BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

NOTICE OF PUBLIC MEETING

TELECONFERENCE - GOVERNMENT AFFAIRS & STRATEGIC PLANNING COMMITTEE

March 10, 2016, 10:00 a.m.

One or more Committee Members will participate in this meeting at the teleconference sites listed below. Each teleconference location is accessible to the public and the public will be given an opportunity to address the Government Affairs and Strategic Planning Committee at each teleconference location. The public teleconference sites for this meeting are as follows:

Teleconference Meeting Locations:

Julie Elginer, DrPH
Board of Chiropractic Examiners
901 P Street, Suite 142A
Sacramento, CA 95814
(916) 263-5355

Dionne McClain, D.C.
McClain Sports & Wellness Inc.
6360 Wilshire Blvd. #410
Los Angeles, CA 90048
(323) 653-1014

Frank Ruffino, Public Member
Department of Veterans Affairs
700 E. Naples Court
Chula Vista, CA 91911
(619) 205-1415

AGENDA

1. **Call to Order**

2. **Approval of Minutes**
   a. January 14, 2016

3. **Legislative Update**
   a. SB 1033 (Hill) Medical Board: disclosure of probationary status.
   b. SB 1348 (Cannella) Licensure applications: military experience.
   c. SB 1155 (Morrell) Professions and vocations: licenses: military service
   d. SB 1217 (Stone) Healing arts: reporting requirements: professional liability resulting in death or personal injury

4. **Discussion of Dates for Future Committee Meetings**

5. **Public Comment For Items Not On The Agenda**
   Note: The Committee may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125, 11125.7(a).] Public comment is encouraged; however, if time constraints mandate, comments may be limited at the discretion of the Chair.

6. Future Agenda Items

7. Adjournment

GOVERNMENT AFFAIRS COMMITTEE
Julie Elginer, Dr. PH, Chair
Dionne McClain, D.C.
Frank Ruffino, Public Member

The Board of Chiropractic Examiners' paramount responsibility is to protect the health, welfare, and safety of the public through licensure, education, and enforcement in chiropractic care.

Committee 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 Committee may take action on any item listed on the agenda, unless listed as Informational only. All times are approximate and subject to change. Agenda Items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at **www.chiro.ca.gov.**

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Valerie James at (916) 263-5355 ext. 5362 or e-mail valerie.james@dca.ca.gov or send a written request to the Board of Chiropractic Examiners, 901 P Street, Ste. 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
MEETING MINUTES
Government Affairs Committee
January 14, 2016

Teleconference Locations

Board of Chiropractic Examiners 901 P Street, Suite 142A Sacramento, CA 95814	McClain Sports & Wellness Inc. 6360 Wilshire Blvd. #410 Los Angeles, CA 90048	Department of Veterans Affairs 700 East Naples Court Chula Vista, CA 91911

Committee Members Present
Julie Elginer, Dr.PH, Chair
Dionne McClain, D.C.
Frank Ruffino

Staff Present
Robert Puleo, Executive Officer
Linda Shaw, Assistant Executive Officer
Dixie Van Allen, Licensing & Administration Manager
Marcus McCarther, Policy Analyst
Brianna Lauziere, Staff Services Analyst

Call to Order
Dr. Elginer called the meeting to order at 10:00 a.m.

Roll Call
Dr. McClain called the roll. All Board members were present at the locations listed on the Agenda.

Approval of Minutes

Mr. Ruffino requested staff refer to page three, paragraph two, under the overview of strategic planning. Under this section, Mr. Ruffino requested staff remove the sentence, "Mr. Ruffino suggested that the Board follow the same basic steps but less elaborate but without the use of SOLID" which he suggested was incorrectly captured in prior Committee meeting. Mr. Ruffino further clarified support of the using the same basic steps and continuing with the use of DCA SOLID.

MOTION: MR. RUFFINO MOVED TO APPROVE THE MINUTES OF THE OCTOBER 22, 2015 GOVERNMENT AFFAIRS COMMITTEE MEETING WITH REVISIONS.

SECOND: DR. MCCLAIN SECONDED THE MOTION

VOTE: (3-0) (DR. MCCLAIN – AYE, MR. RUFFINO – AYE, DR. ELGINER - AYE)

MOTION CARRIED

Presentation and Discussion of the Upcoming 2016 Strategic Planning Process

DCA SOLID's Dennis Zanchi, started off by explaining that SOLID's customer satisfaction with their strategic planning services is ninety-five percent. He provided and explained the Chiropractic Strategic Plan Roadmap.

Dr. Elginer shared that the Board was happy with the previous process using SOLID and that they did a great job. Also, she shared that Board members are receptive to the message that SOLID will provide.

Mr. Zanchi explained the planning process to the committee. The planning session is scheduled for 7/28/2016. However, the process will consist of various stages to take place during the spring of 2016. Mr. Zanchi provided additional information about the Environmental scan, stakeholders (licensees, consumer groups, professional associations, and interested parties), and the online survey. He concluded by telling the Committee it would see a strategic plan draft by August 15, 2016.

Dr. McClain asked Mr. Puleo how he planned to handle the issue of the BreeZe system in the upcoming strategic plan. Mr. Puleo responded that it would be difficult to address the issue moving forward without additional information from the Department regarding an updated timeline on phase 3 of the BreeZe project.

Review and Discussion of BCE Strategic Plan Goals Assigned to the Government Affairs & Strategic Plan Committee

Dr. Elginer started by sharing that most of the strategic plan goals have been completed.

- Goal 4.1

Dr. Elginer recommended that each mentor should check in with their mentee before the next Board meeting. Dr. Elginer will relay this to Dr. Azzolino.

- Goal 4.2

Mr. Puleo will follow up with board members to see if anyone would like to spend time in the Sacramento Office or over the phone observing and learning the different Board functions.

- Goal 4.3.2

Next, Dr. Elginer informed the Committee that Cris Forsyth, Director of Governmental Affairs and Chief Operating Officer for the California Chiropractic Association (CCA) was in attendance and asked if he had any thoughts he was willing to share.

Mr. Forsyth explained that CCA communicates through a committee structure and that when someone sees an item of interest on a Board of Chiropractic Examiners meeting agenda their committees discuss whether or not there are concerns about the BCE topic. Mr. Forsyth offered to have a discussion with his licensees about more general participation with BCE meetings.

Mr. Puleo asked Mr. Forsyth if he had received feedback from his members in regard to things that the Board should or needs to do better.

Mr. Forsyth responded that there are things that CCA could do together with BCE to accomplish these goals. CCA could help with providing feedback from licensees of the association to the board. However, mostly what CCA hears from licensees are complaints regarding marketing or sales tactics and whether they should be brought to the attention of the Board.

Dr. Elginer reminded the Committee that the board is engaging the next three year strategic plan and that it would be a great opportunity to explore partnering with the association in order to inform licensees about what is going on with the Board and that the Board would like to hear from them. This outreach work could be done through the use of newsletters and/or social media.

Mr. Forsyth agreed to meet with the BCE staff to discuss an outreach plan in further detail.

- Goal 7.2

Mr. Puleo advised the Committee on the status of the Out-of-State travel package for the NBCE/FCLB meeting and expects to have an answer with the next few weeks.

- Goal 7.2.1

Dr. Elginer inquired about how the Board could provide outreach to consumers.

Mr. Puleo shared that in-state travel is allowed if the Board participates as a guest speaker. Mr. Puleo will do more research on the topic and check with the department's outreach unit to see if they have a list of consumer groups that the board staff could contact.

Mr. Puleo mentioned the need for staff to reestablish a place on the website dedicated to information about the Ambassador program. Mr. Puleo shared that the link would allow groups to request a speaker from the Board. Additionally, Mr. Puleo requested Mr. Forsyth inform his members that they are able to request a speaker from the Board by using this program.

Review and Possible Action Regarding the Board Member Administrative Manual

Dr. Elginer and the Committee went through the Board Member Administrative Manual page by page to capture any needed changes. Over the course of the review, several edits were discussed.

- Page 1

Dr. Elginer reminded staff to change the revision date on the document.

- Page 7

Dr. Elginer referred to the first bullet point on page seven, under the General Rules of Conduct Section. Here she discussed the possibility of making changes to the requirements of the percentage of enforcement cases Board Members should vote on.

The Committee agreed to accept a minimum 75% vote participation requirement for Board Members. When discussing possible consequences for members who fail to meet the new requirement, the Committee concluded that if it becomes excessive the Board Chair should have a conversation with the member to understand what the problems may be. In the event that there are issues with the Board Chair, the Board Vice-Chair would have a conversation with the Chair.

The Committee decided that the addition of language referring to the need to meet the vote submission requirement established by the Board could be added to the first bullet point. Further, the full language would be added on Page 10, under the heading for E-mail Ballots.

Also, the Committee agreed to add under the General Rules of Conduct Section, a requirement for Board members to be up to date on training requirements.

- Page 13

Dr. Elginer asked the Committee if there was a need to clarify that the travel liaison was a staff member. Mr. Puleo suggested referring to the person as the staff travel liaison.

- Page 16

Dr. Elginer suggested that the Board Chair formalize a process to assign Board members to a committee.

Mr. Puleo responded that the Board members could contact and inform the Chair if there was/is a need to change their current or upcoming Committee assignment.

Dr. Elginer explained that adding language that included that "dually it is the responsibility of the Chair and Board members to take the suggested Committee preferences under consideration before determining Committee assignments.

- Page 17

Mr. Puleo explained that he would send around the Committee descriptions to the Committee Chairs to determine if changes are necessary.

- Page 18

In first sentence on the page, the second period needs to be deleted.

- Page 19

Under the Communications with Other Organizations heading, Mr. Puleo suggested adding language indicating that the Board Chair is the liaison to other association and may designate an alternative Board Member if necessary.

- Page 20

Under the BCE Identification Cards heading, Mr. Puleo stated that the paragraph should refer to an identification card that "states" the member is appointed. Also, the paragraph should read, "...appointed, commissioned, and duly sworn..."

- Page 23

Under the Various Other Tasks and Responsibilities heading, Mr. Puleo suggests removing the reference to entities, continuing education audits, Executive Officers, and add "state" to associations.

- Page 24

Mr. Puleo suggested the addition of an additional heading titled Resignation of Board Members (Board Policy). The Committee discussed how to handle the resignation of Board Members. They agreed that it should be clear that the Board member notifies the Governor's office and sends the letter to the Board Chair and Executive Officer. Additionally, the Executive Officer shall notify the Governor's Appointment's Office of the resignation of any Board Member.

- Page 27

Under the Board Member Orientation heading, the Committee discussed adding language regarding the requirement for newly appointed Board members and reappointed Board Members to attend the Board Member Orientation Training.

Review of the BCE Legislative Bill Tracking Manual

Mr. McCarther provided the Committee with a brief overview of changes made to the Legislative Bill Tracking Manual.

Mr. Ruffino suggested that staff adds examples of support, oppose, and veto letters the Board had previously submitted to the Legislature.

Ms. Martin-Rojas from DCA suggested adding a section referring to the different statuses a bill may have over the course of the legislative cycle. Additionally, Mr. Puleo suggested adding a glossary of legislative terms.

Review of the 2016 Legislative Calendar

The Committee briefly reviewed the 2016 legislative calendar. The calendar was provided to be a helpful reminder to Committee members about important dates throughout the legislative season.

Mr. Puleo shared with the Committee that the calendar is important for them to know the deadlines that bills have to meet throughout the year.

2015 Legislative Update

Mr. Puleo explained to the Committee that the list of bills provided contained the 2-year bills from the previous legislative session.

Public Comment for Items Not On the Agenda

No public comment provided

Future Agenda Items

Dr. Elginer suggested the Committee set the meeting dates for the rest of the year. The next Committee meeting is scheduled for March 10, 2016.

Adjournment

MOTION: MR. RUFFINO MOVED TO ADJOURN THE GOVERNMENT AFFAIRS COMMITTEE MEETING

SECOND: DR. MCCLAIN SECONDED THE MOTION

VOTE: (3-0) (MR. RUFFINO – AYE, DR. MCCLAIN – AYE, DR. ELGINER - AYE) MOTION CARRIED

Dr. Elginer adjourned the meeting at 11:26 p.m.

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

Agenda Item 3
March 10, 2016

Legislative Update

Purpose of the item

This agenda item has been included to provide the Committee with an update on the bills staff is tracking during the current two-year legislative session. If necessary, the Committee will take a position on the bills discussed.

Action(s) requested

The Government Affairs Committee may recommend the Board take one of the following actions regarding each bill:

- Support
- Support if Amended
- Oppose
- Watch
- Neutral
- No Action

Background

Board staff is currently tracking four bills, pertaining to disclosure of probationary status, agency reporting requirements, and military licensure.

The following legislation will most likely impact the Chiropractic Profession and Board:

Newly introduced bills staff is tracking

Bill Number	Author	Bill Title
SB 1033	Hill	Medical Board: disclosure of probationary status
SB 1155	Morrell	Professions and vocations: licenses: military service
SB 1217	Stone	Healing Arts: reporting requirements: professional liability
SB 1348	Cannella	Licensure applications: military experience.

Recommendation(s)

Staff recommendations regarding Board action are included on each individual bill's analysis.

Next Step

Bills will be discussed at the next Board meeting.

Attachment(s)

- SB 1033 (Hill) Medical Board: disclosure of probationary status.
- SB 1348 (Cannella) Licensure applications: military experience.
- SB 1155 (Morrell) Professions and vocations: licenses: military service
- SB 1217 (Stone) Healing arts: reporting requirements: professional liability resulting in death or personal injury

Board of Chiropractic Examiners
Bill Analysis

Bill Number: SB 1033
Author: Senator Jerry Hill
Bill Version: Introduced February 12, 2016
Subject: Medical Board: disclosure of probationary status
Sponsor: TBD
Status of Bill: Referred to the Senate Committee on B. P. & E.D

Summary:

This bill would require the Medical Board of California (Board) through regulation to require a licensee on probation, for specific serious offenses, to disclose his or her probationary status to patients before each visit throughout the duration of probation. The bill would also require the Board to place each licensee's probation summary on various public documents and the Board's webpages.

While the BCE has not received specific language regarding amendments to the bill, the author's office has informed the BCE of its intent to amend the bill to also require chiropractors, podiatrists, and acupuncturists to notify patients of probationary status.

Amendments to the bill are expected after March 28, 2016, which is the close of the 30-day bill review period.

Existing Law:

- Existing law, the Medical Practice Act, establishes the Medical Board of California for the licensing, regulation, and discipline of physicians and surgeons.
- Existing law authorizes the board to discipline a physician or a surgeon by placing her or him on probation, which may include requiring the physician or surgeon to complete specified trainings, examinations, or community service or restricting the extent, scope, or type of practice, as specified.
- Existing law requires the board to disclose to an inquiring member of the public and to post on its Internet Web site specified information concerning each physician and surgeon, including revocations, suspensions, probations, or limitations on practice.

This Bill Would:

- Require the MBC, by July 1, 2018, to:
  - Include the summary of each probation order in a licensee's license status.
  - Include each licensee's probation summary on any board documents informing the public of probation orders, including, but not limited to, newsletters.

- Include, in plain view on a licensees BreEZe profile web page, the summary of each probation order.
- Adopt regulations to implement subdivision (b). The board shall include in these regulations a requirement that the licensee obtain from each patient a signed receipt following the disclosure that includes a written explanation of how the patient can find further information on the licensee's discipline on the board's Internet Web site.
- Include, in the first section of each order of probation, a standardized, single paragraph, plain-language summary that contains the accusations that led to the licensee's probation, the length of the probation and the end date, and all practice restrictions placed on the licensee by the board.

- Require a licensee to disclose her or his probationary status to patients before each visit while the licensee is on probation for any of the following:
  - The board made a finding in the probation order that the licensee committed any of the following:
    - Gross negligence
    - Repeated negligent acts involving a departure from the standard of care with multiple patients.
    - Repeated acts of inappropriate and excessive prescribing of controlled substances, including, but not limited to, prescribing controlled substances without appropriate prior examination or without medical reason documented in medical records.
    - Drug or alcohol abuse that threatens to impair a licensee's ability to practice medicine safely, including practicing under the influence of drugs or alcohol.
    - Felony conviction arising from or occurring during patient care or treatment.
  - The board ordered any of the following in conjunction with placing the licensee on probation:
    - That a third party chaperone be present when the licensee examines patients as a result of sexual misconduct.
    - That the licensee submits to drug testing as a result of drug or alcohol abuse.
    - That the licensee have a monitor.
    - Restricting totally or partially the licensee from prescribing controlled substances.
    - Suspending the licensee from practice in cases related to quality of care.
  - The licensee has not successfully completed a clinical training program or any associated examinations required by the board as a condition of probation.
  - The licensee has been on probation repeatedly.

Background:

According to the author's office:

> In November 2015, the Medical Board of California (MBC) voted down a petition by Consumers Union that would have required doctors placed on probation to inform their patients verbally and in writing, of their probationary status. The MBC instead formed a task force to consider less

"prescriptive" ways to notify patients when their doctor is on probation for medical misdeeds, including Web site enhancements and advertising campaigns, but not direct notification.

On average, 500 to 600 of the 137,000 licensed physicians in California are on probation at any given time for serious offenses. This is less than half of one percent of the total active licensee population. The reasons for probation range from physicians whose mismanagement of medical records rose to the level of gross negligence to doctors whose treatment resulted in multiple patient deaths. One such case involved a physician whose practice was linked in a news investigation to fatal overdoses of 16 patients. The MBC pursued two overdose cases against the doctor, who did not contest the charges, and was placed on five years of probation.

Fiscal Impact:

The BCE anticipates the fiscal impact would be minor and absorbable. Additional patient notification requirements would require promulgation of regulations, staff process changes, and minor modifications to the Board's website.

Support & Opposition:

Support:
Consumers Union

Opposition:
No opposition on file

Arguments:

Pro:

- Consumers Union has argued, "Protection of the public is the MBC's paramount responsibility and gives the MBC authority to discipline physicians, including placing them on probation. Further, the MBC should exercise its authority and fulfill its responsibility by requiring that physicians on probation disclose their probation status to their patients."
- According to the author, California licensing boards post information on their websites related to licensee discipline, but patients may not know about this resource or have the ability to check the databases. These websites can be difficult to navigate and often people have to review complicated legal documents to find out why their doctor was placed on probation. SB 1033 would require a straightforward listing of the reasons for the probation order to be included on the regulatory boards' websites.

Con:

- While there is currently no opposition to SB 1033, the MBC has previously argued that the proposal is "too prescriptive" and that a more nuanced approach was possible with some additional work.
- The California Medical Association has voiced concern that a notification requirement would be bad for business. "This would put a burden on the physician-patient relationship and take time away from important patient appointments that are already limited," "This information is already public and available online and can be accessed by anyone. This is a duplicative burden that will interfere with patient care."

Staff Recommended Position: SUPPORT

This bill would further enhance consumer protection by requiring medical professionals to disclose their probationary status to patients before each visit under specific circumstances.

SENATE BILL No. 1033

Introduced by Senator Hill

February 12, 2016

An act to amend Sections 803.1, 2027, and 2228 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1033, as introduced, Hill. Medical Board: disclosure of probationary status.

Existing law, the Medical Practice Act, establishes the Medical Board of California for the licensing, regulation, and discipline of physicians and surgeons. Existing law authorizes the board to discipline a physician or a surgeon by placing her or him on probation, which may include requiring the physician or surgeon to complete specified trainings, examinations, or community service or restricting the extent, scope, or type of practice, as specified.

This bill would require the board to require a physician or surgeon to disclose her or his probationary status to patients before each visit while the physician or surgeon is on probation under specified circumstances, including the board finding the physician or surgeon committed gross negligence or the physician or surgeon having been on probation repeatedly, among others. The bill would require the board, by July 1, 2018, to adopt related regulations that include requiring the physician or surgeon to obtain from the patient a signed receipt containing specified information following the disclosure.

Existing law requires the board to disclose to an inquiring member of the public and to post on its Internet Web site specified information concerning each physician and surgeon, including revocations, suspensions, probations, or limitations on practice.

This bill would require the board, by July 1, 2018, to include in each order of probation a written summary containing specified information and to include the summary in the disclosure to an inquiring member of the public, on any board documents informing the public of probation orders, and on a specified profile web page of each physician and surgeon subject to probation.

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

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

1 SECTION 1. Section 803.1 of the Business and Professions
2 Code is amended to read:
3 803.1. (a) Notwithstanding any other provision of law, the
4 Medical Board of California, the Osteopathic Medical Board of
5 California, the California Board of Podiatric Medicine, and the
6 Physician Assistant Board shall disclose to an inquiring member
7 of the public information regarding any enforcement actions taken
8 against a licensee, including a former licensee, by the board or by
9 another state or jurisdiction, including all of the following:
10 (1) Temporary restraining orders issued.
11 (2) Interim suspension orders issued.
12 (3) Revocations, suspensions, probations, or limitations on
13 practice ordered by the board, including those made part of a
14 probationary order or stipulated agreement.
15 (4) Public letters of reprimand issued.
16 (5) Infractions, citations, or fines imposed.
17 (b) Notwithstanding any other provision of law, in addition to
18 the information provided in subdivision (a), the Medical Board of
19 California, the Osteopathic Medical Board of California, the
20 California Board of Podiatric Medicine, and the Physician Assistant
21 Board shall disclose to an inquiring member of the public all of
22 the following:
23 (1) Civil judgments in any amount, whether or not vacated by
24 a settlement after entry of the judgment, that were not reversed on
25 appeal and arbitration awards in any amount of a claim or action
26 for damages for death or personal injury caused by the physician
27 and surgeon's negligence, error, or omission in practice, or by his
28 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. *By July 1, 2018, the Medical Board of California shall include the summary of each probation order as written pursuant to subdivision (e) of Section 2228.*

(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.

(i) By July 1, 2018, the board shall include each licensee's probation summary written pursuant to subdivision (e) of Section 2228 on any board documents informing the public of probation orders, including, but not limited to, newsletters.

SEC. 2. Section 2027 of the Business and Professions Code is amended to read:

2027. (a) The board shall post on its Internet Web site the following information on the current status of the license for all current and former licensees:

(1) Whether or not the licensee is presently in good standing.

(2) Current American Board of Medical Specialties certification or board equivalent as certified by the board.

(3) Any of the following enforcement actions or proceedings to which the licensee is actively subjected:

(A) Temporary restraining orders.

(B) Interim suspension orders.

(C) *(i)* Revocations, suspensions, probations, or limitations on practice ordered by the board or the board of another state or jurisdiction, including those made part of a probationary order or stipulated agreement.

(ii) By July 1, 2018, the board shall include, in plain view on the BreEZe profile web page of each licensee subject to probation, the summary of each probation order as written pursuant to subdivision (e) of Section 2228. For purposes of this subparagraph, a BreEZe profile web page is a profile web page on the BreEZe system pursuant to Section 210.

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

(E) Citations issued that have not been resolved or appealed within 30 days.

(b) The board shall post on its Internet Web site all of the following historical information in its possession, custody, or control regarding all current and former licensees:

(1) Approved postgraduate training.

(2) Any final revocations and suspensions, or other equivalent actions, taken against the licensee by the board or the board of another state or jurisdiction or the surrender of a license by the licensee in relation to a disciplinary action or investigation, including the operative accusation resulting in the license surrender or discipline by the board.

(3) Probation or other equivalent action ordered by the board, or the board of another state or jurisdiction, completed or terminated, including the operative accusation resulting in the discipline by the board.

(4) Any felony convictions. Upon receipt of a certified copy of an expungement order granted pursuant to Section 1203.4 of the Penal Code from a licensee, the board shall, within six months of receipt of the expungement order, post notification of the expungement order and the date thereof on its Internet Web site.

(5) Misdemeanor convictions resulting in a disciplinary action or accusation that is not subsequently withdrawn or dismissed. Upon receipt of a certified copy of an expungement order granted pursuant to Section 1203.4 of the Penal Code from a licensee, the board shall, within six months of receipt of the expungement order, post notification of the expungement order and the date thereof on its Internet Web site.

(6) Civil judgments issued in any amount, whether or not vacated by a settlement after entry of the judgment, that were not reversed on appeal, and arbitration awards issued in any amount, for 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.

(7) Except as provided in subparagraphs (A) and (B), a summary of any final hospital disciplinary actions that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason. The posting shall provide any additional explanatory or exculpatory information submitted by the licensee pursuant to subdivision (f) of Section 805. The board shall also post on its Internet Web site a factsheet that explains and provides information on the reporting requirements under Section 805.

(A) If a licensee's hospital staff privileges are restored and the licensee notifies the board of the restoration, the information pertaining to the termination or revocation of those privileges shall remain posted on the Internet Web site for a period of 10 years from the restoration date of the privileges, and at the end of that period shall be removed.

(B) If a court finds, in a final judgment, that peer review resulting in a hospital disciplinary action was conducted in bad faith and the licensee notifies the board of that finding, the information concerning that hospital disciplinary action posted on the Internet Web site shall be immediately removed. For purposes of this subparagraph, "peer review" has the same meaning as defined in Section 805.

(8) Public letters of reprimand issued within the past 10 years by the board or the board of another state or jurisdiction, including the operative accusation, if any, resulting in discipline by the board.

(9) Citations issued within the last three years that have been resolved by payment of the administrative fine or compliance with the order of abatement.

(10) All settlements within the last five years 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 five years, and for a licensee in the high-risk category if there are four or more settlements for that

licensee within the last five years. 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 board pursuant to subdivision (f) of Section 803.1.

(A) For the purposes of this paragraph, "settlement" means a settlement in an amount of thirty thousand dollars ($30,000) or more of any 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.

(B) For the purposes of this paragraph, "settlement" does not include a settlement by a licensee, regardless of the amount paid, when (i) the settlement is made as a part of the settlement of a class claim, (ii) the amount paid in settlement of the class claim is the same amount paid by 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 for which the complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action.

(C) The board shall not disclose the actual dollar amount of a settlement, but shall disclose settlement information in the same manner and with the same disclosures required under subparagraph (B) of paragraph (2) of subdivision (b) of Section 803.1.

(11) Appropriate disclaimers and explanatory statements to accompany the information described in paragraphs (1) to (10), inclusive, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

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

SEC. 3. Section 2228 of the Business and Professions Code is amended to read:

2228. *(a)* The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

~~(a)~~

(1) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.

~~(b)~~

(2) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

~~(c)~~

(3) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

~~(d)~~

(4) Providing the option of alternative community service in cases other than violations relating to quality of care.

(b) The board shall require a licensee to disclose her or his probationary status to patients before each visit while the licensee is on probation in any of the following circumstances:

(1) The board made a finding in the probation order that the licensee committed any of the following:

(A) Gross negligence.

(B) Repeated negligent acts involving a departure from the standard of care with multiple patients.

(C) Repeated acts of inappropriate and excessive prescribing of controlled substances, including, but not limited to, prescribing controlled substances without appropriate prior examination or without medical reason documented in medical records.

(D) Drug or alcohol abuse that threatens to impair a licensee's ability to practice medicine safely, including practicing under the influence of drugs or alcohol.

(E) Felony conviction arising from or occurring during patient care or treatment.

(2) The board ordered any of the following in conjunction with placing the licensee on probation:

(A) That a third party chaperone be present when the licensee examines patients as a result of sexual misconduct.

(B) That the licensee submit to drug testing as a result of drug or alcohol abuse.

(C) That the licensee have a monitor.

(D) Restricting totally or partially the licensee from prescribing controlled substances.

(E) Suspending the licensee from practice in cases related to quality of care.

(3) The licensee has not successfully completed a clinical training program or any associated examinations required by the board as a condition of probation.

(4) The licensee has been on probation repeatedly.

(c) The board shall adopt regulations by July 1, 2018, to implement subdivision (b). The board shall include in these regulations a requirement that the licensee obtain from each patient a signed receipt following the disclosure that includes a written explanation of how the patient can find further information on the licensee's discipline on the board's Internet Web site.

(d) Section 2314 shall not apply to subdivision (b) or (c).

(e) By July 1, 2018, the board shall include, in the first section of each order of probation, a standardized, single paragraph, plain-language summary that contains the accusations that led to the licensee's probation, the length of the probation and the end date, and all practice restrictions placed on the licensee by the board.

O

Board of Chiropractic Examiners
Bill Analysis

Bill Number: SB 1348
Author: Senator Anthony Cannella
Bill Version: Introduced February 19, 2016
Subject: Licensure applications: military experience
Sponsor: Unknown
Status of Bill: In the Senate pending referral

Summary:

This bill would require DCA licensing Board's that currently allow veterans to apply military experience and training toward licensing requirements, to modify their application to advise veterans about their ability to apply that military experience and training towards their licensure requirements.

Existing Law:

- Provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs.
- Requires each board to inquire in every application for licensure if the individual applying for licensure is serving in, or has previously served in, the military.

This Bill Would:

This bill would require each board, with a governing law authorizing veterans to apply military experience and training towards licensure requirements, to modify their application for licensure to advise veteran applicants about their ability to apply that experience and training towards licensure requirements.

Background:

The author's office was unable to provide background information for this bill.

However, the contents of the bill are similar AB 213 (Logue), which was introduced and died during the 2013-2014 legislative session. AB 213 would have required healing arts board under Division 2 of the Business and Professions Code and State Department of Public Health to require a school seeking accreditation or approval to provide proof of procedures to evaluate whether the military training, education, and practical experience are equivalent to Board standards.

Previously, the Board took a position of oppose unless amended on AB 213.

Fiscal Impact:

As introduced, the bill has no fiscal impact on the Board. The Chiropractic Act does not specifically authorize the Board to accept military experience and training toward licensing requirements.

Support & Opposition:

Unknown at this time

Arguments:

None at this time

Staff Recommended Position: WATCH (As Introduced on February 19, 2016)

In its current form, this bill does not apply to BCE. However, staff will continue to monitor the bill for future amendments that may change our position.

SENATE BILL No. 1348

Introduced by Senator Cannella

February 19, 2016

An act to amend Section 114.5 of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1348, as introduced, Cannella. Licensure applications: military experience.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law requires each board to inquire in every application for licensure if the individual applying for licensure is serving in, or has previously served in, the military.

This bill would require each board, with a governing law authorizing veterans to apply military experience and training towards licensure requirements, to modify their application for licensure to advise veteran applicants about their ability to apply that experience and training towards licensure requirements.

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

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

1 SECTION 1. Section 114.5 of the Business and Professions
2 Code is amended to read:
3 114.5. ~~Commencing January 1, 2015, each~~ *(a) Each* board
4 shall inquire in every application for licensure if the individual
5 applying for licensure is serving in, or has previously served in,
6 the military.

1 *(b) If a board's governing law authorizes veterans to apply*
2 *military experience and training towards licensure requirements,*
3 *that board shall modify their application for licensure to advise*
4 *veteran applicants about their ability to apply military experience*
5 *and training towards licensure requirements.*

O

Board of Chiropractic Examiners
Bill Analysis

Bill Number: SB 1155
Author: Senator Mike Morrell
Bill Version: Introduced February 18, 2016
Subject: Professional and vocations: licenses: military service
Sponsor: Unknown
Status of Bill: In the Senate pending referral.

Summary:

The bill requires the Department of Consumer Affairs (DCA), to establish a program that grants fee waivers for an initial application for and issuance of a license to honorably discharged veterans who served as active duty members of the U.S. Military or California National Guard.

Existing Law:

- Provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs.
- Authorizes any licensee whose license expired while he or she was on active duty as a member of the California National Guard or the United States Armed Forces to reinstate his or her license without examination or penalty if certain requirements are met.
- Requires the boards to waive the renewal fees, continuing education requirements, and other renewal requirements, if applicable, of any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard, if certain requirements are met.
- Requires each board to inquire in every application if the individual applying for licensure is serving in, or has previously served in, the military.
- On and after July 1, 2016, requires a board within the Department of Consumer Affairs to expedite, and authorizes a board to assist, the initial licensure process for an applicant who has served as an active duty member of the Armed Forces of the United States and was honorably discharged.
- Section 5 of the Chiropractic Initiative Act requires each application to be accompanied by a fee of not more than $100.

This Bill Would:

- Require the DCA, in consultation with the Department of Veterans Affairs and the Military Department, to establish and maintain a program that grants a fee waiver for the application for and the issuance of an initial license to an individual who is an honorably discharged veteran, as specified.

- Specify that DCA shall issue veterans only one fee waiver, the waiver shall not apply to a business or other entity, and a waiver shall not be issued for a license renewal or any license other than an initial license.

Background:

The author's office was unable to provide background information for this bill.

Fiscal Impact:

The fiscal impact of this bill is unclear. Currently, the Board has not promulgated a regulation to allow the Board to capture data related to which applicants are veterans or non-veterans. Only recently, staff has begun to informally capture this data. Therefore, the Board is unable to reliably determine how many veterans would be eligible to receive an initial license fee waiver.

The Board has an application fee of one hundred dollars ($100) and an initial licensure fee of one hundred dollars ($100). The total initial license fees are two hundred dollars ($200). The Board has a total licensee population of 13,271. Over the last five years the Board has received an average of 272 license applications ($27,200) and issued an average of 260 initial licenses ($25,000) annually.

Support & Opposition:

Unknown at this time

Arguments:

Pro: The passage of this bill would help honorably discharged veterans get established in their professional career by waiving the initial licensing fees.

Con: The bill does not specify who would pay for the waived initial licensing fees or how the new program would operate. The implicit assumption is that the Board will cover the cost of providing these fee waivers. By providing an initial license fee waiver for honorably discharged veterans, the cost absorbed by the Board would be subsidized by the current licensee population.

Staff Recommended Position: **Neutral**

The Board supports making every effort to ensure that qualified veterans are able to obtain quality jobs and face as few barriers to employment as possible. Although the loss in revenue resulting from this bill would be subsidized by the current licensee population, the BCE does not anticipate a significant number of veterans to be applying for licensure each year. BCE should be able to absorb this loss in revenue without raising fees for existing licensees.

SENATE BILL No. 1155

Introduced by Senator Morrell

February 18, 2016

An act to add Section 114.6 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1155, as introduced, Morrell. Professions and vocations: licenses: military service.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes any licensee whose license expired while he or she was on active duty as a member of the California National Guard or the United States Armed Forces to reinstate his or her license without examination or penalty if certain requirements are met. Existing law also requires the boards to waive the renewal fees, continuing education requirements, and other renewal requirements, if applicable, of any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard, if certain requirements are met. Existing law requires each board to inquire in every application if the individual applying for licensure is serving in, or has previously served in, the military. Existing law, on and after July 1, 2016, requires a board within the Department of Consumer Affairs to expedite, and authorizes a board to assist, the initial licensure process for an applicant who has served as an active duty member of the Armed Forces of the United States and was honorably discharged.

This bill would require the Department of Consumer Affairs, in consultation with the Department of Veterans Affairs and the Military Department, to establish and maintain a program that grants a fee waiver

for the application for and the issuance of an initial license to an individual who is an honorably discharged veteran, as specified.

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

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

1 SECTION 1. Section 114.6 is added to the Business and
2 Professions Code, to read:
3 114.6. The Department of Consumer Affairs, in consultation
4 with the Department of Veterans Affairs and the Military
5 Department, shall establish and maintain a program that grants a
6 fee waiver for the application for and issuance of a license to an
7 individual who is an honorably discharged veteran who served as
8 an active duty member of the California National Guard or the
9 United States Armed Forces. Under this program, all of the
10 following apply:
11 (a) The Department of Consumer Affairs shall grant only one
12 fee waiver to a veteran.
13 (b) The fee waiver shall apply only to an application of and a
14 license issued to an individual veteran and not to an application
15 of or a license issued to a business or other entity.
16 (c) A waiver shall not be issued for a renewal of a license or for
17 the application for and issuance of a license other than one initial
18 license.

O

Board of Chiropractic Examiners
Bill Analysis

Bill Number: SB 1217
Author: Senator Jeff Stone
Bill Version: Introduced February 18, 2016
Subject: Healing arts: reporting requirements: professional liability resulting in death or personal injury
Sponsor: TBD
Status of Bill: In the Senate pending referral

Summary:

This bill would increase the reporting requirements from three thousand ($3,000) dollars to ten thousand dollars ($10,000) for any judgement or settlement requiring payment of damages for death or personal injury caused by a licensee's negligence, error, or omission in practice. These new requirements would apply to insurers providing professional liability insurance, state or local governmental agencies that self-insure healing arts licensees and individual healing arts licensees who do not possess professional liability insurance, as referenced in Business and Professions Code, section 800(a). The bill would also require Board files on individual licensees to include reported judgements or settlements with damages over $10,000.

Existing Law:

- Requires each healing arts licensing board, including the Chiropractic Board to create and maintain a central file containing an individual historical record on each person who holds a license from that board.
- Requires that the individual historical record contain any reported judgment or settlement requiring the licensee or the licensee's insurer to pay over $3,000 in damages for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or rendering unauthorized professional service.
- Provides that information concerning professional liability settlements, judgments, and arbitration awards of over $3,000 in damages arising from death or personal injury shall be reported to the respective licensing boards.
- Requires every insurer providing professional liability insurance to a person who holds a license to send a complete report to that agency as to any settlement or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by that licensee's negligence, error, or omission in practice, or by his or her rendering of authorized professional services.

This Bill Would:

- Require the record to contain reported judgments or settlements with damages over $10,000.
- Raise the minimum dollar amount triggering those reporting requirements from $3,000 to $10,000.

Background:

The author's office was unable to provide background information for this bill.

Fiscal Impact:

Costs associated with this legislation should be minor and absorbable within existing resources. Currently, the majority of reports received by the Board are over the proposed $10,000 threshold, therefore, the investigative workload would not realize a significant increase or decrease as a result of this proposal.

Support & Opposition:

Unknown

Arguments:

Pro:

It could be argued that settlements of less than $10,000 are generally settled because insurance companies believe that it is less expensive to settle a case than to litigate. Agreeing to a settlement is not an indication to wrongdoing on the part of the doctor. In most cases, settlements or judgements of $10,000 or less involved little harm to consumers and therefore do not need Board review.

Con:

Increasing the reporting requirement by from $3,000 to $10,000 is essentially decreasing the amount of judgements and settlements reported to the Board. Even though there may not be a violation, the board should have the opportunity to review these reports to determine if there was fault on the part of the medical professional. Although settlements or judgments less than $10,000 may be considered monetarily minor, the amount of the judgment or settlement does not negate the fact that there may be merit to the complaint regarding the licensee's actions.

Staff Recommended Position: **Neutral**

SENATE BILL No. 1217

Introduced by Senator Stone

February 18, 2016

An act to amend Sections 800, 801, 801.1, and 802 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1217, as introduced, Stone. Healing arts: reporting requirements: professional liability resulting in death or personal injury.

Existing law establishes within the Department of Consumer Affairs various boards that license and regulate the practice of various professions and vocations, including those relating to the healing arts. Existing law requires each healing arts licensing board to create and maintain a central file containing an individual historical record on each person who holds a license from that board. Existing law requires that the individual historical record contain any reported judgment or settlement requiring the licensee or the licensee's insurer to pay over $3,000 in damages for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or rendering unauthorized professional service.

This bill would instead require the record to contain reported judgments or settlements with damages over $10,000.

Existing law requires an insurer providing professional liability insurance to a physician and surgeon, a governmental agency that self-insures a physician and surgeon or, if uninsured, a physician and surgeon himself or herself, to report to the respective licensing board information concerning settlements over $30,000, arbitration awards in any amount, and judgments in any amount in malpractice actions to the practitioner's licensing board. Existing law provides that information concerning professional liability settlements, judgments, and arbitration

awards of over $10,000 in damages arising from death or personal injury must be reported to the respective licensing boards of specified healing arts practitioners including, among others, licensed professional clinical counselors, licensed dentists, and licensed veterinarians. Existing law provides that, for other specified healing arts practitioners including, among others, licensed educational psychologists, licensed nurses, and licensed pharmacists, information concerning professional liability settlements, judgments, and arbitration awards of over $3,000 in damages arising from death or personal injury shall be reported to their respective licensing boards.

This bill would raise the minimum dollar amount triggering those reporting requirements from $3,000 to $10,000.

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

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

1 SECTION 1. Section 800 of the Business and Professions Code
2 is amended to read:
3 800. (a) The Medical Board of California, the Board of
4 Psychology, the Dental Board of California, the Dental Hygiene
5 Committee of California, the Osteopathic Medical Board of
6 California, the State Board of Chiropractic Examiners, the Board
7 of Registered Nursing, the Board of Vocational Nursing and
8 Psychiatric Technicians of the State of California, the State Board
9 of Optometry, the Veterinary Medical Board, the Board of
10 Behavioral Sciences, the Physical Therapy Board of California,
11 the California State Board of Pharmacy, the Speech-Language
12 Pathology and Audiology and Hearing Aid Dispensers Board, the
13 California Board of Occupational Therapy, the Acupuncture Board,
14 and the Physician Assistant Board shall each separately create and
15 maintain a central file of the names of all persons who hold a
16 license, certificate, or similar authority from that board. Each
17 central file shall be created and maintained to provide an individual
18 historical record for each licensee with respect to the following
19 information:
20 (1) Any conviction of a crime in this or any other state that
21 constitutes unprofessional conduct pursuant to the reporting
22 requirements of Section 803.

(2) Any judgment or settlement requiring the licensee or his or her insurer to pay any amount of damages in excess of ~~three thousand dollars ($3,000)~~ *ten thousand dollars ($10,000)* for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802.

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

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

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

(b) (1) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

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

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

(c) (1) The contents of any central file that are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the provision that may disclose the identity of an information source. For the purposes of

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

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

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

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

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

801. (a) Except as provided in Section 801.01 and ~~subdivisions (b), (c), and (d)~~ *subdivision (b)* of this section, every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency specified in subdivision (a) of Section 800 shall send a complete report to that agency as to any settlement or arbitration award over ~~three thousand dollars ($3,000)~~ *ten thousand dollars ($10,000)* of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

~~(b) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4990), or Chapter 16 (commencing with Section 4999.10) shall send a complete report to the Board of Behavioral Sciences as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.~~

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

~~(d)~~

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

~~(e)~~

(c) The insurer shall notify the claimant, or if the claimant is represented by counsel, the insurer shall notify the claimant's attorney, that the report required by subdivision ~~(a), (b), or (c)~~ *(a)* has been sent to the agency. If the attorney has not received this

notice within 45 days after the settlement was reduced to writing and signed by all of the parties, the arbitration award was served on the parties, or the date of entry of the civil judgment, the attorney shall make the report to the agency.

~~(f)~~

(d) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer. This section shall only apply to a settlement on a policy of insurance executed or renewed on or after January 1, 1971.

SEC. 3. Section 801.1 of the Business and Professions Code is amended to read:

801.1. ~~(a)~~ Every state or local governmental agency that self-insures a person who holds a license, certificate, or similar authority from or under any agency specified in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act) shall send a complete report to that agency as to any settlement or arbitration award over ~~three thousand dollars ($3,000)~~ *ten thousand dollars ($10,000)* of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

~~(b) Every state or local governmental agency that self-insures a person licensed pursuant to Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4990), or Chapter 16 (commencing with Section 4999.10) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties~~

~~thereto or within 30 days after service of the arbitration award on the parties.~~

SEC. 4. Section 802 of the Business and Professions Code is amended to read:

802. ~~(a)~~ Every settlement, judgment, or arbitration award over ~~three thousand dollars ($3,000)~~ *ten thousand dollars ($10,000)* of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a person who holds a license, certificate, or other similar authority from an agency specified in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act) who does not possess professional liability insurance as to that claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties, be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if the person is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the licensee or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars ($50) or more than five hundred dollars ($500). Knowing and intentional failure to comply with this section or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance, is a public offense punishable by a fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

~~(b) Every settlement, judgment, or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional~~

~~services, by a marriage and family therapist, a clinical social worker, or a professional clinical counselor licensed pursuant to Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4990), or Chapter 16 (commencing with Section 4999.10), respectively, who does not possess professional liability insurance as to that claim shall within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if he or she is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make a complete report. Failure of the marriage and family therapist, clinical social worker, or professional clinical counselor or claimant (or, if represented by counsel, his or her counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars ($50) nor more than five hundred dollars ($500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section or to hinder or impede any other person in that compliance, is a public offense punishable by a fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).~~

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