ($30,000) or more.
(B) The board shall not disclose the actual dollar amount of a settlement but shall put the number and amount of the settlement in context by doing the following:
(i) Comparing the settlement amount to the experience of other licensees within the same specialty or subspecialty, indicating if it is below average, average, or above average for the most recent 10-year period.
(ii) Reporting the number of years the licensee has been in practice.
(iii) Reporting the total number of licensees in that specialty or subspecialty, the number of those who have entered into a settlement agreement, and the percentage that number represents of the total number of licensees in the specialty or subspecialty.

(3) Current American Board of Medical Specialties certification or board equivalent as certified by the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine.
(4) Approved postgraduate training.
(5) Status of the license of a licensee. By January 1, 2004, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall adopt regulations defining the status of a licensee. The board shall employ this definition when disclosing the status of a licensee pursuant to Section 2027.
(6) Any summaries of hospital disciplinary actions that result in the termination or revocation of a licensee's staff privileges for medical disciplinary cause or reason, unless a court finds, in a final judgment, that the peer review resulting in the disciplinary action was conducted in bad faith and the licensee notifies the board of that finding. In addition, any exculpatory or explanatory statements submitted by the licentiate electronically pursuant to subdivision (f) of that section shall be disclosed. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.
(c) Notwithstanding any other provision of law, the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall disclose to an inquiring member of the public information received regarding felony convictions of a physician and surgeon or doctor of podiatric medicine.
(d) The Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may by regulation establish categories of information that need not be disclosed to an inquiring member of the public because that information is unreliable or not sufficiently related to the licensee's professional practice. The Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall include the following statement when disclosing information concerning a settlement:
"Some studies have shown that there is no significant correlation between malpractice history and a doctor's competence. At the same time, the State of California believes that consumers should have access to malpractice information. In these profiles, the State of California has given you information about both the malpractice settlement history for the doctor's specialty and the doctor's history of settlement payments only if in the last 10 years, the doctor, if in a low-risk specialty, has three or more settlements or the doctor, if in a high-risk specialty, has four or more settlements. The State of California has excluded some class action lawsuits because those cases are commonly related to systems issues such as product liability, rather than questions of individual professional competence and because they are brought on a class basis where the economic incentive for settlement is great. The State of California has placed payment amounts into three statistical categories: below average, average, and above average compared to others in the doctor's specialty. To make the best health care decisions, you should view this information in perspective. You could miss an opportunity for high-quality care by selecting a doctor based solely on malpractice history.

When considering malpractice data, please keep in mind:
Malpractice histories tend to vary by specialty. Some specialties are more likely than others to be the subject of litigation. This report compares doctors only to the members of their specialty, not to all doctors, in order to make an individual doctor's history more meaningful.
This report reflects data only for settlements made on or after January 1, 2003. Moreover, it includes information concerning those settlements for a 10-year period only. Therefore, you should know that a doctor may have made settlements in the 10 years immediately preceding January 1, 2003, that are not included in this report. After January 1, 2013, for doctors practicing less than 10 years, the data covers their total years of practice. You should take into account the effective date of settlement disclosure as well as how long the doctor has been in practice when considering malpractice averages.
The incident causing the malpractice claim may have happened years before a payment is finally made. Sometimes, it takes a long time for a malpractice lawsuit to settle. Some doctors work primarily with high-risk patients. These doctors may have malpractice settlement histories that are higher than average because they specialize in cases or patients who are at very high risk for problems.
Settlement of a claim may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the doctor. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.
You may wish to discuss information in this report and the general issue of malpractice with your doctor."
(e) The Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall, by regulation, develop standard terminology that accurately describes the different types of disciplinary filings and actions to take against a licensee as described in paragraphs (1) to (5), inclusive, of subdivision (a). In providing the public with information about a licensee via the Internet pursuant to Section 2027, the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall not use the terms "enforcement," "discipline," or similar language implying a sanction unless the physician and surgeon has been the subject of one of the actions described in paragraphs (1) to (5), inclusive, of subdivision (a).
(f) The Medical Board of California shall adopt regulations no later than July 1, 2003, designating each specialty and subspecialty practice area as either high risk or low risk. In promulgating these regulations, the board shall consult with commercial underwriters of medical malpractice insurance companies, health care systems that self-insure physicians and surgeons, and representatives of the California medical specialty societies. The board shall utilize the carriers' statewide data to establish the two risk categories and the averages required by subparagraph (B) of paragraph (2) of subdivision (b). Prior to issuing regulations, the board shall convene public meetings with the medical malpractice carriers, self-insurers, and specialty representatives.
(g) The Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the Physician Assistant Board shall provide each licensee, including a former licensee under subdivision (a), with a copy of the

text of any proposed public disclosure authorized by this section prior to release of the disclosure to the public. The licensee shall have 10 working days from the date the board provides the copy of the proposed public disclosure to propose corrections of factual inaccuracies. Nothing in this section shall prevent the board from disclosing information to the public prior to the expiration of the 10-day period.

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

(Amended by Stats. 2012, Ch. 332, Sec. 6. Effective January 1, 2013.)

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, the Physician Assistant Board, or other appropriate allied health board, 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.

(Amended by Stats. 2012, Ch. 332, Sec. 7. Effective January 1, 2013.)

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, the Physician Assistant Board, or other appropriate allied health board, as applicable, 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 board.

(Amended by Stats. 2012, Ch. 332, Sec. 8. Effective January 1, 2013.)

804.

(a) Any agency to whom reports are to be sent under Section 801, 801.1, 802, or 803, may develop a prescribed form for the making of the reports, usage of which it may, but need not, by regulation, require in all cases.
(b) A report required to be made by Sections 801, 801.1, or 802 shall be deemed complete only if it includes the following information: (1) the name and last known business and residential addresses of every plaintiff or claimant involved in the matter, whether or not each plaintiff or claimant recovered anything; (2) the name and last known business and residential addresses of every physician or provider of health care services who was claimed or alleged to have acted improperly, whether or not that person was a named defendant and whether or not any recovery or judgment was had against that person; (3) the name, address, and principal place of business of every insurer providing professional liability insurance as to any person named in (2), and the insured's policy number; (4) the name of the court in which the action or any part of the action was filed along with the date of filing and docket number of each action; (5) a brief description or summary of the facts upon which each claim, charge or judgment rested including the date of occurrence; (6) the names and last known business and residential addresses of every person who acted as counsel for any party in the litigation or negotiations, along with an identification of the party whom said person represented; (7) the date and amount of final judgment or settlement; and (8) any other information the agency to whom the reports are to be sent may, by regulation, require.
(c) Every person named in the report, who is notified by the board within 60 days of the filing of the report, shall maintain for the period of three years from the filing of the report any records he or she has as to the matter in question and shall make those available upon request to the agency with which the report was filed.
(Amended by Stats. 2006, Ch. 223, Sec. 14. Effective January 1, 2007.)

804.5.
The Legislature recognizes that various types of entities are creating, implementing, and maintaining patient safety and risk management programs that encourage early intervention in order to address known complications and other unanticipated events requiring medical care. The Legislature recognizes that some entities even provide financial assistance to individual patients to help them address these unforeseen health care concerns. It is the intent of the Legislature, however, that such financial assistance not limit a patient's interaction with, or his or her rights before, the Medical Board of California.
Any entity that provides early intervention, patient safety, or risk management programs to patients, or contracts for those programs for patients, shall not include, as part of any of those programs or contracts, any of the following:
(a) A provision that prohibits a patient or patients from contacting or cooperating with the board.
(b) A provision that prohibits a patient or patients from filing a complaint with the board.
(c) A provision that requires a patient or patients to withdraw a complaint that has been filed with the board.
(Added by Stats. 2009, Ch. 505, Sec. 2. Effective January 1, 2010.)

805.

(a) As used in this section, the following terms have the following definitions:

(1) (A) "Peer review" means both of the following:

(i) A process in which a peer review body reviews the basic qualifications, staff privileges, employment, medical outcomes, or professional conduct of licentiates to make recommendations for quality improvement and education, if necessary, in order to do either or both of the following:

(I) Determine whether a licentiate may practice or continue to practice in a health care facility, clinic, or other setting providing medical services, and, if so, to determine the parameters of that practice.

(II) Assess and improve the quality of care rendered in a health care facility, clinic, or other setting providing medical services.

(ii) Any other activities of a peer review body as specified in subparagraph (B).

(B) "Peer review body" includes:

(i) A medical or professional staff of any health care facility or clinic licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code or of a facility certified to participate in the federal Medicare program as an ambulatory surgical center.

(ii) A health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that contracts with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code.

(iii) Any medical, psychological, marriage and family therapy, social work, professional clinical counselor, dental, or podiatric professional society having as members at least 25 percent of the eligible licentiates in the area in which it functions (which must include at least one county), which is not organized for profit and which has been determined to be exempt from taxes pursuant to Section 23701 of the Revenue and Taxation Code.

(iv) A committee organized by any entity consisting of or employing more than 25 licentiates of the same class that functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.

(2) "Licentiate" means a physician and surgeon, doctor of podiatric medicine, clinical psychologist, marriage and family therapist, clinical social worker, professional clinical counselor, dentist, or physician assistant. "Licentiate" also includes a person authorized to practice medicine pursuant to Section 2113 or 2168.

(3) "Agency" means the relevant state licensing agency having regulatory jurisdiction over the licentiates listed in paragraph (2).

(4) "Staff privileges" means any arrangement under which a licentiate is allowed to practice in or provide care for patients in a health facility. Those arrangements shall include, but are not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(5) "Denial or termination of staff privileges, membership, or employment" includes failure or refusal to renew a contract or to renew, extend, or reestablish any staff privileges, if the action is based on medical disciplinary cause or reason.

(6) "Medical disciplinary cause or reason" means that aspect of a licentiate's competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care.
(7) "805 report" means the written report required under subdivision (b).
(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after the effective date on which any of the following occur as a result of an action of a peer review body:
(1) A licentiate's application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.
(2) A licentiate's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.
(3) Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason.
(c) If a licentiate takes any action listed in paragraph (1), (2), or (3) after receiving notice of a pending investigation initiated for a medical disciplinary cause or reason or after receiving notice that his or her application for membership or staff privileges is denied or will be denied for a medical disciplinary cause or reason, the chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic where the licentiate is employed or has staff privileges or membership or where the licentiate applied for staff privileges or membership, or sought the renewal thereof, shall file an 805 report with the relevant agency within 15 days after the licentiate takes the action.
(1) Resigns or takes a leave of absence from membership, staff privileges, or employment.
(2) Withdraws or abandons his or her application for staff privileges or membership.
(3) Withdraws or abandons his or her request for renewal of staff privileges or membership.
(d) For purposes of filing an 805 report, the signature of at least one of the individuals indicated in subdivision (b) or (c) on the completed form shall constitute compliance with the requirement to file the report.
(e) An 805 report shall also be filed within 15 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days.
(f) A copy of the 805 report, and a notice advising the licentiate of his or her right to submit additional statements or other information, electronically or otherwise, pursuant to Section 800, shall be sent by the peer review body to the licentiate named in the report. The notice shall also advise the licentiate that information submitted electronically will be publicly disclosed to those who request the information.
The information to be reported in an 805 report shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

A supplemental report shall also be made within 30 days following the date the licentiate is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by the reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.

If another peer review body is required to file an 805 report, a health care service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason. If the Medical Board of California or a licensing agency of another state revokes or suspends, without a stay, the license of a physician and surgeon, a peer review body is not required to file an 805 report when it takes an action as a result of the revocation or suspension.

(g) The reporting required by this section shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and Sections 803.1 and 2027, provided that a copy of the report containing the information required by this section may be disclosed as required by Section 805.5 with respect to reports received on or after January 1, 1976.

(h) The Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California shall disclose reports as required by Section 805.5.

(i) An 805 report shall be maintained electronically by an agency for dissemination purposes for a period of three years after receipt.

(j) No person shall incur any civil or criminal liability as the result of making any report required by this section.

(k) A willful failure to file an 805 report by any person who is designated or otherwise required by law to file an 805 report is punishable by a fine not to exceed one hundred thousand dollars ($100,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. A violation of this subdivision may constitute unprofessional conduct by the licentiate. A person who is alleged to have violated this subdivision may assert any defense available at law. As used in this subdivision, "willful" means a voluntary and intentional violation of a known legal duty.

(l) Except as otherwise provided in subdivision (k), any failure by the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report, shall be punishable by a fine that under no circumstances shall exceed fifty thousand dollars ($50,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. The amount of the fine

imposed, not exceeding fifty thousand dollars ($50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report exercised due diligence despite the failure to file or whether they knew or should have known that an 805 report would not be filed; and whether there has been a prior failure to file an 805 report. The amount of the fine imposed may also differ based on whether a health care facility is a small or rural hospital as defined in Section 124840 of the Health and Safety Code.
(m) A health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that negotiates and enters into a contract with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code, when determining participation with the plan or insurer, shall evaluate, on a case-by-case basis, licentiates who are the subject of an 805 report, and not automatically exclude or deselect these licentiates.
(Amended by Stats. 2012, Ch. 332, Sec. 9. Effective January 1, 2013.)

805.01.
(a) As used in this section, the following terms have the following definitions:
(1) "Agency" has the same meaning as defined in Section 805.
(2) "Formal investigation" means an investigation performed by a peer review body based on an allegation that any of the acts listed in paragraphs (1) to (4), inclusive, of subdivision (b) occurred.
(3) "Licentiate" has the same meaning as defined in Section 805.
(4) "Peer review body" has the same meaning as defined in Section 805.
(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file a report with the relevant agency within 15 days after a peer review body makes a final decision or recommendation regarding the disciplinary action, as specified in subdivision (b) of Section 805, resulting in a final proposed action to be taken against a licentiate based on the peer review body's determination, following formal investigation of the licentiate, that any of the acts listed in paragraphs (1) to (4), inclusive, may have occurred, regardless of whether a hearing is held pursuant to Section 809.2. The licentiate shall receive a notice of the proposed action as set forth in Section 809.1, which shall also include a notice advising the licentiate of the right to submit additional explanatory or exculpatory statements electronically or otherwise.
(1) Incompetence, or gross or repeated deviation from the standard of care involving death or serious bodily injury to one or more patients, to the extent or in such a manner as to be dangerous or injurious to any person or to the public. This paragraph shall not be construed to affect or require the imposition of immediate suspension pursuant to Section 809.5.

(2) The use of, or prescribing for or administering to himself or herself, any controlled substance; or the use of any dangerous drug, as defined in Section 4022, or of alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the licentiate, any other person, or the public, or to the extent that such use impairs the ability of the licentiate to practice safely.
(3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith effort prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain, consistent with lawful prescribing, be reported for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.
(4) Sexual misconduct with one or more patients during a course of treatment or an examination.
(c) The relevant agency shall be entitled to inspect and copy the following documents in the record of any formal investigation required to be reported pursuant to subdivision (b):
(1) Any statement of charges.
(2) Any document, medical chart, or exhibit.
(3) Any opinions, findings, or conclusions.
(4) Any certified copy of medical records, as permitted by other applicable law.
(d) The report provided pursuant to subdivision (b) and the information disclosed pursuant to subdivision (c) shall be kept confidential and shall not be subject to discovery, except that the information may be reviewed as provided in subdivision (c) of Section 800 and may be disclosed in any subsequent disciplinary hearing conducted pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).
(e) The report required under this section shall be in addition to any report required under Section 805.
(f) A peer review body shall not be required to make a report pursuant to this section if that body does not make a final decision or recommendation regarding the disciplinary action to be taken against a licentiate based on the body's determination that any of the acts listed in paragraphs (1) to (4), inclusive, of subdivision (b) may have occurred.
(Added by Stats. 2010, Ch. 505, Sec. 4. Effective January 1, 2011.)

805.1.
(a) The Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California shall be entitled to inspect and copy the following documents in the record of any disciplinary proceeding resulting in action that is required to be reported pursuant to Section 805:
(1) Any statement of charges.
(2) Any document, medical chart, or exhibits in evidence.
(3) Any opinion, findings, or conclusions.
(4) Any certified copy of medical records, as permitted by other applicable law.

(b) The information so disclosed shall be kept confidential and not subject to discovery, in accordance with Section 800, except that it may be reviewed, as provided in subdivision (c) of Section 800, and may be disclosed in any subsequent disciplinary hearing conducted pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).
(Amended by Stats. 2010, Ch. 505, Sec. 5. Effective January 1, 2011.)

805.2.
(a) It is the intent of the Legislature to provide for a comprehensive study of the peer review process as it is conducted by peer review bodies defined in paragraph (1) of subdivision (a) of Section 805, in order to evaluate the continuing validity of Section 805 and Sections 809 to 809.8, inclusive, and their relevance to the conduct of peer review in California.
(b) The Medical Board of California shall contract with an independent entity to conduct this study that is fair, objective, and free from bias that is directly familiar with the peer review process and does not advocate regularly before the board on peer review matters or on physician and surgeon disciplinary matters.
(c) The study by the independent entity shall include, but not be limited to, the following components:
(1) A comprehensive description of the various steps of and decisionmakers in the peer review process as it is conducted by peer review bodies throughout the state, including the role of other related committees of acute care health facilities and clinics involved in the peer review process.
(2) A survey of peer review cases to determine the incidence of peer review by peer review bodies, and whether they are complying with the reporting requirement in Section 805.
(3) A description and evaluation of the roles and performance of various state agencies, including the State Department of Health Services and occupational licensing agencies that regulate healing arts professionals, in receiving, reviewing, investigating, and disclosing peer review actions, and in sanctioning peer review bodies for failure to comply with Section 805.
(4) An assessment of the cost of peer review to licentiates and the facilities which employ them.
(5) An assessment of the time consumed by the average peer review proceeding, including the hearing provided pursuant to Section 809.2, and a description of any difficulties encountered by either licentiates or facilities in assembling peer review bodies or panels to participate in peer review decisionmaking.
(6) An assessment of the need to amend Section 805 and Sections 809 to 809.8, inclusive, to ensure that they continue to be relevant to the actual conduct of peer review as described in paragraph (1), and to evaluate whether the current reporting requirement is yielding timely and accurate information to aid licensing boards in their responsibility to regulate and discipline healing arts practitioners when necessary, and to assure that peer review bodies function in the best interest of patient care.
(7) Recommendations of additional mechanisms to stimulate the appropriate reporting of peer review actions under Section 805.

(8) Recommendations regarding the Section 809 hearing process to improve its overall effectiveness and efficiency.
(9) An assessment of the role of medical professionals, using professionals who are experts and are actively practicing medicine in this state, to review and investigate for the protection of consumers, allegations of substandard practice or professional misconduct.
(10) An assessment of the process to identify and retain a medical professional with sufficient expertise to review allegations of substandard practice or professional misconduct by a physician and surgeon, if the peer review process is discontinued.
(d) The independent entity shall exercise no authority over the peer review processes of peer review bodies. However, peer review bodies, health care facilities, health care clinics, and health care service plans shall cooperate with the independent entity in providing raw data, information, and case files as requested in a mutually agreeable timeframe.
(e) The case files and other information obtained by the independent entity shall be confidential. The independent entity shall not release the case files or other information it obtains to any individual, agency, or entity, including the board, except as aggregate data, examples, or in the final report submitted to the board and the Legislature, but in no case shall information released under these exemptions be identifiable in any way or associated with, or related to, a specific facility, individual, or peer review body.
(f) Notwithstanding any other provision of law, information obtained by the independent entity from a peer review body or from any other person or entity and information otherwise generated by the independent entity, including, but not limited to, raw data, patient information, case files or records, interviews and records of interviews, proceedings of a peer review body, and analyses or conclusions of the independent entity, shall not be subject to discovery or to a subpoena or a subpoena duces tecum and shall not be admissible as evidence in any court of law in this state. The information described in this subdivision shall be subject to all other confidentiality protections and privileges otherwise provided by law. The independent entity and its employees and contractors shall assert all of the protections for the information described in this subdivision that may apply in order to protect the information from disclosure. However, nothing in this section shall affect provisions of law relating to otherwise admissible material obtainable from sources other than the independent entity.
(g) The independent entity shall report to the peer review body any information it obtains from the peer review body that the independent entity determines should have been reported pursuant to Section 805. The independent entity shall include with the report a clear explanation of the reasons it determined that the information warrants a report under Section 805. If the peer review body agrees with the independent entity's determination, the peer review body shall report the information pursuant to Section 805 without being subject to penalties under subdivision (k) or (l) of Section 805, if the peer review body makes the report to the board within 30 days of the date the independent entity reported its determination to the peer review body, unless additional time is required to afford due process or fair hearing rights to the subject of the report as required by Section 805 and Sections 809.1 and following.

(h) The independent entity shall work in cooperation with and under the general oversight of the Executive Director of the Medical Board of California and shall submit a written report with its findings and recommendations to the board and the Legislature no later than July 31, 2008.
(i) Completion of the peer review study pursuant to this section shall be among the highest priorities of the Medical Board of California, and the board shall ensure that it is completed no later than July 31, 2008.
(Amended by Stats. 2006, Ch. 223, Sec. 17. Effective January 1, 2007.)

805.5.
(a) Prior to granting or renewing staff privileges for any physician and surgeon, psychologist, podiatrist, or dentist, any health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, or any health care service plan or medical care foundation, or the medical staff of the institution shall request a report from the Medical Board of California, the Board of Psychology, the Osteopathic Medical Board of California, or the Dental Board of California to determine if any report has been made pursuant to Section 805 indicating that the applying physician and surgeon, psychologist, podiatrist, or dentist has been denied staff privileges, been removed from a medical staff, or had his or her staff privileges restricted as provided in Section 805. The request shall include the name and California license number of the physician and surgeon, psychologist, podiatrist, or dentist. Furnishing of a copy of the 805 report shall not cause the 805 report to be a public record.
(b) Upon a request made by, or on behalf of, an institution described in subdivision (a) or its medical staff the board shall furnish a copy of any report made pursuant to Section 805 as well as any additional exculpatory or explanatory information submitted electronically to the board by the licensee pursuant to subdivision (f) of that section. However, the board shall not send a copy of a report (1) if the denial, removal, or restriction was imposed solely because of the failure to complete medical records, (2) if the board has found the information reported is without merit, (3) if a court finds, in a final judgment, that the peer review, as defined in Section 805, resulting in the report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, or (4) if a period of three years has elapsed since the report was submitted. This three-year period shall be tolled during any period the licentiate has obtained a judicial order precluding disclosure of the report, unless the board is finally and permanently precluded by judicial order from disclosing the report. If a request is received by the board while the board is subject to a judicial order limiting or precluding disclosure, the board shall provide a disclosure to any qualified requesting party as soon as practicable after the judicial order is no longer in force.
If the board fails to advise the institution within 30 working days following its request for a report required by this section, the institution may grant or renew staff privileges for the physician and surgeon, psychologist, podiatrist, or dentist.
(c) Any institution described in subdivision (a) or its medical staff that violates subdivision (a) 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).

(Amended by Stats. 2010, Ch. 505, Sec. 6. Effective January 1, 2011.)

805.6.
(a) The Medical Board of California, the Osteopathic Medical Board, and the Dental Board of California shall establish a system of electronic notification that is either initiated by the board or can be accessed by qualified subscribers, and that is designed to achieve early notification to qualified recipients of the existence of new reports that are filed pursuant to Section 805.
(b) The State Department of Health Services shall notify the appropriate licensing agency of any reporting violations pursuant to Section 805.
(c) The Department of Managed Health Care shall notify the appropriate licensing agency of any reporting violations pursuant to Section 805.
(Added by Stats. 2001, Ch. 614, Sec. 6. Effective January 1, 2002.)

805.7.
(a) The Medical Board of California shall work with interested parties in the pursuit and establishment of a pilot program, similar to those proposed by the Citizens Advocacy Center, of early detection of potential quality problems and resolutions through informal educational interventions.
(b) The Medical Board of California shall report to the Legislature its evaluation and findings and shall include recommendations regarding the statewide implementation of this pilot program before April 1, 2004.
(Amended by Stats. 2002, Ch. 1012, Sec. 4. Effective September 27, 2002.)

806.
Each agency in the department receiving reports pursuant to the preceding sections shall prepare a statistical report based upon these records for presentation to the Legislature not later than 30 days after the commencement of each regular session of the Legislature, including by the type of peer review body, and, where applicable, type of health care facility, the number of reports received and a summary of administrative and disciplinary action taken with respect to these reports and any recommendations for corrective legislation if the agency considers legislation to be necessary.
(Amended by Stats. 2001, Ch. 614, Sec. 8. Effective January 1, 2002.)

807.
Each agency in the department shall notify every person licensed, certified or holding similar authority issued by it, and the department shall notify every insurance company doing business in this state and every institution mentioned in Section 805 of the provisions of this article.
(Added by Stats. 1975, 2nd Ex. Sess., Ch. 1.)

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.
Division of Legal Affairs
1625 N Market Blvd., Suite S 309, Sacramento, CA 95834
P (916) 574-8220 F (916) 574-8623

MEMORANDUM

DATE	September 13, 2013
TO	Executive Officers, Board Presidents Healing Arts Boards
FROM	Don Chang, Assistant Chief Counsel Division of Legal Affairs
SUBJECT	**Coupon or Voucher Based Advertising; Section 650**

This memo provides important information regarding a previous Department of Consumer Affairs' (Department) opinion relating to licensed health professionals using voucher or coupon based advertising and the provisions of section 650 of the Business and Professions Code (section 650).

In Legal Opinion 12-06 (December 10, 2012), this Office concluded that the use of coupon or voucher based advertising by a healing arts licensee automatically constituted a violation of section 650. The opinion was premised on the way advertisers such as Groupon or Living Social conducted their voucher based advertising programs.

This Office has recently been made aware that significant structural and operational changes have been made in the way these programs are now operated. This Office is unaware if all coupon or voucher based advertisers have made these changes, and therefore, the conclusions reached in Opinion 12-06 may no longer be valid with respect to *all* coupon or voucher based advertising programs.

Accordingly, this Office believes that it is prudent to rescind the previous opinion, thereby allowing each healing arts board to conduct its own individualized, case-by-case analysis of a particular set of facts to determine if section 650 has been violated. Healing arts boards may wish to consult with their Deputy Attorney General liaison when conducting this analysis.

Please be advised that the Department is seeking a formal opinion from the Office of the Attorney General regarding this issue. If you have any questions or need additional information, please contact Kurt Heppler, Senior Staff Counsel, at (916) 574-8220.

Model Disciplinary Orders

Model Number

1. Revocation - Single Cause

License No. (Ex:DC-12345) issued to respondent (Ex: John Smith, D.C.) is revoked. Respondent shall relinquish his/her wall license and pocket renewal license to the Board or its designee within 10 days of the effective date of this decision. Respondent may not petition the Board for reinstatement of his/her revoked license for 2 years from the effective date of this decision. Respondent shall pay to the Board its costs of investigation and enforcement in the amount of $_____ within 15 days of the effective date of this decision.

(Optional) License No. (Ex:DC-12345) issued to respondent (Ex: John Smith, D.C.) is revoked. Respondent shall relinquish his/her wall license and pocket renewal license to the Board or its designee within 10 days of the effective date of this decision. Respondent may not petition the Board for reinstatement of his/her revoked license for 2 years from the effective date of this decision. If respondent petitions the Board ~~is~~ he/she shall pay to the Board its costs associated with the investigation and enforcement in the amount of $_____. Payment of the costs is no guarantee the petition will be granted. If respondent fails to pay the amount specified, the petition shall be denied and the license shall remain revoked.

2. Revocation - Multiple Causes

License No. (Ex.: DC-12345) issued to respondent (Ex.: Jane D oe, D.C.) is revoked pursuant to Determination of Issues (Ex: I, II, and III) separately and together. Respondent shall relinquish his/her wall license and pocket renewal license to the Board or its designee within 10 days of the effective date of this decision. Respondent may not petition the Board for reinstatement of his/her revoked license for 2 years from the effective date of this decision. Respondent shall pay to the Board its costs of investigation and ~~prosecution~~ enforcement in the amount of $_____ within 15 days of the
effective date of this decision.

(Optional) License No. (Ex.: DC-12345) issued to respondent (Ex.: Jane D oe, D.C.) is revoked pursuant to Determination of Issues (Ex: I, II, and III) separately and together. Respondent shall relinquish his/her wall license and pocket renewal license to the Board or its designee within10 days of the effective date of this decision. Respondent may not petition the Board for reinstatement of his/her revoked license for 2 years from the effective date of this decision. If respondent petitions the Board he/she shall pay to the Board its costs associated with the investigation and enforcement in the amount of $_____. Payment of the costs is no guarantee the petition will be granted. If respondent fails to pay the amount specified, the petition shall be denied and the license

DRAFT

shall remain revoked.

3. **Revocation - Business and Professions Code Section 1003**

License No. (Ex.: DC-12345) issued to respondent (Ex.: Jane D-oe, D.C.) is revoked pursuant to Determination of Issues (Ex: I, II, and III) separately and together. Respondent shall relinquish his/her wall license and pocket renewal license to the Board or its designee within 10 days of the effective date of this decision. Respondent may not petition the Board for reinstatement of his/her revoked license for 10 years from the effective date of this decision. Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $_____ within 15 days of the effective date of this decision.

4. **~~Exam applicants~~ Applicants who are placed on probation**

The application of respondent _____ for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed, and respondent placed on probation for a period of ____ years on the following terms and conditions.

~~5. **Endorsement applicants who are placed on probation**~~

~~The application of respondent _____ for licensure is hereby granted and a license shall be issued to respondent upon successful completion of all licensing requirements. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of ____ years on the following terms and conditions.~~

6. **Reinstatement of license with conditions of probation**

The application of respondent (Ex.: John Doe, D.C.) for license reinstatement is hereby granted. A license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed, and respondent placed on probation for a period of (Ex.: five) years on the following terms and conditions.

(Optional) Upon successful completion of the California law examination, a license shall be issued to respondent.

(Optional) The respondent shall enroll in and successfully complete (Ex.: 12, 24) hours of continuing education prior to issuance of the license. ~~The respondent is suspended from practice until the required continuing education is successfully completed.~~

NOTE: If cost recovery was ordered in the revocation or surrender of a license and the cost recovery has not been paid in full by petitioner, a probation term requiring payment of original cost recovery must be included in the reinstatement decision.

DRAFT

7. Standard Stay Order

However, (revocation) is stayed and respondent is placed on probation for (Ex: five) years upon the following terms and conditions:

8. Surrender of License

It is hereby ordered that chiropractic license No. D.C. ____, issued to respondent (John Doe), is surrendered, as of the effective date of this decision and accepted by the Board of Chirpracitc Examiners.

The surrender of respondent's chiropractic license and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against respondent and shall become a part or respondent's license history with the Board. The surrender of respondent' chiropractic license constitutes that all allegations contained in accusation No.___ will be deemed to be true and correct.

Respondent shall lose all rights and privileges as a chiropractor in California as of the effective date of the Board's Decision and Order. Respondent shall relinquish his/her wall license and pocket renewal license to the Board or its designee within ten (10) days from the date of acceptance.

If Respondent ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the petition is filed. Respondent may not petition the Boared for reinstatement of his/her license for two (2) years from the effective date of this decision.

~~Respondent surrenders license number (Ex: DC 12345) as of the effective date of this decision. Respondent shall relinquish his/her wall license and pocket renewal license to the Board or its designee within 10 days of the effective date of this decision. Respondent may not petition the Board for reinstatement of his/her license for 2 years from the effective date of this decision. Respondent stipulates that should he/she petition the Board after the 2 year period has elapsed, all allegations contained in accusation number _____ will be deemed to be true. Respondent shall meet all requirements for licensure as of the date the petition is submitted to the Board, including, but not limited to taking and passing the California chiropractic law exam prior to reissuance or reinstatement of the license.~~

~~Respondent further stipulates that he/she shall reimburse the Board for investigation and enforcement costs in the amount of $_____ within _____ days of the effective date of this decision.~~

DRAFT

(Optional) Respondent stipulates that should ~~respondent~~ he/she petition ~~apply~~ for reinstatement of
his/her license he/she shall pay to the Board costs associated with its investigation and enforcement in the amount of $_____ at the time the petition is filed. ~~of application.~~

9. Extension of Probation in Lieu of Revocation of Probation

License No. (Ex.: DC-12345) issued to respondent (Ex.: Jane Doe, D.C.) remains revoked, stayed, and placed on probation for an additional (number of years) from the original effective date of Decision and Order AC_____. The original terms and conditions of probation shall remain in full force and effect, and are fully incorporated herein by reference. In addition to the terms and conditions set forth in Decision and Order No. AC_____, that became effective on (date), respondent shall comply with the following terms and conditions of probation.

RATIONALE: This language was added due to there not being language for this issue of extended probation in lieu of revocation of probation.

DRAFT

BILLING MONITOR

Within sixty (60) days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of a person to act as a billing monitor. The proposed billing monitor can be one of the following: 1.) a licensed chiropractor, licensed for at least five (5) years and never been subject to any disciplinary action by the Board or a certified professional coder/ medical auditor. All proposed billing monitors shall be independent, with no professional or personal relationship with Respondent, including a familial relationship with or be an employee, partner, or associate of Respondent. It is Respondent's responsibility to ensure their billing monitor has copies of the Accusation in this matter along with the Decision and Order for reference. Once the Board has approved a billing monitor, Respondent shall submit a plan or scope of review by which the billing monitor will provide monitoring of Respondent's billing practices. To comply with this term, Respondent must have continuous record of chiropractic treatment, associated billing, accounting, payments and either the patient and/or the insurance company, and fiscal records, to be examined by the Billing Monitor. Pro bono treatment or trade for services will not be accepted as Billing Monitor compliance. Failure to treat patients on a fee for service basis will be considered non-compliance with this term and Respondent will be considered in "tolling" status. If at any time during the period of probation, the billing monitor quits or is otherwise unavailable to perform his or her monitoring duties, within fifteen (15) calendar days of the same, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more persons to be the billing monitor. The billing monitor shall submit written reports to the Board on a quarterly basis verifying that monitoring has taken place as required. It shall be Respondent's responsibility to ensure that the required reports are filed in a timely manner. Respondent shall give the monitor access to all of Respondent's chiropractic practice business records including financial and patient records. Monitoring shall consist of at least four (4) hours, per quarter, of review of Respondent's records. This review shall take place in Respondent's office and or place of employment. If the monitor prepares a quarterly report to the Board which finds substantial errors or omissions in, and/ or questionable billing practices, monitoring may be increased at the discretion of the Board and Respondent shall immediately comply therewith. All costs of monitoring shall be borne by the Respondent.

RATIONALE: The added language assists in not allowing Respondent to circumvent the Order and avoid the proof of rehabilitation that is required after violations such as insurance fraud, failure to ensure accurate billings, etc. Proper monitoring cannot take place if the practice is absent fee for service patients.

DRAFT

CERTIFIED PUBLIC ACCOUNTANT (CPA)

Within 60 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of a licensed certified public accountant (CPA) in this state, and a plan by which such CPA would monitor Respondent's billing practices. The CPA shall be independent, with no present or prior business, professional, or personal financial relationship with Respondent. The CPA approved by the Board shall submit written reports to the Board on a quarterly basis verifying that monitoring has taken place as required. **To comply with this term, Respondent must have continuous record of chiropractic treatment, associated billing, accounting, payments and either the patient and/or the insurance company, and fiscal records, to be examined by the CPA. Pro bono treatment or trade for services will not be accepted as CPA monitoring compliance. Failure to treat patients on a fee for service basis will be considered non-compliance with this term and Respondent will be considered in "tolling" status.** It shall be Respondent's responsibility to ensure that the required reports are filed in a timely fashion. Respondent shall give the CPA access to Respondent's fiscal records. Monitoring shall consist of at least 4 hours per quarter of review of Respondent's fiscal records. After two quarters, if the CPA determines that less time is sufficient for compliance, the Respondent may request Board approval of a reduction of the number of hours of review. If ever the CPA prepares a quarterly report to the Board which finds substantial errors or omissions in, or questionable billing practices, monitoring may be increased at the discretion of the Board and Respondent shall comply therewith. All costs of monitoring shall be borne by Respondent. If at any time during the period of probation, the CPA quits or is otherwise unavailable to perform his/her monitoring duties, within 30 days of the same, Respondent shall submit to the Board, for its prior approval, the name and qualifications of a licensed CPA in this state and a plan by which such CPA would monitor Respondent's billing practices.

RATIONALE: The added language assists in not allowing Respondent to circumvent the Order and avoid the proof of rehabilitation that is required after violations such as insurance fraud, failure to ensure accurate billings, etc. Proper monitoring cannot take place if the practice is absent fee for service patients.

DRAFT

DRUG AND ALCOHOL TESTING

Upon the request of the Board or its designee, Respondent shall immediately submit, with or without prior notice, to observed blood, urine, hair, breath, saliva or any other mode of testing and location as determined by the Board, at Respondent's expense. **Failure to pay costs for testing will constitute a violation of probation.** Any confirmed positive finding will be considered a violation of this term. Any attempts by Respondent to circumvent the requirements of this term shall also be considered a violation of this term. This includes, but is not limited to, Respondent's failure to submit a testable sample or his or her use of any device designated to fraudulently defeat drug tests. If the Board files a petition to revoke probation or an accusation, the Board may suspend Respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period. All terms and conditions remain in effect during the period of suspension.

RATIONAL: This added language prohibits respondent from defaulting on his/her responsibility to pay for ongoing testing.

DRAFT