



Board of Chiropractic Examiners

Public Copy

**Teleconference
Government Affairs &
Strategic Planning Committee**

June 9, 2016



State of California
Edmund G. Brown Jr., Governor

Committee Meeting Agenda

NOTICE OF PUBLIC MEETING

TELECONFERENCE - GOVERNMENT AFFAIRS & STRATEGIC PLANNING COMMITTEE

June 9, 2016, 11:00 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:

901 P Street, Suite 142A
Sacramento, CA 95814
(916) 263-5355
(Board Staff)

Julie Elginer, DrPH
Agoura Hills Library
29901 Ladyface Circle
Agoura Hills, CA 91301
(818) 889-2278

John Roza, D.C.
800 Douglas Blvd
Roseville, CA 95678
(916) 786-2267

Frank Ruffino
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. May 12, 2016
- 3. Update and Discussion on the BCE Strategic Plan**
- 4. Update and Possible Action Regarding Legislation**
 - a. AB 1992 (Jones) Pupil health: physical examinations
 - b. AB 2407 (Chavez) Workers' Compensation
 - c. AB 2744 (Gordon) Healing arts: referrals
 - d. SB 1033 (Hill) Medical Board: disclosure of probationary status.
 - e. SB 1155 (Morrell) Professions and vocations: licenses: military service
 - f. SB 1195 (Hill) Professions and vocations: board actions: competitive impact.
 - g. SB 1217 (Stone) Healing arts: reporting requirements
 - h. SB 1348 (Cannella) Licensure applications: military experience.
- 5. Discussion of Dates for Future Committee Meetings**
- 6. 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.

7. Future Agenda Items

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] Public comment is encouraged; however, if time constraints mandate, comments may be limited at the discretion of the Chair.

8. Adjournment

GOVERNMENT AFFAIRS COMMITTEE

Julie Elginer, DrPH, Chair
John Roza, 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.



State of California
Edmund G. Brown Jr., Governor

Approval of Minutes

**Board of Chiropractic Examiners
TELECONFERENCE MEETING MINUTES
Government Affairs Committee
May 12, 2016**

Teleconference Meeting Locations

901 P Street, Suite 142A
Sacramento, CA 95814
(916) 263-5355
(Board Staff)

Julie Elginer, DrPH
Agoura Hills Library
29901 Ladyface Circle
Agoura Hills, CA 91301

John Roza, D.C.
800 Douglas Blvd
Roseville, CA 95678

Mr. Frank Ruffino
Raintree's Cimarron Golf Resort
67-707 30th Avenue
Cathedral City, CA 92234

Committee Members Present

Julie Elginer, DrPH, Chair
John Roza, D.C.
Frank Ruffino

Staff Present

Robert Puleo, Executive Officer
Dixie Van Allen, Licensing Manager
Marcus McCarther, Policy Analyst

Call to Order

Dr. Elginer called the meeting to order at 10:12 a.m.

Roll Call

Dr. Roza called the roll. All Board members were present at the locations listed on the Agenda.

Approval of Minutes

MOTION: MR. RUFFINO MOVED TO APPROVE THE MINUTES OF THE APRIL 7, 2016 MEETING.

SECOND: DR. ROZA SECONDED THE MOTION

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

MOTION CARRIED (3 – 0)

Strategic Plan Process Update

Mr. Puleo introduced the Committee to Ted Evans of DCA's SOLID Unit. Mr. Puleo shared that Mr. Evans started the planning process and has already conducted separate Strategic Plan focus groups with management and staff and will be reaching out to board members to schedule phone interviews in the near future.

Mr. Evans shared that he had been able to meet with Board staff and management to discuss the details of the upcoming strategic plan. He explained that information was collected on board stakeholders and contact information for board members was discussed. Mr. Evans informed the Committee that a survey was developed and sent out to the board's stakeholder contact list. He shared that stakeholders would have until the end of May to complete the survey.

Dr. Elginer requested that Mr. Evans provide her with the survey questions that were sent out to the Board stakeholders.

Mr. Evans responded that he would provide the questions and that the questions included would be the same for each group participating in the planning process (Board members, staff, and stakeholders). He shared that the only difference is that stakeholders would be asked to identify their affiliation to the board (i.e. whether they are a school, licensee, or consumer).

Mr. Evans explained that items on the Strategic Plan timeline were delayed for personal reasons. Also, he shared that it took time to gain approval on language to include in the email to Board members.

Dr. Elginer requested that Mr. Evans provide an updated Strategic Plan Process timeline before the board meeting the following week.

Mr. Evans responded that it would not be a problem to provide the updated timeline and that the Strategic Plan schedule was still on track for completion. He explained that the Board member interviews would be scheduled and completed by May 27, 2016.

Mr. Evans shared with committee members that DCA's SOLID Unit was currently vetting focus group information and had started the environmental scan document. He stated the a draft of the Environmental Scan would be available for board staff review on June 23, 2016.

Dr. Elginer asked Mr. Evans if there were specific directions or tools provided to members to help prepare for the July 28, 2016 planning session. She explained that experience has shown her that clear directions and expectations yield the best results.

Mr. Evans responded that before the planning session, the environmental scan document is distributed to board members along with a worksheet. He stated that the worksheet includes instructions asking members to identify A, B, and C level priorities, strategic objectives, and to keep notes from the scan, in order to present items of priority to other board members during the group discussion.

Dr. Elginer shared with Mr. Evans that she would remind board members to build time into their schedules to review the environmental scan documents in preparation for the full board planning session.

Mr. Evans stated that he would provide the members with the contact information of Elissa Cohan, the BCE Strategic Plan, Co-Facilitator.

Dr. Elginer explained to Mr. Evans that she expects the other members to be fully prepared and ready to go for the planning session.

Dr. Elginer requested Mr. Evans to add the date of the October 14, 2016 board meeting to the Strategic Plan timeline. She explained that this would ensure that members know the Strategic Plan would be approved at the October meeting.

Legislative Update

Mr. Puleo explained to the committee that the board had taken a position on three bills; however, two of those bills have since died.

AB 1992 (Jones) Pupil health: physical examinations

Mr. Puleo stated that AB 1992, which dealt with pre-participation sports physicals, failed in the Assembly Business and Professions Committee.

Mr. Chris Forsyth, Government Affairs Director for the California Chiropractic Association (CCA), provided the committee with an update on the status of the failed bill. He explained that CCA was working Assembly Member Jones and various other members of the legislature to find another vehicle for the AB 1992 language.

Dr. Elginer requested that Mr. Forsyth provide the board with an update on the bill if it is picked up again.

AB 2407 (Chavez) Workers' compensation

Mr. Puleo shared that AB 2407, which would have encouraged physicians and surgeons to consider conservative care options like chiropractic, before surgery or prescribing opioids to patients failed in Committee. Mr. Puleo explained that AB 2047 was held in the Assembly Insurance Committee and assigned for study.

Mr. Forsythe informed the committee that the legislature would hold a fall informational hearing discussing the subject matter addressed in AB 2407. He explained that the hearing would be held in September or October of 2016 and was not sure where the hearing would take place.

Mr. Ruffino asked Mr. Forsyth if CCA had taken a position on AB 2744.

Mr. Forsyth responded that CCA has taken a watch position on the bill.

SB 1033 (Hill) Medical Board: disclosure of probationary status.

Mr. Puleo began by explaining SB 1033 would require certain medical professionals to disclose their probationary status to patients if their probation requires them to do specific tasks. He shared that this could include having a monitor or third party present.

Mr. Puleo shared that the bill had been amended and the technical amendments requested by the board had been accepted. Those amendments changed references to the "practice of medicine" to the practice of chiropractic and deleted any paragraph that includes a reference to chiropractors "prescribing controlled substances".

After review, Mr. Puleo explained that the changes to SB 1033 were not substantive enough to change the board's support position on the bill. Mr. Puleo explained that since the April 7, 2016 committee meeting, SB 1033 had not been heard in the Legislature and was rescheduled several times. He shared that the bill would be heard in the Senate Appropriations Committee on May 16, 2016 and that he did not anticipate any major objections to the bill.

Dr. Elginer responded to Mr. Puleo asking if there were any issues with SB 1033.

Mr. Puleo explained that the author pulled the bill in order to finalize amendments. He shared that it was not the Senate Appropriation Committee raising objections to the bill.

Mr. Puleo informed the committee that staff would represent the board and testify in support of the bill at the Senate Appropriation Committee.

Dr. Elginer asked Mr. Forsyth if CCA had testified in support of SB 1033.

Mr. Forsyth responded that CCA had testified in support of the bill.

Dr. Elginer shared that AB 2744 had been moved to the consent calendar of the Legislature.

Discussion of Dates for Future Committee Meetings

Dr. Elginer explained that the committee has meetings scheduled for June 9, 2016 and July 21, 2016 and tentative dates for the legislative meet and greets in November.

Public Comment For Items Not On The Agenda

There was no public comment on this agenda item.

Future Agenda Items

There were no future agenda items discussed.

Adjournment

Dr. Elginer adjourned the meeting at 10:51 a.m.



Update and Discussion on the BCE Strategic Plan



State of California
Edmund G. Brown Jr., Governor

Agenda Item 3
June 9, 2016

Strategic Plan Update

Purpose of the item

The Committee will have the opportunity to review and discuss the BCE 2014-2017 Strategic Plan. The 2014-2017 Strategic Plan is being presented to the committee in order to assist with determining which incomplete items should be moved forward to the next strategic plan.

Action(s) requested

No action requested.

Background

The Board completes a Strategic Plan every three years. The Board completed the 2014-2017 Strategic Plan in 2013. SOLID is currently in an 8-week planning phase where it completes a SWOT analysis and an environmental scan for the Board. Additionally, SOLID planners will conduct focus groups with BCE staff and management and survey stakeholders.

The week of the July 29th Board meeting, SOLID will conduct the full Strategic Planning Session with Board members.

Recommendation(s)

Staff has no recommendation at this time.

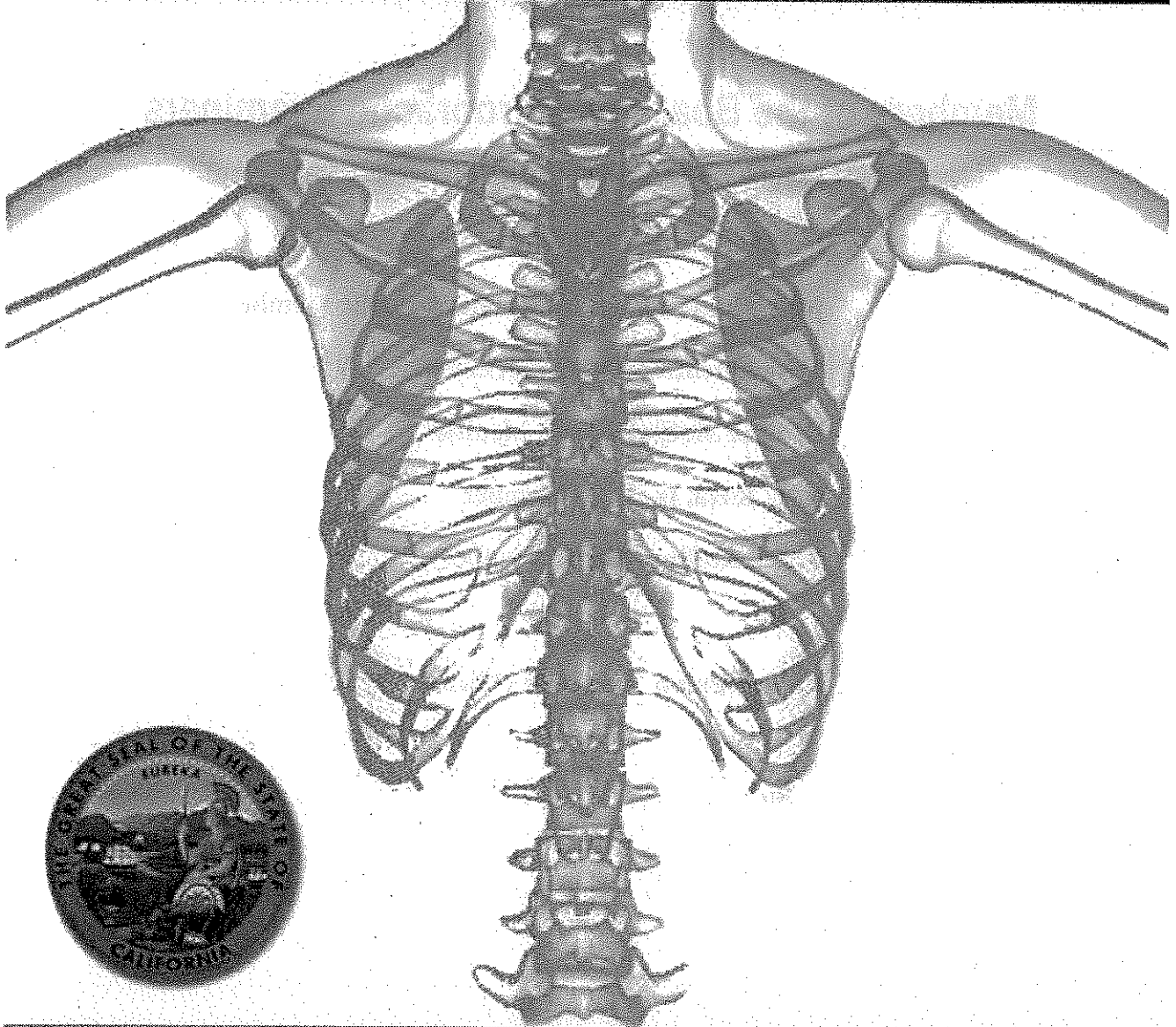
Next Step

Board members will participate in a Strategic Planning Session on July 28, 2016.

Attachment(s)

- 2014-2017 Strategic Plan

2014–2017 Strategic Plan



Board of
Chiropractic Examiners

State of California

Members of the Board of Chiropractic Examiners

Sergio Azzolino, D.C., Chair

Heather Dehn, D.C., Vice-Chair

Julie Elginer, Dr., PH, Secretary, Public Member

Corey Lichtman, D.C., Member

Dionne McClain, D.C., Member

John Roza, Jr., D.C., Member

Frank Ruffino, Public Member

Robert Puleo, Executive Officer

Edmund G. Brown, Jr., Governor

Anna M. Caballero, Secretary, Business, Consumer Services and Housing Agency

Awet Kidane, Director, Department of Consumer Affairs

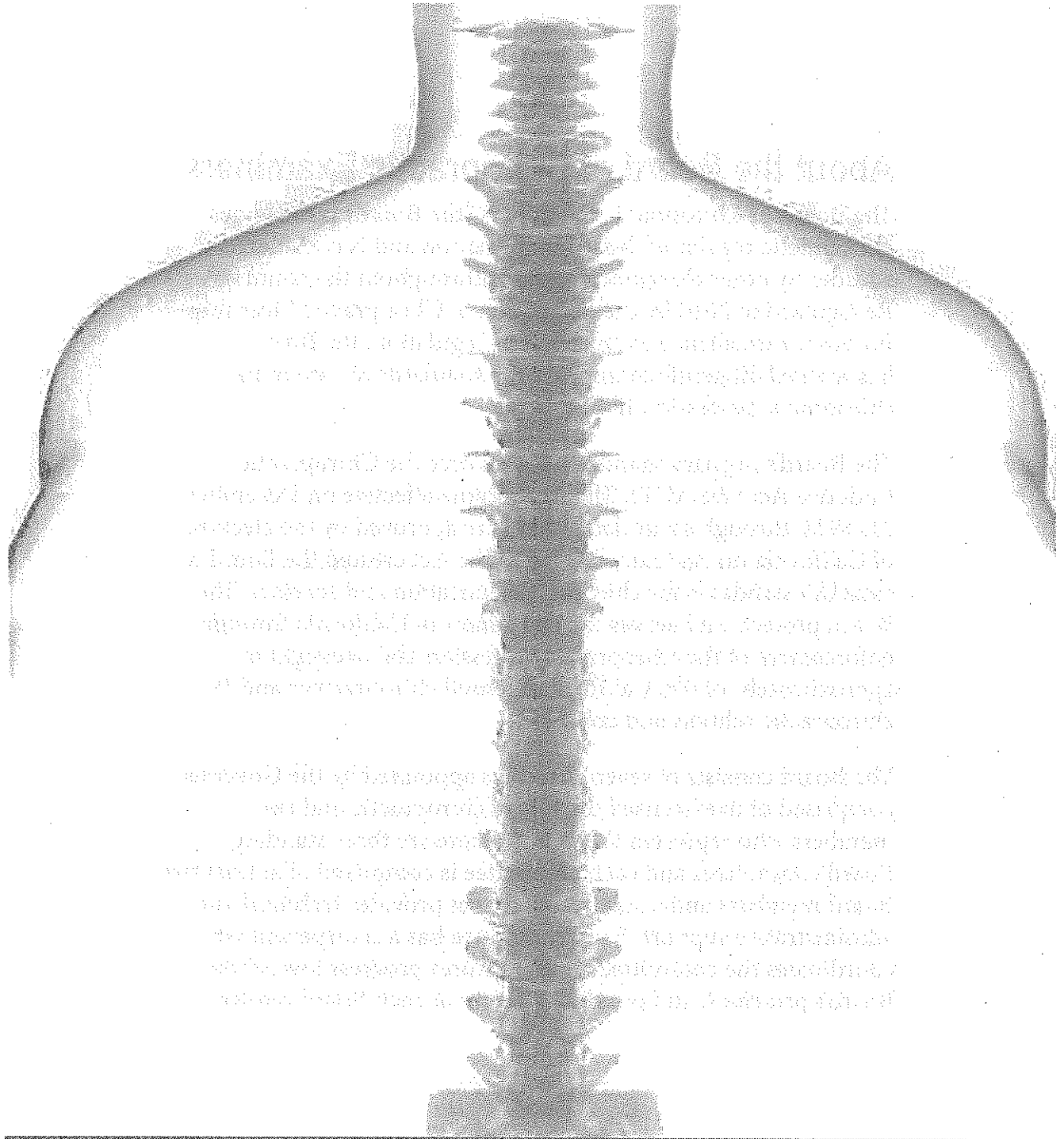


Table of Contents

About the Board of Chiropractic Examiners	2
Overview of Strategic Planning	4
Significant Accomplishments	5
Our Vision, Our Mission, and Our Values	7
Strategic Goals and Objectives	8

About the Board of Chiropractic Examiners

The Board of Chiropractic Examiners (the Board) is the largest chiropractic regulatory board in the nation and is considered a leader by other chiropractic boards throughout the country. Recognized in 2010 by the Federation of Chiropractic Licensing Boards for excellence in chiropractic regulation, the Board has worked diligently to improve the standards of care in the chiropractic profession in California.

The Board's primary mandate is to enforce the Chiropractic Initiative Act (the ACT). The Act became effective on December 21, 1922, through an initiative measure approved by the electors of California on November 7, 1922. The Act created the Board to establish standards for chiropractic education and services. The Board protects and serves the consumers of California through enforcement of the chiropractic profession and oversight of approximately 14,000 California licensed chiropractors and 19 chiropractic schools and colleges.

The Board consists of seven members appointed by the Governor, comprised of five licensed doctors of chiropractic and two members who represent the public. There are three standing Board committees and each committee is comprised of at least two Board members and a staff resource that provides technical and administrative support. Each committee has a chairperson who coordinates the committee's work, ensures progress toward the Board's priorities, and provides a report at each Board meeting.



The three Board committees include:

Committee	Responsibilities
Licensing, Continuing Education, & Public Relations	Proposes policies and standards regarding chiropractic colleges, doctors of chiropractic, satellite offices, corporation registration, and continuing education providers and courses. The Committee also develops strategies to communicate with the public through various forms of media.
Enforcement & Scope of Practice	Proposes regulations, policies, and standards to ensure compliance with chiropractic law and regulations. The Committee continuously seeks ways to improve the Board's enforcement activities.
Government Affairs & Strategic Planning	<p>Proposes and reviews policies, procedures to address audit and sunset review deficiencies.</p> <hr/> <p>Works directly with the Executive Officer and staff to monitor budget expenditures, trends, and the Contingent Fund levels.</p> <hr/> <p>Reviews and recommends positions on legislative bills that affect the Board.</p> <hr/> <p>Oversees all administrative issues regarding Board operations.</p> <hr/> <p>Develops draft strategic plans and monitors the Board's progress in achieving goals and objectives, reporting on progress of plan completion annually.</p>

The Board appoints an Executive Officer to oversee a staff of 19 permanent positions that support three functional units:

- The Administrative/Licensing Unit is responsible for the Board of Chiropractic Examiners licensee application and renewals, continuing education, administrative, and policy functions.
- The Compliance Unit (CU) and the Field Investigations Unit (FIU), which are responsible for enforcement functions, handling complaint intake, investigations, disciplinary action, and probation monitoring.

All of these functions support the protection of Californians from licensed and unlicensed individuals who engage in fraudulent, negligent, or incompetent chiropractic practice.

The Board must ensure that only those applicants with the necessary education, examination, and experience receive a California license to practice chiropractic. Requirements for licensing include passing the California Law and Professional Practice Exam (CLPPE), completing 60 pre-chiropractic units of approved education courses, and graduation from a Council on Chiropractic Education (CCE) approved college or school. Licensees are required to complete 24 hours of continuing education credit each year for license renewal.

The Board continually strives to fulfill its state mandate and mission in the most efficient manner, by exploring new policies and revising existing policies, programs, and processes. The Board is continually committed to increasing the quality and availability of services it offers to stakeholders.

Overview of Strategic Planning

SOLID begins strategic planning by conducting a preliminary meeting with the Executive Officer and Board staff management to learn about the background of the Board of Chiropractic Examiners, identify key areas of focus, define roles and responsibilities, and establish a customized strategic planning schedule.

To understand the environment in which the Board operates and identify factors that could impact the Board's success, SOLID conducted a scan and analysis of the internal and external environments by collecting information through the following methods:

- An online survey sent to twenty-four Board stakeholders, comprised of chiropractic professional associations, Board approved schools or colleges, and others who expressed interest in the strategic direction of the Board. Sixteen stakeholders responded to the survey.
- Telephone interviews with six Board members conducted during the month of May 2013.
- Focus group discussion on June 13, 2013, with Board staff, managers, and the Executive Officer.

The most significant themes and trends identified from the environmental scan were discussed by the Board during a strategic planning session facilitated by SOLID. This information guided the Board in development of its Vision, Mission, and Values, and directed the strategic goals and objectives outlined in this strategic plan for the Board to accomplish over the next four years 2014–2017.

Significant Accomplishments

As a part of strategic planning, the Board evaluated its previous strategic plan goals and identified which objectives were accomplished. The following are the significant Board accomplishments since the 2008 strategic plan was adopted:

- Established a Board culture that fosters and promotes consumer protection, effective Board governance, and accountability.
- Developed and maintain a Board Member Administrative Manual, which is used as a model for other Boards, and assists Board members in carrying out their responsibilities of developing policy, adjudicating disciplinary matters and protecting the public's interest.
- Analyzed core business processes and implemented improvements that resulting in decreased processing times and the elimination of backlogs for Licensing, Enforcement, and Continuing Education.
- Developed and implemented an internal control system for monitoring timeliness of case reviews, complaint processing, and created compliance and investigation procedure manuals.
- Established and filled field investigator positions to investigate consumer complaints, monitor probationers, and onsite inspections of chiropractic offices.
- Maintained proactive consumer protection and enforcement by staying current and recognizing when changes to laws are needed. Promulgated and adopted regulations for consumer protection to raise requirements, and institute a citation and fine program, which improved enforcement operations.

- Adopted regulations to increase the required annual continuing education from 12 hours to 24 hours, and allowed for online courses and courses approved by other health care Boards.
- Restructured the Board's eight committees into three committees.
- Began live webcasting Board meetings in May 2009 and posting these recorded meetings on the Board's website.
- Reduced enforcement case closure rates to within nine months.
- Began teleconferencing committee meetings to save costs and allow for increased public access.
- Completed a successful Sunset Review.



Our Vision

To promote excellence in chiropractic care.

Our Mission

To protect the health, welfare, and safety of the public through licensure, education, and enforcement in chiropractic care.

Our Values

CONSUMER PROTECTION

We make effective and informed decisions in the best interest and for the safety of the consumer.

SERVICE

We are professional and responsive to the needs of our stakeholders.

INNOVATION

We value new ideas and concepts, which are fundamental to our successful delivery of services to consumers and the efficient regulation of the Chiropractic marketplace.

QUALITY

We will deliver service, information, and products that reflect excellence.

TRANSPARENCY

We hold ourselves accountable to the people of California.

EFFICIENCY

We diligently identify the best ways to deliver high-quality services with the most efficient use of our resources.

INTEGRITY

We are honest, fair, respectful, and ethical.

Strategic Goals and Objectives

GOAL 1: Licensing _____	9
GOAL 2: Regulation and Enforcement _____	10
GOAL 3: Professional Qualifications and Continuing Education _____	12
GOAL 4: Organizational Effectiveness _____	14
GOAL 5: Public Relations and Outreach _____	16
GOAL 6: Professional Advancement _____	18
GOAL 7: Government Affairs _____	20



Goal 1: Licensing

Promote licensing standards to protect consumers and allow reasonable access to the profession.

The objectives and action items to meet this goal are listed below in order of priority:

1.1 Evaluate internal procedures to identify areas for improvement to maintain prompt and efficient processing of applications and renewals.

Objective Measurement
Adherence to timeframes and completed review of existing policies/procedures.
Action Item
1.1.1 Conduct evaluation of workload and processing timeframes (e.g., monthly reports, quarterly statistics, process goals), and determine discrepancies.
1.1.2 Compare internal processes to similar health profession boards to identify best practice processing timeframes.
1.1.3 Review statistics and existing policies/procedures to identify areas for improvement.
1.1.4 Adjust workload policies and procedures and/or goals for greater efficiency.

1.2 Collaborate with the Department of Consumer Affairs (DCA) to implement a new licensing and enforcement system (BreEZe) for online processing of initial and license renewals, including acceptance of credit card payments.

Objective Measurement
Successful implementation of BreEZe.
Action Item
1.2.1 Correspond regularly with DCA's BreEZe team until phase 3 rollout is completed.
1.2.2 Actively work with Breeze development team to define business needs, test system, and clean up data in preparation for Breeze implementation.
1.2.3 Train all BCE staff on Breeze.

1.3 Determine the feasibility of recognizing equivalent educational standards with other countries.

Objective Measurement
Presentation of findings to the Licensing, Continuing Education, & Public Relations Committee.
Action Item
1.3.1 Evaluate the curriculum of foreign schools to ensure it meets BCE requirements.
1.3.2 Determine standards of the Chiropractic Council of Education (CCE) and the Councils on Chiropractic Education International (CCEI) to meet minimum standards of equivalence.
1.3.3 Identify needed changes to existing regulations.
1.3.4 Present findings to the Licensing, Continuing Education, & Public Relations Committee.

Goal 2: Regulation and Enforcement

Enforce laws and regulations to ensure consumer protection.

The objectives and action items to meet this goal are listed below in order of priority:

2.1 Establish standardized training and evaluation of Expert Consultants to improve effectiveness and consistency.

Objective Measurement
Successful creation of standards, training, and an Expert Consultant evaluation.
Action Item
2.1.1 Consult with DCA's Legal Affairs about the ability to test and evaluate expert consultants to ensure consistency in reporting.
2.1.2 Develop qualifications and proficiency standards for expert consultants with the Enforcement & Scope of Practice Committee to define criteria and standards for expert consultant selection.
2.1.3 Review regulations to more clearly define standards of care to establish consistency among expert consultants.
2.1.4 Conduct a needs assessment to identify existing materials, gaps, and determine what is needed for training expert consultants.
2.1.5 Consult with SOLID to create a training course for expert consultants to provide more in-depth training.

2.2 Protect the Board's authority to interpret and clarify the Chiropractic Initiative Act to ensure public protection.

Objective Measurement
Communication updates of trends and areas of concern provided at Board meetings.
Action Item
2.2.1 Monitor legislation that impacts the Board and its authority during the legislative cycle (Jan – Sept).
2.2.2 Communicate with legislative staff throughout the legislative process: Analyze legislation, send position letters and testify at hearings.
2.2.3 Monitor the legislative activities of special interest groups and determine the impact to the Chiropractic Act.
2.2.4 Work with the Government Affairs & Strategic Planning Committee to keep lines of communication open with the legislative staff and the Legislature.
2.2.5 Update Board members on trends and special interest group areas of concern at Board meetings.

2.3 Review and revise the Board's disciplinary guidelines.

Objective Measurement
Completion of regulatory process.
Action Item
2.3.1 Conduct review of new laws and current disciplinary guidelines. Work with the Enforcement & Scope of Practice Committee to identify changes.
2.3.2 Identify areas of improvement and prepare a draft with proposed changes.
2.3.3 Prepare proposed regulatory language in document and display changes.
2.3.4 Submit document to Board for review and approval.
2.3.5 Complete the regulatory process.

2.4 Utilize BreZE and online resources to coordinate receipt of disciplinary documents more efficiently.

Objective Measurement
Successful implementation of BreZE.
Action Item
2.4.1 Correspond regularly with DCA's BreZE team until phase 3 rollout is completed.
2.4.2 Actively work with Breeze development team to define business needs, test system, and clean up data in preparation for Breeze implementation.
2.4.3 Train all BCE staff on Breeze.

Goal 3: Professional Qualifications and Continuing Education

Ensure the initial and continuous competency of all Doctors of Chiropractic.

The objectives and action items to meet this goal are listed below in order of priority:

3.1 Establish provider review standards for continuing education providers.

Objective Measurement
Completion of regulatory process.
Action Item
3.1.1 Define proficiency standards for Continuing Education (CE) providers with the Licensing, Continuing Education, & Public Relations (LIC/CE/PR) Committee.
3.1.2 Prepare proposed regulatory language in document and display changes.
3.1.3 Submit document to the Board for review and approval.
3.1.4 Complete the regulatory process.

3.2 Develop a continuing education course auditing system to ensure providers are delivering quality instruction to licensees and take action against those providers who fail to meet these standards.

Objective Measurement
Developed auditing mechanism to maintain quality of CE courses and integrity of the CE process.
Action Item
3.2.1 Review regulations to determine criteria for course content.
3.2.2 Develop an auditing form/checklist for CE courses.
3.2.3 Provide a quarterly list of new CE providers and dates for upcoming courses to the Licensing, Continuing Education, & Public Relations Committee.
3.2.4 The Licensing, Continuing Education, & Public Relations (LIC/CE/PR) Committee assigns auditors to attend CE courses and audit providers.
3.2.5 Submit audit forms to the CE Manager and take action as appropriate.

3.3 Evaluate effectiveness of compliance with continuing education regulations to ensure competency.

Objective Measurement
Presentation of findings to the Licensing, Continuing Education, & Public Relations (LIC/CE/PR) Committee.
Action Item
3.3.1 Collect and evaluate complaints and compile statistics regarding enforcement trends and new laws related to CE course work.
3.3.2 Develop a process to conduct random audits of licensees' compliance with CE regulations and course completion.
3.3.3 Identify the top 10 licensee violations and disseminate to CE providers as topics for CE courses.
3.3.4 Present findings to the LIC/CE/PR Committee to determine the next action items.

3.4 Establish and document protocols for ongoing communication with chiropractic oversight organizations to ensure consistent standards.

Objective Measurement
Chair appoints a Board member liaison who provides bi-annual reports to the Board.
Action Item
3.4.1 Assign a professional Board member to serve as a liaison to professional organizations and BCE.
3.4.2 Update Board member manual to reflect new duties and responsibilities of the Board liaison role.
3.4.3 Board member liaison regularly communicates with other chiropractic oversight organizations.
3.4.4 Report findings to the Board.

Goal 4: Organizational Effectiveness

Efficiently utilize resources to meet goals and objectives.

The objectives and action items to meet this goal are listed below in order of priority:

4.1 Improve onboarding of new Board members by creating a Board specific orientation program.

Objective Measurement
Updated onboarding program and materials for Board members.
Action Item
4.1.1 Establish a process to invite new Board members to visit the BCE office to gain understanding of office functions.
4.1.2 Develop a Board member mentor program.
4.1.3 Survey Board members to assess needs and determine the types of materials to include in the new Board member manual.
4.1.4 Based on the needs assessment results, develop a new employee/ welcome binder for new Board members with BCE overview, BCE budget, administrative processes, and historical information.
4.1.5 Work with the Government Affairs & Strategic Planning Committee to update the Board Administration Manual.
4.1.6 Present the onboarding manuals for Board approval.

4.2 Increase Board awareness of staff functions, responsibilities, and timeframes for completing tasks.

Objective Measurement
Board member satisfaction of materials and awareness of BCE staff functions.
Action Item
4.2.1 Schedule BCE office visits for Board members.
4.2.2 Implement email blasts of Board related events to notify Board members of BCE, DCA BMOT, and association meetings.
4.2.3 Survey Board members to determine the types of materials requested.
4.2.4 Based on feedback, develop materials that provide overview of BCE staff functions.
4.2.5 Provide Board program overview information to Board members.

4.3 Explore alternative ways to engage public participation in Board and committee meetings that leverage new technologies.

Objective Measurement
Increased public attendance and participation at Board Meetings.
Action Item
4.3.1 Establish a process that would encourage licensees to attend Board meetings (e.g., credit earned toward professional development).
4.3.2 Invite school representatives as guest speakers at Board meetings.
4.3.3 Send Board meeting calendar to schools, colleges, and associations to disseminate.
4.3.4 Ask professional associations to publicize Board meeting dates.
4.3.5 Work with DCA's Office of Public Affairs to regularly update Twitter, Facebook, and other social media channels to increase awareness of Board meeting dates.
4.3.6 Identify and implement methods to increase accessibility to Board meetings.

Goal 5: Public Relations and Outreach

Communicate with consumers, licensees and stakeholders about the current and evolving practice of chiropractic and regulation of the profession.

The objectives and action items to meet this goal are listed below in order of priority:

5.1 Partner with DCA to establish internal and external communication protocols.

Objective Measurement
Developed communication plan is approved by the Licensing, Continuing Education & Public Relations (LIC/CE/PR) Committee.
Action Item
5.1.1 Forward the DCA Board/Bureau/Program meeting schedule email to Board members.
5.1.2 Contact the DCA Office of Public Affairs for information on development of a BCE Communication Plan.
5.1.3 Identify DCA resources and examples for the communication plan.
5.1.4 Executive Officer shares the gathered information with the LIC/CE/PR Committee.
5.1.5 Establish Board communication protocols and best practices for the communication plan.
5.1.6 Develop the BCE Communication Plan.

5.2 Through the DCA Office of Publications, Design, and Editing, develop consumer education materials in different languages to assist consumers in making informed decisions.

Objective Measurement	
Consumer education material is created, approved by the Board, and distributed to stakeholders and target audiences.	
Action Item	
5.2.1A	Contact the DCA Office of Publications, Design, and Editing about creating publications to educate consumers, licensees, and students.
5.2.2A	Present samples from the DCA Office of Publications, Design, and Editing to the LIC/CE/PR Committee.
5.2.3A	LIC/CE/PR Committee Chair will form a task force to develop publication content.
5.2.4A	Convene the task force to develop a prototype for the LIC/CE/PR Committee's review.
5.2.5A	Present the prototype to the Board for approval.
5.2.6A	Prepare approved materials for electronic distribution to stakeholders and target audiences.

Objective Measurement	
Quarterly newsletter is created and distributed to stakeholders and target audiences.	
Action Item	
5.2.1B	Research areas of interest for quarterly newsletter articles and identify targeted consumers and licensees.
5.2.2B	Draft newsletter articles for the LIC/CE/PR Committee's review.
5.2.3B	DCA Office of Publications, Design, and Editing formats the newsletter.
5.2.4B	DCA Legal Affairs reviews the newsletter and BCE staff submit the newsletter for Board approval.
5.2.5B	Approved newsletter is prepared for electronic distribution to consumers and licensees.

5.3 Collaborate with DCA to optimize the Board's website.

Objective Measurement
Identified website enhancements are approved by the Board and updated on the BCE website.
Action Item
5.3.1 Conduct a needs assessment of the BCE website with Board members to identify gaps and areas of improvement.
5.3.2 Review the needs assessment findings and identify ideas for website enhancements.
5.3.3 Present recommendations to the Board for approval.
5.3.4 Consult with the Office of Publications, Design, and Editing web team to enhance the BCE website with the Board's approved enhancements.

Goal 6: Professional Advancement

The Board of Chiropractic Examiners embraces innovation and supports the advancement of the practice of chiropractic.

The objectives and action items to meet this goal are listed below in order of priority:

6.1 Embrace the non-surgical, non-pharmaceutical role of the Chiropractor to increase consumer access to healthcare.

Objective Measurement
Board Liaison is appointed by the Chair and reports bi-annual updates to the Board.
Action Item
6.1.1 Appoint a professional Board member to serve as a liaison to monitor national trends related to scope of practice and report information to the Board.
6.1.2 Update the Board member manual to reflect new duties and responsibilities of the Board Liaison.
6.1.3 Board Liaison regularly communicates with other health care organizations.
6.1.4 Report updates to the Board.

6.2 Evaluate trends in chiropractic care in other states to determine potential impact to regulations in California.

Objective Measurement
Bi-annual report of chiropractic care trends provided to the Board.
Action Item
6.2.1 Review chiropractic trends and identify what chiropractors can do within existing regulations.
6.2.2 Explore the possibility of amending the Chiropractic Act and Section 302 of regulations to clarify or expand the scope of practice and provide recommendations to the Board.
6.2.3 Monitor trends in chiropractic care and communicate with organizations to stay current.
6.2.4 Report to the Board on chiropractic care trends.

6.3 Embrace the role of the chiropractic specialties.

Objective Measurement
The Enforcement/SOP Committee provides recommendations to the Board.
Action Item
6.3.1 Explore the possibility of amending the Chiropractic Act or regulation to recognize chiropractic specialties.
6.3.2 Develop recommendations for the Board's decision of the next action items.

Goal 7: Government Affairs

Establish and maintain collaborative partnerships in government to ensure the Board of Chiropractic Examiners is well informed regarding priorities and initiatives.

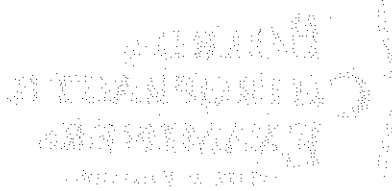
The objectives and action items to meet this goal are listed below in order of priority:

7.1 Establish open lines of communication with government stakeholders to ensure the Board is well informed about information relevant to the chiropractic profession.

Objective Measurement
Subscription and identification of regulatory notices impacting BCE.
Action Item
7.1.1 Subscribe to other DCA health care boards email subscriptions to receive email blasts of information updates.
7.1.2 Review email updates and identify important information to communicate to Board members.
7.1.3 Participate in the Executive Officer Roundtable Meeting and forward information to Board members.
7.1.4 Monitor the Office of Administrative Law regulatory notices of current and pending regulation packages, and disapprovals from other DCA health care programs and boards.
7.1.5 Report to the Board on regulatory notices impacting the BCE.

7.2 Partner with state and local government to participate in consumer related events to increase awareness of the Board's mission and consumer protection services.

Objective Measurement
Identified outreach events and implemented Board approved recommendations.
Action Item
7.2.1 Work with the Government Affairs & Strategic Planning Committee to identify target groups for outreach.
7.2.2 Research and work with the DCA Outreach Unit to identify events for outreach.
7.2.3 Provide recommendations to the Government Affairs & Strategic Planning Committee.
7.2.4 Provide recommendations to the Board.
7.2.5 Implement the Board approved recommendations to increase awareness.





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STATE OF CALIFORNIA



DEPARTMENT OF CONSUMER AFFAIRS



State of California
Edmund G. Brown Jr., Governor

Update and Possible Action Regarding Legislation



State of California
Edmund G. Brown Jr., Governor

Agenda Item 4
June 9, 2016

Update and Possible Action Regarding Legislation

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.

Action(s) requested

The Committee will be asked to review and discuss the bills provided below. If necessary, the Committee will have an opportunity to take a position on any new or previously discussed bills.

Background

Board staff is currently tracking multiple bills during 2016 legislative session.

Bills staff are tracking

Support

Bill	Author	Title	Status	Position
<u>AB 1992</u>	Jones	Pupil health: physical examinations	Dead: Failed in Asm. B&P and reconsideration refused.	Support
<u>AB 2407</u>	Chavez	Workers' compensation	Dead: Bill retained in committee and will be referred to a Committee for study.	Support
<u>SB 1033</u>	Hill	Medical professionals: probation	Passed in appropriations and sent to the Senate Floor for a vote.	Support

Neutral

Bill	Author	Title	Status	Position
<u>SB 1155</u>	Morrell	Professions and vocations: licenses: military service.	APPR: Hearing set for May 27 th .	Comm: Neutral
<u>SB 1217</u>	Stone	Healing arts: reporting requirements: professional liability resulting in death or personal injury	Dead: Failed passage in B&P committee (4/18/16).	Comm: Neutral
<u>AB 2744</u>	Gordon	Healing arts: referrals	Referred to Senate Com. on B., P. & E.D.	Comm: Neutral

Watch

Bill	Author	Title	Status	Position
SB 1348	Cannella	Licensure applications: military experience	Passed in appropriations and sent to the Senate Floor for a vote.	Comm: Watch

Unreviewed Bill

Bill	Author	Title	Status	Position
SB 1195	Hill	Professions and vocations: board actions: competitive impact	Passed in appropriations and sent to the Senate Floor for a vote.	No position

Summary of Bills

Bill	Author	Summary	Amended
AB 1992	Jones	This bill would add chiropractors, naturopathic doctors, and nurse practitioners to the list of health care professionals authorized to perform a physical examination as a condition of participation in an interscholastic athletic program.	
AB 2407	Chavez	This bill would require medical providers treating injured workers with back injuries to assess the employee's level of risk for chronic back pain and determine if the criteria is met for a surgical consultation. This bill would specify that treatments that may be deemed appropriate after the assessment, including chiropractic manipulation.	4/27/16
AB 2744	Gordon	This bill would provide that payment or receipt of consideration for advertising, in which a licensee offers or sells prepaid services, is not referral of patients.	4/11/16
SB 1195	Hill	<i>This bill would grant authority to the Director of the Department of Consumer Affairs (DCA) to review decisions and other actions by boards within the Department to determine if the action restrains trade. The bill would require the Office of Administrative Law (OAL) to perform additional reviews of regulations proposed by boards within the Department. The bill would extend the statutory sunset of the Veterinary Medical Board</i>	4/6/16
SB 1033	Hill	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.	5/10/16
SB 1155	Morrell	The bill would require every Board within DCA, to grant a fee waiver for the application for and issuance of an initial license to an individual who has been honorably discharged from the United States Armed Forces.	3/28/16
SB 1217	Stone	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. The bill would also require Board files on individual licensees to include reported judgements or settlements with damages over \$10,000.	4/12/16
SB 1348	Cannella	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.	

Recommendation(s)

Any staff recommendations regarding Committee action are included on each individual bill's analysis.

Next Step

N/A

Attachment(s)

No attachments included

Board of Chiropractic Examiners Bill Analysis

Bill Number: SB 1033
Author: Senator Jerry Hill
Bill Version: Amended May 10, 2016
Subject: Medical professionals: probation
Sponsor: Author
Status of Bill: Passed out of the Sen. Appropriations Committee. Sent to the Senate Floor.

Summary:

This bill would require various healing arts professionals including chiropractors, to disclose his or her probationary status to a patient prior to the patient's first visit following a probationary order.

Existing Law:

- Establishes the State Board of Chiropractic Examiners for the licensing and regulation of chiropractors.
- Authorizes various healing arts regulatory agencies to discipline its licensees by placing them on probation.

This Bill Would:

Amend Business and Professions Code Section 1006 to:

- a) Require a licensee to disclose on a separate document his or her probationary status, the board's website, and the board's telephone number to patients or patient representatives, prior to a patient's first visit following the probationary order.
- b) Bill text would apply for a licensee on probation in any of the following circumstances:
 1. The accusation alleges, the statement of issues indicates, or the legal conclusions of an administrative law judge find that the licensee is implicated in any of the following:
 - A. Gross negligence.
 - B. Repeated negligent acts involving a departure from the standard of care with multiple patients.
 - C. Drug or alcohol abuse that threatens to impair a licensee's ability to chiropractic safely, including practicing under the influence of drugs or alcohol.
 - D. Felony conviction arising from or occurring during patient care or treatment.
 - E. Mental illness or other cognitive impairment that impedes a licensee's ability to safely practice chiropractic.
 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 submits to drug testing as a result of drug or alcohol abuse.
- C. That the licensee have a monitor.
- 3. The licensee has not successfully completed a training program or any associated examinations required by the board as a condition of probation.
- 4. The licensee has been on probation more than once.
 - b) The licensee shall 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 probation on the board's Internet Web site.
 - c) The licensee shall not be required to provide the disclosure prior to the visit as required by subdivision (a) if the visit occurs in an emergency room and the licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.
 - d) By January 1, 2018, the board shall develop a standardized format for listing the following information pursuant to subdivision (e):
 - 1. The listing of the causes for probation alleged in the accusation, the statement of issues, or the legal conclusions of an administrative law judge.
 - 2. The length of the probation and the end date.
 - 3. All practice restrictions placed on the licensee by the board.
 - e) By January 1, 2018, the board shall provide the information listed in subdivision (d) as follows:
 - 1. To an inquiring member of the public.
 - 2. On any board documents informing the public of probation orders and probationary licenses, including, but not limited to, newsletters
 - 3. On the board's Internet Website

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:

According to the Senate Appropriations Committee analysis, there will be ongoing costs of about \$1 million per year for additional disciplinary hearings for physicians licensed by the Medical Board (Contingent Fund of the Medical Board of California). Also, they anticipate that there will be ongoing costs in the tens of thousands per year, on average, for additional disciplinary hearings by the Board of Chiropractic Examiners.

Support & Opposition:

Support:

Consumers Union
Californians for Patients' Rights
CALPIRG
Center for Public Interest Law
Consumer Federation of California
Consumers Union's Safe Patient Project
Consumer Watchdog

Opposition:

California Chapter of the American College of Emergency Room Physicians
California Medical Association

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's Recommended Position: MAINTAIN THE BOARD'S SUPPORT POSITION

The amended bill has included the BCE proposed technical amendments. These amendments will help ensure the proposed changes are consistent with the Chiropractic Initiative Act. With no other major changes to the substance of the bill, there is no need to change the board's position.

However, the BCE disputes the fiscal analysis provided by the legislature. The BCE was not consulted by the Senate Appropriations Committee and the data provided is not consistent with the fiscal impact determined by board staff. The BCE maintains that any additional administrative cost incurred by this bill would be minor and absorbable.

The bill as amended still would enhance consumer protection by requiring chiropractors to disclose their probationary status to a patient before the first visit following a probation order.

AMENDED IN SENATE MAY 10, 2016
AMENDED IN SENATE MARCH 17, 2016

SENATE BILL

No. 1033

Introduced by Senator Hill

February 12, 2016

An act to amend Sections 125.3, 803.1, 2027, 2221, 2221.05, 2228, and 3663 of, and to add Sections 1006 and 4962 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1033, as amended, Hill. Medical Board: disclosure of probationary status: professionals: probation.

~~Existing~~

(1) Existing law, the Medical Practice Act, establishes the Medical Board of California for the licensing, regulation, and discipline of physicians and surgeons. Existing law establishes the California Board of Podiatric Medicine within the Medical Board of California for the licensing, regulation, and discipline of podiatrists. Existing law, the Osteopathic Act, enacted by an initiative measure, establishes the Osteopathic Medical Board of California for the licensing and regulation of osteopathic physicians and surgeons and requires the Osteopathic Medical Board of California to enforce the Medical Practice Act with respect to its licensees. Existing law, the Naturopathic Doctors Act, establishes the Naturopathic Medicine Committee in the Osteopathic Medical Board of California for the licensing and regulation of naturopathic doctors. Existing law, the Chiropractic Act, enacted by an initiative measure, establishes the State Board of Chiropractic Examiners for the licensing and regulation of chiropractors. Existing law, the Acupuncture Licensure Act, establishes the Acupuncture Board for the

licensing and regulation of acupuncturists. Existing law authorizes each of these regulatory agencies *entities* to discipline its licensee by placing her or him on probation, as specified.

~~This bill~~ *bill, on and after January 1, 2018, would require these regulatory entities to require a licensee to disclose on a separate document her or his probationary status status, certain information related to his or her probation, the address of his or her BreEze profile Internet Web page or a specified Internet Web site, and the regulatory entity's telephone number to a patient, the patient's guardian, or the health care surrogate prior to the patient's first visit following the probationary order while the licensee is on probation under specified circumstances, including an accusation alleging, a statement of issues indicating, or an administrative law judge's legal conclusion finding the licensee committed gross negligence or the licensee having been on probation more than once, among others. The bill would require the licensee to obtain from the patient a signed receipt containing specified information following the disclosure. The bill would exempt a licensee licensee, except for a licensed chiropractor, from disclosing her or his probationary status prior to a visit or treatment that disclosure requirement if the patient is unable to comprehend the disclosure or and sign an acknowledgment and a guardian or health care surrogate is unavailable. The bill would require in that instance that the doctor disclose his or her status as soon as either the patient can comprehend and sign the receipt or a guardian or health care surrogate is available to comprehend the disclosure and sign the receipt. The bill would also exempt a licensee from that disclosure requirement if the visit occurs in an emergency room and the licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.*

~~Existing~~

(2) *Existing* law requires the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine to disclose to an inquiring member of the public and to post on their Internet Web sites specified information concerning each licensee including revocations, suspensions, probations, or limitations on practice.

~~The~~

This bill would require the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, the

Naturopathic Medicine Committee, and the Acupuncture Board by ~~July~~ *January* 1, 2018, to develop a standardized format for listing specified information related to the probation and to provide that information to an inquiring member of the public, on any documents informing the public of probation orders, and on a specified profile Internet Web page of each licensee subject to probation, *or an Internet Web site*, as specified.

(3) Existing law, in any order issued in resolution of a disciplinary proceeding before any board within the Department of Consumer Affairs or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding unless the entity is the Medical Board of California, authorizes the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, as specified.

This bill would authorize the Medical Board of California to request and obtain from a physician and surgeon the investigation and prosecution costs for a disciplinary proceeding in which the physician and surgeon's license is placed on 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 125.3 of the Business and Professions*
2 *Code is amended to read:*

3 125.3. (a) Except as otherwise provided by law, in any order
4 issued in resolution of a disciplinary proceeding before any board
5 within the department or before the Osteopathic Medical Board,
6 upon request of the entity bringing the proceeding, the
7 administrative law judge may direct a licentiate found to have
8 committed a violation or violations of the licensing act to pay a
9 sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case.

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

14 (c) A certified copy of the actual costs, or a good faith estimate
15 of costs where actual costs are not available, signed by the entity
16 bringing the proceeding or its designated representative shall be

1 prima facie evidence of reasonable costs of investigation and
2 prosecution of the case. The costs shall include the amount of
3 investigative and enforcement costs up to the date of the hearing,
4 including, but not limited to, charges imposed by the Attorney
5 General.

6 (d) The administrative law judge shall make a proposed finding
7 of the amount of reasonable costs of investigation and prosecution
8 of the case when requested pursuant to subdivision (a). The finding
9 of the administrative law judge with regard to costs shall not be
10 reviewable by the board to increase the cost award. The board may
11 reduce or eliminate the cost award, or remand to the administrative
12 law judge if the proposed decision fails to make a finding on costs
13 requested pursuant to subdivision (a).

14 (e) If an order for recovery of costs is made and timely payment
15 is not made as directed in the board's decision, the board may
16 enforce the order for repayment in any appropriate court. This
17 right of enforcement shall be in addition to any other rights the
18 board may have as to any licentiate to pay costs.

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

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

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

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

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

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

1 (k) Notwithstanding the provisions of this section, the Medical
2 Board of California shall not request nor obtain from a physician
3 and ~~surgeon~~, *surgeon* investigation and prosecution costs for a
4 disciplinary proceeding against the ~~licentiate~~. *licentiate, except for*
5 *a disciplinary proceeding in which the licentiate's license is placed*
6 *on probation.* The board shall ensure that this subdivision is
7 revenue neutral with regard to it and that any loss of revenue or
8 increase in costs resulting from this subdivision is offset by an
9 increase in the amount of the initial license fee and the biennial
10 renewal fee, as provided in subdivision (e) of Section 2435.

11 ~~SECTION 1.~~

12 *SEC. 2.* Section 803.1 of the Business and Professions Code
13 is amended to read:

14 803.1. (a) Notwithstanding any other ~~provision~~ of law, the
15 Medical Board of California, the Osteopathic Medical Board of
16 California, the California Board of Podiatric Medicine, and the
17 Physician Assistant Board shall disclose to an inquiring member
18 of the public information regarding any enforcement actions taken
19 against a licensee, including a former licensee, by the board or by
20 another state or jurisdiction, including all of the following:

- 21 (1) Temporary restraining orders issued.
- 22 (2) Interim suspension orders issued.
- 23 (3) Revocations, suspensions, probations, or limitations on
24 practice ordered by the board, including those made part of a
25 probationary order or stipulated agreement.
- 26 (4) Public letters of reprimand issued.
- 27 (5) Infractions, citations, or fines imposed.

28 (b) Notwithstanding any other ~~provision~~ of law, in addition to
29 the information provided in subdivision (a), the Medical Board of
30 California, the Osteopathic Medical Board of California, the
31 California Board of Podiatric Medicine, and the Physician Assistant
32 Board shall disclose to an inquiring member of the public all of
33 the following:

- 34 (1) Civil judgments in any amount, whether or not vacated by
35 a settlement after entry of the judgment, that were not reversed on
36 appeal and arbitration awards in any amount of a claim or action
37 for damages for death or personal injury caused by the physician
38 and surgeon's negligence, error, or omission in practice, or by his
39 or her rendering of unauthorized professional services.

1 (2) (A) All settlements in the possession, custody, or control
2 of the board shall be disclosed for a licensee in the low-risk
3 category if there are three or more settlements for that licensee
4 within the last 10 years, except for settlements by a licensee
5 regardless of the amount paid where (i) the settlement is made as
6 a part of the settlement of a class claim, (ii) the licensee paid in
7 settlement of the class claim the same amount as the other licensees
8 in the same class or similarly situated licensees in the same class,
9 and (iii) the settlement was paid in the context of a case where the
10 complaint that alleged class liability on behalf of the licensee also
11 alleged a products liability class action cause of action. All
12 settlements in the possession, custody, or control of the board shall
13 be disclosed for a licensee in the high-risk category if there are
14 four or more settlements for that licensee within the last 10 years
15 except for settlements by a licensee regardless of the amount paid
16 where (i) the settlement is made as a part of the settlement of a
17 class claim, (ii) the licensee paid in settlement of the class claim
18 the same amount as the other licensees in the same class or
19 similarly situated licensees in the same class, and (iii) the
20 settlement was paid in the context of a case where the complaint
21 that alleged class liability on behalf of the licensee also alleged a
22 products liability class action cause of action. Classification of a
23 licensee in either a "high-risk category" or a "low-risk category"
24 depends upon the specialty or subspecialty practiced by the licensee
25 and the designation assigned to that specialty or subspecialty by
26 the Medical Board of California, as described in subdivision (f).
27 For the purposes of this paragraph, "settlement" means a settlement
28 of an action described in paragraph (1) entered into by the licensee
29 on or after January 1, 2003, in an amount of thirty thousand dollars
30 (\$30,000) or more.

31 (B) The board shall not disclose the actual dollar amount of a
32 settlement but shall put the number and amount of the settlement
33 in context by doing the following:

34 (i) Comparing the settlement amount to the experience of other
35 licensees within the same specialty or subspecialty, indicating if
36 it is below average, average, or above average for the most recent
37 10-year period.

38 (ii) Reporting the number of years the licensee has been in
39 practice.

1 (iii) Reporting the total number of licensees in that specialty or
2 subspecialty, the number of those who have entered into a
3 settlement agreement, and the percentage that number represents
4 of the total number of licensees in the specialty or subspecialty.

5 (3) Current American Board of Medical Specialties certification
6 or board equivalent as certified by the Medical Board of California,
7 the Osteopathic Medical Board of California, or the California
8 Board of Podiatric Medicine.

9 (4) Approved postgraduate training.

10 (5) Status of the license of a licensee. By January 1, 2004, the
11 Medical Board of California, the Osteopathic Medical Board of
12 California, and the California Board of Podiatric Medicine shall
13 adopt regulations defining the status of a licensee. The board shall
14 employ this definition when disclosing the status of a licensee
15 pursuant to Section 2027. ~~By July~~ *January* 1, 2018, the Medical
16 Board of California, the Osteopathic Medical Board of California,
17 and the California Board of Podiatric Medicine shall include the
18 information described in subdivision (f) of Section 2228.

19 (6) Any summaries of hospital disciplinary actions that result
20 in the termination or revocation of a licensee's staff privileges for
21 medical disciplinary cause or reason, unless a court finds, in a final
22 judgment, that the peer review resulting in the disciplinary action
23 was conducted in bad faith and the licensee notifies the board of
24 that finding. In addition, any exculpatory or explanatory statements
25 submitted by the licensee electronically pursuant to subdivision
26 (f) of that section shall be disclosed. For purposes of this paragraph,
27 "peer review" has the same meaning as defined in Section 805.

28 (c) Notwithstanding any other ~~provision~~ of law, the Medical
29 Board of California, the Osteopathic Medical Board of California,
30 the California Board of Podiatric Medicine, and the Physician
31 Assistant Board shall disclose to an inquiring member of the public
32 information received regarding felony convictions of a physician
33 and surgeon or doctor of podiatric medicine.

34 (d) The Medical Board of California, the Osteopathic Medical
35 Board of California, the California Board of Podiatric Medicine,
36 and the Physician Assistant Board may formulate appropriate
37 disclaimers or explanatory statements to be included with any
38 information released, and may by regulation establish categories
39 of information that need not be disclosed to an inquiring member
40 of the public because that information is unreliable or not

1 sufficiently related to the licensee's professional practice. The
2 Medical Board of California, the Osteopathic Medical Board of
3 California, the California Board of Podiatric Medicine, and the
4 Physician Assistant Board shall include the following statement
5 when disclosing information concerning a settlement:
6

7 "Some studies have shown that there is no significant correlation
8 between malpractice history and a doctor's competence. At the
9 same time, the State of California believes that consumers should
10 have access to malpractice information. In these profiles, the State
11 of California has given you information about both the malpractice
12 settlement history for the doctor's specialty and the doctor's history
13 of settlement payments only if in the last 10 years, the doctor, if
14 in a low-risk specialty, has three or more settlements or the doctor,
15 if in a high-risk specialty, has four or more settlements. The State
16 of California has excluded some class action lawsuits because
17 those cases are commonly related to systems issues such as product
18 liability, rather than questions of individual professional
19 competence and because they are brought on a class basis where
20 the economic incentive for settlement is great. The State of
21 California has placed payment amounts into three statistical
22 categories: below average, average, and above average compared
23 to others in the doctor's specialty. To make the best health care
24 decisions, you should view this information in perspective. You
25 could miss an opportunity for high-quality care by selecting a
26 doctor based solely on malpractice history.

27 When considering malpractice data, please keep in mind:

28 Malpractice histories tend to vary by specialty. Some specialties
29 are more likely than others to be the subject of litigation. This
30 report compares doctors only to the members of their specialty,
31 not to all doctors, in order to make an individual doctor's history
32 more meaningful.

33 This report reflects data only for settlements made on or after
34 January 1, 2003. Moreover, it includes information concerning
35 those settlements for a 10-year period only. Therefore, you should
36 know that a doctor may have made settlements in the 10 years
37 immediately preceding January 1, 2003, that are not included in
38 this report. After January 1, 2013, for doctors practicing less than
39 10 years, the data covers their total years of practice. You should
40 take into account the effective date of settlement disclosure as well

1 as how long the doctor has been in practice when considering
2 malpractice averages.

3 The incident causing the malpractice claim may have happened
4 years before a payment is finally made. Sometimes, it takes a long
5 time for a malpractice lawsuit to settle. Some doctors work
6 primarily with high-risk patients. These doctors may have
7 malpractice settlement histories that are higher than average
8 because they specialize in cases or patients who are at very high
9 risk for problems.

10 Settlement of a claim may occur for a variety of reasons that do
11 not necessarily reflect negatively on the professional competence
12 or conduct of the doctor. A payment in settlement of a medical
13 malpractice action or claim should not be construed as creating a
14 presumption that medical malpractice has occurred.

15 You may wish to discuss information in this report and the
16 general issue of malpractice with your ~~doctor.~~²²

17 ~~(e) doctor.~~

18 (e) The Medical Board of California, the Osteopathic Medical
19 Board of California, the California Board of Podiatric Medicine,
20 and the Physician Assistant Board shall, by regulation, develop
21 standard terminology that accurately describes the different types
22 of disciplinary filings and actions to take against a licensee as
23 described in paragraphs (1) to (5), inclusive, of subdivision (a). In
24 providing the public with information about a licensee via the
25 Internet pursuant to Section 2027, the Medical Board of California,
26 the Osteopathic Medical Board of California, the California Board
27 of Podiatric Medicine, and the Physician Assistant Board shall not
28 use the terms "enforcement," "discipline," or similar language
29 implying a sanction unless the physician and surgeon has been the
30 subject of one of the actions described in paragraphs (1) to (5),
31 inclusive, of subdivision (a).

32 (f) The Medical Board of California shall adopt regulations no
33 later than July 1, 2003, designating each specialty and subspecialty
34 practice area as either high risk or low risk. In promulgating these
35 regulations, the board shall consult with commercial underwriters
36 of medical malpractice insurance companies, health care systems
37 that self-insure physicians and surgeons, and representatives of
38 the California medical specialty societies. The board shall utilize
39 the carriers' statewide data to establish the two risk categories and
40 the averages required by subparagraph (B) of paragraph (2) of

1 subdivision (b). Prior to issuing regulations, the board shall
2 convene public meetings with the medical malpractice carriers,
3 self-insurers, and specialty representatives.

4 (g) The Medical Board of California, the Osteopathic Medical
5 Board of California, the California Board of Podiatric Medicine,
6 and the Physician Assistant Board shall provide each licensee,
7 including a former licensee under subdivision (a), with a copy of
8 the text of any proposed public disclosure authorized by this section
9 prior to release of the disclosure to the public. The licensee shall
10 have 10 working days from the date the board provides the copy
11 of the proposed public disclosure to propose corrections of factual
12 inaccuracies. Nothing in this section shall prevent the board from
13 disclosing information to the public prior to the expiration of the
14 10-day period.

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

22 (i) By ~~July~~ *January* 1, 2018, the Medical Board of California,
23 the Osteopathic Medical Board of California, and the California
24 Board of Podiatric Medicine shall include the information listed
25 in subdivision (f) of Section 2228 on any board documents
26 informing the public of probation orders and probationary licenses,
27 including, but not limited to, newsletters.

28 ~~SEC. 2:~~

29 *SEC. 3.* Section 1006 is added to the Business and Professions
30 Code, to read:

31 1006. (a) ~~Except~~ *On and after January 1, 2018, except* as
32 provided by subdivision (c), the State Board of Chiropractic
33 Examiners shall require a licensee to disclose on a separate
34 document her or his probationary ~~status~~ *status, all of the*
35 *information described in subdivision (d), the address of the board's*
36 *Internet Web site, and the board's telephone number* to a patient,
37 the patient's guardian, or health care surrogate prior to the patient's
38 first visit following the probationary order while the licensee is on
39 probation in any of the following circumstances:

1 (1) The accusation alleges, the statement of issues indicates, or
2 the legal conclusions of an administrative law judge find that the
3 licensee is implicated in any of the following:

4 (A) Gross negligence.

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

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

11 ~~(D)~~

12 (C) Drug or alcohol abuse that threatens to impair a licensee's
13 ability to practice ~~medicine~~ *chiropractic* safely, including practicing
14 under the influence of drugs or alcohol.

15 ~~(E)~~

16 (D) Felony conviction arising from or occurring during patient
17 care or treatment.

18 ~~(F)~~

19 (E) Mental illness or other cognitive impairment that impedes
20 a licensee's ability to safely practice ~~medicine~~ *chiropractic*.

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

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

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

27 (C) That the licensee have a monitor.

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

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

33 (4) The licensee has been on probation more than once.

34 (b) The licensee shall obtain from each patient a signed receipt
35 following the disclosure that includes a written explanation of how
36 the patient can find further information on the licensee's probation
37 on the board's Internet Web site.

38 (c) The licensee shall not be required to provide the disclosure
39 prior to the visit as required by subdivision (a) if the ~~patient is
40 unconscious or otherwise unable to comprehend the disclosure~~

1 and sign the receipt pursuant to subdivision (b) and a guardian or
 2 health care surrogate is unavailable to comprehend the disclosure
 3 and sign the receipt. In that instance, the licensee shall disclose
 4 her or his status as soon as either the patient can comprehend the
 5 disclosure and sign the receipt or a guardian or health care surrogate
 6 is available to comprehend the disclosure and sign the receipt. *visit*
 7 *occurs in an emergency room and the licensee who will be treating*
 8 *the patient during the visit is not known to the patient until*
 9 *immediately prior to the start of the visit.*

10 (d) By ~~July~~ *January* 1, 2018, the board shall develop a
 11 standardized format for listing the following information pursuant
 12 to subdivision (e):

13 (1) The listing of the causes for probation alleged in the
 14 accusation, the statement of issues, or the legal conclusions of an
 15 administrative law judge.

16 (2) The length of the probation and the end date.

17 (3) All practice restrictions placed on the ~~licensee~~ *licensee* by
 18 the ~~committee~~ *board*.

19 (e) By ~~July~~ *January* 1, 2018, the board shall provide the
 20 information listed in subdivision (d) as follows:

21 (1) To an inquiring member of the public.

22 (2) On any board documents informing the public of probation
 23 orders and probationary licenses, including, but not limited to,
 24 newsletters.

25 (3) ~~Upon availability of a licensee's BreEZe profile Internet~~
 26 ~~Web page on the BreEZe system pursuant to Section 210, in plain~~
 27 ~~view on the BreEZe profile~~ *On the board's Internet Web page of*
 28 ~~a licensee subject to probation or a probationary license.~~ *site.*

29 ~~SEC. 3.~~

30 *SEC. 4.* Section 2027 of the Business and Professions Code is
 31 amended to read:

32 2027. (a) The board shall post on its Internet Web site the
 33 following information on the current status of the license for all
 34 current and former licensees:

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

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

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

40 (A) Temporary restraining orders.

1 (B) Interim suspension orders.

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

6 (ii) ~~By July~~ *January* 1, 2018, the board, the Osteopathic Medical
7 Board of California, and the California Board of Podiatric Medicine
8 shall include, in plain view on the BreZE profile Internet Web
9 page of each licensee subject to probation or a probationary license,
10 the information described in subdivision (f) of Section 2228. For
11 purposes of this subparagraph, a BreZE profile Internet Web page
12 is a profile Internet Web page on the BreZE system pursuant to
13 Section 210.

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

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

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

25 (1) Approved postgraduate training.

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

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

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

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

8 (6) Civil judgments issued in any amount, whether or not
9 vacated by a settlement after entry of the judgment, that were not
10 reversed on appeal, and arbitration awards issued in any amount,
11 for a claim or action for damages for death or personal injury
12 caused by the physician and surgeon's negligence, error, or
13 omission in practice, or by his or her rendering of unauthorized
14 professional services.

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

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

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

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

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

4 (10) All settlements within the last five years in the possession,
5 custody, or control of the board shall be disclosed for a licensee
6 in the low-risk category if there are three or more settlements for
7 that licensee within the last five years, and for a licensee in the
8 high-risk category if there are four or more settlements for that
9 licensee within the last five years. Classification of a licensee in
10 either a "high-risk category" or a "low-risk" category depends
11 upon the specialty or subspecialty practiced by the licensee and
12 the designation assigned to that specialty or subspecialty by the
13 board pursuant to subdivision (f) of Section 803.1.

14 (A) For the purposes of this paragraph, "settlement" means a
15 settlement in an amount of thirty thousand dollars (\$30,000) or
16 more of any claim or action for damages for death or personal
17 injury caused by the physician and surgeon's negligence, error, or
18 omission in practice, or by his or her rendering of unauthorized
19 professional services.

20 (B) For the purposes of this paragraph, "settlement" does not
21 include a settlement by a licensee, regardless of the amount paid,
22 when (i) the settlement is made as a part of the settlement of a
23 class claim, (ii) the amount paid in settlement of the class claim
24 is the same amount paid by the other licensees in the same class
25 or similarly situated licensees in the same class, and (iii) the
26 settlement was paid in the context of a case for which the complaint
27 that alleged class liability on behalf of the licensee also alleged a
28 products liability class action cause of action.

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

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

38 (c) The board shall provide links to other Internet Web sites
39 that provide information on board certifications that meet the
40 requirements of subdivision (h) of Section 651. The board may

1 also provide links to any other Internet Web sites that provide
2 information on the affiliations of licensed physicians and surgeons.
3 The board may provide links to other Internet Web sites on the
4 Internet that provide information on health care service plans,
5 health insurers, hospitals, or other facilities.

6 ~~SEC. 4.~~

7 *SEC. 5.* Section 2221 of the Business and Professions Code is
8 amended to read:

9 2221. (a) The board may deny a physician's and surgeon's
10 certificate to an applicant guilty of unprofessional conduct or of
11 any cause that would subject a licensee to revocation or suspension
12 of his or her license.

13 (b) The board in its sole discretion, may issue a probationary
14 physician's and surgeon's certificate to an applicant subject to
15 terms and conditions, including, but not limited to, any of the
16 following conditions of probation:

17 (1) Practice limited to a supervised, structured environment
18 where the licensee's activities shall be supervised by another
19 physician and surgeon.

20 (2) Total or partial restrictions on drug prescribing privileges
21 for controlled substances.

22 (3) Continuing medical or psychiatric treatment.

23 (4) Ongoing participation in a specified rehabilitation program.

24 (5) Enrollment and successful completion of a clinical training
25 program.

26 (6) Abstention from the use of alcohol or drugs.

27 (7) Restrictions against engaging in certain types of medical
28 practice.

29 (8) Compliance with all provisions of this chapter.

30 (9) Payment of the cost of probation monitoring.

31 (10) Disclosing probationary license status to patients, pursuant
32 to subdivision (b) of Section 2228.

33 (c) The board may modify or terminate the terms and conditions
34 imposed on the probationary certificate upon receipt of a petition
35 from the licensee; however, the provisions of subdivision (b) of
36 Section 2228 are mandatory with any probationary licensee. The
37 board may assign the petition to an administrative law judge
38 designated in Section 11371 of the Government Code. After a
39 hearing on the petition, the administrative law judge shall provide
40 a proposed decision to the board.

1 (d) The board shall deny a physician's and surgeon's certificate
2 to an applicant who is required to register pursuant to Section 290
3 of the Penal Code. This subdivision does not apply to an applicant
4 who is required to register as a sex offender pursuant to Section
5 290 of the Penal Code solely because of a misdemeanor conviction
6 under Section 314 of the Penal Code.

7 (e) An applicant shall not be eligible to reapply for a physician's
8 and surgeon's certificate for a minimum of three years from the
9 effective date of the denial of his or her application, except that
10 the board may, in its discretion and for good cause demonstrated,
11 permit reapplication after not less than one year has elapsed from
12 the effective date of the denial.

13 ~~SEC. 5.~~

14 *SEC. 6.* Section 2221.05 of the Business and Professions Code
15 is amended to read:

16 2221.05. (a) Notwithstanding subdivisions (a) and (b) of
17 Section 2221, the board may issue a physician's and surgeon's
18 certificate to an applicant who has committed minor violations
19 that the board deems, in its discretion, do not merit the denial of
20 a certificate or require probationary status under Section 2221, and
21 may concurrently issue a public letter of reprimand.

22 (b) A public letter of reprimand issued concurrently with a
23 physician's and surgeon's certificate shall be purged three years
24 from the date of issuance.

25 (c) A public letter of reprimand issued pursuant to this section
26 shall be disclosed to an inquiring member of the public and shall
27 be posted on the board's Internet Web site.

28 (d) Nothing in this section shall be construed to affect the
29 board's authority to issue an unrestricted license.

30 ~~SEC. 6.~~

31 *SEC. 7.* Section 2228 of the Business and Professions Code is
32 amended to read:

33 2228. (a) The authority of the board or the California Board
34 of Podiatric Medicine to discipline a licensee by placing him or
35 her on probation includes, but is not limited to, the following:

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

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

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

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

13 (b) ~~The~~ *On and after January 1, 2018, except as provided by*
 14 *subdivision (d), the board or the California Board of Podiatric*
 15 *Medicine shall require a licensee to disclose on a separate*
 16 *document her or his probationary—status status, all of the*
 17 *information described in subdivision (f), the address of his or her*
 18 *BreZE profile Internet Web page, and the telephone number of*
 19 *the board, if the probation was imposed by the board, or the*
 20 *California Board of Podiatric Medicine, if the probation was*
 21 *imposed by the California Board of Podiatric Medicine, to a*
 22 *patient, the patient’s guardian, or health care surrogate prior to the*
 23 *patient’s first visit following the probationary order while the*
 24 *licensee is on probation in any of the following circumstances:*

25 (1) The accusation alleges, the statement of issues indicates, or
 26 the legal conclusions of an administrative law judge ~~finds~~ *find* that
 27 the licensee is implicated in any of the following:

28 (A) Gross negligence.

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

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

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

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

- 1 (F) Mental illness or other cognitive impairment that impedes
2 a licensee's ability to safely practice medicine.
- 3 (2) The board ordered any of the following in conjunction with
4 placing the licensee on probation:
- 5 (A) That a third-party chaperone be present when the licensee
6 examines patients as a result of sexual misconduct.
- 7 (B) That the licensee submit to drug testing as a result of drug
8 or alcohol abuse.
- 9 (C) That the licensee have a monitor.
- 10 (D) Restricting *the licensee* totally or partially ~~the licensee~~ from
11 prescribing controlled substances.
- 12 (3) The licensee has not successfully completed a ~~clinical~~
13 training program or any associated examinations required by the
14 board as a condition of probation.
- 15 (4) The licensee has been on probation more than once.
- 16 (c) The licensee shall obtain from each patient a signed receipt
17 following the disclosure that includes a written explanation of how
18 the patient can find further information on the licensee's probation
19 on the board's Internet Web site.
- 20 (d) ~~A~~ *The licensee shall not be required to provide the disclosure*
21 *prior to a the visit as required by subdivision (b) if the either of*
22 *the following applies:*
- 23 (1) *The patient is unconscious or otherwise unable to*
24 *comprehend the disclosure and sign the receipt pursuant to*
25 *subdivision (c) and a guardian or health care surrogate is*
26 *unavailable to comprehend the disclosure and sign the receipt. In*
27 *that instance, the licensee shall disclose her or his status as soon*
28 *as either the patient can comprehend the disclosure and sign the*
29 *receipt or a guardian or health care surrogate is available to*
30 *comprehend the disclosure and sign the receipt.*
- 31 (2) *The visit occurs in an emergency room and the licensee who*
32 *will be treating the patient during the visit is not known to the*
33 *patient until immediately prior to the start of the visit.*
- 34 (e) Section 2314 shall not apply to subdivision (b), (c), or (d).
- 35 (f) ~~By July~~ *January 1, 2018, the board shall develop a*
36 *standardized format for listing the following information pursuant*
37 *to paragraph (5) of subdivision (b) of Section 803.1, subdivision*
38 *(i) of Section 803.1, and clause (ii) of subparagraph (C) of*
39 *paragraph (1) of subdivision (a) of Section 2027:*

1 (1) The listing of the causes for probation alleged in the
2 accusation, the statement of issues, or the legal conclusions of an
3 administrative law judge.

4 (2) The length of the probation and the end date.

5 (3) All practice restrictions placed on the licensee by the board.

6 ~~SEC. 7.~~

7 *SEC. 8.* Section 3663 of the Business and Professions Code is
8 amended to read:

9 3663. (a) The committee shall have the responsibility for
10 reviewing the quality of the practice of naturopathic medicine
11 carried out by persons licensed as naturopathic doctors pursuant
12 to this chapter.

13 (b) The committee may discipline a naturopathic doctor for
14 unprofessional conduct. After a hearing conducted in accordance
15 with the Administrative Procedure Act (Chapter 5 (commencing
16 with Section 11500) of Part 1 of Division 3 of Title 2 of the
17 Government Code), the committee may deny, suspend, revoke, or
18 place on probation the license of, or reprimand, censure, or
19 otherwise discipline a naturopathic doctor in accordance with
20 Division 1.5 (commencing with Section 475).

21 (c) ~~Except~~ *On and after January 1, 2018, except* as provided
22 by subdivision (e), the committee shall require a naturopathic
23 doctor to disclose on a separate document her or his probationary
24 ~~status status~~, *all of the information described in subdivision (f),*
25 *the address of his or her BreZE profile Internet Web page, and*
26 *the committee's telephone number* to a patient, the patient's
27 guardian, or health care surrogate prior to the patient's first visit
28 following the probationary order while the naturopathic doctor is
29 on probation in any of the following circumstances:

30 (1) The accusation alleges, the statement of issues indicates, or
31 the legal conclusions of an administrative law judge find that the
32 naturopathic doctor is implicated in any of the following:

33 (A) Gross negligence.

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

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

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

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

6 (F) Mental illness or other cognitive impairment that impedes
7 a naturopathic doctor's ability to safely practice medicine.

8 (2) The committee ordered any of the following in conjunction
9 with placing the naturopathic doctor on probation:

10 (A) That a third-party chaperone be present when the
11 naturopathic doctor examines patients as a result of sexual
12 misconduct.

13 (B) That the naturopathic doctor submit to drug testing as a
14 result of drug or alcohol abuse.

15 (C) That the naturopathic doctor have a monitor.

16 (D) Restricting the naturopathic doctor totally or partially from
17 prescribing controlled substances.

18 (3) The naturopathic doctor has not successfully completed a
19 ~~clinical~~ training program or any associated examinations required
20 by the committee as a condition of probation.

21 (4) The naturopathic doctor has been on probation more than
22 once.

23 (d) The naturopathic doctor shall obtain from each patient a
24 signed receipt following the disclosure that includes a written
25 explanation of how the patient can find further information on the
26 naturopathic doctor's probation on the committee's Internet Web
27 site.

28 (e) The naturopathic doctor shall not be required to provide the
29 disclosure prior to the visit as required by subdivision (c) if ~~the~~
30 *either of the following applies:*

31 (1) *The patient is unconscious or otherwise unable to*
32 *comprehend the disclosure ~~or and~~ sign the receipt pursuant to*
33 *subdivision (d) and a guardian or health care surrogate is*
34 *unavailable to comprehend the disclosure ~~or and~~ sign the receipt.*
35 *In ~~such an~~ that instance, the naturopathic doctor shall disclose her*
36 *or his status as soon as either the patient can comprehend the*
37 *disclosure and sign the receipt or a guardian or health care surrogate*
38 *is available to comprehend the disclosure and sign the receipt.*

1 (2) *The visit occurs in an emergency room and the naturopathic*
2 *doctor who will be treating the patient during the visit is not known*
3 *to the patient until immediately prior to the start of the visit.*

4 (f) By ~~July~~ January 1, 2018, the committee shall develop a
5 standardized format for listing the following information pursuant
6 ~~to~~ to subdivision (g):

7 (1) The listing of the causes for probation alleged in the
8 accusation, the statement of issues, or the legal conclusions of an
9 administrative law judge.

10 (2) The length of the probation and the end date.

11 (3) All practice restrictions placed on the naturopathic doctor
12 by the committee.

13 (g) By ~~July~~ January 1, 2018, the committee shall provide the
14 information listed in subdivision (f) as follows:

15 (1) To an inquiring member of the public.

16 (2) On any committee documents informing the public of
17 probation orders and probationary licenses, including, but not
18 limited to, newsletters.

19 (3) In plain view on the BreEZe profile Internet Web page of a
20 naturopathic doctor subject to probation or a probationary license.

21 ~~SEC. 8.~~

22 *SEC. 9.* Section 4962 is added to the Business and Professions
23 Code, to read:

24 4962. (a) ~~Except~~ *On and after January 1, 2018, except as*
25 *provided by subdivision (c), the board shall require a licensee to*
26 *disclose on a separate document her or his probationary*~~status~~
27 *status, all of the information described in subdivision (e), the*
28 *address of his or her BreEZe profile Internet Web page, and the*
29 *board's telephone number to a patient, the patient's guardian, or*
30 *health care surrogate prior to the patient's first visit following the*
31 *probationary order while the licensee is on probation in any of the*
32 *following circumstances:*

33 (1) The accusation alleges, the statement of issues indicates, or
34 the legal conclusions of an administrative law judge find that the
35 licensee is implicated in any of the following:

36 (A) Gross negligence.

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

1 (C) Drug or alcohol abuse that threatens to impair a licensee's
2 ability to practice acupuncture safely, including practicing under
3 the influence of drugs or alcohol.

4 (D) Felony conviction arising from or occurring during patient
5 care or treatment.

6 (E) Mental illness or other cognitive impairment that impedes
7 a licensee's ability to safely practice acupuncture.

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

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

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

14 (C) That the licensee have a monitor.

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

18 (4) The licensee has been on probation more than once.

19 (b) The licensee shall obtain from each patient a signed receipt
20 following the disclosure that includes a written explanation of how
21 the patient can find further information on the licensee's probation
22 on the board's Internet Web site.

23 (c) The licensee shall not be required to provide the disclosure
24 prior to the visit as required by subdivision (a) if ~~the~~ *either of the*
25 *following applies:*

26 (1) *The patient is unconscious or otherwise unable to*
27 *comprehend the disclosure ~~or~~ and sign the receipt pursuant to*
28 *subdivision (b) and a guardian or health care surrogate is*
29 *unavailable to comprehend the disclosure ~~or~~ and sign the receipt.*
30 *In ~~such an~~ that instance, the licensee shall disclose her or his status*
31 *as soon as either the patient can comprehend the disclosure and*
32 *sign the receipt or a guardian or health care surrogate is available*
33 *to comprehend the disclosure and sign the receipt.*

34 (2) *The visit occurs in an emergency room and the licensee who*
35 *will be treating the patient during the visit is not known to the*
36 *patient until immediately prior to the start of the visit.*

37 (d) Section 4935 shall not apply to subdivision ~~(a) or (b):~~ (a),
38 (b), or (c).

- 1 (e) By ~~July~~ *January* 1, 2018, the ~~committee~~ *board* shall develop
2 a standardized format for listing the following information pursuant
3 to subdivision (f):
- 4 (1) The listing of the causes for probation alleged in the
5 accusation, the statement of issues, or the legal conclusions of an
6 administrative law judge.
- 7 (2) The length of the probation and the end date.
- 8 (3) All practice restrictions placed on the ~~licensee~~ *licensee* by
9 the ~~committee~~ *board*.
- 10 (f) By ~~July~~ *January* 1, 2018, the board shall provide the
11 information listed in subdivision (e) as follows:
- 12 (1) To an inquiring member of the public.
- 13 (2) On any board documents informing the public of probation
14 orders and probationary licenses, including, but not limited to,
15 newsletters.
- 16 (3) Upon availability of a licensee's BreZE profile Internet
17 Web page on the BreZE system pursuant to Section 210, in plain
18 view on the BreZE profile Internet Web page of a licensee subject
19 to probation or a probationary license.

Board of Chiropractic Examiners Bill Analysis

Bill Number: SB 1195
Author: Senator Jerry Hill
Bill Version: Amended April 6, 2016
Subject: Professions and vocations: board actions: competitive impact
Sponsor: Author
Status of Bill: Appropriation hearing scheduled for May 27, 2016.

Summary:

This bill would authorize the Department of Consumer Affairs (DCA) Director to review a decision or other action of a board within the DCA to determine whether it unreasonably restrains trade and to approve, disapprove, or modify the board decision or action. The bill would establish an additional standard to follow prior to board submission of regulatory packages to the Office of Administrative Law (OAL). This bill would extend the sunset date for the Veterinary Medical Board until January 1, 2021.

Existing Law:

- Provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, and authorizes those boards to adopt regulations to enforce the laws pertaining to the profession and vocation for which they have jurisdiction.
- Makes decisions of any board within the department pertaining to setting standards, conducting examinations, passing candidates, and revoking licenses final, except as specified, and provides that those decisions are not subject to review by the Director of Consumer Affairs.
- Authorizes the director to audit and review certain inquiries and complaints regarding licensees, including the dismissal of a disciplinary case.
- Requires the director to annually report to the chairpersons of certain committees of the Legislature information regarding findings from any audit, review, or monitoring and evaluation.
- Authorizes the director to contract for services of experts and consultants where necessary.
- Requires regulations, except those pertaining to examinations and qualifications for licensure and fee changes proposed or promulgated by a board within the department, to comply with certain requirements before the regulation or fee change can take effect, including that the director is required to be notified of the rule or regulation and given 30 days to disapprove the regulation.
- Prohibits a rule or regulation that is disapproved by the director from having any force or effect, unless the director's disapproval is overridden by a unanimous vote of the members of the board, as specified.

This Bill Would:

1. Authorize the Director, upon his or her own initiative, or upon the request of a consumer or licensee, to review a decision or action, of a board within the DCA to determine whether it unreasonably restrains trade and to approve, disapprove, or modify the board decision or action.
2. Require the Director to post on the DCA's website his or her final written decision and the reasons for the decision within 90 days from receipt of the request of a consumer or licensee.
3. Clarify that the review described shall not apply when an individual seeks review of disciplinary or other action pertaining solely to that individual.
4. Commencing on March 1, 2017, would require the Director to annually report to the chairs of Senate and Assembly Business and Professions Committees information regarding the Director's disapprovals, modifications, or findings from any audit, review or monitoring and evaluation.
5. Authorize the Director to seek, designate, employ, or contract for services of independent antitrust experts for purposes of reviewing board actions for unreasonable restraints of trade.
6. Require the Director to review and approve any regulation promulgated by a board within the DCA, as specified, and would authorize the Director to modify any regulation as a condition of approval, and to disapprove a regulation because it would have an impermissible anticompetitive effect.
7. Prohibit any rule or regulation from having any force or effect if the Director does not approve the regulation because it has an impermissible anticompetitive effect.
8. Extend the sunset date for the VMB and Executive Officer of the Board until January 1, 2021.

Background:

According to the author's office:

In 2010, the Federal Trade Commission (FTC) brought an administrative complaint against the North Carolina State Board of Dental Examiners (Board) for excluding non-dentists from the practice of teeth whitening. The FTC alleged that the Board's decision was anticompetitive under the FTC Act because the Board was not acting as a state agent. The Board appealed to the Supreme Court, arguing that it was acting on behalf of the government and should be afforded immunity from antitrust lawsuits.

The Supreme Court ruled in the FTC's favor, stating that regulatory bodies comprised of active market participants in the occupation regulated may invoke state-action antitrust immunity only if it is subject to active supervision by the State.

In order to establish "active supervision," this bill authorizes the DCA Director to review discretionary board decisions made pursuant to clearly articulated and affirmatively expressed state law in order to ensure such decisions conform with state policy. This bill also ensures that DCA board members are not personally liable in the event they are successfully sued in an antitrust matter related to their board service, and prohibits board executive officers from being an active member of the profession the board regulates.

Fiscal Impact:

According to a fiscal analysis completed by the Senate Appropriations Committee, SB 1195 will have one-time costs of \$600,000 and ongoing costs of \$570,000 per year for the DCA to establish an Anti-Trust Unit to review board actions for their impacts on trade. The costs would be paid by DCA boards and bureaus.

Support & Opposition:

Support:

University of California, Davis, School of Veterinary Medicine

Opposition:

No opposition on file

Arguments:

Pro:

- This bill is necessary to ensure compliance with the recent US Supreme Court Decision in North Carolina State Board of Dental Examiners v. FTC, which determined that the Board was not acting as a state agent and could be sued for its actions.
- This bill would establish a review process that could be initiated by DCA's Director or by any member of the public who believes a board action constitutes an unreasonable restraint of trade.
- The bill would authorize the Director to utilize the services of independent antitrust experts for purposes of reviewing board actions for unreasonable restraints of trade, thereby ensuring an objective review of the Board action..
- By authorizing the Director to disapprove regulations that would have anticompetitive marketplace impacts, which are not substantiated by state policy, this bill would ensure DCA Boards have appropriate "State Supervision." This will limit the potential liability of individual Board members by ensuring Boards are acting pursuant to state policy. As such, the Board Members will be indemnified by the state for antitrust violations in the same way they are for other types of lawsuits.

Con:

- This bill would have projected one-time costs of \$600,000 and ongoing costs of \$570,000 per year for the DCA to establish an Anti-Trust Unit to review board actions for their impacts on trade. This cost would be passed on to DCAs boards and bureaus through their pro rata fees to the Department.
- It could be argued that this bill interferes with the autonomy of DCA's regulatory Boards by granting the Director authority to overrule a Board's policy decisions and enforcement actions.

Staff Recommended Position: NEUTRAL

This bill is necessary to ensure compliance with the recent US Supreme Court Decision in North Carolina State Board of Dental Examiners v. FTC, which determined that the Board was not acting as a state agent and could be sued for its actions.

AMENDED IN SENATE APRIL 6, 2016

SENATE BILL

No. 1195

Introduced by Senator Hill

February 18, 2016

An act to amend Sections ~~4800 and 4804.5~~ of 109, 116, 153, 307, 313.1, 2708, 4800, 4804.5, 4825.1, 4830, and 4846.5 of, and to add Sections 4826.3, 4826.5, 4826.7, 4848.1, and 4853.7 to, the Business and Professions Code, and to amend Sections 825, 11346.5, 11349, and 11349.1 of the Government Code, relating to ~~healing arts~~; professional regulation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1195, as amended, Hill. ~~Veterinary Medical Board: executive officer. Professions and vocations: board actions: competitive impact.~~

(1) Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, and authorizes those boards to adopt regulations to enforce the laws pertaining to the profession and vocation for which they have jurisdiction. Existing law makes decisions of any board within the department pertaining to setting standards, conducting examinations, passing candidates, and revoking licenses final, except as specified, and provides that those decisions are not subject to review by the Director of Consumer Affairs. Existing law authorizes the director to audit and review certain inquiries and complaints regarding licensees, including the dismissal of a disciplinary case. Existing law requires the director to annually report to the chairpersons of certain committees of the Legislature information regarding findings from any audit, review, or monitoring and evaluation. Existing law authorizes the director to contract for services of experts and consultants where necessary.

Existing law requires regulations, except those pertaining to examinations and qualifications for licensure and fee changes proposed or promulgated by a board within the department, to comply with certain requirements before the regulation or fee change can take effect, including that the director is required to be notified of the rule or regulation and given 30 days to disapprove the regulation. Existing law prohibits a rule or regulation that is disapproved by the director from having any force or effect, unless the director's disapproval is overridden by a unanimous vote of the members of the board, as specified.

This bill would instead authorize the director, upon his or her own initiative, and require the director, upon the request of a consumer or licensee, to review a decision or other action, except as specified, of a board within the department to determine whether it unreasonably restrains trade and to approve, disapprove, or modify the board decision or action, as specified. The bill would require the director to post on the department's Internet Web site his or her final written decision and the reasons for the decision within 90 days from receipt of the request of a consumer or licensee. The bill would, commencing on March 1, 2017, require the director to annually report to the chairs of specified committees of the Legislature information regarding the director's disapprovals, modifications, or findings from any audit, review, or monitoring and evaluation. The bill would authorize the director to seek, designate, employ, or contract for the services of independent antitrust experts for purposes of reviewing board actions for unreasonable restraints on trade. The bill would also require the director to review and approve any regulation promulgated by a board within the department, as specified. The bill would authorize the director to modify any regulation as a condition of approval, and to disapprove a regulation because it would have an impermissible anticompetitive effect. The bill would prohibit any rule or regulation from having any force or effect if the director does not approve the regulation because it has an impermissible anticompetitive effect.

(2) Existing law, until January 1, 2018, provides for the licensure and regulation of registered nurses by the Board of Registered Nursing, which is within the Department of Consumer Affairs, and requires the board to appoint an executive officer who is a nurse currently licensed by the board.

This bill would instead prohibit the executive officer from being a licensee of the board.

~~The~~

(3) *The Veterinary Medicine Practice Act provides for the licensure and registration of veterinarians and registered veterinary technicians and the regulation of the practice of veterinary medicine by the Veterinary Medical Board, which is within the Department of Consumer Affairs, and authorizes the board to appoint an executive officer, as specified. Existing law repeals the provisions establishing the board and authorizing the board to appoint an executive officer as of January 1, 2017. That act exempts certain persons from the requirements of the act, including a veterinarian employed by the University of California or the Western University of Health Sciences while engaged in the performance of specified duties. That act requires all premises where veterinary medicine, dentistry, and surgery is being practiced to register with the board. That act requires all fees collected on behalf of the board to be deposited into the Veterinary Medical Board Contingent Fund, which continuously appropriates fees deposited into the fund. That act makes a violation of any provision of the act punishable as a misdemeanor.*

This bill would extend the operation of the board and the authorization of the board to appoint an executive officer to January 1, 2021. *The bill would authorize a veterinarian and registered veterinary technician who is under the direct supervision of a veterinarian with a current and active license to compound a drug for anesthesia, the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal in a premises currently and actively registered with the board, as specified. The bill would authorize the California State Board of Pharmacy and the board to ensure compliance with these requirements. The bill would instead require veterinarians engaged in the practice of veterinary medicine employed by the University of California or by the Western University of Health Sciences while engaged in the performance of specified duties to be licensed as a veterinarian in the state or hold a university license issued by the board. The bill would require an applicant for a university license to meet certain requirements, including that the applicant passes a specified exam. The bill would also prohibit a premise registration that is not renewed within 5 years after its expiration from being renewed, restored, reissued, or reinstated; however, the bill would authorize a new premise registration to be issued to an applicant if no fact, circumstance, or condition exists that would justify the revocation or suspension of the registration if the registration was issued and if specified fees are paid. By requiring*

additional persons to be licensed and pay certain fees that would go into a continuously appropriated fund, this bill would make an appropriation. By requiring additional persons to be licensed under the act that were previously exempt, this bill would expand the definition of an existing crime and would, therefore, result in a state-mandated local program.

(4) Existing law, except as provided, requires a public entity to pay any judgment or any compromise or settlement of a claim or action against an employee or former employee of the public entity if the employee or former employee requests the public entity to defend him or her against any claim or action against him or her for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity, the request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action.

This bill would require a public entity to pay a judgment or settlement for treble damage antitrust awards against a member of a regulatory board for an act or omission occurring within the scope of his or her employment as a member of a regulatory board.

(5) The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. That act requires the review by the office to follow certain standards, including, among others, necessity, as defined. That act requires an agency proposing to adopt, amend, or repeal a regulation to prepare a notice to the public that includes specified information, including reference to the authority under which the regulation is proposed.

This bill would add competitive impact, as defined, as an additional standard for the office to follow when reviewing regulatory actions of a state board on which a controlling number of decisionmakers are active market participants in the market that the board regulates, and requires the office to, among other things, consider whether the anticompetitive effects of the proposed regulation are clearly outweighed by the public policy merits. The bill would authorize the office to designate, employ, or contract for the services of independent antitrust or applicable economic experts when reviewing proposed regulations for competitive impact. The bill would require state boards on which a controlling number of decisionmakers are active market participants

in the market that the board regulates, when preparing the public notice, to additionally include a statement that the agency has evaluated the impact of the regulation on competition and that the effect of the regulation is within a clearly articulated and affirmatively expressed state law or policy.

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

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

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

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

1 SECTION 1. Section 109 of the Business and Professions Code
2 is amended to read:

3 ~~109. (a) The decisions of any of the boards comprising the~~
4 ~~department with respect to setting standards, conducting~~
5 ~~examinations, passing candidates, and revoking licenses, are not~~
6 ~~subject to review by the director, but are final within the limits~~
7 ~~provided by this code which are applicable to the particular board,~~
8 ~~except as provided in this section.~~

9 (b)
10 109. (a) The director may initiate an investigation of any
11 allegations of misconduct in the preparation, administration, or
12 scoring of an examination which is administered by a board, or in
13 the review of qualifications which are a part of the licensing process
14 of any board. A request for investigation shall be made by the
15 director to the Division of Investigation through the chief of the
16 division or to any law enforcement agency in the jurisdiction where
17 the alleged misconduct occurred.

18 (c)
19 (b) (1) The director may intervene in any matter of any board
20 where an investigation by the Division of Investigation discloses
21 probable cause to believe that the conduct or activity of a board,
22 or its members or employees constitutes a violation of criminal
23 law.

24 ~~The~~

1 (2) *The term “intervene,” as used in paragraph (e) of this section*
2 *(1) may include, but is not limited to, an application for a*
3 *restraining order or injunctive relief as specified in Section 123.5,*
4 *or a referral or request for criminal prosecution. For purposes of*
5 *this section, the director shall be deemed to have standing under*
6 *Section 123.5 and shall seek representation of the Attorney*
7 *General, or other appropriate counsel in the event of a conflict in*
8 *pursuing that action.*

9 *(c) The director may, upon his or her own initiative, and shall,*
10 *upon request by a consumer or licensee, review any board decision*
11 *or other action to determine whether it unreasonably restrains*
12 *trade. Such a review shall proceed as follows:*

13 *(1) The director shall assess whether the action or decision*
14 *reflects a clearly articulated and affirmatively expressed state law.*
15 *If the director determines that the action or decision does not*
16 *reflect a clearly articulated and affirmatively expressed state law,*
17 *the director shall disapprove the board action or decision and it*
18 *shall not go into effect.*

19 *(2) If the action or decision is a reflection of clearly articulated*
20 *and affirmatively expressed state law, the director shall assess*
21 *whether the action or decision was the result of the board’s*
22 *exercise of ministerial or discretionary judgment. If the director*
23 *finds no exercise of discretionary judgment, but merely the direct*
24 *application of statutory or constitutional provisions, the director*
25 *shall close the investigation and review of the board action or*
26 *decision.*

27 *(3) If the director concludes under paragraph (2) that the board*
28 *exercised discretionary judgment, the director shall review the*
29 *board action or decision as follows:*

30 *(A) The director shall conduct a full review of the board action*
31 *or decision using all relevant facts, data, market conditions, public*
32 *comment, studies, or other documentary evidence pertaining to*
33 *the market impacted by the board’s action or decision and*
34 *determine whether the anticompetitive effects of the action or*
35 *decision are clearly outweighed by the benefit to the public. The*
36 *director may seek, designate, employ, or contract for the services*
37 *of independent antitrust or economic experts pursuant to Section*
38 *307. These experts shall not be active participants in the market*
39 *affected by the board action or decision.*

1 (B) If the board action or decision was not previously subject
2 to a public comment period, the director shall release the subject
3 matter of his or her investigation for a 30-day public comment
4 period and shall consider all comments received.

5 (C) If the director determines that the action or decision furthers
6 the public protection mission of the board and the impact on
7 competition is justified, the director may approve the action or
8 decision.

9 (D) If the director determines that the action furthers the public
10 protection mission of the board and the impact on competition is
11 justified, the director may approve the action or decision. If the
12 director finds the action or decision does not further the public
13 protection mission of the board or finds that the action or decision
14 is not justified, the director shall either refuse to approve it or
15 shall modify the action or decision to ensure that any restraints
16 of trade are related to, and advance, clearly articulated state law
17 or public policy.

18 (4) The director shall issue, and post on the department's
19 Internet Web site, his or her final written decision approving,
20 modifying, or disapproving the action or decision with an
21 explanation of the reasons and rationale behind the director's
22 decision within 90 days from receipt of the request from a
23 consumer or licensee. Notwithstanding any other law, the decision
24 of the director shall be final, except if the state or federal
25 constitution requires an appeal of the director's decision.

26 (d) The review set forth in paragraph (3) of subdivision (c) shall
27 not apply when an individual seeks review of disciplinary or other
28 action pertaining solely to that individual.

29 (e) The director shall report to the Chairs of the Senate Business,
30 Professions, and Economic Development Committee and the
31 Assembly Business and Professions Committee annually,
32 commencing March 1, 2017, regarding his or her disapprovals,
33 modifications, or findings from any audit, review, or monitoring
34 and evaluation conducted pursuant to this section. That report
35 shall be submitted in compliance with Section 9795 of the
36 Government Code.

37 (f) If the director has already reviewed a board action or
38 decision pursuant to this section or Section 313.1, the director
39 shall not review that action or decision again.

1 (g) *This section shall not be construed to affect, impede, or*
2 *delay any disciplinary actions of any board.*

3 *SEC. 2. Section 116 of the Business and Professions Code is*
4 *amended to read:*

5 116. (a) The director may audit and review, upon his or her
6 own initiative, or upon the request of a consumer or licensee,
7 inquiries and complaints regarding licensees, dismissals of
8 disciplinary cases, the opening, conduct, or closure of
9 investigations, informal conferences, and discipline short of formal
10 accusation by ~~the Medical Board of California, the allied health~~
11 ~~professional boards, and the California Board of Podiatric~~
12 ~~Medicine. The director may make recommendations for changes~~
13 ~~to the disciplinary system to the appropriate board, the Legislature,~~
14 ~~or both. any board or bureau within the department.~~

15 (b) The director shall report to the ~~Chairpersons~~ *Chairs* of the
16 ~~Senate Business and Professions~~ *Business, Professions, and*
17 *Economic Development* Committee and the ~~Assembly Health~~
18 *Business and Professions* Committee annually, commencing March
19 1, ~~1995, 2017~~, regarding his or her findings from any audit, review,
20 or monitoring and evaluation conducted pursuant to this section.
21 *This report shall be submitted in compliance with Section 9795 of*
22 *the Government Code.*

23 *SEC. 3. Section 153 of the Business and Professions Code is*
24 *amended to read:*

25 153. The director may investigate the work of the several
26 boards in his department and may obtain a copy of all records and
27 full and complete data in all official matters in possession of the
28 boards, their members, officers, or ~~employees, other than~~
29 ~~examination questions prior to submission to applicants at~~
30 ~~scheduled examinations. employees.~~

31 *SEC. 4. Section 307 of the Business and Professions Code is*
32 *amended to read:*

33 307. The director may contract for the services of experts and
34 consultants where necessary to carry out ~~the provisions of this~~
35 chapter and may provide compensation and reimbursement of
36 expenses for ~~such~~ *those* experts and consultants in accordance with
37 state law.

38 *SEC. 5. Section 313.1 of the Business and Professions Code*
39 *is amended to read:*

1 313.1. (a) Notwithstanding any other provision of law to the
2 contrary, no rule or regulation, except those relating to
3 examinations and qualifications for licensure, regulation and no
4 fee change proposed or promulgated by any of the boards,
5 commissions, or committees within the department, shall take
6 effect pending compliance with this section.

7 (b) The director shall be formally notified of and shall be
8 provided a full opportunity to review, in accordance with the
9 requirements of Article 5 (commencing with Section 11346) of
10 Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government
11 Code, *the requirements in subdivision (c) of Section 109*, and this
12 section, all of the following:

13 (1) All notices of proposed action, any modifications and
14 supplements thereto, and the text of proposed regulations.

15 (2) Any notices of sufficiently related changes to regulations
16 previously noticed to the public, and the text of proposed
17 regulations showing modifications to the text.

18 (3) Final rulemaking records.

19 (4) *All relevant facts, data, public comments, market conditions,*
20 *studies, or other documentary evidence pertaining to the market*
21 *impacted by the proposed regulation. This information shall be*
22 *included in the written decision of the director required under*
23 *paragraph (4) of subdivision (c) of Section 109.*

24 (c) The submission of all notices and final rulemaking records
25 to the director and the ~~completion of the director's review,~~
26 *approval*, as authorized by this section, shall be a precondition to
27 the filing of any rule or regulation with the Office of Administrative
28 Law. The Office of Administrative Law shall have no jurisdiction
29 to review a rule or regulation subject to this section until after the
30 ~~completion of the director's review and only then if the director~~
31 ~~has not disapproved it.~~ *approval*. The filing of any document with
32 the Office of Administrative Law shall be accompanied by a
33 certification that the board, commission, or committee has complied
34 with the requirements of this section.

35 (d) Following the receipt of any final rulemaking record subject
36 to subdivision (a), the director shall have the authority for a period
37 of 30 days to *approve a proposed rule or regulation or disapprove*
38 *a proposed rule or regulation on the ground that it is injurious to*
39 *the public health, safety, or welfare. welfare, or has an*
40 *impermissible anticompetitive effect. The director may modify a*

1 rule or regulation as a condition of approval. Any modifications
2 to regulations by the director shall be subject to a 30-day public
3 comment period before the director issues a final decision
4 regarding the modified regulation. If the director does not approve
5 the rule or regulation within the 30-day period, the rule or
6 regulation shall not be submitted to the Office of Administrative
7 Law and the rule or regulation shall have no effect.

8 (e) Final rulemaking records shall be filed with the director
9 within the one-year notice period specified in Section 11346.4 of
10 the Government Code. If necessary for compliance with this
11 section, the one-year notice period may be extended, as specified
12 by this subdivision.

13 (1) In the event that the one-year notice period lapses during
14 the director's 30-day review period, or within 60 days following
15 the notice of the director's disapproval, it may be extended for a
16 maximum of 90 days.

17 (2) If the director approves the final rulemaking record or
18 declines to take action on it within 30 days, record, the board,
19 commission, or committee shall have five days from the receipt
20 of the record from the director within which to file it with the
21 Office of Administrative Law.

22 (3) If the director disapproves a rule or regulation, it shall have
23 no force or effect unless, within 60 days of the notice of
24 disapproval, (A) the disapproval is overridden by a unanimous
25 vote of the members of the board, commission, or committee, and
26 (B) the board, commission, or committee files the final rulemaking
27 record with the Office of Administrative Law in compliance with
28 this section and the procedures required by Chapter 3.5
29 (commencing with Section 11340) of Part 1 of Division 3 of Title
30 2 of the Government Code. *This paragraph shall not apply to any*
31 *decision disapproved by the director under subdivision (c) of*
32 *Section 109.*

33 (f) ~~Nothing in this~~ This section shall not be construed to prohibit
34 the director from affirmatively approving a proposed rule,
35 regulation, or fee change at any time within the 30-day period after
36 it has been submitted to him or her, in which event it shall become
37 effective upon compliance with this section and the procedures
38 required by Chapter 3.5 (commencing with Section 11340) of Part
39 1 of Division 3 of Title 2 of the Government Code.

1 *SEC. 6. Section 2708 of the Business and Professions Code is*
2 *amended to read:*

3 2708. (a) The board shall appoint an executive officer who
4 shall perform the duties delegated by the board and who shall be
5 responsible to it for the accomplishment of those duties.

6 (b) The executive officer shall *not* be a ~~nurse currently licensed~~
7 *licensee* under this chapter and shall possess other qualifications
8 as determined by the board.

9 (c) The executive officer shall not be a member of the board.

10 (d) This section shall remain in effect only until January 1, 2018,
11 and as of that date is repealed, unless a later enacted statute, that
12 is enacted before January 1, 2018, deletes or extends that date.

13 ~~SECTION 1.~~

14 *SEC. 7. Section 4800 of the Business and Professions Code is*
15 *amended to read:*

16 4800. (a) There is in the Department of Consumer Affairs a
17 Veterinary Medical Board in which the administration of this
18 chapter is vested. The board consists of the following members:

19 (1) Four licensed veterinarians.

20 (2) One registered veterinary technician.

21 (3) Three public members.

22 (b) This section shall remain in effect only until January 1, 2021,
23 and as of that date is repealed.

24 (c) Notwithstanding any other law, the repeal of this section
25 renders the board subject to review by the appropriate policy
26 committees of the Legislature. However, the review of the board
27 shall be limited to those issues identified by the appropriate policy
28 committees of the Legislature and shall not involve the preparation
29 or submission of a sunset review document or evaluative
30 questionnaire.

31 ~~SEC. 2.~~

32 *SEC. 8. Section 4804.5 of the Business and Professions Code*
33 *is amended to read:*

34 4804.5. (a) The board may appoint a person exempt from civil
35 service who shall be designated as an executive officer and who
36 shall exercise the powers and perform the duties delegated by the
37 board and vested in him or her by this chapter.

38 (b) This section shall remain in effect only until January 1, 2021,
39 and as of that date is repealed.

1 *SEC. 9. Section 4825.1 of the Business and Professions Code*
2 *is amended to read:*

3 4825.1. These definitions shall govern the construction of this
4 chapter as it applies to veterinary medicine.

5 (a) "Diagnosis" means the act or process of identifying or
6 determining the health status of an animal through examination
7 and the opinion derived from that examination.

8 (b) "Animal" means any member of the animal kingdom other
9 than humans, and includes fowl, fish, and reptiles, wild or
10 domestic, whether living or dead.

11 (c) "Food animal" means any animal that is raised for the
12 production of an edible product intended for consumption by
13 humans. The edible product includes, but is not limited to, milk,
14 meat, and eggs. Food animal includes, but is not limited to, cattle
15 (beef or dairy), swine, sheep, poultry, fish, and amphibian species.

16 (d) "Livestock" includes all animals, poultry, aquatic and
17 amphibian species that are raised, kept, or used for profit. It does
18 not include those species that are usually kept as pets such as dogs,
19 cats, and pet birds, or companion animals, including equines.

20 (e) "*Compounding*," for the purposes of veterinary medicine,
21 shall have the same meaning given in Section 1735 of Title 16 of
22 the California Code of Regulations, except that every reference
23 therein to "pharmacy" and "pharmacist" shall be replaced with
24 "veterinary premises" and "veterinarian," and except that only
25 a licensed veterinarian or a licensed registered veterinarian
26 technician under direct supervision of a veterinarian may perform
27 compounding and shall not delegate to or supervise any part of
28 the performance of compounding by any other person.

29 *SEC. 10. Section 4826.3 is added to the Business and*
30 *Professions Code, to read:*

31 4826.3. (a) *Notwithstanding Section 4051, a veterinarian or*
32 *registered veterinarian technician under the direct supervision of*
33 *a veterinarian with a current and active license may compound a*
34 *drug for anesthesia, the prevention, cure, or relief of a wound,*
35 *fracture, bodily injury, or disease of an animal in a premises*
36 *currently and actively registered with the board and only under*
37 *the following conditions:*

38 (1) *Where there is no FDA-approved animal or human drug*
39 *that can be used as labeled or in an appropriate extralabel manner*

1 to properly treat the disease, symptom, or condition for which the
2 drug is being prescribed.

3 (2) Where the compounded drug is not available from a
4 compounding pharmacy, outsourcing facility, or other
5 compounding supplier in a dosage form and concentration to
6 appropriately treat the disease, symptom, or condition for which
7 the drug is being prescribed.

8 (3) Where the need and prescription for the compounded
9 medication has arisen within an established
10 veterinarian-client-patient relationship as a means to treat a
11 specific occurrence of a disease, symptom, or condition observed
12 and diagnosed by the veterinarian in a specific animal that
13 threatens the health of the animal or will cause suffering or death
14 if left untreated.

15 (4) Where the quantity compounded does not exceed a quantity
16 demonstrably needed to treat a patient with which the veterinarian
17 has a current veterinarian-client-patient relationship.

18 (5) Except as specified in subdivision (c), where the compound
19 is prepared only with commercially available FDA-approved
20 animal or human drugs as active ingredients.

21 (b) A compounded veterinary drug may be prepared from an
22 FDA-approved animal or human drug for extralabel use only when
23 there is no approved animal or human drug that, when used as
24 labeled or in an appropriate extralabel manner will, in the
25 available dosage form and concentration, treat the disease,
26 symptom, or condition. Compounding from an approved human
27 drug for use in food-producing animals is not permitted if an
28 approved animal drug can be used for compounding.

29 (c) A compounded veterinary drug may be prepared from bulk
30 drug substances only when:

31 (1) The drug is compounded and dispensed by the veterinarian
32 to treat an individually identified animal patient under his or her
33 care.

34 (2) The drug is not intended for use in food-producing animals.

35 (3) If the drug contains a bulk drug substance that is a
36 component of any marketed FDA-approved animal or human drug,
37 there is a change between the compounded drug and the
38 comparable marketed drug made for an individually identified
39 animal patient that produces a clinical difference for that
40 individually identified animal patient, as determined by the

1 veterinarian prescribing the compounded drug for his or her
2 patient.

3 (4) There are no FDA-approved animal or human drugs that
4 can be used as labeled or in an appropriate extralabel manner to
5 properly treat the disease, symptom, or condition for which the
6 drug is being prescribed.

7 (5) All bulk drug substances used in compounding are
8 manufactured by an establishment registered under Section 360
9 of Title 21 of the United States Code and are accompanied by a
10 valid certificate of analysis.

11 (6) The drug is not sold or transferred by the veterinarian
12 compounding the drug, except that the veterinarian shall be
13 permitted to administer the drug to a patient under his or her care
14 or dispense it to the owner or caretaker of an animal under his or
15 her care.

16 (7) Within 15 days of becoming aware of any product defect or
17 serious adverse event associated with any drug compounded by
18 the veterinarian from bulk drug substances, the veterinarian shall
19 report it to the federal Food and Drug Administration on Form
20 FDA 1932a.

21 (8) In addition to any other requirements, the label of any
22 veterinary drug compounded from bulk drug substances shall
23 indicate the species of the intended animal patient, the name of
24 the animal patient, and the name of the owner or caretaker of the
25 patient.

26 (d) Each compounded veterinary drug preparation shall meet
27 the labeling requirements of Section 4076 and Sections 1707.5
28 and 1735.4 of Title 16 of the California Code of Regulations, except
29 that every reference therein to "pharmacy" and "pharmacist"
30 shall be replaced by "veterinary premises" and "veterinarian,"
31 and any reference to "patient" shall be understood to refer to the
32 animal patient. In addition, each label on a compounded veterinary
33 drug preparation shall include withdrawal and holding times, if
34 needed, and the disease, symptom, or condition for which the drug
35 is being prescribed. Any compounded veterinary drug preparation
36 that is intended to be sterile, including for injection, administration
37 into the eye, or inhalation, shall in addition meet the labeling
38 requirements of Section 1751.2 of Title 16 of the California Code
39 of Regulations, except that every reference therein to "pharmacy"
40 and "pharmacist" shall be replaced by "veterinary premises" and

1 "veterinarian," and any reference to "patient" shall be understood
2 to refer to the animal patient.

3 (e) Any veterinarian, registered veterinarian technician who is
4 under the direct supervision of a veterinarian, and veterinary
5 premises engaged in compounding shall meet the compounding
6 requirements for pharmacies and pharmacists stated by the
7 provisions of Article 4.5 (commencing with Section 1735) of Title
8 16 of the California Code of Regulations, except that every
9 reference therein to "pharmacy" and "pharmacist" shall be
10 replaced by "veterinary premises" and "veterinarian," and any
11 reference to "patient" shall be understood to refer to the animal
12 patient:

13 (1) Section 1735.1 of Title 16 of the California Code of
14 Regulations.

15 (2) Subdivisions (d), (e), (f), (g), (h), (i), (j), (k), and (l) of Section
16 1735.2 of Title 16 of the California Code of Regulations.

17 (3) Section 1735.3 of Title 16 of the California Code of
18 Regulations, except that only a licensed veterinarian or registered
19 veterinarian technician may perform compounding and shall not
20 delegate to or supervise any part of the performance of
21 compounding by any other person.

22 (4) Section 1735.4 of Title 16 of the California Code of
23 Regulations.

24 (5) Section 1735.5 of Title 16 of the California Code of
25 Regulations.

26 (6) Section 1735.6 of Title 16 of the California Code of
27 Regulations.

28 (7) Section 1735.7 of Title 16 of the California Code of
29 Regulations.

30 (8) Section 1735.8 of Title 16 of the California Code of
31 Regulations.

32 (f) Any veterinarian, registered veterinarian technician under
33 the direct supervision of a veterinarian, and veterinary premises
34 engaged in sterile compounding shall meet the sterile compounding
35 requirements for pharmacies and pharmacists under Article 7
36 (commencing with Section 1751) of Title 16 of the California Code
37 of Regulations, except that every reference therein to "pharmacy"
38 and "pharmacist" shall be replaced by "veterinary premises" and
39 "veterinarian," and any reference to "patient" shall be understood
40 to refer to the animal patient.

1 (g) *The California State Board of Pharmacy shall have authority*
2 *with the board to ensure compliance with this section and shall*
3 *have the right to inspect any veterinary premises engaged in*
4 *compounding, along with or separate from the board, to ensure*
5 *compliance with this section. The board is specifically charged*
6 *with enforcing this section with regard to its licensees.*

7 *SEC. 11. Section 4826.5 is added to the Business and*
8 *Professions Code, to read:*

9 *4826.5. Failure by a licensed veterinarian, registered*
10 *veterinarian technician, or veterinary premises to comply with the*
11 *provisions of this article shall be deemed unprofessional conduct*
12 *and constitute grounds for discipline.*

13 *SEC. 12. Section 4826.7 is added to the Business and*
14 *Professions Code, to read:*

15 *4826.7. The board may adopt regulations to implement the*
16 *provisions of this article.*

17 *SEC. 13. Section 4830 of the Business and Professions Code*
18 *is amended to read:*

19 *4830. (a) This chapter does not apply to:*

20 (1) *Veterinarians while serving in any armed branch of the*
21 *military service of the United States or the United States*
22 *Department of Agriculture while actually engaged and employed*
23 *in their official capacity.*

24 (2) *Regularly licensed veterinarians in actual consultation from*
25 *other states.*

26 (3) *Regularly licensed veterinarians actually called from other*
27 *states to attend cases in this state, but who do not open an office*
28 *or appoint a place to do business within this state.*

29 ~~(4) *Veterinarians employed by the University of California*~~
30 ~~*while engaged in the performance of duties in connection with the*~~
31 ~~*College of Agriculture, the Agricultural Experiment Station, the*~~
32 ~~*School of Veterinary Medicine, or the agricultural extension work*~~
33 ~~*of the university or employed by the Western University of Health*~~
34 ~~*Sciences while engaged in the performance of duties in connection*~~
35 ~~*with the College of Veterinary Medicine or the agricultural*~~
36 ~~*extension work of the university.*~~

37 (5)

38 (4) *Students in the School of Veterinary Medicine of the*
39 *University of California or the College of Veterinary Medicine of*
40 *the Western University of Health Sciences who participate in*

1 diagnosis and treatment as part of their educational experience,
2 including those in off-campus educational programs under the
3 direct supervision of a licensed veterinarian in good standing, as
4 defined in paragraph (1) of subdivision (b) of Section 4848,
5 appointed by the University of California, Davis, or the Western
6 University of Health Sciences.

7 ~~(6)~~

8 (5) A veterinarian who is employed by the Meat and Poultry
9 Inspection Branch of the California Department of Food and
10 Agriculture while actually engaged and employed in his or her
11 official capacity. A person exempt under this paragraph shall not
12 otherwise engage in the practice of veterinary medicine unless he
13 or she is issued a license by the board.

14 ~~(7)~~

15 (6) Unlicensed personnel employed by the Department of Food
16 and Agriculture or the United States Department of Agriculture
17 when in the course of their duties they are directed by a veterinarian
18 supervisor to conduct an examination, obtain biological specimens,
19 apply biological tests, or administer medications or biological
20 products as part of government disease or condition monitoring,
21 investigation, control, or eradication activities.

22 (b) (1) For purposes of paragraph (3) of subdivision (a), a
23 regularly licensed veterinarian in good standing who is called from
24 another state by a law enforcement agency or animal control
25 agency, as defined in Section 31606 of the Food and Agricultural
26 Code, to attend to cases that are a part of an investigation of an
27 alleged violation of federal or state animal fighting or animal
28 cruelty laws within a single geographic location shall be exempt
29 from the licensing requirements of this chapter if the law
30 enforcement agency or animal control agency determines that it
31 is necessary to call the veterinarian in order for the agency or
32 officer to conduct the investigation in a timely, efficient, and
33 effective manner. In determining whether it is necessary to call a
34 veterinarian from another state, consideration shall be given to the
35 availability of veterinarians in this state to attend to these cases.
36 An agency, department, or officer that calls a veterinarian pursuant
37 to this subdivision shall notify the board of the investigation.

38 (2) Notwithstanding any other provision of this chapter, a
39 regularly licensed veterinarian in good standing who is called from
40 another state to attend to cases that are a part of an investigation

1 described in paragraph (1) may provide veterinary medical care
2 for animals that are affected by the investigation with a temporary
3 shelter facility, and the temporary shelter facility shall be exempt
4 from the registration requirement of Section 4853 if all of the
5 following conditions are met:

6 (A) The temporary shelter facility is established only for the
7 purpose of the investigation.

8 (B) The temporary shelter facility provides veterinary medical
9 care, shelter, food, and water only to animals that are affected by
10 the investigation.

11 (C) The temporary shelter facility complies with Section 4854.

12 (D) The temporary shelter facility exists for not more than 60
13 days, unless the law enforcement agency or animal control agency
14 determines that a longer period of time is necessary to complete
15 the investigation.

16 (E) Within 30 calendar days upon completion of the provision
17 of veterinary health care services at a temporary shelter facility
18 established pursuant to this section, the veterinarian called from
19 another state by a law enforcement agency or animal control agency
20 to attend to a case shall file a report with the board. The report
21 shall contain the date, place, type, and general description of the
22 care provided, along with a listing of the veterinary health care
23 practitioners who participated in providing that care.

24 (c) For purposes of paragraph (3) of subdivision (a), the board
25 may inspect temporary facilities established pursuant to this
26 section.

27 *SEC. 14. Section 4846.5 of the Business and Professions Code*
28 *is amended to read:*

29 4846.5. (a) Except as provided in this section, the board shall
30 issue renewal licenses only to those applicants that have completed
31 a minimum of 36 hours of continuing education in the preceding
32 two years.

33 (b) (1) Notwithstanding any other law, continuing education
34 hours shall be earned by attending courses relevant to veterinary
35 medicine and sponsored or cosponsored by any of the following:

36 (A) American Veterinary Medical Association (AVMA)
37 accredited veterinary medical colleges.

38 (B) Accredited colleges or universities offering programs
39 relevant to veterinary medicine.

40 (C) The American Veterinary Medical Association.

1 (D) American Veterinary Medical Association recognized
2 specialty or affiliated allied groups.

3 (E) American Veterinary Medical Association's affiliated state
4 veterinary medical associations.

5 (F) Nonprofit annual conferences established in conjunction
6 with state veterinary medical associations.

7 (G) Educational organizations affiliated with the American
8 Veterinary Medical Association or its state affiliated veterinary
9 medical associations.

10 (H) Local veterinary medical associations affiliated with the
11 California Veterinary Medical Association.

12 (I) Federal, state, or local government agencies.

13 (J) Providers accredited by the Accreditation Council for
14 Continuing Medical Education (ACCME) or approved by the
15 American Medical Association (AMA), providers recognized by
16 the American Dental Association Continuing Education
17 Recognition Program (ADA CERP), and AMA or ADA affiliated
18 state, local, and specialty organizations.

19 (2) Continuing education credits shall be granted to those
20 veterinarians taking self-study courses, which may include, but
21 are not limited to, reading journals, viewing video recordings, or
22 listening to audio recordings. The taking of these courses shall be
23 limited to no more than six hours biennially.

24 (3) The board may approve other continuing veterinary medical
25 education providers not specified in paragraph (1).

26 (A) The board has the authority to recognize national continuing
27 education approval bodies for the purpose of approving continuing
28 education providers not specified in paragraph (1).

29 (B) Applicants seeking continuing education provider approval
30 shall have the option of applying to the board or to a
31 board-recognized national approval body.

32 (4) For good cause, the board may adopt an order specifying,
33 on a prospective basis, that a provider of continuing veterinary
34 medical education authorized pursuant to paragraph (1) or (3) is
35 no longer an acceptable provider.

36 (5) Continuing education hours earned by attending courses
37 sponsored or cosponsored by those entities listed in paragraph (1)
38 between January 1, 2000, and January 1, 2001, shall be credited
39 toward a veterinarian's continuing education requirement under
40 this section.

1 (c) Every person renewing his or her license issued pursuant to
2 Section 4846.4, or any person applying for relicensure or for
3 reinstatement of his or her license to active status, shall submit
4 proof of compliance with this section to the board certifying that
5 he or she is in compliance with this section. Any false statement
6 submitted pursuant to this section shall be a violation subject to
7 Section 4831.

8 (d) This section shall not apply to a veterinarian's first license
9 renewal. This section shall apply only to second and subsequent
10 license renewals granted on or after January 1, 2002.

11 (e) The board shall have the right to audit the records of all
12 applicants to verify the completion of the continuing education
13 requirement. Applicants shall maintain records of completion of
14 required continuing education coursework for a period of four
15 years and shall make these records available to the board for
16 auditing purposes upon request. If the board, during this audit,
17 questions whether any course reported by the veterinarian satisfies
18 the continuing education requirement, the veterinarian shall provide
19 information to the board concerning the content of the course; the
20 name of its sponsor and cosponsor, if any; and specify the specific
21 curricula that was of benefit to the veterinarian.

22 (f) A veterinarian desiring an inactive license or to restore an
23 inactive license under Section 701 shall submit an application on
24 a form provided by the board. In order to restore an inactive license
25 to active status, the veterinarian shall have completed a minimum
26 of 36 hours of continuing education within the last two years
27 preceding application. The inactive license status of a veterinarian
28 shall not deprive the board of its authority to institute or continue
29 a disciplinary action against a licensee.

30 (g) Knowing misrepresentation of compliance with this article
31 by a veterinarian constitutes unprofessional conduct and grounds
32 for disciplinary action or for the issuance of a citation and the
33 imposition of a civil penalty pursuant to Section 4883.

34 (h) The board, in its discretion, may exempt from the continuing
35 education requirement any veterinarian who for reasons of health,
36 military service, or undue hardship cannot meet those requirements.
37 Applications for waivers shall be submitted on a form provided
38 by the board.

39 (i) The administration of this section may be funded through
40 professional license and continuing education provider fees. The

1 fees related to the administration of this section shall not exceed
2 the costs of administering the corresponding provisions of this
3 section.

4 (j) For those continuing education providers not listed in
5 paragraph (1) of subdivision (b), the board or its recognized
6 national approval agent shall establish criteria by which a provider
7 of continuing education shall be approved. The board shall initially
8 review and approve these criteria and may review the criteria as
9 needed. The board or its recognized agent shall monitor, maintain,
10 and manage related records and data. The board may impose an
11 application fee, not to exceed two hundred dollars (\$200)
12 biennially, for continuing education providers not listed in
13 paragraph (1) of subdivision (b).

14 (k) (1) ~~On or after~~ *Beginning* January 1, 2018, a licensed
15 veterinarian who renews his or her license shall complete a
16 minimum of one credit hour of continuing education on the
17 judicious use of medically important antimicrobial drugs every
18 four years as part of his or her continuing education requirements.

19 (2) For purposes of this subdivision, “medically important
20 antimicrobial drug” means an antimicrobial drug listed in Appendix
21 A of the federal Food and Drug Administration’s Guidance for
22 Industry #152, including critically important, highly important,
23 and important antimicrobial drugs, as that appendix may be
24 amended.

25 *SEC. 15. Section 4848.1 is added to the Business and*
26 *Professions Code, to read:*

27 *4848.1. (a) A veterinarian engaged in the practice of veterinary*
28 *medicine, as defined in Section 4826, employed by the University*
29 *of California while engaged in the performance of duties in*
30 *connection with the School of Veterinary Medicine or employed*
31 *by the Western University of Health Sciences while engaged in the*
32 *performance of duties in connection with the College of Veterinary*
33 *Medicine shall be licensed in California or shall hold a university*
34 *license issued by the board.*

35 *(b) An applicant is eligible to hold a university license if all of*
36 *the following are satisfied:*

37 *(1) The applicant is currently employed by the University of*
38 *California or Western University of Health Sciences as defined in*
39 *subdivision (a).*

1 (2) Passes an examination concerning the statutes and
2 regulations of the Veterinary Medicine Practice Act, administered
3 by the board, pursuant to subparagraph (C) of paragraph (2) of
4 subdivision (a) of Section 4848.

5 (3) Successfully completes the approved educational curriculum
6 described in paragraph (5) of subdivision (b) of Section 4848 on
7 regionally specific and important diseases and conditions.

8 (c) A university license:

9 (1) Shall be numbered as described in Section 4847.

10 (2) Shall cease to be valid upon termination of employment by
11 the University of California or by the Western University of Health
12 Sciences.

13 (3) Shall be subject to the license renewal provisions in Section
14 4846.4.

15 (4) Shall be subject to denial, revocation, or suspension pursuant
16 to Sections 4875 and 4883.

17 (d) An individual who holds a University License is exempt from
18 satisfying the license renewal requirements of Section 4846.5.

19 SEC. 16. Section 4853.7 is added to the Business and
20 Professions Code, to read:

21 4853.7. A premise registration that is not renewed within five
22 years after its expiration may not be renewed and shall not be
23 restored, reissued, or reinstated thereafter. However, an
24 application for a new premise registration may be submitted and
25 obtained if both of the following conditions are met:

26 (a) No fact, circumstance, or condition exists that, if the premise
27 registration was issued, would justify its revocation or suspension.

28 (b) All of the fees that would be required for the initial premise
29 registration are paid at the time of application.

30 SEC. 17. Section 825 of the Government Code is amended to
31 read:

32 825. (a) Except as otherwise provided in this section, if an
33 employee or former employee of a public entity requests the public
34 entity to defend him or her against any claim or action against him
35 or her for an injury arising out of an act or omission occurring
36 within the scope of his or her employment as an employee of the
37 public entity and the request is made in writing not less than 10
38 days before the day of trial, and the employee or former employee
39 reasonably cooperates in good faith in the defense of the claim or
40 action, the public entity shall pay any judgment based thereon or

1 any compromise or settlement of the claim or action to which the
2 public entity has agreed.

3 If the public entity conducts the defense of an employee or
4 former employee against any claim or action with his or her
5 reasonable good-faith cooperation, the public entity shall pay any
6 judgment based thereon or any compromise or settlement of the
7 claim or action to which the public entity has agreed. However,
8 where the public entity conducted the defense pursuant to an
9 agreement with the employee or former employee reserving the
10 rights of the public entity not to pay the judgment, compromise,
11 or settlement until it is established that the injury arose out of an
12 act or omission occurring within the scope of his or her
13 employment as an employee of the public entity, the public entity
14 is required to pay the judgment, compromise, or settlement only
15 if it is established that the injury arose out of an act or omission
16 occurring in the scope of his or her employment as an employee
17 of the public entity.

18 Nothing in this section authorizes a public entity to pay that part
19 of a claim or judgment that is for punitive or exemplary damages.

20 (b) Notwithstanding subdivision (a) or any other provision of
21 law, a public entity is authorized to pay that part of a judgment
22 that is for punitive or exemplary damages if the governing body
23 of that public entity, acting in its sole discretion except in cases
24 involving an entity of the state government, finds all of the
25 following:

26 (1) The judgment is based on an act or omission of an employee
27 or former employee acting within the course and scope of his or
28 her employment as an employee of the public entity.

29 (2) At the time of the act giving rise to the liability, the employee
30 or former employee acted, or failed to act, in good faith, without
31 actual malice and in the apparent best interests of the public entity.

32 (3) Payment of the claim or judgment would be in the best
33 interests of the public entity.

34 As used in this subdivision with respect to an entity of state
35 government, "a decision of the governing body" means the
36 approval of the Legislature for payment of that part of a judgment
37 that is for punitive damages or exemplary damages, upon
38 recommendation of the appointing power of the employee or
39 former employee, based upon the finding by the Legislature and
40 the appointing authority of the existence of the three conditions

1 for payment of a punitive or exemplary damages claim. The
2 provisions of subdivision (a) of Section 965.6 shall apply to the
3 payment of any claim pursuant to this subdivision.

4 The discovery of the assets of a public entity and the introduction
5 of evidence of the assets of a public entity shall not be permitted
6 in an action in which it is alleged that a public employee is liable
7 for punitive or exemplary damages.

8 The possibility that a public entity may pay that part of a
9 judgment that is for punitive damages shall not be disclosed in any
10 trial in which it is alleged that a public employee is liable for
11 punitive or exemplary damages, and that disclosure shall be
12 grounds for a mistrial.

13 (c) Except as provided in subdivision (d), if the provisions of
14 this section are in conflict with the provisions of a memorandum
15 of understanding reached pursuant to Chapter 10 (commencing
16 with Section 3500) of Division 4 of Title 1, the memorandum of
17 understanding shall be controlling without further legislative action,
18 except that if those provisions of a memorandum of understanding
19 require the expenditure of funds, the provisions shall not become
20 effective unless approved by the Legislature in the annual Budget
21 Act.

22 (d) The subject of payment of punitive damages pursuant to this
23 section or any other provision of law shall not be a subject of meet
24 and confer under the provisions of Chapter 10 (commencing with
25 Section 3500) of Division 4 of Title 1, or pursuant to any other
26 law or authority.

27 (e) Nothing in this section shall affect the provisions of Section
28 818 prohibiting the award of punitive damages against a public
29 entity. This section shall not be construed as a waiver of a public
30 entity's immunity from liability for punitive damages under Section
31 1981, 1983, or 1985 of Title 42 of the United States Code.

32 (f) (1) Except as provided in paragraph (2), a public entity shall
33 not pay a judgment, compromise, or settlement arising from a
34 claim or action against an elected official, if the claim or action is
35 based on conduct by the elected official by way of tortiously
36 intervening or attempting to intervene in, or by way of tortiously
37 influencing or attempting to influence the outcome of, any judicial
38 action or proceeding for the benefit of a particular party by
39 contacting the trial judge or any commissioner, court-appointed
40 arbitrator, court-appointed mediator, or court-appointed special

1 referee assigned to the matter, or the court clerk, bailiff, or marshal
2 after an action has been filed, unless he or she was counsel of
3 record acting lawfully within the scope of his or her employment
4 on behalf of that party. Notwithstanding Section 825.6, if a public
5 entity conducted the defense of an elected official against such a
6 claim or action and the elected official is found liable by the trier
7 of fact, the court shall order the elected official to pay to the public
8 entity the cost of that defense.

9 (2) If an elected official is held liable for monetary damages in
10 the action, the plaintiff shall first seek recovery of the judgment
11 against the assets of the elected official. If the elected official's
12 assets are insufficient to satisfy the total judgment, as determined
13 by the court, the public entity may pay the deficiency if the public
14 entity is authorized by law to pay that judgment.

15 (3) To the extent the public entity pays any portion of the
16 judgment or is entitled to reimbursement of defense costs pursuant
17 to paragraph (1), the public entity shall pursue all available
18 creditor's remedies against the elected official, including
19 garnishment, until that party has fully reimbursed the public entity.

20 (4) This subdivision shall not apply to any criminal or civil
21 enforcement action brought in the name of the people of the State
22 of California by an elected district attorney, city attorney, or
23 attorney general.

24 *(g) Notwithstanding subdivision (a), a public entity shall pay*
25 *for a judgment or settlement for treble damage antitrust awards*
26 *against a member of a regulatory board for an act or omission*
27 *occurring within the scope of his or her employment as a member*
28 *of a regulatory board.*

29 *SEC. 18. Section 11346.5 of the Government Code is amended*
30 *to read:*

31 11346.5. (a) The notice of proposed adoption, amendment, or
32 repeal of a regulation shall include the following:

33 (1) A statement of the time, place, and nature of proceedings
34 for adoption, amendment, or repeal of the regulation.

35 (2) Reference to the authority under which the regulation is
36 proposed and a reference to the particular code sections or other
37 provisions of law that are being implemented, interpreted, or made
38 specific.

1 (3) An informative digest drafted in plain English in a format
2 similar to the Legislative Counsel's digest on legislative bills. The
3 informative digest shall include the following:

4 (A) A concise and clear summary of existing laws and
5 regulations, if any, related directly to the proposed action and of
6 the effect of the proposed action.

7 (B) If the proposed action differs substantially from an existing
8 comparable federal regulation or statute, a brief description of the
9 significant differences and the full citation of the federal regulations
10 or statutes.

11 (C) A policy statement overview explaining the broad objectives
12 of the regulation and the specific benefits anticipated by the
13 proposed adoption, amendment, or repeal of a regulation, including,
14 to the extent applicable, nonmonetary benefits such as the
15 protection of public health and safety, worker safety, or the
16 environment, the prevention of discrimination, the promotion of
17 fairness or social equity, and the increase in openness and
18 transparency in business and government, among other things.

19 (D) An evaluation of whether the proposed regulation is
20 inconsistent or incompatible with existing state regulations.

21 (4) Any other matters as are prescribed by statute applicable to
22 the specific state agency or to any specific regulation or class of
23 regulations.

24 (5) A determination as to whether the regulation imposes a
25 mandate on local agencies or school districts and, if so, whether
26 the mandate requires state reimbursement pursuant to Part 7
27 (commencing with Section 17500) of Division 4.

28 (6) An estimate, prepared in accordance with instructions
29 adopted by the Department of Finance, of the cost or savings to
30 any state agency, the cost to any local agency or school district
31 that is required to be reimbursed under Part 7 (commencing with
32 Section 17500) of Division 4, other nondiscretionary cost or
33 savings imposed on local agencies, and the cost or savings in
34 federal funding to the state.

35 For purposes of this paragraph, "cost or savings" means
36 additional costs or savings, both direct and indirect, that a public
37 agency necessarily incurs in reasonable compliance with
38 regulations.

39 (7) If a state agency, in proposing to adopt, amend, or repeal
40 any administrative regulation, makes an initial determination that

1 the action may have a significant, statewide adverse economic
2 impact directly affecting business, including the ability of
3 California businesses to compete with businesses in other states,
4 it shall include the following information in the notice of proposed
5 action:

6 (A) Identification of the types of businesses that would be
7 affected.

8 (B) A description of the projected reporting, recordkeeping, and
9 other compliance requirements that would result from the proposed
10 action.

11 (C) The following statement: "The (name of agency) has made
12 an initial determination that the (adoption/amendment/repeal) of
13 this regulation may have a significant, statewide adverse economic
14 impact directly affecting business, including the ability of
15 California businesses to compete with businesses in other states.
16 The (name of agency) (has/has not) considered proposed
17 alternatives that would lessen any adverse economic impact on
18 business and invites you to submit proposals. Submissions may
19 include the following considerations:

20 (i) The establishment of differing compliance or reporting
21 requirements or timetables that take into account the resources
22 available to businesses.

23 (ii) Consolidation or simplification of compliance and reporting
24 requirements for businesses.

25 (iii) The use of performance standards rather than prescriptive
26 standards.

27 (iv) Exemption or partial exemption from the regulatory
28 requirements for businesses."

29 (8) If a state agency, in adopting, amending, or repealing any
30 administrative regulation, makes an initial determination that the
31 action will not have a significant, statewide adverse economic
32 impact directly affecting business, including the ability of
33 California businesses to compete with businesses in other states,
34 it shall make a declaration to that effect in the notice of proposed
35 action. In making this declaration, the agency shall provide in the
36 record facts, evidence, documents, testimony, or other evidence
37 upon which the agency relies to support its initial determination.

38 An agency's initial determination and declaration that a proposed
39 adoption, amendment, or repeal of a regulation may have or will
40 not have a significant, adverse impact on businesses, including the

1 ability of California businesses to compete with businesses in other
2 states, shall not be grounds for the office to refuse to publish the
3 notice of proposed action.

4 (9) A description of all cost impacts, known to the agency at
5 the time the notice of proposed action is submitted to the office,
6 that a representative private person or business would necessarily
7 incur in reasonable compliance with the proposed action.

8 If no cost impacts are known to the agency, it shall state the
9 following:

10 "The agency is not aware of any cost impacts that a
11 representative private person or business would necessarily incur
12 in reasonable compliance with the proposed action."

13 (10) A statement of the results of the economic impact
14 assessment required by subdivision (b) of Section 11346.3 or the
15 standardized regulatory impact analysis if required by subdivision
16 (c) of Section 11346.3, a summary of any comments submitted to
17 the agency pursuant to subdivision (f) of Section 11346.3 and the
18 agency's response to those comments.

19 (11) The finding prescribed by subdivision (d) of Section
20 11346.3, if required.

21 (12) (A) A statement that the action would have a significant
22 effect on housing costs, if a state agency, in adopting, amending,
23 or repealing any administrative regulation, makes an initial
24 determination that the action would have that effect.

25 (B) The agency officer designated in paragraph ~~(14)~~ (15) shall
26 make available to the public, upon request, the agency's evaluation,
27 if any, of the effect of the proposed regulatory action on housing
28 costs.

29 (C) The statement described in subparagraph (A) shall also
30 include the estimated costs of compliance and potential benefits
31 of a building standard, if any, that were included in the initial
32 statement of reasons.

33 (D) For purposes of model codes adopted pursuant to Section
34 18928 of the Health and Safety Code, the agency shall comply
35 with the requirements of this paragraph only if an interested party
36 has made a request to the agency to examine a specific section for
37 purposes of estimating the costs of compliance and potential
38 benefits for that section, as described in Section 11346.2.

39 (13) *If the regulatory action is submitted by a state board on*
40 *which a controlling number of decisionmakers are active market*

1 *participants in the market the board regulates, a statement that*
2 *the adopting agency has evaluated the impact of the proposed*
3 *regulation on competition, and that the proposed regulation*
4 *further a clearly articulated and affirmatively expressed state law*
5 *to restrain competition.*

6 ~~(13)~~

7 (14) A statement that the adopting agency must determine that
8 no reasonable alternative considered by the agency or that has
9 otherwise been identified and brought to the attention of the agency
10 would be more effective in carrying out the purpose for which the
11 action is proposed, would be as effective and less burdensome to
12 affected private persons than the proposed action, or would be
13 more cost effective to affected private persons and equally effective
14 in implementing the statutory policy or other provision of law. For
15 a major regulation, as defined by Section 11342.548, proposed on
16 or after November 1, 2013, the statement shall be based, in part,
17 upon the standardized regulatory impact analysis of the proposed
18 regulation, as required by Section 11346.3, as well as upon the
19 benefits of the proposed regulation identified pursuant to
20 subparagraph (C) of paragraph (3).

21 ~~(14)~~

22 (15) The name and telephone number of the agency
23 representative and designated backup contact person to whom
24 inquiries concerning the proposed administrative action may be
25 directed.

26 ~~(15)~~

27 (16) The date by which comments submitted in writing must
28 be received to present statements, arguments, or contentions in
29 writing relating to the proposed action in order for them to be
30 considered by the state agency before it adopts, amends, or repeals
31 a regulation.

32 ~~(16)~~

33 (17) Reference to the fact that the agency proposing the action
34 has prepared a statement of the reasons for the proposed action,
35 has available all the information upon which its proposal is based,
36 and has available the express terms of the proposed action, pursuant
37 to subdivision (b).

38 ~~(17)~~

39 (18) A statement that if a public hearing is not scheduled, any
40 interested person or his or her duly authorized representative may

1 request, no later than 15 days prior to the close of the written
2 comment period, a public hearing pursuant to Section 11346.8.

3 ~~(18)~~

4 (19) A statement indicating that the full text of a regulation
5 changed pursuant to Section 11346.8 will be available for at least
6 15 days prior to the date on which the agency adopts, amends, or
7 repeals the resulting regulation.

8 ~~(19)~~

9 (20) A statement explaining how to obtain a copy of the final
10 statement of reasons once it has been prepared pursuant to
11 subdivision (a) of Section 11346.9.

12 ~~(20)~~

13 (21) If the agency maintains an Internet Web site or other similar
14 forum for the electronic publication or distribution of written
15 material, a statement explaining how materials published or
16 distributed through that forum can be accessed.

17 ~~(21)~~

18 (22) If the proposed regulation is subject to Section 11346.6, a
19 statement that the agency shall provide, upon request, a description
20 of the proposed changes included in the proposed action, in the
21 manner provided by Section 11346.6, to accommodate a person
22 with a visual or other disability for which effective communication
23 is required under state or federal law and that providing the
24 description of proposed changes may require extending the period
25 of public comment for the proposed action.

26 (b) The agency representative designated in paragraph ~~(14)~~ (15)
27 of subdivision (a) shall make available to the public upon request
28 the express terms of the proposed action. The representative shall
29 also make available to the public upon request the location of
30 public records, including reports, documentation, and other
31 materials, related to the proposed action. If the representative
32 receives an inquiry regarding the proposed action that the
33 representative cannot answer, the representative shall refer the
34 inquiry to another person in the agency for a prompt response.

35 (c) This section shall not be construed in any manner that results
36 in the invalidation of a regulation because of the alleged inadequacy
37 of the notice content or the summary or cost estimates, or the
38 alleged inadequacy or inaccuracy of the housing cost estimates, if
39 there has been substantial compliance with those requirements.

1 *SEC. 19. Section 11349 of the Government Code is amended*
2 *to read:*

3 11349. The following definitions govern the interpretation of
4 this chapter:

5 (a) "Necessity" means the record of the rulemaking proceeding
6 demonstrates by substantial evidence the need for a regulation to
7 effectuate the purpose of the statute, court decision, or other
8 provision of law that the regulation implements, interprets, or
9 makes specific, taking into account the totality of the record. For
10 purposes of this standard, evidence includes, but is not limited to,
11 facts, studies, and expert opinion.

12 (b) "Authority" means the provision of law which permits or
13 obligates the agency to adopt, amend, or repeal a regulation.

14 (c) "Clarity" means written or displayed so that the meaning of
15 regulations will be easily understood by those persons directly
16 affected by them.

17 (d) "Consistency" means being in harmony with, and not in
18 conflict with or contradictory to, existing statutes, court decisions,
19 or other provisions of law.

20 (e) "Reference" means the statute, court decision, or other
21 provision of law which the agency implements, interprets, or makes
22 specific by adopting, amending, or repealing a regulation.

23 (f) "Nonduplication" means that a regulation does not serve the
24 same purpose as a state or federal statute or another regulation.
25 This standard requires that an agency proposing to amend or adopt
26 a regulation must identify any state or federal statute or regulation
27 which is overlapped or duplicated by the proposed regulation and
28 justify any overlap or duplication. This standard is not intended
29 to prohibit state agencies from printing relevant portions of
30 enabling legislation in regulations when the duplication is necessary
31 to satisfy the clarity standard in paragraph (3) of subdivision (a)
32 of Section 11349.1. This standard is intended to prevent the
33 indiscriminate incorporation of statutory language in a regulation.

34 (g) "*Competitive impact*" means that the record of the
35 rulemaking proceeding or other documentation demonstrates that
36 the regulation is authorized by a clearly articulated and
37 affirmatively expressed state law, that the regulation furthers the
38 public protection mission of the state agency, and that the impact
39 on competition is justified in light of the applicable regulatory
40 rationale for the regulation.

1 *SEC. 20. Section 11349.1 of the Government Code is amended*
2 *to read:*

3 11349.1. (a) The office shall review all regulations adopted,
4 amended, or repealed pursuant to the procedure specified in Article
5 5 (commencing with Section 11346) and submitted to it for
6 publication in the California Code of Regulations Supplement and
7 for transmittal to the Secretary of State and make determinations
8 using all of the following standards:

9 (1) Necessity.

10 (2) Authority.

11 (3) Clarity.

12 (4) Consistency.

13 (5) Reference.

14 (6) Nonduplication.

15 (7) *For those regulations submitted by a state board on which*
16 *a controlling number of decisionmakers are active market*
17 *participants in the market the board regulates, the office shall*
18 *review for competitive impact.*

19 In reviewing regulations pursuant to this section, the office shall
20 restrict its review to the regulation and the record of the rulemaking
21 ~~proceeding~~ *except as directed in subdivision (h)*. The office shall
22 approve the regulation or order of repeal if it complies with the
23 standards set forth in this section and with this chapter.

24 (b) In reviewing proposed regulations for the criteria in
25 subdivision (a), the office may consider the clarity of the proposed
26 regulation in the context of related regulations already in existence.

27 (c) The office shall adopt regulations governing the procedures
28 it uses in reviewing regulations submitted to it. The regulations
29 shall provide for an orderly review and shall specify the methods,
30 standards, presumptions, and principles the office uses, and the
31 limitations it observes, in reviewing regulations to establish
32 compliance with the standards specified in subdivision (a). The
33 regulations adopted by the office shall ensure that it does not
34 substitute its judgment for that of the rulemaking agency as
35 expressed in the substantive content of adopted regulations.

36 (d) The office shall return any regulation subject to this chapter
37 to the adopting agency if any of the following occur:

38 (1) The adopting agency has not prepared the estimate required
39 by paragraph (6) of subdivision (a) of Section 11346.5 and has not

1 included the data used and calculations made and the summary
2 report of the estimate in the file of the rulemaking.

3 (2) The agency has not complied with Section 11346.3.
4 “Noncompliance” means that the agency failed to complete the
5 economic impact assessment or standardized regulatory impact
6 analysis required by Section 11346.3 or failed to include the
7 assessment or analysis in the file of the rulemaking proceeding as
8 required by Section 11347.3.

9 (3) The adopting agency has prepared the estimate required by
10 paragraph (6) of subdivision (a) of Section 11346.5, the estimate
11 indicates that the regulation will result in a cost to local agencies
12 or school districts that is required to be reimbursed under Part 7
13 (commencing with Section 17500) of Division 4, and the adopting
14 agency fails to do any of the following:

15 (A) Cite an item in the Budget Act for the fiscal year in which
16 the regulation will go into effect as the source from which the
17 Controller may pay the claims of local agencies or school districts.

18 (B) Cite an accompanying bill appropriating funds as the source
19 from which the Controller may pay the claims of local agencies
20 or school districts.

21 (C) Attach a letter or other documentation from the Department
22 of Finance which states that the Department of Finance has
23 approved a request by the agency that funds be included in the
24 Budget Bill for the next following fiscal year to reimburse local
25 agencies or school districts for the costs mandated by the
26 regulation.

27 (D) Attach a letter or other documentation from the Department
28 of Finance which states that the Department of Finance has
29 authorized the augmentation of the amount available for
30 expenditure under the agency’s appropriation in the Budget Act
31 which is for reimbursement pursuant to Part 7 (commencing with
32 Section 17500) of Division 4 to local agencies or school districts
33 from the unencumbered balances of other appropriations in the
34 Budget Act and that this augmentation is sufficient to reimburse
35 local agencies or school districts for their costs mandated by the
36 regulation.

37 (4) The proposed regulation conflicts with an existing state
38 regulation and the agency has not identified the manner in which
39 the conflict may be resolved.

1 (5) The agency did not make the alternatives determination as
2 required by paragraph (4) of subdivision (a) of Section 11346.9.

3 (6) *The office decides that the record of the rulemaking*
4 *proceeding or other documentation for the proposed regulation*
5 *does not demonstrate that the regulation is authorized by a clearly*
6 *articulated and affirmatively expressed state law, that the*
7 *regulation does not further the public protection mission of the*
8 *state agency, or that the impact on competition is not justified in*
9 *light of the applicable regulatory rationale for the regulation.*

10 (e) The office shall notify the Department of Finance of all
11 regulations returned pursuant to subdivision (d).

12 (f) The office shall return a rulemaking file to the submitting
13 agency if the file does not comply with subdivisions (a) and (b)
14 of Section 11347.3. Within three state working days of the receipt
15 of a rulemaking file, the office shall notify the submitting agency
16 of any deficiency identified. If no notice of deficiency is mailed
17 to the adopting agency within that time, a rulemaking file shall be
18 deemed submitted as of the date of its original receipt by the office.
19 A rulemaking file shall not be deemed submitted until each
20 deficiency identified under this subdivision has been corrected.

21 (g) Notwithstanding any other law, return of the regulation to
22 the adopting agency by the office pursuant to this section is the
23 exclusive remedy for a failure to comply with subdivision (c) of
24 Section 11346.3 or paragraph (10) of subdivision (a) of Section
25 11346.5.

26 (h) *The office may designate, employ, or contract for the services*
27 *of independent antitrust or applicable economic experts when*
28 *reviewing proposed regulations for competitive impact. When*
29 *reviewing a regulation for competitive impact, the office shall do*
30 *all of the following:*

31 (1) *If the Director of Consumer Affairs issued a written decision*
32 *pursuant to subdivision (c) of Section 109 of the Business and*
33 *Professions Code, the office shall review and consider the decision*
34 *and all supporting documentation in the rulemaking file.*

35 (2) *Consider whether the anticompetitive effects of the proposed*
36 *regulation are clearly outweighed by the public policy merits.*

37 (3) *Provide a written opinion setting forth the office's findings*
38 *and substantive conclusions under paragraph (2), including, but*
39 *not limited to, whether rejection or modification of the proposed*
40 *regulation is necessary to ensure that restraints of trade are related*

1 to and advance the public policy underlying the applicable
2 regulatory rationale.

3 SEC. 21. No reimbursement is required by this act pursuant
4 to Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.

O