Agenda Item 2
August 29, 2016

Discuss, Review and Possible Action on Regulations

Purpose of the item

The agenda item has been included to provide the Board members with an opportunity to review and approve amended Consumer Protection Enforcement Initiative (CPEI) regulatory language.

Action(s) requested

The Board will review and discuss proposed CPEI language. The Board will be asked to approve amended regulatory language and initiate the rulemaking process.

The Board will make a motion to approve the amended language, delegate authority to the Executive Officer to make any technical, non-substantive changes, and initiate the rulemaking process.

Background

At the May 19, 2016 Board meeting, members briefly discussed and approved proposed language related to the CPEI. The language would add or amend 12 sections within the California Code of Regulations that would establish stricter reporting and disclosure requirements by licensees and applicants and increase the Board's enforcement authority.

Following additional review and scrutiny of the regulatory language, staff discovered two sections that required attention:

- CCR §317.2 - Gag Clauses in Civil Agreements
- CCR §321.1 – Physical or Mental Examination of Applicants

CCR §317.2 would prohibit licensees from including gag clauses in civil agreements. However, this section should be removed because the provisions included in the proposed language already exist in current law, B&P Code Section 143.5. Adding §317.2 would be duplicative thus not meeting the Office of Administrative Law's necessity requirement.

CCR §321.1 would authorize the Board to compel applicants for licensure to undergo a mental or physical examination in cases where it appeared that the applicant may be unable to safely perform as a chiropractor due to a mental or physical illness affecting competence.

Current Law - BCP §820 and BCE CCR §315

The Board already has the authority to order licensees to take a mental or physical examination when it appears the individual is unable to practice safely because he/she is impaired due to a mental or physical illness.

In an effort to prevent unfit individuals from potentially harming consumers, the Board is seeking the authority to compel applicants, where evidence exists, to take a mental or physical examination to determine fitness for license. This will increase the health and safety of consumers of chiropractic services.

Proposed Revisions - §321.1. Physical or Mental Examination of Applicants.

Staff believes that "whenever it appears that an applicant …" provides the Board with too much discretion and that it is necessary to limit the discretion involved in determining whether an applicant has a mental or physical illness.

§321.1. Physical or Mental Examination of Applicants (Current Language).

(a) In addition to any other requirements for licensure, ***whenever it appears*** that an applicant for a license may be unable to perform as a chiropractor safely because the applicant's ability to perform may be impaired due to mental illness or physical illness affecting competency, the board may order the applicant to be examined by one or more physicians and surgeons, chiropractors, or psychologists designated by the board. The board shall pay the full cost of such examination.

Staff is proposing the inclusion of criteria that includes the collection of objective evidence prior to requiring an applicant to sit for a mental or physical examination to determine fitness for licensure.

§321.1. Physical or Mental Examination of Applicants (Proposed Revision).

(a) In addition to any other requirements for licensure, whenever ~~it appears~~ **evidence exists** that an applicant for a license may be unable to perform as a chiropractor safely because the applicant's ability to perform may be impaired due to mental illness or physical illness affecting competency, the board may order the applicant to be examined by one or more physicians and surgeons, chiropractors, or psychologists designated by the board. The board shall pay the full cost of such examination.

Additionally, a provision has been added that would require the Board to purge and destroy all records pertaining to the examination proceedings, provided specific criteria and time frames are met.

§321.1. Physical or Mental Examination of Applicants.

(e) If the Board determines, pursuant to proceedings conducted under this subdivision, that there is insufficient evidence to deny an application due to an applicant's fitness for licensure, then all Board records of the proceedings, including the order for the examination, investigative reports, if any, and the report of the physicians and surgeons, chiropractors or psychologists, shall be kept confidential. If no further proceedings are conducted to determine the applicant's fitness to practice during a period of five years from the date of the determination by the Board of the proceedings pursuant to this subdivision, then the Board shall purge and

> destroy all records pertaining to the proceedings. If new proceedings are instituted during the five-year period against the applicant by the Board, the records, including the report of the physicians and surgeon, chiropractor, or psychologist, may be used in the proceedings and shall be available to the applicant pursuant to the provisions of Section 11507.6 of the Government Code.

Other Board's on the mental/physical examination provision

Upon review, staff observed that six healing arts Board have enacted the CPEI provisions on physical or mental examination of applicants.

- Board of Behavioral Sciences
- Dental Board
- Occupational Therapy Board
- Physician Assistant Board
- Speech/Language Pathology Audiology Board
- Vocational Nursing/Psychiatric Technicians Board

Recommendation(s)

Staff recommends that the Board approve the amended CPEI language.

Next Step

Staff will finalize the amended language and notice the regulation package for a 45-day comment period.

Attachment(s)

- Consumer Protection Enforcement Initiative (CPEI) amended language

TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS

Proposed Language: Consumer Protection Enforcement Initiative (CPEI)

§303. Filing of Addresses.

(a) Each person holding a license ~~to practice chiropractic in the State of California under any and all laws administered by the board~~ shall file with the board his or her proper and current ~~place of~~ physical practice address ~~of his principal office~~ and, where appropriate, each and every ~~sub-office~~ satellite office~~, with the board at its office in Sacramento and shall immediately notify the board at its said office of any and all changes of place of practice address, giving both his old and his new address within 30 days of change~~. If a licensee does not have a practice address, the licensee may file with the board his or her proper and current residential address. The address provided pursuant to this paragraph shall be public information unless the licensee also submits an alternate address pursuant to paragraph (b).

(b) In addition to the address filed pursuant to paragraph (a), a licensee may designate a post office box number or other alternate address as the address of record that shall be public information.

(c) Each licensee shall report to the board each and every change of address within 30 (thirty) days after each change, providing both the old and new addresses. The change of address shall be submitted in writing and mailed or faxed to the board at its office in Sacramento.

NOTE: Authority cited: Sections 27 and 136 of the Business and Professions Code, Sections 1000-4(b) and 1000-4(e), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923 p. 1xxxviii). Reference: Sections 27 and 136 of the Business and Professions Code, Section 1000-10(a), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923 p. 1xxxviii).

§304. Discipline by Another ~~State~~ Jurisdiction.

~~The revocation, suspension, or other discipline by another state of a license or certificate to practice chiropractic, or any other health care profession for which a license or certificate is required, shall constitute grounds for disciplinary action against a chiropractic licensee or grounds for the denial of chiropractic licensure of an applicant in this state.~~

(a) Any disciplinary action taken against a licensee by another licensing entity or authority of this state or of another state or an agency of the federal government or province thereof, or the United States Military or a foreign government or any other jurisdiction shall constitute unprofessional conduct.

(b) Disciplinary action is defined as any revocation, suspension, probation, or reprimand of a professional license.

Note: Authority cited: Sections 1000-4(b) and 1000-10(a), ~~of the~~ Business and Professions Code (Chiropractic Initiative Act of California, ~~(~~Stats. 1923, p. lxxxviii). Reference: Sections 1000-4(b) and 1000-10(a), ~~of the~~ Business and Professions Code (Chiropractic Initiative Act of California, ~~(~~Stats. 1923, p. lxxxviii).

§306.3. Investigators; Authority to Inspect Premises.

The board or its designee may inspect the physical premises of any chiropractic office during regular business hours. Failure by a licensee to allow such an inspection shall be considered as unprofessional conduct.

Note: Authority cited: Sections 1000-4(b) and 1000-4(e), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii). Reference: Sections 1000-4(b), 1000-4(e) and 1000-4(h), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii).

§308. Display of License.

(a) Each person holding a license shall prominently display ~~a~~ their current active license in the entry area or waiting area of their principal place of business ~~a conspicuous place in the licensee's principal office or primary place of practice~~.

(b) Any licensed ~~D~~doctor of ~~C~~chiropractic with more than one place of practice shall obtain from the board a Satellite Office Certificate for each additional place of practice. Said certificate must be renewed annually.

(c) A licensed ~~D~~doctor of ~~C~~chiropractic must prominently display ~~in a conspicuous place~~ a current active Satellite Office Certificate in the entry area or waiting area of ~~at~~ the office for which it was issued at all times while treating, examining or evaluating patients at that location.

(d) Notwithstanding subdivisions (b) and (c), any licensed doctor of chiropractic who is practicing in a mobile setting, such as at a health fair, a sporting event, or a patient's home, shall not be required to obtain and display a satellite certificate. However, any licensee practicing in such a mobile setting must at all times carry a current and active pocket license and shall make their pocket license available for inspection to a representative of the board or any member of the public immediately upon request.

(e) No licensed ~~D~~doctor of ~~C~~chiropractic shall display any chiropractic license, certificate or registration, which is not currently active and valid.

NOTE: Authority cited: Section 104 of the Business and Professions Code and Section 1000-4(b), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii). Reference: Section 104 of the Business and Professions Code and Sections 1000-5, 1000-7 and 1000-12, Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii).

308.1. Notice to Consumers

(a) A licensee engaged in the practice of chiropractic shall provide notice to each patient of the fact that the licensee is licensed and regulated by the board. The notice shall include the following statement and information:

Notice to Consumers

Chiropractic doctors are licensed and regulated by the Board of Chiropractic Examiners

(916) 263-5355

www.chiro.ca.gov

(b) The notice required by this section shall be provided by one of the following methods:

(1) Prominently posting the notice in an area visible to patients on the premises where the licensee provides the licensed services, in which case the notice shall be in at least 40-point type in Arial font.

(2) Including the notice in a written statement, signed and dated by the patient or the patient's representative and retained in the patient's medical records, stating the patient understands the chiropractor is licensed and regulated by the board.

(3) Including the notice in a statement on letterhead, discharge instructions, or other documents given to a patient or the patient's representative, where the notice is placed immediately above the signature line for the patient in at least 14-point type.

NOTE: Authority cited: Sections 138 of the Business and Professions Code and 1000-4(b), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii). Reference: Section 138 of the Business and Professions Code and 1000-4(b), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii).

§ 312. ~~Illegal Practice~~ Supervision of Unlicensed Individuals.

~~Unlicensed individuals are not permitted to diagnose, analyze, or perform a chiropractic adjustment.~~ An "unlicensed individual" is defined as any person, including a student or graduate of a chiropractic institution, who does not hold a valid California chiropractic license. An exemption is hereby created for chiropractic students ~~doctors~~ participating in board approved preceptorship programs.

The licensed doctor of chiropractic shall initially examine and prepare a written treatment plan for a patient prior to the provision of physiotherapy treatment. The unlicensed individual shall follow and provide only the treatment defined in the written plan.

(a) The permitted activities of unlicensed individuals are as follows:

(~~a~~1) Unlicensed individuals may take the history of a patient. ~~However, this activity is separate from the consultation which at all times must be conducted by the licensed doctor.~~ The licensed doctor of chiropractic must confirm the history with the patient and determine all appropriate evaluations, imaging, examinations and referrals.

(~~b~~2) Unlicensed individuals may conduct standard neurological, orthopedic, physical and chiropractic examinations ~~except they may not perform such examinations which require diagnostic or analytic interpretations nor may they~~ at the direction of the licensed doctor of chiropractic**.** Unlicensed individuals may not render a conclusion either verbally or in writing to a patient regarding the patient's ~~physical~~ condition. ~~As an example, unlicensed individuals may not perform evaluations of heart or lung soundings.~~ Such individuals shall be at all times under the ~~immediate and~~ direct supervision of a licensed ~~D~~doctor of ~~C~~chiropractic.

"~~Immediate and d~~Direct supervision" means the licensed ~~D~~doctor of ~~C~~chiropractic shall be at all times ~~on the premises~~ present in the same chiropractic facility where the examinations are being conducted. The licensed ~~D~~doctor of ~~C~~chiropractic shall be responsible for the verification of the recorded findings and will be solely responsible for rendering a conclusion based on the findings.

(~~c~~3) Unlicensed individuals may administer ~~physical~~ physiotherapy treatments as an adjunct to chiropractic adjustment, provided the ~~physical~~ physiotherapy treatment is conducted under the ~~adequate~~ indirect supervision of a licensed ~~D~~doctor of ~~C~~chiropractic.

~~Adequate~~ "Indirect supervision" means ~~shall include all of the following:~~
~~(1) T~~the licensed doctor of chiropractic shall be present in the same chiropractic facility with the unlicensed individual at least fifty percent of any work week or portion thereof the said individual is on duty unless this requirement has been waived by the board. The licensed doctor of chiropractic shall be readily available to the said individual at all other times for advice, assistance and instruction.

~~(2) The doctor shall initially examine and prepare a written treatment program for a patient prior to the providing of physical therapy treatment by the unlicensed individual.~~

~~(3) The doctor shall provide periodic reevaluation of the treatment program and of the individual's performance in relation to the patient. "Periodic reevaluation" shall mean at least once every thirty days the patient is under active care.~~

~~(4) The doctor shall perform and record an evaluation of the patient and his or her response to treatment at the termination thereof.~~

(~~d~~4) The licensed doctor of chiropractic is responsible for evaluating a radiographic image before any markings are added that obstruct portions of a body part. The licensed doctor of chiropractic may refer the evaluation of radiographic images to a radiologist. Following the licensed doctor of chiropractic's review of the radiograph, the ~~U~~unlicensed individual~~s~~ may mark X-ray films ~~administered~~ generated by a licensed ~~D~~doctor of ~~C~~chiropractic. "Marking X-rays" is defined as drawing and measuring between reference points and making angular and linear measurements. Unlicensed individuals are not permitted to make any diagnostic conclusions or chiropractic analytical listings.~~, and t~~The licensed doctor of chiropractic is responsible for any pathological entities covered or obstructed by the markings.

(~~e~~b) Unlicensed individuals may not: ~~administer~~

(1) Generate X-rays unless they hold a valid X-ray technician certificate ~~from the~~ issued by the Department of Public Health ~~Services~~, Radiologic Health Branch, or participate under the direct supervision of a licensed ~~D~~doctor of ~~C~~chiropractic ~~in a~~ as part of a training program approved by that department and set forth in Section 25668.1 of the California Health and Safety Code. This prohibition, set forth in Section 30403 of Title 17 of the California Administrative Code includes the following activities:

(~~1~~A) Positioning of patient;

(~~2~~B) Setting up of X-ray machines;

(~~3~~C) Pushing a button to generate a radiographic beam;

(4D) Developing of films. However, ~~T~~the Department of Public Health ~~Services~~, Radiologic Health Branch has determined that unlicensed individuals may develop X-ray film if that is their sole radiologic responsibility.

(2) Unlicensed individuals are not permitted to diagnose, analyze, or perform a chiropractic adjustment. All preceptors must be under the direct supervision of a licensed doctor of chiropractic.

(c) Unlicensed individuals who exceed the permitted scope of practice set forth in this regulation shall be in violation of Section 15 of the Chiropractic Initiative Act and shall be prohibited from applying for a California chiropractic license for such time as may be determined by the board. Student doctors participating in board approved preceptorship programs are not to be considered "unlicensed individuals" when working in said program.

(d) A violation of this section shall constitute unprofessional conduct and may subject the licensee to disciplinary action.

NOTE: Authority cited: Section 1000-4(b), ~~of the~~ Business and Professions Code (Chiropractic Initiative Act of California, ~~(~~Stats. 1923, p. ~~l~~1xxxviii). Reference: Section 1000-15, ~~of the~~ Business and Professions Code (Chiropractic Initiative Act of California, ~~(~~Stats. 1923, p. ~~l~~1xxxviii)) and Section 25668.1, California Health and Safety Code; Section 30403 of Title 17, California Administrative Code.

§314. Law Violators.

It shall be the duty of every licensee to notify the Executive Officer or his or her designee of any violation of the act and statutes governing the practice of chiropractic, or these rules and regulations, in order that the board may take disciplinary action.

NOTE: Authority cited: Sections 1000-4(b), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923 p. 1xxxviii). Reference: Section 1000-4(b), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923 p. 1xxxviii).

~~**§317.2. Gag Clauses in Civil Agreements Prohibited.**~~

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

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

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

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

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

~~NOTE: Authority cited: Sections 1000-4(b), and 1000-10 (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii) and Section 475, Business and Professions Code. Reference: Section 1000-10, Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii) and Section 475, Business and Professions Code.~~

§317.3. Licensee Reporting Requirements.

(a) A licensee shall report any of the following to the board:

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

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

(3) Any disciplinary action, as defined in section 304.

(b) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, the arrest, the conviction, or the disciplinary action.

(c) Failure to make a report required by this section shall constitute unprofessional conduct.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii). Reference: Section 1000-10, Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii).

§321.1. Physical or Mental Examination of Applicants.

(a) In addition to any other requirements for licensure, whenever ~~it appears~~ evidence exists that an applicant for a license may be unable to perform as a chiropractor safely because the applicant's ability to perform may be impaired due to mental illness or physical illness affecting competency, the board may order the applicant to be examined by one or more physicians and surgeons, chiropractors, or psychologists designated by the board. The board shall pay the full cost of such examination.

(b) An applicant's failure to comply with an order issued under subdivision (a) shall render his or her application incomplete.

(c) The report of the evaluation shall be made available to the applicant

(d) If after receiving the evaluation report the board determines that the applicant is unable to safely practice, the board may deny the application.

(e) If the Board determines, pursuant to proceedings conducted under this subdivision, that there is insufficient evidence to deny an application due to an applicant’s fitness for licensure, then all Board records of the proceedings, including the order for the examination, investigative reports, if any, and the report of the physicians and surgeons, chiropractors or psychologists, shall be kept confidential. If no further proceedings are conducted to determine the applicant's fitness to practice during a period of five years from the date of the determination by the Board of the proceedings pursuant to this subdivision, then the Board shall purge and destroy all records pertaining to the proceedings. If new proceedings are instituted during the five-year period against the applicant by the Board, the records, including the report of the physicians and surgeons or psychologists, may be used in the proceedings and shall be available to the applicant pursuant to the provisions of Section 11507.6 of the Government Code.

NOTE: Authority cited: Sections 1000-4(b) and 1000-4(e), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii). Reference: Section 1000-4(b), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii) and Sections 480, 820, 822 of the Business and Professions Code.

384.1 Petitions for Reinstatement, Reduction of Penalty, or Early Termination of Probation

(a) In petitioning for Reinstatement under Section 1000-10(c) Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii) or Reduction of Penalty which would include Early Termination of Probation under Government Code section 11522, the petitioner has the burden of demonstrating any rehabilitative or corrective measures he or she has taken since the revocation or disciplinary action and, that he or she has the necessary and current qualifications and skills to safely engage in the practice of chiropractic within the scope of current law, and accepted standards of practice.

(b) In reaching its determination the board may consider various factors including the following:

(1) The original violation(s) for which action was taken against the petitioner's license including:
(A) The type, severity, number, and length of violations.
(B) Whether the violation involved intentional, negligent or other unprofessional conduct.
(C) Actual or potential harm to the public, patients, or others.
(D) The length of time since the violation(s) was committed.

(2) Prior disciplinary and criminal actions also taken against the petitioner by the board, any local, state, or federal entity, territory, foreign country, or U.S. federal jurisdiction:
(A) The petitioner's compliance with all terms of probation, parole, previous discipline or other lawfully imposed sanctions including any order of restitution.
(B) Whether the petitioner is currently on or has been terminated from probation or other lawfully imposed sanction.
(C) The petitioner's legal and regulatory history to and since the violation(s).

(3) The petitioner's attitude toward his or her commission of the original violation(s) and his or her attitude in regard to compliance with legal sanctions and rehabilitative efforts.

(4) The petitioner's documented rehabilitative efforts including:
(A) Efforts to maintain and/or upgrade professional skills and knowledge through continuing education or other methods.
(B) Efforts to establish safeguards to prevent repetition of the original violation(s) including changes or modifications in policies, structure, systems, or methods of behavior applicable to the petitioner's chiropractic practice.
(C) Service to community or charitable groups.
(D) Voluntary restitution to those affected by the original violation(s).
(E) Use of appropriate professional medical or psychotherapeutic treatment.
(F) Participation in appropriate self-help and/or rehabilitation groups.
(G) Use of appropriate peer review mechanisms.
(H) Participation in professional chiropractic organizations or associations.

(5) Assessment of the petitioner's rehabilitative and corrective efforts including:
(A) Whether the efforts relate to the original violation(s).
(B) The date rehabilitative efforts were initiated.
(C) The length, time, and expense associated with rehabilitative efforts or corrective actions.
(D) The assessment and recommendations of qualified professionals directly involved in the petitioner's rehabilitative efforts or acting at the request of the board, including their description of the petitioner's progress and their prognosis of the petitioner's current ability to practice chiropractic.
(E) The petitioner's reputation for truth, professional ability and good character since the commission of the original violation(s).
(F) The nature and status of ongoing and continuing rehabilitation efforts.
(c) In addition, the board may consider other appropriate and relevant matters not listed in the above guidelines.

(d) All statements to be introduced at hearing must be made in person or pursuant to Government Code Section 11514 (evidence by affidavit). All other statements not made in person or pursuant to Government Code Section 11514 must be under oath and will be considered only as administrative hearsay.

(e) A petition for reinstatement shall be submitted on an application form (Form # 09PRRL – Revised 5/2016) prescribed and provided by the board, and titled "Petition for Reinstatement of Revoked License," accompanied by such evidence, statements, or documents as are therein required, and filed with the board at its office in Sacramento.

(f) A petition for early termination of probation shall be submitted on an application form (Form # 09PTP – Revised 5/2016) prescribed and provided by the board, and titled "Petition for Early Termination of Probation," accompanied by such evidence, statements, or documents as are therein required, and filed with the board at its office in Sacramento.

(g) A petition for reduction of penalty shall be submitted on an application form (Form # 09PRP – Revised 5/2016) prescribed and provided by the board, and titled "Petition for Reduction of Penalty," accompanied by such evidence, statements, or documents as are therein required, and filed with the board at its office in Sacramento.

(h) A petitioner pursuant to Section 1000-10(c) Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii) whose license has been revoked or cancelled may not petition the board for reinstatement until two (2) years has elapsed since the effective date of the decision revoking the license or the date the license was cancelled.

NOTE: Authority cited: Sections 1000-4(b) 1000-10(c) Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii); Section 1003 Business and Professions Code; and Sections 11514 and 11522 Government Code. Reference: Sections 1000-4(b) and 1000-10(c) Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii).

§390.7. Sexual Contact With Patient.

Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c)(3) of Section 729 of the Business and Professions Code, shall contain an order of revocation. A proposed decision shall not contain a stay of the revocation.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii).
Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii).

§390.8. Required Actions Against Registered Sex Offenders.

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

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

(2) If the individual is licensed under (Chiropractic Initiative Act of California) the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation nor place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

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

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender, provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny or discipline a license under any other provision of state law.

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

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

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii).
Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii).

State of California
Edmund G. Brown Jr., Governor

Agenda Item 3
August 29, 2016

Legislative Update – SB 1194 (Hill) Professions and vocations: board actions and regulations

Purpose of the item

This agenda item has been included to provide the Board with an update on SB 1194 (Hill) Professions and vocations: board actions and regulations.

Action(s) requested

The Board will have an opportunity to review and discuss the August 19, 2016 amendments to SB 1194 (Hill). The Board will have an opportunity to take a position the bill.

Background

June 2016, SB 1195 (Hill) was brought to the attention of the Board. This bill was introduced in response to the North Carolina Board of Dental Examiners Supreme Court case. This bill would authorize the Director of the Department of Consumer Affairs (DCA) to review a decision or other action of a board within the DCA to determine whether it unreasonably restrains trade and to approve or disapprove the board decision or action. Practically speaking, the bill aims to ensure appropriate supervision of state regulatory boards, that regulatory boards are not engaging in anti-competitive behavior, and that their actions serve a clearly articulated state policy.

On June 2, 2016, SB 1195 (Hill) was placed on the inactive file. DCA has been working with the Senate Business, Professions, and Economic Development (B&P) Committee to provide technical assistance on new language.

At the June 9, 2016 Board of Chiropractic Examiners Government Affairs Committee meeting, members voted to take a watch position on the bill.

August 19, 2016, the following changes have been amended into SB 1194 (Hill):

- The language narrows the Director's review to only those board actions or decisions that are deemed market sensitive.
- It does not allow the Director to modify a board action or decision. The Director may simply approve or disapprove an action.
- It removes the proposed provision that would have prohibited an Executive Officer of any board from being a licensee of the board, committee or commission he/or she regulates.
- It does not apply to any board action taken before January 1, 2017.
- It requires the Director to issue and post on the DCA website, his or her final written decision on the board action with an explanation of the reasons for the decision.
- Removes the authority of a board or commission to override the Director's disapproval of a regulation, if the regulation does not further a clearly articulated and affirmatively expressed state policy.

- The language contains a provision that requires the public entity to pay for a judgement or settlement against a member of a regulatory board for an act or omission occurring within the scope of his or her capacity as a member or the regulatory board.

Recommendation(s)

Staff recommends the board takes a support position on the bill.

Next Step

N/A

Attachment(s)

- SB 1194 (Hill) Professions and vocations: board actions and regulations

AMENDED IN ASSEMBLY AUGUST 19, 2016

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE APRIL 21, 2016

AMENDED IN SENATE APRIL 11, 2016

SENATE BILL **No. 1194**

Introduced by Senator Hill

February 18, 2016

An act to amend Sections ~~2909.5, 2913, 2914, 2914.1, 2914.2, 2915, 2920, and 2933 of, to add Sections 2934.1 and 2988.5 to, and to repeal Section 2947 of, the Business and Professions Code, relating to healing arts.~~ *109, 116, 153, 307, 313.1 of the Business and Professions Code, and to amend Section 825 of the Government Code, relating to professional regulations.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1194, as amended, Hill. ~~Psychology: Board of Psychology: personnel.~~ *Professions and vocations: board actions and regulations.*

(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 the board making the decision or the Legislature, to review any nonministerial market-sensitive action, except as specified, of a board within the department to determine whether it furthers a clearly articulated and affirmatively expressed state policy and to approve, disapprove, or recommend modifications of the board action, as specified. The bill would require the director to issue and post on the department's Internet Web site his or her final written decision and the reasons for the decision. 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 and recommended modifications of board actions. The bill would require the director to review rules or regulations, as described above, within 60 days. The bill would require the director to disapprove a proposed rule or regulation that is a market-sensitive action that does not further clearly articulated and affirmatively expressed state policy and authorize him or her to recommend modifications.

(2) The Government Claims Act, 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. That act prohibits the payment of punitive or exemplary damages by a public entity, except as specified.

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. The bill would specify that treble damages awarded pursuant to a specified federal law for violation of another federal law are not punitive or exemplary damages within the Government Claims Act.

~~(1) Existing law, the Psychology Licensing Law (hereafter law), establishes the Board of Psychology to license and regulate the practice of psychology, and authorizes the board to employ all personnel necessary to carry out that law and to employ an executive officer, as specified. These provisions are in effect only until January 1, 2017.~~

~~This bill would extend those provisions to January 1, 2021.~~

~~(2) The law defines the practice of psychology as rendering or offering to render, for a fee, psychological services involving the application of psychological principles and methods, including the diagnosis, prevention, and treatment of psychological problems and emotional and mental disorders. The law prohibits unlicensed persons from practicing psychology, but authorizes unlicensed persons, including psychological assistants who meet certain requirements and do not provide psychological services to the public, except as an employee of a licensed psychologist, licensed physician, contract clinic, psychological corporation, or medical corporation, to perform limited psychological functions. The law also prohibits its provisions from being construed as restricting or preventing specified nonprofit community agency employees from carrying out activities of a psychological nature or using their official employment title, as specified, provided the employees do not render or offer to render psychological services. The law provides that a violation of any of its provisions is a misdemeanor.~~

~~This bill would recast these provisions to authorize an unlicensed person preparing for licensure as a psychologist to perform psychological functions under certain conditions, including registration with the board as a psychological assistant and immediate supervision by a licensed psychologist or physician and surgeon who is board certified in psychiatry, as specified. The bill would prohibit a psychological assistant from providing psychological services to the public except as a supervisee. The bill would expand the prohibition~~

~~on construing the law's provisions as restricting or preventing specified activities of nonprofit community agency employees by making this prohibition contingent on the employees' not rendering or offering to render psychological services to the public. By changing the definition of a crime, this bill would create a state-mandated local program.~~

~~(3) The law conditions the issuance of a psychology license upon an applicant having received any of certain kinds of doctorate degrees, from an accredited educational institution. The law requires, with certain exceptions, the board to issue renewal licenses for psychology only to those applicants who have completed 36 hours of approved continuing education in the preceding two years. Existing law prescribes a biennial license renewal fee of not more than $500. Existing law also requires a person applying for relicensure or for reinstatement to an active license to certify under penalty of perjury that he or she is in compliance with the continuing education requirements. Existing law requires continuing education instruction to be completed within the state or be approved for credit by the American Psychological Association or its equivalent.~~

~~This bill would revise and recast the doctorate degree requirements for licensure to include, until January 1, 2020, a doctorate degree from an unaccredited institution that is approved for operation by a specified entity. The bill would replace the term "continuing education" with "continuing professional development," define "continuing professional development," require a person applying for renewal or reinstatement to certify compliance with these requirements under penalty of perjury, require continuing professional courses to be approved by organizations approved by the board, as specified, and authorize the board to grant exemptions from, or extensions for compliance with, these requirements.~~

~~This bill would authorize the board to issue a retired license to a licensed psychologist if the psychologist has applied to the board for a retired license and pays a fee of not more than $75. The bill would also prohibit the holder of a retired license from engaging in the practice of psychology in the same manner as an active licensee. Because a violation of this prohibition would be a crime, the bill would impose a state-mandated local program.~~

~~(4) The law authorizes the board to appoint qualified persons to give the whole or any portion of any examination provided for in the law, to be designated as commissioners on examination.~~

~~This bill would repeal this authorization.~~

~~This bill would authorize the board to post on its Internet Web site the prescribed information regarding all current and former licensees.~~

~~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. Fiscal committee: yes. State-mandated local program: ~~yes~~ *no*.

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 *(1)* The director may intervene in any matter of any board where
20 an investigation by the Division of Investigation discloses probable
21 cause to believe that the conduct or activity of a board, or its
22 members or ~~employees~~ *employees,* constitutes a violation of
23 criminal law.
24 ~~The~~
25 *(2) The* term "intervene," as used in paragraph ~~(c)~~ *(1)* of this
26 section may include, but is not limited to, an application for a
27 restraining order or injunctive relief as specified in Section 123.5,
28 or a referral or request for criminal prosecution. For purposes of
29 this section, the director shall be deemed to have standing under
30 Section 123.5 and shall seek representation of the Attorney

General, or other appropriate counsel in the event of a conflict in pursuing that action.

(b) (1) For the purposes of this subdivision, the following definitions shall apply:

(A) "Action" includes nonministerial formal actions as voted on by a board and nonministerial informal decisions made by staff as a result of explicit or implied delegated authority to act on behalf of the board.

(B) Notwithstanding any other law, "board" means a board, committee, or commission within the Department of Consumer Affairs.

(C) "Market-sensitive actions" means those actions that create barriers to market participation and restrict competition, including, but not limited to, examination passage scores, advertising restrictions, price regulation, enlarging or restricting the scope of practice qualifications for licensure, and a pattern or program of disciplinary actions affecting multiple individuals that create barriers to market participation.

(D) "Clearly articulated and affirmatively expressed state policy" includes federal statutes and regulations, California state statutes and regulations, department policies, and executive orders.

(2) (A) (i) Within 60 days of an action taking place, the director may, upon his or her own initiative, and shall, upon request by the board making the decision or the Legislature, review any action by a board to determine if it is a market-sensitive action.

(ii) If the action is found to be a market-sensitive action, the director shall, within 90 days of receiving a request for a review or initiating a review pursuant to this section, further determine whether the market-sensitive action furthers a clearly articulated and affirmatively expressed state policy.

(iii) If the director initiates a review of an action, he or she shall notify the relevant board of the review and whether the review resulted from a contact made by a specific member of the Legislature, a specific organization, or a member of the public.

(iv) The director's decision to review an action under this section shall serve to cease implementation of the action until the review is finalized and the action is found to further a clearly articulated and affirmatively expressed state policy.

(v) Any review by the director under this subdivision shall include a full substantive review of the board action based upon

all the relevant facts in the record provided by the board and any additional information identified by the director.

(B) Upon completion of the review, the director shall take one of the following actions:

(i) Approve the action or decision upon determination that it furthers a clearly articulated and affirmatively expressed state policy.

(ii) Disapprove the action or decision if it does not further a clearly articulated and affirmatively expressed state policy. Upon disapproval, the director may recommend modifications to the board action that the board may vote to accept and resubmit for review by the director. If the board rejects the recommended modification, the board action shall not take effect.

(3) This subdivision shall not be construed to apply to any action taken by any board prior to January 1, 2017.

(c) The director shall issue, and post on the department's Internet Web site, his or her final written decision on the board action with an explanation of the reasons that action or decision does or does not further a clearly articulated and affirmatively expressed state policy and the rationale behind the director's decision.

(d) The review set forth in subdivision (b) shall not apply to the review of any regulation promulgated by a board, singular disciplinary action, official positions on legislation or legislative proposals, or any other sanction or citation imposed by a board upon a single licensee unless it is part of a pattern or program of disciplinary actions affecting multiple individuals that create barriers to market participation.

(e) The director shall report to the Chairs of the Senate Committee on Business, Professions, and Economic Development and the Assembly Committee on Business and Professions annually, commencing March 1, 2017, regarding his or her disapprovals and recommendations for modifications pursuant to this section. This report shall be submitted in compliance with Section 9795 of the Government Code.

(f) This section shall not be construed to affect, impede, or delay any disciplinary actions of any board, except those actions that are under review as part of a potential pattern or program of disciplinary actions affecting multiple individuals that create barriers to market participation.

(g) This section shall not affect, impede, or delay the availability of judicial review under any other law, including, but not limited to, Section 1085 of the Code of Civil Procedure.

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

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

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

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

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

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

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

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

313.1. (a) ~~Notwithstanding~~ *For the purposes of this section, the following definitions shall apply:*

(1) "Market-sensitive actions" means those actions that create barriers to market participation and restrict competition, including, but not limited to, examination passage scores, advertising restrictions, price regulation, enlarging or restricting the scope of practice qualifications for licensure, and a pattern or program of disciplinary actions affecting multiple individuals that create barriers to market participation.

(2) "Clearly articulated and affirmatively expressed state policy" includes federal statutes and regulations, California state statutes and regulations, department policies, and executive orders.

(b) Notwithstanding any other ~~provision of~~ law to the contrary, no rule or ~~regulation, except those relating to examinations and qualifications for licensure,~~ *regulation* and no fee change proposed or promulgated by any of the boards, commissions, or committees within the department, shall take effect pending compliance with this section.

~~(b)~~

(c) The director shall be formally notified of and shall ~~be provided a full opportunity to~~ review, in accordance with the requirements of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, and this section, all of the following:

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

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

(3) Final rulemaking records.

(4) All relevant facts in the rulemaking record, which may include data, public comments, or other documentary evidence pertaining to the proposed regulation to determine whether it furthers a clearly articulated and affirmatively expressed state policy.

~~(c)~~

(d) The submission of all notices and final rulemaking records to the director and the ~~completion of the director's review,~~ *director's approval,* as authorized by this section, shall be a precondition to the filing of any rule or regulation with the Office

of Administrative Law. The Office of Administrative Law shall have no jurisdiction to review a rule or regulation subject to this section until after ~~the completion of~~ the director's review and ~~only then if the director has not disapproved it.~~ *approval.* The filing of any document with the Office of Administrative Law shall be accompanied by a certification that the board, commission, or committee has complied with the requirements of this section.

~~(d)~~

(e) (1) Following the receipt of any final rulemaking record subject to subdivision (a), the director shall ~~have the authority for a period of 30 days to disapprove a proposed rule or regulation~~ *approve or disapprove a proposed rule or regulation within 60 days. Disapproval shall only be allowed* on the ground that it is injurious to the public health, safety, or ~~welfare.~~ *welfare or is a market-sensitive action that does not further a clearly articulated and affirmatively expressed state policy.*

(2) If the regulation is a market-sensitive action that does not further a clearly articulated and affirmatively expressed state policy, it shall be disapproved. If the director disapproves the regulation because it is a market-sensitive action that does not further a clearly articulated and affirmatively expressed state policy, he or she may recommend modifications. The disapproval shall be in writing and express the director's rationale for the disapproval.

~~(e)~~

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

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

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

(3) *(A)* If the director disapproves a rule or regulation, it shall have no force or effect unless, within 60 days of the notice of disapproval, (A) the disapproval is overridden by a unanimous vote of the members of the board, commission, or committee, and (B) the board, commission, or committee files the final rulemaking record with the Office of Administrative Law in compliance with this section and the procedures required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(B) Any regulation disapproved because it does not further a clearly articulated and affirmatively expressed state policy shall not be subject to this subdivision.

~~(f) Nothing in this~~

(g) This section shall *not* be construed to prohibit the director from affirmatively approving a proposed rule, regulation, or fee change at any time within the 30-day period after it has been submitted to him or her, in which event it shall become effective upon compliance with this section and the procedures required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(h) This section shall not affect, impede, or delay the availability of judicial review under any other law, including, but not limited to, Section 1085 of the Code of Civil Procedure.

SEC. 6. Section 825 of the Government Code is amended to read:

825. (a) Except as otherwise provided in this section, if an employee or former employee of a public entity 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 and 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, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed.

If the public entity conducts the defense of an employee or former employee against any claim or action with his or her reasonable good-faith cooperation, the public entity shall pay any judgment based thereon or any compromise or settlement of the

claim or action to which the public entity has agreed. However, where the public entity conducted the defense pursuant to an agreement with the employee or former employee reserving the rights of the public entity not to pay the judgment, compromise, or settlement until it is established that the injury arose out of an act or omission occurring within the scope of his or her employment as an employee of the public entity, the public entity is required to pay the judgment, compromise, or settlement only if it is established that the injury arose out of an act or omission occurring in the scope of his or her employment as an employee of the public entity.

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

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

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

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

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

As used in this subdivision with respect to an entity of state government, "a decision of the governing body" means the approval of the Legislature for payment of that part of a judgment that is for punitive damages or exemplary damages, upon recommendation of the appointing power of the employee or former employee, based upon the finding by the Legislature and the appointing authority of the existence of the three conditions for payment of a punitive or exemplary damages claim. The provisions of subdivision (a) of Section 965.6 shall apply to the payment of any claim pursuant to this subdivision.

The discovery of the assets of a public entity and the introduction of evidence of the assets of a public entity shall not be permitted

in an action in which it is alleged that a public employee is liable for punitive or exemplary damages.

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

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

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

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

(f) (1) Except as provided in paragraph (2), a public entity shall not pay a judgment, compromise, or settlement arising from a claim or action against an elected official, if the claim or action is based on conduct by the elected official by way of tortiously intervening or attempting to intervene in, or by way of tortiously influencing or attempting to influence the outcome of, any judicial action or proceeding for the benefit of a particular party by contacting the trial judge or any commissioner, court-appointed arbitrator, court-appointed mediator, or court-appointed special referee assigned to the matter, or the court clerk, bailiff, or marshal after an action has been filed, unless he or she was counsel of record acting lawfully within the scope of his or her employment on behalf of that party. Notwithstanding Section 825.6, if a public entity conducted the defense of an elected official against such a

claim or action and the elected official is found liable by the trier of fact, the court shall order the elected official to pay to the public entity the cost of that defense.

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

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

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

(g) Notwithstanding subdivision (a), a public entity shall pay for 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 official capacity as a member of a regulatory board.

(h) Treble damages awarded pursuant to the federal Clayton Act (Sections 12 to 27, inclusive, of Title 15 of, and Sections 52 and 53 of Title 29 of, the United States Code) for a violation of the federal Sherman Act (Sections 1 to 7, inclusive, of Title 15 of the United States Code) are not punitive or exemplary damages under the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) for purposes of this section.

~~SECTION 1. Section 2909.5 of the Business and Professions Code is amended to read:~~

~~2909.5. This chapter shall not be construed as restricting or preventing activities of a psychological nature or the use of the official title of the position for which persons were employed on the part of persons who meet the educational requirements of subdivision (b) of Section 2914 and who have one year or more of the supervised professional experience referenced in subdivision (c) of Section 2914, if they are employed by nonprofit community~~

~~agencies that receive a minimum of 25 percent of their financial support from any federal, state, county, or municipal governmental organizations for the purpose of training and providing services, provided those persons are performing those activities as part of the duties for which they were employed, are performing those activities solely within the confines of or under the jurisdiction of the organization in which they are employed and do not render or offer to render psychological services to the public, as defined in Section 2903. Those persons shall be registered by the agency with the board at the time of employment and shall be identified in the setting as a "registered psychologist." Those persons shall be exempt from this chapter for a maximum period of 30 months from the date of registration.~~

~~SEC. 2. Section 2913 of the Business and Professions Code is amended to read:~~

~~2913. A person other than a licensed psychologist may perform psychological functions in preparation for licensure as a psychologist only if all of the following conditions are met:~~

~~(a) The person shall register himself or herself with the board as a "psychological assistant." This registration shall be renewed annually in accordance with regulations adopted by the board.~~

~~(b) The person (1) has completed a master's degree in psychology or education with the field of specialization in psychology or counseling psychology, or (2) has been admitted to candidacy for a doctoral degree in psychology or education with the field of specialization in psychology or counseling psychology, after having satisfactorily completed three or more years of postgraduate education in psychology and having passed preliminary doctoral examinations, or (3) has completed a doctoral degree that qualifies for licensure under Section 2914.~~

~~(c) (1) The psychological assistant is at all times under the immediate supervision, as defined in regulations adopted by the board, of a licensed psychologist, or a licensed physician and surgeon who is certified in psychiatry by the American Board of Psychiatry and Neurology, who shall be responsible for insuring that the extent, kind, and quality of the psychological services that the psychological assistant performs are consistent with his or her training and experience and be responsible for the psychological assistant's compliance with this chapter and regulations.~~

~~(2) A licensed psychologist or board certified psychiatrist shall not supervise more than three psychological assistants at any given time. No psychological assistant may provide psychological services to the public except as a supervisee pursuant to this section.~~

~~(d) The psychological assistant shall comply with regulations that the board may, from time to time, duly adopt relating to the fulfillment of requirements in continuing education.~~

~~SEC. 3. Section 2914 of the Business and Professions Code is amended to read:~~

~~2914. Each applicant for licensure shall comply with all of the following requirements:~~

~~(a) Is not subject to denial of licensure under Division 1.5 (commencing with Section 475).~~

~~(b) Possess an earned doctorate degree (1) in psychology, (2) in educational psychology, or (3) in education with the field of specialization in counseling psychology or educational psychology. Except as provided in subdivision (h), this degree or training shall be obtained from an accredited university, college, or professional school. The board shall make the final determination as to whether a degree meets the requirements of this section.~~

~~(c) (1) On or after January 1, 2020, possess an earned doctorate degree in psychology, in educational psychology, or in education with the field of specialization in counseling psychology or educational psychology from a college or institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education. Until January 1, 2020, the board may accept an applicant who possesses a doctorate degree in psychology, educational psychology, or in education with the field of specialization in counseling psychology or educational psychology from an institution that is not accredited by an accrediting agency recognized by the United States Department of Education, but is approved to operate in this state by the Bureau for Private Postsecondary Education.~~

~~(2) No educational institution shall be denied recognition as an accredited academic institution solely because its program is not accredited by any professional organization of psychologists, and nothing in this chapter or in the administration of this chapter shall require the registration with the board by educational institutions~~

~~of their departments of psychology or their doctoral programs in psychology.~~

~~(3) An applicant for licensure trained in an educational institution outside the United States or Canada shall demonstrate to the satisfaction of the board that he or she possesses a doctorate degree in psychology that is equivalent to a degree earned from a regionally accredited university in the United States or Canada. These applicants shall provide the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), and any other documentation the board deems necessary.~~

~~(d) (1) Have engaged for at least two years in supervised professional experience under the direction of a licensed psychologist, the specific requirements of which shall be defined by the board in its regulations, or under suitable alternative supervision as determined by the board in regulations duly adopted under this chapter, at least one year of which shall be after being awarded the doctorate in psychology. The supervisor shall submit verification of the experience required by this subdivision to the trainee in a manner prescribed by the board. If the supervising licensed psychologist fails to provide verification to the trainee in a timely manner, the board may establish alternative procedures for obtaining the necessary documentation. Absent good cause, the failure of a supervising licensed psychologist to provide the verification to the board upon request shall constitute unprofessional conduct.~~

~~(2) The board shall establish qualifications by regulation for supervising psychologists.~~

~~(e) Take and pass the examination required by Section 2941 unless otherwise exempted by the board under this chapter.~~

~~(f) Show by evidence satisfactory to the board that he or she has completed training in the detection and treatment of alcohol and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after September 1, 1985.~~

~~(g) (1) Show by evidence satisfactory to the board that he or she has completed coursework in spousal or partner abuse assessment, detection, and intervention. This requirement applies to applicants who began graduate training during the period~~

~~commencing on January 1, 1995, and ending on December 31, 2003.~~

~~(2) An applicant who began graduate training on or after January 1, 2004, shall show by evidence satisfactory to the board that he or she has completed a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. An applicant may request an exemption from this requirement if he or she intends to practice in an area that does not include the direct provision of mental health services.~~

~~(3) Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. This requirement for coursework shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.~~

~~(h) Until January 1, 2020, an applicant holding a doctoral degree in psychology from an approved institution is deemed to meet the requirements of this section if both of the following are true:~~

~~(1) The approved institution offered a doctoral degree in psychology designed to prepare students for a license to practice psychology and was approved by the former Bureau for Private Postsecondary and Vocational Education on or before July 1, 1999.~~

~~(2) The approved institution has not, since July 1, 1999, had a new location, as described in Section 94823.5 of the Education Code.~~

~~SEC. 4. Section 2914.1 of the Business and Professions Code is amended to read:~~

~~2914.1. The board shall encourage every licensed psychologist to take continuing professional development in geriatric pharmacology.~~

~~SEC. 5. Section 2914.2 of the Business and Professions Code is amended to read:~~

~~2914.2. The board shall encourage licensed psychologists to take continuing professional development in psychopharmacology and biological basis of behavior.~~

~~SEC. 6. Section 2915 of the Business and Professions Code is amended to read:~~

~~2915. (a) Except as provided in this section, the board shall issue a renewal license only to an applicant who has completed 36 hours of approved continuing professional development in the preceding two years.~~

~~(b) Each person who applies to renew or reinstate his or her license issued pursuant to this chapter shall certify under penalty of perjury that he or she is in compliance with this section and shall retain proof of this compliance for submission to the board upon request. False statements submitted pursuant to this section shall be a violation of Section 2970.~~

~~(c) Continuing professional development means certain continuing education learning activities approved in four different categories:~~

~~(1) Professional.~~

~~(2) Academic.~~

~~(3) Sponsored continuing education coursework.~~

~~(4) Board certification from the American Board of Professional Psychology.~~

~~The board may develop regulations further defining acceptable continuing professional development activities.~~

~~(d) (1) The board shall require a licensed psychologist who began graduate study prior to January 1, 2004, to take a continuing education course during his or her first renewal period after the operative date of this section in spousal or partner abuse assessment, detection, and intervention strategies, including community resources, cultural factors, and same gender abuse dynamics. Equivalent courses in spousal or partner abuse assessment, detection, and intervention strategies taken prior to the operative date of this section or proof of equivalent teaching or practice experience may be submitted to the board and at its discretion, may be accepted in satisfaction of this requirement.~~

~~(2) Continuing education courses taken pursuant to this subdivision shall be applied to the 36 hours of approved continuing professional development required under subdivision (a).~~

~~(e) Continuing education courses approved to meet the requirements of this section shall be approved by organizations approved by the board. An organization previously approved by~~

~~the board to provide or approve continuing education is deemed approved under this section.~~

~~(f) The board may accept sponsored continuing education courses that have been approved by a private, nonprofit organization that has demonstrated to the board in writing that it has, at a minimum, a 10-year history of providing educational programming for psychologists and has documented procedures for maintaining a continuing education approval program. The board shall adopt regulations as necessary for implementing this section.~~

~~(g) The board may grant an exemption, or an extension of the time for compliance with, from the continuing professional development requirement of this section.~~

~~(h) The administration of this section may be funded through professional license fees and continuing education provider and course approval fees, or both. The fees related to the administration of this section shall not exceed the costs of administering the corresponding provisions of this section.~~

~~SEC. 7. Section 2920 of the Business and Professions Code is amended to read:~~

~~2920. (a) The Board of Psychology shall enforce and administer this chapter. The board shall consist of nine members, four of whom shall be public members.~~

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

~~(c) Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.~~

~~SEC. 8. Section 2933 of the Business and Professions Code is amended to read:~~

~~2933. (a) Except as provided by Section 159.5, the board shall employ and shall make available to the board within the limits of the funds received by the board all personnel necessary to carry out this chapter. The board may employ, exempt from the State Civil Service Act, an executive officer to the Board of Psychology. The board shall make all expenditures to carry out this chapter. The board may accept contributions to effectuate the purposes of this chapter.~~

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

~~SEC. 9. Section 2934.1 is added to the Business and Professions Code, to read:~~

~~2934.1. (a) The board may post on its Internet Web site the following information on the current status of the license for all current and former licensees:~~

~~(1) Whether or not the licensee has a record of a disciplinary action.~~

~~(2) Any of the following enforcement actions or proceedings against the licensee:~~

~~(A) Temporary restraining orders.~~

~~(B) Interim suspension orders.~~

~~(C) Revocations, suspensions, probations, or limitations on practice ordered by the board or by a court with jurisdiction in the state, including those made part of a probationary order, cease practice order, or stipulated agreement.~~

~~(D) Accusations filed by the board, including those accusations that are on appeal, excluding ones that have been dismissed or withdrawn where the action is no longer pending.~~

~~(E) Citations issued by the board. Unless withdrawn, citations shall be posted for five years from the date of issuance.~~

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

~~(1) Institutions that awarded the qualifying educational degree and type of degree awarded.~~

~~(2) A link to the licensee's professional Internet Web site.~~

~~(c) The board may also post other information designated by the board in regulation.~~

~~SEC. 10. Section 2947 of the Business and Professions Code is repealed.~~

~~SEC. 11. Section 2988.5 is added to the Business and Professions Code, to read:~~

~~2988.5. (a) The board may issue, upon an application prescribed by the board and payment of a fee not to exceed seventy-five dollars ($75), a retired license to a psychologist who holds a current license issued by the board, or one capable of being renewed, and whose license is not suspended, revoked, or otherwise restricted by the board or subject to discipline under this chapter.~~

~~(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active license is~~

~~required. A psychologist holding a retired license shall be permitted to use the title "psychologist, retired" or "retired psychologist." The designation of retired shall not be abbreviated in any way.~~

~~(c) A retired license shall not be subject to renewal.~~

~~(d) The holder of a retired license may apply to obtain an active status license as follows:~~

~~(1) If that retired license was issued less than three years prior to the application date, the applicant shall meet all of the following requirements:~~

~~(A) Has not committed an act or crime constituting grounds for denial or discipline of a license.~~

~~(B) Pays the renewal fee required by this chapter.~~

~~(C) Completes the continuing professional development required for the renewal of a license within two years of the date of application for restoration.~~

~~(D) Complies with the fingerprint submission requirements established by the board.~~

~~(2) Where the applicant has held a retired license for three or more years, the applicant shall do all of the following:~~

~~(A) Submit a complete application for a new license.~~

~~(B) Take and pass the California Psychology Law and Ethics Examination.~~

~~(C) Pay all fees required to obtain a new license.~~

~~(D) Comply with the fingerprint submission requirements established by the board.~~

~~(E) Be deemed to have met the educational and experience requirements of subdivisions (b) and (c) of Section 2914.~~

~~(F) Establish that he or she has not been subject to denial or discipline of a license.~~

~~SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

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