

LAWS RELATING TO THE PRACTICE
OF
OSTEOPATHIC MEDICINE



Issued by:
Osteopathic Medical Board
of California

2000

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STATE OF CALIFORNIA

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PREFACE

The Osteopathic Physician and Surgeon

"There are two types of complete physicians in the United States, One has an M.D. (doctor of medicine) degree, and the other has a D.O. (doctor of osteopathic medicine) degree. So what's the difference?

In the first place, let's define what we mean by "complete" physician. In general use of the term, a complete, fully trained physician has taken the prescribed amount of premedical training, graduated from an undergraduate college, and received four years of training in medical school. The young physician then takes a year's internship in a hospital with an approved intern-training program. If he or she elects to enter any one of a number of medical specialties, the doctor engages in a further two- to six-year residency program. Whether one becomes a D.O. or M.D., the route of complete medical training is basically the same. The difference is that the osteopathic physician receives additional training in what the osteopathic profession believes to be a most significant factor in comprehensive health care . . .

D.O.'s and M.D.'s are alike in that they both utilize all scientifically accepted methods of diagnosis and treatment, including the use of drugs and surgery. Educational requirements are the same, and . . . osteopathic physicians are licensed to practice all phases of medicine in all of the 50 states of the Union.

Physicians and surgeons, D.O., do, however, have an additional dimension to their training and practice, one not taught in medical schools giving M.D. degrees. The D.O. recognizes that the musculoskeletal system (the muscles, bones, and joints) make up over 60 percent of body mass. He or she also recognizes that all body systems, including the musculoskeletal system, are interdependent, and a disturbance in one causes altered function in other systems of the body. This interrelationship of body systems is effected through the nervous and circulatory systems. The emphasis on the relationship between body structure and organic functioning gives a broader base for the treatment of the patient as a unit. These concepts require a thorough understanding of anatomy and the development of special skills in recognizing (diagnosing) and correcting (treating) structural problems through manipulative therapy. Physicians and surgeons, D.O., use structural diagnosis and manipulative therapy along with all of the other more traditional forms of diagnosis and treatment to care effectively for patients and to relieve their distress . . ."

American Osteopathic Association, "What is a D.O.? What is an M.D.?" October 1982

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OSTEOPATHIC ACT (Original Initiative Act of 1922)

[Submitted by the Initiative and approved by electors November 7, 1922.
In effect December 21, 1922.]

An act to establish a board of osteopathic examiners, to provide for their appointment, and to prescribe their powers and duties; to regulate the examination of applicants, who are graduates of osteopathic schools, for any form of certificate to treat disease, injuries, deformities or other physical or mental conditions; to regulate the practice of those so licensed, who are graduates of osteopathic schools; to impose upon said board of osteopathic examiners all duties and functions, relating to graduates of osteopathic schools, holding or applying for any form of certificate or license, heretofore exercised and performed by the Board of Medical Examiners of the State of California under the provisions of the state Medical Practice Act, approved June 2, 1913, and acts amendatory thereof.

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

SECTION I. A self-sustaining Board of Osteopathic Examiners to consist of five members and to be known as the "Board of Osteopathic Examiners of the State of California" is hereby created and established. The governor shall appoint the members of the board, each of whom shall have been a citizen of this state for at least five years next preceding his appointment. Each of the members shall be appointed from among persons who are graduates of osteopathic schools who hold unrevoked licenses or certificates to practice in this state. The governor shall fill by appointment all vacancies on the board. The term of office of each member shall be three years; provided, that of the first board appointed, one shall be appointed for one year, two for two years, and two for three years, and that thereafter all appointments shall be for three years, except that appointments to fill vacancies shall be for the unexpired term only. The governor shall have power to remove from office any member of the board for neglect of duty, for incompetency, or for unprofessional conduct. Each member of the board shall, before entering upon the duties of his office, take the constitutional oath of office. All fees collected on behalf of the Board of Osteopathic Examiners and all receipts of every kind and nature, shall be reported at the beginning of each month for the month preceding, to the state controller and at the same time the entire amount must be paid into the state treasury and shall be credited to a fund to be known as the Board of Osteopathic Examiners Contingent Fund, which fund is hereby created. Such contingent fund shall be for the use of the Board of Osteopathic Examiners and out of it and not otherwise shall be paid all expenses of the board. Necessary traveling expenses and a per diem of not to exceed ten dollars (\$10.00) for each day of actual service in the discharge of official duties may be paid each member of the board, provided the fees and other receipts of the board are sufficient to meet this expense.

The Governor shall appoint the members of said board within thirty days after this act takes effect. The board shall

be organized within sixty days after the appointment of its members by the Governor by electing from its number a president, vice president and a secretary who shall also be the treasurer, who shall hold their respective positions during the pleasure of the board. The board shall hold one meeting annually beginning on the second Tuesday in January in the city of Sacramento with power of adjournment from time to time until its business is concluded. Special meetings of the board may be held at such time and place as the board may designate. Notice of each regular or special meeting shall be given twice a week for two weeks next preceding each meeting in one daily paper published in the city of San Francisco, one published in the city of Sacramento, and one published in the city of Los Angeles which notice shall also specify the time and place of holding the examination of applicants. The secretary of the board, or the chairman of the committee may call meetings of any duly appointed committee of the board at a specified time and place and it shall not be necessary to advertise such committee meetings. The board shall receive through its secretary applications for certificates to be issued by said board and shall, on or before the first day of January in each year transmit to the Governor a full report of all its proceedings together with a report of its receipts and disbursements.

The office of the board shall be in the city of Sacramento. Sub-offices may be established in Los Angeles and San Francisco and such records as may be necessary may be transferred temporarily to such sub-offices. Legal proceedings against the board may be instituted in any one of said three cities.

The board may from time to time adopt such rules as may be necessary to enable it to carry into effect the provisions of this act. It shall require the affirmative vote of three members of said board to carry any motion or resolution, to adopt any rules, pass any measure or to authorize the issuance or the revocation of any certificate. Any member of the board may administer oaths in all matters pertaining to the duties of the board and the board shall have authority to take evidence in any matter cognizable by it. The board shall keep an official record of its proceedings, apart of which record shall consist of a register of all applicants for certificates under this act together with the action of the board upon each application.

The board shall have the power to employ legal counsel to advise and assist it in connection with all matters cognizable by the board or in connection with any litigation or legal proceedings instituted by or against said board and may also employ inspectors, special agents and investigators, and such clerical assistance as it may deem necessary to carry into effect the provisions of this act. The board may fix the compensation to be paid for such services and may incur such other expense as it may deem necessary;

provided, however, that all of such expense shall be payable only from the said fund hereinbefore provided for and to be known as the Board of Osteopathic Examiners Contingent Fund.

Every applicant for any form of certificate shall pay to the secretary-treasurer of the board the fees prescribed by law. Every licentiate, or certificate holder, subject to the jurisdiction of this board, shall on or before the first day of January of each year pay to the secretary-treasurer the annual tax and registration fee prescribed by law.

SECTION 2. All persons who are graduates of osteopathic schools and who desire to apply for any form of certificate mentioned or provided for in the state Medical Practice Act, approved June 2, 1913, and all acts amendatory thereof, shall make application therefor, to said Board of Osteopathic Examiners and not to the Board of Medical Examiners of the State of California. The Board of Osteopathic Examiners in respect to graduates of osteopathic schools, applying for any form of certificate mentioned or provided for in the state Medical Practice Act, approved June 2, 1913, and all acts amendatory thereof, is hereby authorized and directed to carry out the terms and provisions of the state Medical Practice Act, approved June 2, 1913, and all acts amendatory thereof, and all laws hereafter enacted prescribing and regulating the approval of schools, the qualifications of applicants for examination for any form of certificate, the applications for any form of certificate, the admission of applicants to examinations for any form of certificate, the conduct of examinations, the issuance of any form of certificate, the collection of fees from applicants, the collection of an annual tax and registration fee, the compilation and issuance of a directory, the revocation of any form of license or certificate, the prosecution of persons who attempt to practice without a certificate, and all other matters relating to the graduates of osteopathic schools, holding or applying for any form of certifi-

cate or license. Every applicant to said Board of Osteopathic Examiners for any form of certificate shall pay to the secretary-treasurer of the board the fees prescribed for such application by said state Medical Practice Act, approved June 2, 1913, or any acts amendatory thereof or laws hereafter enacted. Said Board of Osteopathic Examiners shall in respect to all the matters aforesaid, relating to graduates of osteopathic schools, applying for or holding any form of certificate or license, take over, exercise and perform all the functions and duties imposed upon and heretofore exercised or performed by the Board of Medical Examiners of the State of California under the provisions of the state Medical Practice Act, approved June 2, 1913, and acts amendatory thereof. The provisions of said state Medical Practice Act, approved June 2, 1913, acts amendatory thereof are hereby declared to be applicable to said Board of Osteopathic Examiners in respect to all of the aforesaid matters and all other matters now or hereafter prescribed by law relating to the graduates of osteopathic colleges holding or applying for any form of certificate or license. In no other respects than as herein provided shall the jurisdiction, duties or functions of said Board of Medical Examiners of the State of California be in any wise limited or changed; nor shall the Board of Osteopathic Examiners have any power or jurisdiction over the graduates of any other than osteopathic schools. From and after the time of the organization of the Board of Osteopathic Examiners said Board of Medical Examiners of the State of California, shall have no further jurisdiction, duties or functions with respect to graduates of osteopathic schools holding or applying for any form of certificate or license and the said jurisdiction, duties and functions shall be assumed and performed by said Board of Osteopathic Examiners.

SECTION 3. This act shall be known and cited as the "**Osteopathic Act.**"

OSTEOPATHIC ACT AS SUBSEQUENTLY AMENDED SINCE 1962

The 1922 Osteopathic Act was amended by the State electorate in 1962 (Chapter 48, 1962 First Extraordinary Session, page 337). The purpose of these amendments were threefold: (1) Osteopathic physicians and surgeons who chose to be known as "M.D.'s" were required to be under the jurisdiction of the State Medical Board instead of the Board of Osteopathic Examiners; (2) The state legislature was authorized to amend or modify the Osteopathic Act; and (3) Section 2 of the 1922 Osteopathic Act was modified to rescind the authority of the Board of Osteopathic Examiners to issue osteopathic physicians' and surgeons' licenses. The two objectives of "M.D." election and authorization for legislative amendment were upheld by the state courts in 1974 and 1975 (see Board of Osteopathic Examiners vs Board of Medical Examiners 53 C.A. 3d 78). However, the Board of Osteopathic Examiners was empowered to enforce the licensing provisions of the 1922 Osteopathic Act in 1974 when the Supreme Court of the State of California held that the 1962 attempts to repeal Section 2 of the 1922 Initiative Act were nullified. The net effect of this ruling was the restoration of the Osteopathic Board's authority, pursuant to the original Section 2 of the 1922 Initiative Act, to administer those provisions as they relate to the licensing of osteopathic physicians and surgeons. (*D'Amico vs Board of Medical Examiners 11 C.3d 1, page 24*).

With the exception of the restoration of section 2 of the 1922 Initiative Act as it relates with licensing, the Osteopathic Act, as presently codified, is found in Business and Professions Code Sections 3600-1 through -5 in West's Annotated California Codes and in Appendix 2 of Deering's Business and Professions Code. In addition to the 1962 amendments, Section I of the Osteopathic Act was amended by the legislature in 1969 and again in 1971; other sections were also added in 1982.

SECTION 3600-1. Osteopathic Medical Board of California. A self-sustaining Osteopathic Medical Board of California to consist of five members and to be known as the "Osteopathic Medical Board of California" is hereby created and established. The Governor shall appoint the members of the board, each of whom shall have been a citizen of this state and in active practice for at least five years next preceding his or her appointment. Each of the members shall be appointed from among persons who are graduates of osteopathic schools who hold unrevoked physician's and surgeon's D.O. licenses or certificates to practice in this state. No one residing or practicing outside of this state may be appointed to, or sit as a member of, the board. The Governor shall fill by appointment all vacancies on the board for the unexpired term. The term of office of each member shall be three years; provided, that of the first board appointed, one shall be appointed for one year, two for two years, and two for three years, and that thereafter all appointments shall be for three years, except that appointments to fill vacancies shall be for the unexpired term only. No member shall serve for more than three full consecutive terms. The Governor shall have power to re-

move from office any member of the board for neglect of duty required by the Osteopathic Act or Medical Practice Act, for no longer complying with the residency or practice requirements of this section, for incompetency, or for unprofessional conduct. Each member of the board shall, before entering upon the duties of his or her office, take the constitutional oath of office. All fees collected on behalf of the Osteopathic Medical Board of California and all receipts of every kind and nature, shall be reported at the beginning of each month for the month preceding, to the Controller and at the same time the entire amount must be paid into the State Treasury and shall be credited to a fund to be known as the Osteopathic Medical Board of California Contingent Fund, which fund is hereby created. The contingent fund shall be for the use of the Osteopathic Medical Board of California and out of it and not otherwise shall be paid all expenses of the board. Each member of the board shall receive a per diem and expenses as provided in Section 103, provided the fees and other receipts of the board are sufficient to meet this expense.

The Governor shall appoint the members of the board within 30 days after this act takes effect. The board shall be organized within 60 days after the appointment of its members by the Governor by electing from its number a president, vice president, and a secretary who shall also be the treasurer, who shall hold their respective positions during the pleasure of the board. The board shall hold one meeting during the first quarter of each calendar year at a time and place designated by the board with power of adjournment from time to time until its business is concluded. Special meetings of the board may be held at such time and place as the board may designate. Notice of each regular or special meeting shall be given twice a week for two weeks next preceding each meeting in one daily paper published in the City of San Francisco, one published in the City of Sacramento, and one published in the City of Los Angeles which notice shall also specify the time and place of holding the examination of applicants. The secretary of the board upon an authorization from the president of the board, or the chairperson of the committee may call meetings of any duly appointed committee of the board at a specified time and place and it shall not be necessary to advertise those committee meetings. The board shall receive through its secretary applications for certificates to be issued by the board and shall, on or before the first day of January in each year transmit to the Governor a full report of all its proceedings together with a report of its receipts and disbursements.

The office of the board shall be in the City of Sacramento, Suboffices may be established in Los Angeles and San Francisco and records as may be necessary may be transferred temporarily to those suboffices. Legal proceedings against the board may be instituted in any one of the three cities.

The board may from time to time adopt rules as may be necessary to enable it to carry into effect the provisions of this act. It shall require the affirmative vote of three mem-

bers of the board to carry any motion or resolution, to adopt any rules, pass any measure or to authorize the issuance or the revocation of any certificate. Any member of the board may administer oaths in all matters pertaining to the duties of the board and the board shall have authority to take evidence in any matter cognizable by it. The board shall keep an official record of its proceedings, a part of which record shall consist of a register of all applicants for certificates under this act together with the action of the board upon each application.

The board shall have the power to employ legal counsel to advise and assist it in connection with all matters cognizable by the board or in connection with any litigation or legal proceedings instituted by or against the board and may also employ clerical assistance as it may deem necessary to carry into effect this act. The board may fix the compensation to be paid for those services and may incur other expense as it may deem necessary; provided, however, that all of that expense shall be payable only from the fund hereinbefore provided for and to be known as the Osteopathic Medical Board of California Contingent Fund.

(Amended by Stats. 1991, Ch. 359 (A.B. 1332), § 39.)

SECTION 3600-1.5. Osteopathic Medical Board of California; public members. In addition to the five members of the Osteopathic Medical Board of California as provided for in Section I, there shall be two public members on the board. The public members shall not be a licensee of any board in Division 2 (commencing with Section 500) of the Business and Professions Code or of any initiative act referred to in that division. The public members shall be appointed by the Governor for a term of three years and shall not serve for more than three full consecutive terms.

(Amended by Stats. 1991, Ch. 359 (A.B. 1332), § 40.)

SECTION 3600-2. Enforcement of certain provisions of medical practice act; exemptions. The Osteopathic Medical Board of California shall enforce those portions of the Medical Practice Act identified as Article 12 (commencing with Section 2220), of Chapter 5 of Division 2 of the Business and Professions Code, as now existing or hereafter amended, as to persons who hold certificates subject to the jurisdiction of the Osteopathic Medical Board of California, however, persons who elect to practice using the term or suffix "M.D." as provided in Section 2275 of the Business and Professions Code, as now existing or

hereafter amended, shall not be subject to this section, and the Medical Board of California shall enforce the provisions of the article as to persons who make the election. After making the election, each person so electing shall apply for renewal of his or her certificate to the Medical Board of California, and the Medical Board of California shall issue renewal certificates in the same manner as other renewal certificates are issued by it.

(Amended by Stats. 1991, Ch. 359 (A.B. 1332) § 41.)

SECTION 3600-3. Authority of legislature to amend or repeal act; appropriation. This act, as amended, may be further amended or modified by the Legislature. In addition to the power to amend or modify, the Legislature shall have the power to repeal this act, as amended, in its entirety, and transfer any or all of its functions to the Medical Board of California, in the event that the number of persons who are subject to the jurisdiction of the Osteopathic Medical Board of California reaches 40 or fewer. The Legislature shall, from time to time, appropriate to the Medical Board of California, and in particular for the contingent fund of the board, any sums as may be reasonably necessary for the purpose of carrying out its functions and duties.

(Amended by Stats. 1991, Ch. 359 (A.B. 1332), § 42.)

SECTION 3600-4. Short Title. This act shall be known and cited as the "Osteopathic Act."

SECTION 3600-5. Physician's and surgeon's certificate; unprofessional conduct; renewal of prior certificates. Notwithstanding any other provision of law, on and after the effective date of this section, a graduate of an osteopathic medical school shall apply for a physician's and surgeon's certificate from the Osteopathic Medical Board of California, which has the sole power to issue a physician's and surgeon's certificate to an osteopathic-trained physician and surgeon.

It shall be unprofessional conduct for a physician and surgeon licensed by the Osteopathic Medical Board of California to apply for a physician's and surgeon's certificate from a board other than the Osteopathic Medical Board of California.

This section shall not prohibit the renewal of a physician's and surgeon's certificate which was issued by a board other than the Osteopathic Medical Board of California prior to the effective date of this section.

(Amended by Stats. 1991, Ch. 359 (A.B. 1332), § 43.)

GENERAL PROVISIONS OF THE BUSINESS AND PROFESSIONS CODE

Section

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12.5	Citations-Violation of Regulations
14.1	Man or Men as Person or Persons
22	"Board" Defined
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Conviction of a Crime

7.5. A conviction within the meaning of this code means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) of Section 480.

Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(Added by Stats. 1979, Ch. 876.)

Citations-Violation of Regulations

12.5. Whenever in any provision of this code authority is granted to issue a citation for a violation of any provision of this code, that authority also includes the authority to issue a citation for the violation of any regulation adopted pursuant to any provision of this code.

(Added by Stats. 1986, Ch. 1379.)

Man or Men as Person or Persons

14.1. The Legislature hereby declares its intent that **the terms "man" or "men" where appropriate shall be deemed "person" or "persons" and any references to the terms "man" or "men" in sections of this code be changed to "person" or "persons" when such code sections are being amended for any purpose. This act is declaratory and not amendatory of existing law.**

"Board" Defined

22. (a) "Board," as used in any provision of this code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, **shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."**

(b) Whenever the regulatory program of a board that is subject to review by the Joint Legislative Sunset Review Committee, as provided for in Division 1.2 (commencing

with Section 473), is taken over by the department, that program shall be designated as a "bureau."

(Amended by Stats. 1999, Ch. 656.)

"License" Defined

23.7. Unless otherwise expressly provided, "license" means **license, certificate, registration, or other means** to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600,

Internet Information

27. (a) Every entity specified in subdivision (b), on or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code) and the Information Practices Act of 1977 (Chapter I (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by a board and other related enforcement action taken by a board relative to persons, businesses, or facilities subject to licensure or regulation by a board. In providing information on the Internet, each entity shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records. The information shall not include personal information including home address (unless used as a business address), home telephone number, date of birth, or social security number.

(b) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Acupuncture Committee shall disclose **information on its licensees.**

(2) The Board of Behavioral Science Examiners shall disclose information on its licensees, including marriage, family and child counselors; licensed clinical social workers; and licensed educational psychologists.

(3) The Board of Dental Examiners shall disclose information on its licensees.

(4) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of their licensees.

(5) The Board for Professional Engineers and Land Surveyors shall disclose information on its registrants and **licensees.**

(6) The Structural Pest Control Board shall disclose information on its licensees, including applicators; field representatives; and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(7) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(8) The Bureau of Electronic and Appliance Repair shall disclose information on its licensees, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(9) The cemetery program shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, crematories, and cremated remains disposers.

(IO) The funeral program shall disclose information on its licensees, including, embalmers, funeral director establishments, and funeral directors.

(11) The Contractors' State License Board shall disclose information on its licensees in accordance with Chapter 9 (commencing with Section 7000) of Division 3.

(c) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

(Amended by Stats. 1999, Ch. 784.)

Child Abuse Detection

28. The Legislature finds that there is a need to ensure that professionals of the healing arts who have demonstrable contact with child abuse victims, potential child abuse victims, and child abusers and potential child abusers are provided with adequate and appropriate training regarding the assessment and reporting of child abuse which will ameliorate, reduce, and eliminate the trauma of child abuse and neglect and ensure the reporting of child abuse in a timely manner to prevent additional occurrences.

The Psychology Examining Committee and the Board of Behavioral Science Examiners shall establish required training in the area of child abuse assessment and reporting for all persons applying for initial licensure and renewal of a license as a psychologist, clinical social worker, or marriage, family, and child counselor on or after January 1, 1987. This training shall be required one time only for all persons applying for initial licensure or for licensure renewal on or after January 1, 1987.

All persons applying for initial licensure and renewal of a license as a psychologist, clinical social worker, or marriage, family and child counselor on or after January 1, 1987, shall, in addition to all other requirements for licensure or renewal, have completed coursework or training in child abuse assessment and reporting which meets the requirements of this section, including detailed knowledge of Section 11165 of the Penal Code. The training shall:

(a) Be completed after January 1, 1983.

(b) Be obtained from one of the following sources:

(1) An accredited or approved educational institution, as defined in Section 2902, including extension courses offered by those institutions.

(2) An educational institution approved by the Council for Private Postsecondary and Vocational Education pursuant to Article 4 (commencing with Section 94760) of Chapter 7 of Part 59 of the Education Code.

(3) A continuing education provider approved by the responsible board or examining committee.

(4) A course sponsored or offered by a professional association or a local, county, or state department of health or mental health for continuing education and approved by the responsible board.

(c) Have a minimum of 7 contact hours.

(d) Include the study of the assessment and method of reporting of sexual assault, neglect, severe neglect, general neglect, willful cruelty or unjustifiable punishment, corporal punishment or injury, and abuse in out-of-home care. The training shall also include physical and behavioral indicators of abuse, crisis counseling techniques, community resources, rights and responsibilities of reporting, consequences of failure to report, caring for a child's needs after a report is made, sensitivity to previously abused children and adults, and implications and methods of treatment for children and adults.

(e) All applicants shall provide the appropriate board with documentation of completion of the required child abuse training.

The Psychology Examining Committee and the Board of Behavioral Science Examiners shall exempt any applicant who applies for an exemption from the requirements of this section and who shows to the satisfaction of the committee or board that there would be no need for the training in his or her practice because of the nature of that practice.

It is the intent of the Legislature that a person licensed as a psychologist, clinical social worker, or marriage, family, and child counselor have minimal but appropriate training in the areas of child abuse assessment and reporting. It is not intended that by solely complying with the requirements of this section, a practitioner is fully trained in the subject of treatment of child abuse victims and abusers.

(t) This section shall become operative on January 1, 1997.

(Added by Stats. 1995, Ch. 758.)

Compliance with Support Orders

29.5. In addition to other qualifications for licensure prescribed by the various acts of boards under the department, applicants for licensure and licensees renewing their licenses shall also comply with Section 11350.6 of the Welfare and Institutions Code.

Social Security Numbers

30. (a) Notwithstanding any other provision of law, any board, as defined in Section 22, and the State Bar and the Department of Real Estate shall at the time of issuance or renewal of the license require that any licensee provide its federal employer identification number if the licensee is a partnership or his or her social security number for all others.

(b) Any licensee failing to provide the federal identification number or social security number shall be reported by the licensing board to the Franchise Tax Board and, if failing to provide after notification pursuant to paragraph (1) of subdivision (b) of Section 19528 of the Revenue and Taxation Code, shall be subject to the penalty provided in

paragraph (2) of subdivision (b) of Section 19528 of the Revenue and Taxation Code.

(c) In addition to the penalty specified in subdivision (b), a licensing board may not process any application for an original license or for renewal of a license unless the applicant or licensee provides its federal employer identification number or social security number where requested on the application.

(d) A licensing board shall, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board the following information with respect to every licensee:

- (1) Name.
- (2) Address or addresses of record.
- (3) Federal employer identification number if the entity is a partnership or social security number for all others.
- (4) Type of license.
- (5) Effective date of license or a renewal.
- (6) Expiration date of license.
- (7) Whether license is active or inactive, if known.
- (8) Whether license is new or a renewal.

(e) For the purposes of this section:

(1) "Licensee" means any entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(2) "License" includes a certificate, registration, or any other authorization needed to engage in a business or profession regulated by this code or referred to in Section **1000** or 3600.

(3) "Licensing board" means any board, as defined in Section 22, the State Bar, and the Department of Real Estate.

(t) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board.

(g) Licensing boards shall provide to the Franchise Tax Board the information required by this section at a time that the Franchise Tax Board may require.

(h) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the social security number and federal employer identification number furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.

(i) Any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a), or any former officer or employee or other individual who in the course of his or her employment or duty has or has had access to the information required to be furnished under this section, may not disclose or make known in any manner that information, except as provided in this section to the Franchise Tax Board or as provided in subdivision (k).

(j) It is the intent of the Legislature in enacting this section to utilize the social security account number or federal employer identification number for the purpose of establishing the identification of persons affected by state tax laws and for purposes of compliance with Section 11350.6 of the Welfare and Institutions Code and, to that end, the

information furnished pursuant to this section shall be used exclusively for those purposes.

(k) If the board utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the social security number, any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a) may release a social security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.

(l) For the purposes of enforcement of Section 11350.6 of the Welfare and Institutions Code, and notwithstanding any other provision of law, any board, as defined in Section 22, and the State Bar and the Department of Real Estate shall at the time of issuance or renewal of the license require that each licensee provide the social security number of each individual listed on the license and any person who qualifies the license. For the purposes of this subdivision, "licensee" means any entity that is issued a license by any board, as defined in Section 22, the State Bar, the Department of Real Estate, and the Department of Motor Vehicles.

(Amended by Stats. 1999, Ch. 652.)

Licensees Not in Compliance with Judgment

31. (a) As used in this section, "board" means any entity listed in Section 101, the entities referred to in Sections 1000 and 3600, the State Bar, the Department of Real Estate, and any other state agency that issues a license, certificate, or registration authorizing a person to engage in a business or profession.

(b) Each applicant for the issuance or renewal of a license, certificate, registration, or other means to engage in a business or profession regulated by a board who is not in compliance with a judgment or order for support shall be subject to Section 11350.6 of the Welfare and Institutions Code.

(c) "Compliance with a judgment or order for support," has the meaning given in paragraph (2) of subdivision (a) of Section 11350.6 of the Welfare and Institutions Code.

(Added by Stats. 1991, Ch. 110.)

Continuing Education-Assessment and Treatment of AIDS

32. (a) The Legislature finds that there is a need to ensure that professionals of the healing arts who have or intend to have significant contact with patients who have, or are at risk to be exposed to, acquired immune deficiency syndrome (AIDS) are provided with training in the form of continuing education regarding the characteristics and methods of assessment and treatment of the condition.

(b) A board vested with the responsibility of regulating the following licensees shall consider including training regarding the characteristics and method of assessment and treatment of acquired immune deficiency syndrome (AIDS) in any continuing education or training requirements for those licensees: chiropractors, medical laboratory technicians, dentists, dental hygienists, dental assistants, physicians and surgeons, podiatrists, registered

nurses, licensed vocational nurses, psychologists, physician assistants, respiratory therapists, acupuncturists, marriage, family, and child counselors, licensed educational psychologists, and clinical social workers.

(Amended by Stats. 1994, Ch. 26.)

DIVISION 1. DEPARTMENT OF CONSUMER AFFAIRS

CHAPTER 1. THE DEPARTMENT

Section

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Denial of Licensure

116. (Amended and renumbered Sec. 489 by Stats. 1989, Ch. 1104.)

Conviction of a Crime

117. (Amended and renumbered Sec. 493 by Stats. 1989, Ch. 1104.)

Withdrawal of Application or Surrender of License-Continuation of Proceedings

118. (a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order sus-

pending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

(c) As used in this section, "board" includes an individual who is authorized by any provision of this code to **issue, suspend, or revoke a license, and "license" includes "certificate," "registration," and "permit."**

Licensure Offenses

119. Any person who does any of the following is guilty of a misdemeanor:

(a) Displays or causes or permits to be displayed or has in his or her possession either of the following:

(1) A canceled, revoked, suspended, or fraudulently altered license.

(2) A fictitious license or any document simulating a license or purporting to be or have been issued as a license.

(b) Lends his or her license to any other person or knowingly permits the use thereof by another.

(c) Displays or represents any license not issued to him or her as being his or her license.

(d) Fails or refuses to surrender to the issuing authority upon its lawful written demand any license, registration, permit, or certificate which has been suspended, revoked, or canceled.

(e) Knowingly permits any unlawful use of a license issued to him or her.

(t) Photographs, photostats, duplicates, or in any way reproduces any license or facsimile thereof in a manner that it could be mistaken for a valid license, or displays or has in his or her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(Amended by Stat., 1994, Ch. 1206.)

Renewal of Licensure

121. No licensee who has complied with the provisions of this code relating to the renewal of his or her license prior to expiration of such license shall be deemed to be engaged illegally in the practice of his or her business or profession during any period between such renewal and receipt of evidence of such renewal which may occur due to delay not the fault of the applicant.

As used in this section, "license" includes "certificate," "permit," "authorization," and "registration," or any other indicia giving authorization, by any agency, board, bureau, commission, committee, or entity within the Department of Consumer Affairs, to engage in a business or profession regulated by this code or by the board referred to in the Chiropractic Act or the Osteopathic Act.

(Added by Stats. 1979, Ch. 77.)

Duplicate Certificates

122. Except as otherwise provided by law, the department and each of the boards, bureaus, committees, and commissions within the department may charge a fee for

the processing and issuance of a duplicate copy of any certificate of licensure or other form evidencing licensure or renewal of licensure. The fee shall be in an amount sufficient to cover all costs incident to the issuance of the duplicate certificate or other form but shall not exceed twenty-five dollars (\$25).

(Added by Stats. 1986, Ch. 951.)

Subversion of Licensing Examination

123. It is a misdemeanor for any person to engage in any conduct which subverts or attempts to subvert any licensing examination or the administration of an examination, including, but not limited to:

(a) Conduct which violates the security of the examination materials; removing from the examination room any examination materials without authorization; the unauthorized reproduction by any means of any portion of the actual licensing examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing examination; paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination material, except by specific authorization either before, during, or after an examination; or using or purporting to use any examination questions or materials which were improperly removed or taken from any examination for the purpose of instructing or preparing any applicant for examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

(b) Communicating with any other examinee during the administration of a licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination; or impersonating any examinee or having an impersonator take the licensing examination on one's behalf.

Nothing in this section shall preclude prosecution under the authority provided for in any other provision of law.

In addition to any other penalties, a person found guilty of violating this section, shall be liable for the actual damages sustained by the agency administering the examination not to exceed ten thousand dollars (\$10,000) and the costs of litigation.

(c) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(Amended by Stats. 1991, Ch. 647.)

Restraining Order

123.5. Whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of Section 123, the superior court in and for the county wherein the acts or practices takes place, or are about to take place, may issue an injunction, or other appropriate order, restraining such conduct on application of a board, the Attorney General or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

The remedy provided for by this section shall be in addition to, and not a limitation on, the authority provided for in any other provision of law.

(Amended and renumbered by Stats. 1989, Ch. 1022.)

"Written Notice" Defined

124. Notwithstanding subdivision (c) of Section 11505 of the Government Code, whenever written notice, including a notice, order, or document served pursuant to Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), or Chapter 5 (commencing with Section 11500), of Part 1 of Division 3 of Title 2 of the Government Code, is required to be given by any board in the department, the notice may be given by regular mail addressed to the last known address of the licensee or by personal service, at the option of the board.

(Amended by Stats. 1995, Ch. 938.)

Conspiracy With Unlicensed Person

125. Any person, licensed under Division I (commencing with Section 100), Division 2 (commencing with Section 500), or Division 3 (commencing with Section 5000) is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him or her, who conspires with a person not so licensed to violate any provision of this code, or who, with intent to aid or assist that person in violating those provisions does either of the following:

- (a) Allows his or her license to be used by that person.
- (b) Acts as his or her agent or partner.

(Amended by Stats. 1994, Ch. 1206.)

Investigation and Enforcement Costs; Payment by Licensee

125.3. (a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, the board may request the administrative law judge to direct a licensee 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.

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

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

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

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

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

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

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

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

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

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

(Added by Stats. 1992, Ch. 1289.)

Injunction, Restitution, and Reimbursement for Code Violations

125.5. (a) The superior court for the county in which any person has engaged or is about to engage in any act which constitutes a violation of a chapter of this code administered or enforced by a board within the department may, upon a petition filed by the board with the approval of the director, issue an injunction or other appropriate order restraining such conduct. The proceedings under this section shall be governed by Chapter 3 (commencing with

Section 525) of Title 7 of Part 2 of the Code of Civil Procedure. **As used in this section, "board" includes commission, bureau, division, agency and a medical quality review committee.**

(b) The superior court for the county in which any person has engaged in any act which constitutes a violation of a chapter of this code administered or enforced by a board within the department may, upon a petition filed by the board with the approval of the director, order such person to make restitution to persons injured as a result of such violation.

(c) The court may order a person subject to an injunction or restraining order, provided for in subdivision (a) of this section, or subject to an order requiring restitution pursuant to subdivision (b), to reimburse the petitioning board for expenses incurred by the board in its investigation related to its petition.

(d) The remedy provided for by this section shall be in addition to, and not a limitation on, the authority provided for in any other section of this code.

(Amended by Stats. 1982, Ch. 517.)

Unprofessional Conduct-Discrimination

125.6. Every person who holds a license under the provisions of this code is subject to disciplinary action under the disciplinary provisions of this code applicable to such person if, because of the applicant's race, color, sex, religion, ancestry, disability, marital status, or national origin, he or she refuses to perform the licensed activity or aids or incites the refusal to perform such licensed activity by another licensee, or if, because of the applicant's race, color, sex, religion, ancestry, disability, marital status, or national origin, he or she makes any discrimination, or restriction in the performance of the licensed activity. Nothing in this section shall be interpreted to apply to discrimination by employers with regard to employees or prospective employees, nor shall this section authorize action against any club license issued pursuant to Article 4 (commencing with Section 23425) of Chapter 3 of Division 9 because of discriminatory membership policy. The presence of architectural barriers to an individual with physical disabilities which conform to applicable state or local building codes and regulations shall not constitute discrimination under this section.

Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to permit an individual to participate in, or benefit from, the licensed activity of the licensee where that individual poses a direct threat to the health or safety of others. For this purpose, the term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

"License," as used in this section, includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code.

"Applicant," as used in this section means a person applying for licensed services provided by a person licensed under this code.

"Disability" means any of the following with respect to an individual:

(a) A physical or mental impairment that substantially limits one or more of the major life activities of the individual.

(b) A record of such an impairment.

(c) Being regarded as having such an impairment.

(Amended by Stats. 1992, Ch. 913.)

Temporary Restraining Order Against Healing Arts Licensees

125.7. In addition to the remedy provided for in Section 125.5, the superior court for the county in which any licensee licensed under Division 2 (commencing with Section 500), or any initiative act referred to in that division, has engaged or is about to engage in any act that constitutes a violation of a chapter of this code administered or enforced by a board referred to in Division 2 (commencing with Section 500), may, upon a petition filed by the board and accompanied by an affidavit or affidavits in support thereof and a memorandum of points and authorities, issue a temporary restraining order or other appropriate order restraining the licensee from engaging in the business or profession for which the person is licensed or from any part thereof, in accordance with this section.

(a) If the affidavits in support of the petition show that the licensee has engaged or is about to engage in acts or omissions constituting a violation of a chapter of this code and if the court is satisfied that permitting the licensee to continue to engage in the business or profession for which the license was issued will endanger the public health, safety, or welfare, the court may issue an order temporarily restraining the licensee from engaging in the profession for which he or she is licensed.

(b) The order may not be issued without notice to the licensee unless it appears from facts shown by the affidavits that serious injury would result to the public before the matter can be heard on notice.

(c) Except as otherwise specifically provided by this section, proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of **Part 2** of the Code of Civil Procedure.

(d) When a restraining order is issued pursuant to this section, or within a time to be allowed by the superior court, but in any case not more than 30 days after the restraining order is issued, an accusation shall be filed with the board pursuant to Section 11503 of the Government Code or, in the case of a licensee of the State Department of Health Services, with that department pursuant to Section 100171 of the Health and Safety Code. The accusation shall be served upon the licensee as provided by Section 11505 of the Government Code. The licensee shall have all of the rights and privileges available as specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, if the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request and a decision within 15 days of the date the decision is received from the administrative law judge, or the court may nullify the restraining order previously is-

sued. Any restraining order issued pursuant to this section shall be dissolved by operation of law at the time the board's decision is subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) The remedy provided for in this section shall be in addition to, and not a limitation upon, the authority provided by any other provision of this code.

(Amended by Stats. 1998, Ch. 878.)

Temporary Restraining Order Against Licensees

125.8. In addition to the remedy provided for in Section 125.5, the superior court for the county in which any licensee licensed under Division 3 (commencing with Section 5000) or Chapter 2 (commencing with Section 18600) or Chapter 3 (commencing with Section 19000) of Division 8 has engaged or is about to engage in any act which constitutes a violation of a chapter of this code administered or enforced by a board referred to in Division 3 (commencing with Section 5000) or Chapter 2 (commencing with Section 18600) or Chapter 3 (commencing with Section 19000) of Division 8 may, upon a petition filed by the board and accompanied by an affidavit or affidavits in support thereof and a memorandum of points and authorities, issue a temporary restraining order or other appropriate order restraining the licensee from engaging in the business or profession for which the person is licensed or from any part thereof, in accordance with the provisions of this section.

(a) If the affidavits in support of the petition show that the licensee has engaged or is about to engage in acts or omissions constituting a violation of a chapter of this code and if the court is satisfied that permitting the licensee to continue to engage in the business or profession for which the license was issued will endanger the public health, safety, or welfare, the court may issue an order temporarily restraining the licensee from engaging in the profession for which he is licensed.

(b) Such order may not be issued without notice to the licensee unless it appears from facts shown by the affidavits that serious injury would result to the public before the matter can be heard on notice.

(c) Except as otherwise specifically provided by this section, proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(d) When a restraining order is issued pursuant to this section, or within a time to be allowed by the superior court, but in any case not more than 30 days after the restraining order is issued, an accusation shall be filed with the board pursuant to Section 11503 of the Government Code. The accusation shall be served upon the licensee as provided by Section 11505 of the Government Code. The licensee shall have all of the rights and privileges available as specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code; however, if the licensee requests a hearing on the accusation, the board must provide the licensee with a hearing within 30 days of the request and a decision within 15 days of the date of the conclusion of the hearing, or the court may nullify the restraining order previously issued.

Any restraining order issued pursuant to this section shall be dissolved by operation of law at such time the board's decision is subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(Amended by Stats. 1982, Ch. 517.)

Citations

125.9. (a) Except with respect to persons regulated under Chapter 8 (commencing with Section 6850), Chapter 11 (commencing with Section 7500), Chapter 11.5 (commencing with Section 7512), and Chapter 11.6 (commencing with Section 7590) of Division 3, or a person holding a license specified in paragraph (1), (6), or (7) of subdivision (b) of Section 9941, any board, bureau, or commission within the department may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

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

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

(3) In no event shall the administrative fine assessed by the board, bureau, or commission exceed two thousand five hundred dollars (\$2,500) for each inspection or each investigation made with respect to the violation, or two thousand five hundred dollars (\$2,500) for each violation or count if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the board, bureau, or commission shall give due consideration to the appropriateness of the amount of the fine with respect to such factors as the gravity of the violation, the good faith of the licensee, and the history of previous violations.

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

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

(c) The system may contain the following provisions:

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

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

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

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

(Amended by Stats. 1995, Ch. 708.)

Citations-Unlicensed Persons

125.95. Repealed by Stats. 1992, Ch. 1135.

Reports to Governor-Exemption

126. Notwithstanding any other provision of this code, any board, commission, examining committee, or other similarly constituted agency within the department required prior to the effective date of this section to submit reports to the Governor under any provision of this code shall not be required to submit such reports.

Reports to Director

127. Notwithstanding any other provision of this code, the director may require such reports from any **board, commission, examining committee, or other similarly constituted agency** within the department as he deems reasonably necessary on any phase of their operations.

Unlawful Sale of Goods or Services

128. Notwithstanding any other provision of law, it is a misdemeanor to sell equipment, supplies, or services to any person with knowledge that the equipment, supplies, or services are to be used in the performance of a service or contract in violation of the licensing requirements of this code.

The provisions of this section shall not be applicable to cash sales of less than one hundred dollars (\$100).

For the purposes of this section, "person" includes, but is not limited to, a company, partnership, limited liability company, firm, or corporation.

For the purposes of this section "license" includes certificate or registration.

A violation of this section shall be punishable by a fine of not less than one thousand dollars (\$1,000) and by imprisonment in the county jail not exceeding six months.

(Amended by Stats. 1994, Ch. IOIO.)

Reduction of License Fees

128.5. (a) Notwithstanding any other provision of law, if at the end of any fiscal year, an agency within the Department of Consumer Affairs, except the agencies referred to in subdivision (b), has unencumbered funds in an amount which equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other

fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount which will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

(b) Notwithstanding any other provision of law, if at the end of any fiscal year, the California Board of Architectural Examiners, the Board of Behavioral Science Examiners, the Board of Examiners in Veterinary Medicine, the Court Reporters Board of California, the Medical Board of California, the Board of Vocational Nurse and Psychiatric Technician Examiners of California, or the Bureau of Security and Investigative Services has unencumbered funds in an amount which equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount which will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

(Amended by Stats. 1994, Ch. 26.)

Complaint Handling Requirements

129. (a) As used in this section, "board" means every board, bureau, commission, committee and similarly constituted agency in the department which issues licenses.

(b) Each board shall, upon receipt of any complaint respecting a licentiate thereof, notify the complainant of the initial administrative action taken on his complaint within 10 days of receipt. Each board shall thereafter notify the complainant of the final action taken on his complaint. There shall be a notification made in every case in which the complainant is known. If the complaint is not within the jurisdiction of the board or if the board is unable to dispose satisfactorily of the complaint, the board shall transmit the complaint together with any evidence or information it has concerning the complaint to the agency, public or private, whose authority in the opinion of the board will provide the most effective means to secure the relief sought. The board shall notify the complainant of such action and of any other means which may be available to the complainant to secure relief.

(c) The board shall, when the board deems it appropriate, notify the person against whom the complaint is made of the nature of the complaint, may request appropriate relief for the complainant, and may meet and confer with the complainant and the licentiate in order to mediate the complaint. Nothing in this subdivision shall be construed as authorizing or requiring any board to set or to modify any fee charged by a licentiate.

(d) It shall be the continuing duty of the board to ascertain patterns of complaints and to report on all actions taken with respect to such patterns of complaints to the director and to the Legislature at least once a year. The board shall evaluate those complaints dismissed for lack of jurisdiction or no violation and recommend to the director and to the Legislature at least once a year such statutory changes as it deems necessary to implement the board's functions and responsibilities under this section.

(e) It shall be the continuing duty of the board to take whatever action it deems necessary, with the approval of the director, to inform the public of its functions under this section.

Licentiate Requirement of Notification

138. (a) Every board in the department, as defined in Section 22, shall initiate the process of adopting regulations on or before June 30, 1999, to require its licentiates, as defined in Section 23.8, to provide notice to their clients or customers that the practitioner is licensed by this state. A board shall be exempt from the requirement to adopt regulations pursuant to this section if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner's status as a licensee of this state.

(b) Every board, as defined in Section 22, shall submit to the director on or before December 31, 1999, its method for ensuring that every licensing examination administered by or pursuant to contract with the board is subject to periodic evaluation. The evaluation shall include (1) a description of the occupational analysis serving as the basis for the examination; (2) sufficient item analysis data to permit a psychometric evaluation of the items; and (3) an assessment of the appropriateness of prerequisites for admittance to the examination. The evaluation shall be revised and a new evaluation submitted to the director whenever, in the judgment of the board, there is a substantial change in the examination or the prerequisites for admittance to the examination.

(c) The evaluation may be conducted by the board, or pursuant to a contract with a qualified private testing firm. Aboard that provides for development or administration of a licensing examination pursuant to contract with a public or private entity may rely on an occupational analysis or item analysis conducted by that entity.

(Added by Stats. 1999, Ch. 879.)

DIVISION 1.5. DENIAL, SUSPENSION AND REVOCATION OF LICENSES

CHAPTER 1. GENERAL PROVISIONS

Section

475	Applicability
476	Exceptions
477	"Board" and "License" Defined

Applicability

475. (a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

- (1) Knowingly making a false statement of fact required to be revealed in an application for license;
- (2) Conviction of a crime;
- (3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; and
- (4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in subdivision (a)(1) and (2) above.

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

Exceptions

476. Nothing in this division shall apply to the licensure or registration of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3, or pursuant to Division 9 (commencing with Section 23000) or pursuant to Chapter 5 (commencing with Section 19800) of Division 8.

(Amended by Stats. 1983, Ch. 721.)

"Board" and "License" Defined

477. As used in this division:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

(Amended by Stats. 1991, Ch. 654.)

CHAPTER 2. DENIAL OF LICENSES

Section

480	Grounds for Denial
481	Criteria for Related Crimes Required
482	Criteria for Rehabilitation Required
484	Attestations of Good Moral Character Not Required
485	Procedure for Board Upon Denial
486	Reapplication after Denial
487	Hearing
489	Denial of Licensure

Grounds for Denial

480. (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the

qualifications, functions or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

(Amended by Stats. 1979, Ch. 876.)

Criteria for Related Crimes Required

481. Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

Criteria for Rehabilitation Required

482. Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

Attestations of Good Moral Character Not Required

484. No person applying for licensure under this code shall be required to submit to any licensing board any attestation by other persons to his good moral character.

Procedure for Board Upon Denial

485. Upon denial of an application for a license under this chapter or Section 496, the board shall do either of the following:

(a) File and serve a statement of issues in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Notify the applicant that the application is denied, stating (1) the reason for the denial, and (2) that the applicant has the right to a hearing under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code if written request for hearing is made within 60 days after service of the notice of denial. Unless written request for hearing is made within the 60-day period, the applicant's right to a hearing is deemed waived.

Service of the notice of denial may be made in the manner authorized for service of summons in civil actions, or

by registered mail addressed to the applicant at the latest address filed by the applicant in writing with the board in his or her application or otherwise. Service by mail is complete on the date of mailing.

(Amended by Stats. 1997, Ch. 758.)

Reapplication after Denial

486. Where the board has denied an application for a license under this chapter or Section 496, it shall, in its decision, or in its notice under subdivision (b) of Section 485, inform the applicant of the following:

(a) The earliest date on which the applicant may reapply for a license which shall be one year from the effective date of the decision, or service of the notice under subdivision (b) of Section 485, unless the board prescribes an earlier date or a later date is prescribed by another statute.

(b) That all competent evidence of rehabilitation presented will be considered upon a reapplication.

Along with the decision, or the notice under subdivision (b) of Section 485, the board shall serve a copy of the criteria relating to rehabilitation formulated under Section 482.

(Amended by Stats. 1997, Ch. 758.)

Hearing

487. If a hearing is requested by the applicant, the board shall conduct such hearing within 90 days from the date the hearing is requested unless the applicant shall request or agree in writing to a postponement or continuance of the hearing. Notwithstanding the above, the Office of Administrative Hearings may order, or on a showing of good cause, grant a request for, up to 45 additional days within which to conduct a hearing, except in cases involving alleged examination or licensing fraud, in which cases the period may be up to 180 days. In no case shall more than two such orders be made or requests be granted.

(Amended by Stats. 1986, Ch. 220.)

Denial of Licensure

489. Any agency in the department which is authorized by law to deny an application for a license upon the grounds specified in Section 480 or 496, may without a hearing deny an application upon any of those grounds, if within one year previously, and after proceedings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that agency has denied an application from the same applicant upon the same ground.

(Amended by Stats. 1997, Ch. 758.)

CHAPTER 3. SUSPENSION AND REVOCATION OF LICENSES

Section

490 Conviction of a Crime-Substantial Relationship Required

490.5 License Suspension-Welfare and Institutions Code

491 Information to Ex-Licensee

492 Completion of Drug Diversion Program

493 Conviction of a Crime-Conclusive Evidence

494 Orders of Suspension

Conviction of a Crime-Substantial Relationship Required

490. A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued, or the ground of knowingly making a false statement of fact required to be revealed in an application for such license. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(Amended by Stats. 1980, Ch. 548.)

License Suspension-Welfare and Institutions Code

490.5. A board may suspend a license pursuant to Section 11350.6 of the Welfare and Institutions Code if a licensee is not in compliance with a child support order or judgment.

(Added by Stats. 1994, Ch. 906.)

Information to Ex-Licensee

491. Upon suspension or revocation of a license by a board on one or more of the grounds specified in Section 490, the board shall:

(a) Send a copy of the provisions of Section 11522 of the Government Code to the ex-licensee.

(b) Send a copy of the criteria relating to rehabilitation formulated under Section 482 to the ex-licensee.

Completion of Drug Diversion Program

492. Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of Ibis code, or any initiative act referred to in that division.

(Amended by Stats. 1994, Ch. 26.)

Conviction of a Crime-Conclusive Evidence

493. Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary

action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

(Amended and renumbered by Stats. 1989, Ch. 1104.)

Orders of Suspension

494. (a) A board or an administrative law judge sitting alone, as provided in subdivision (h), may, upon **petition, issue an interim order suspending any licentiate** or imposing license restrictions, including, but not limited to, mandatory biological fluid testing, supervision, or remedial training. The petition shall include affidavits that demonstrate, to the satisfaction of the board, both of the following:

(1) The licentiate has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the licensed activity.

(2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.

(b) No interim order provided for in this section shall be issued without notice to the licentiate unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

(c) Except as provided in subdivision (b), the licentiate shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the board in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the licentiate shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice. The licentiate shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the board to provide a hearing within 20 days following the issuance of the interim order without notice, unless the licentiate waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.

(d) At the hearing on the petition for an interim order, the licentiate may:

(1) Be represented by counsel.

(2) Have a record made of the proceedings, copies of which shall be available to the licentiate upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in Section 11523 of the Government Code.

(3) Present affidavits and other documentary evidence.

(4) Present oral argument.

(e) The board, or an administrative law judge sitting alone as provided in subdivision (h), shall issue a decision on the petition for interim order within five business days following submission of the matter. The standard of proof required to obtain an interim order pursuant to this section shall be a preponderance of the evidence standard. If the interim order was previously issued without notice, the board shall determine whether the order shall remain in effect, be dissolved, or modified.

(t) The board shall file an accusation within 15 days of **the issuance of an interim order. In the case of an interim order issued without notice, the time shall run from the date of the order issued after the noticed hearing.** If the licentiate files a Notice of Defense, the hearing shall be held within 30 days of the agency's receipt of the Notice of Defense. A decision shall be rendered on the accusation no later than 30 days after submission of the matter. Failure to comply with any of the requirements in this subdivision shall dissolve the interim order by operation of law.

(g) Interim orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in and for the Counties of Sacramento, San Francisco, Los Angeles, or San Diego. The review of an interim order shall be limited to a determination of whether the board abused its discretion in the issuance of the interim order. Abuse of discretion is established if the respondent board has not proceeded in the manner required by law, or if the court determines that the interim order is not supported by substantial evidence in light of the whole record.

(h) The board may, in its sole discretion, delegate the hearing on any petition for an interim order to an administrative law judge in the Office of Administrative Hearings. If the board hears the noticed petition itself, an administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the board on matters of law. The board shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the petition has been delegated to an administrative law judge, he or she shall sit alone and exercise all of the powers of the board relating to the conduct of the hearing. A decision issued by an administrative law judge sitting alone shall be final when it is filed with the board. If the administrative law judge issues an interim order without notice, he or she shall preside at the noticed hearing, unless unavailable, in which case another administrative law judge may hear the matter. The decision of the administrative law judge sitting alone on the petition for an interim order is final, subject only to judicial review in accordance with subdivision (g).

(i) Failure to comply with an interim order issued pursuant to subdivision (a) or (b) shall constitute a separate cause for disciplinary action against any licentiate, and

may be heard at, and as a part of, the noticed hearing provided for in subdivision (t). Allegations of noncompliance with the interim order may be filed at any time prior to the rendering of a decision on the accusation. Violation of the interim order is established upon proof that the licensee was on notice of the interim order and its terms, and that the order was in effect at the time of the violation. The finding of a violation of an interim order made at the hearing on the accusation shall be reviewed as a part of any review of a final decision of the agency.

If the interim order issued by the agency provides for anything less than a complete suspension of the licensee from his or her business or profession, and the licensee violates the interim order prior to the hearing on the accusation provided for in subdivision (t), the agency may, upon notice to the licensee and proof of violation, modify or expand the interim order.

G) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section. A certified record of the conviction shall be conclusive evidence of the fact that the conviction occurred. A board may take action under this section notwithstanding the fact that an appeal of the conviction may be taken.

(k) The interim orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law.

(l) In the case of a board, a petition for an interim order may be filed by the executive officer. In the case of a bureau or program, a petition may be filed by the chief or program administrator, as the case may be.

(m) "Board," as used in this section, shall include any agency described in Section 22, and any allied health agency within the jurisdiction of the Medical Board of California. Board shall also include the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. The provisions of this section shall not be applicable to the Medical Board of California, the Board of Podiatric Medicine, or the State Athletic Commission.

(Amended by Stats. 1994, Ch. 1275.)

CHAPTER 4. PUBLIC REPROVALS

Procedure

495. Notwithstanding any other provision of law, any entity authorized to issue a license or certificate pursuant to this code may publicly reprove a licensee or certificate holder thereof, for any act that would constitute grounds to suspend or revoke a license or certificate. Any proceedings for public reproof, public reproof and suspension, or public reproof and revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, or, in the case of a licensee or certificate holder under the jurisdiction of the State Department of Health Services, in accordance with Section 100171 of the Health and Safety Code.

(Amended by Stats. 1997, Ch. 220.)

CHAPTER 5. EXAMINATION SECURITY

(Added by Stats. 1983, Ch. 95.)

Section

496	Violation of Exam Security
497	Restraining Order

Violation of Exam Security

496. Aboard may deny, suspend, revoke, or otherwise restrict a license on the ground that an applicant or licensee has violated Section 123 pertaining to subversion of licensing examinations.

(Repealed and added by Stats. 1989, Ch. 1022.)

Restraining Order

497. (Amended and renumbered Section 123.5.)

ILLEGAL ADVERTISING

(Division 7, Part 3, Chapter 1, Articles 1 and 2 of the Business and Professions Code)

Section

17500	False or Misleading Advertising
17500.1	Adoption of Regulations
17506.5	"Board Within the Department of Consumer Affairs" Defined
17535	Injunction-Restitution
17535.5	Penalty for Violating Injunction-Investigation and Prosecution Expenses Paid
17536	Penalty for Violations of Chapter-Investigation and Prosecution Expenses Paid

False or Misleading Advertising

17500. It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning such real or personal property or services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any such person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell such personal property or services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both.

(Amended by Stats. 1979, Ch. 492.)

Adoption of Regulations

17500.1. Notwithstanding any other provision of law, no trade or professional association, or state agency, state board, or state commission within the Department of Consumer Affairs shall enact any rule, regulation, or code of professional ethics which shall restrict or prohibit advertising by any commercial or professional person, firm, partnership or corporation which does not violate the provisions of Section 17500 of the Business and Professions Code, or which is not prohibited by other provisions of law.

The provisions of this section shall not apply to any rules or regulations heretofore or hereafter formulated pursuant to Section 6076.

(Amended by Stats. 1979, Ch. 653.)

"Board Within the Department of Consumer Affairs" Defined

17506.5. As used in this chapter:

(a) "Board within the Department of Consumer Affairs" includes any commission, bureau, division, or other similarly constituted agency within the Department of Consumer Affairs.

(b) "Local consumer affairs agency" means and includes any city or county body which primarily provides **consumer protection services**.

(Amended by Stats. 1979, Ch. 897.)

Injunction-Restitution

17535. Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person, corporation, firm, partnership, joint stock company, or any other association or organization of any practices which violate this chapter, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful.

Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney, county counsel, city attorney, or city prosecutor in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

Penalty for Violating Injunction-Investigation and Prosecution Expenses Paid

17535.5. (a) Any person who intentionally violates any injunction issued pursuant to Section 17535 shall be liable for a civil penalty not to exceed six thousand dollars (\$6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all

relevant circumstances, including, but not limited to, the extent of harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction within his jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall take special precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

(Amended by Stats. 1979, Ch. 897.)

Penalty for Violations of Chapter-Investigation and Prosecution Expenses Paid

17536. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of penalty col-

lected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality which funds the local agency.

(d) As applied to the penalties for acts in violation of Section 17530, the remedies provided by this section and Section 17534 are mutually exclusive.

(Amended by Stats. 1979, Ch. 897.)

DIVISION 2. HEALING ARTS

CHAPTER 1. GENERAL PROVISIONS

Article 4. Frauds of Medical Records

Section

580	Sale of Degree
581	Unlawful Procurement or Alteration
582	Use of Fraudulent Records
583	False Statements in Affidavits
584	Impersonation at Examinations
585	Violation as Felony

Sale of Degree

580. No person, company, or association shall sell or barter or offer to sell or barter any medical degree, podiatric degree, or osteopathic degree, or chiropractic degree, or any other degree which is required for licensure, certification, or registration under this division, or any degree, certificate, transcript, or any other writing, made or purporting to be made pursuant to any laws regulating the licensing and registration or issuing of a certificate to physicians and surgeons, podiatrists, osteopathic physicians, chiropractors, persons lawfully engaged in any other system or mode of treating the sick or afflicted, or to any other person licensed, certified, or registered under this division.

(Amended by Stats. 1986, Ch. 220.)

Unlawful Procurement or Alteration

581. No person, company, or association shall purchase or procure by barter or by any unlawful means or method, or have in possession any diploma, certificate, transcript, or any other writing with intent that it shall be used as evidence of the holder's qualifications to practice as a physician and surgeon, osteopathic physician, podiatrist, any other system or mode of treating the sick or afflicted, as provided in the Medical Practice Act, Chapter 5 (commencing with Section 2000), or to practice as any

other licensee under this division or in any fraud of the law regulating this practice or, shall with fraudulent intent, alter in a material regard, any such diploma, certificate, transcript, or any other writing.

(Amended by Stats. 1986, Ch. 220.)

Use of Fraudulent Records

582. No person, company, or association shall use or attempt to use any diploma, certificate, transcript, or any other writing which has been purchased, fraudulently issued, illegally obtained, counterfeited, or materially altered, either as a certificate or as to character or color of certificate, to practice as a physician and surgeon, podiatrist, osteopathic physician, or a chiropractor, or to practice any other system or mode of treating the sick or afflicted, as provided in the Medical Practice Act, Chapter 5 (commencing with Section 2000) or to practice as any other licensee under this division.

(Amended by Stats. 1986, Ch. 220.)

False Statements in Affidavits

583. No person shall in any document or writing required of an applicant for examination, license, certificate, or registration under this division, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, willfully make a false statement in a material regard.

(Amended by Stats. 1986, Ch. 220.)

Impersonation at Examinations

584. No person shall violate the security of any examination, as defined in subdivision (a) of Section 123, or impersonate, attempt to impersonate, or solicit the impersonation of, another in any examination for a license, certificate, or registration to practice as provided in this division, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or under any other law providing for the regulation of any other system or method of treating the sick or afflicted in this state.

(Amended by Stats. 1989, Ch. 1022.)

Violation as Felony

585. Any person, company, or association violating the provisions of this article is guilty of a felony and upon conviction thereof shall be punishable by a fine of not less than two thousand dollars (\$2,000) nor more than six thousand dollars (\$6,000), or by imprisonment in the state prison. The enforcement remedies provided under this article are not exclusive and shall not preclude the use of any other criminal, civil, or administrative remedy.

(Amended by Stats. 1986, Ch. 220.)

Article 5. Illegal Advertising

Section

601	Advertising Relating to Abortions
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Advertising Relating to Abortions

601. Every person who willfully writes, composes or publishes any notice or advertisement of any medicine or means for producing or facilitating a miscarriage or abortion, or who offers his services by any notice, advertise-

ment, or otherwise, to assist in the accomplishment of any such purpose is guilty of a felony and shall be punished as provided in the Penal Code.

Article 6. Unearned Rebates, Refunds and Discounts

Section

650	Consideration for Referrals Prohibited
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654	Prohibited Arrangements: Opticians and Physicians
654.1	Prohibited Referrals
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655	Prohibited Arrangements: Optometrists and Dispensing Opticians
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656	Injunctions
657	Discounts for Third Party Payors
681	Securing Biological Specimens

Consideration for Referrals Prohibited

650. Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under this division of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest or coownership in or with any person to whom these patients, clients or customers are referred is unlawful.

The payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual arrangement shall not be unlawful if the consideration is commensurate with the value of the services furnished or with the fair rental value of any premises or equipment leased or provided by the recipient to the payor.

Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2, it shall not be unlawful for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic (including entities exempt from licensure pursuant to Section 1206 of the Health and Safety Code), or health care facility solely because the licensee has a proprietary interest or coownership in the laboratory, pharmacy, clinic, or health care facility; provided, however, that the licensee's return on investment for that proprietary interest or coownership shall be based upon the amount of the capital investment or proportional ownership of the licensee which ownership interest is not based on the number or value of any patients referred. Any

referral excepted under this section shall be unlawful if the prosecutor proves that there was no valid medical need for the referral.

"Health care facility" means a general acute care hospital, acute psychiatric hospital, skilled nursing facility, intermediate care facility, and any other health facility licensed by the State Department of Health Services under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding ten thousand dollars (\$10,000), or by both such imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison.

(Amended by Stats. 1990, Ch. 1532.)

Ownership Referral Act

650.01. (a) Notwithstanding Section 650, or any other provision of law, it is unlawful for a licensee to refer a person for laboratory, diagnostic nuclear medicine, radiation oncology, physical therapy, physical rehabilitation, psychometric testing, home infusion therapy, or diagnostic imaging goods or services if the licensee or his or her immediate family has a financial interest with the person or in the entity that receives the referral.

(b) For purposes of this section and Section 650.02, the following shall apply:

(1) "Diagnostic imaging" includes, but is not limited to, all X-ray, computed axial tomography, magnetic resonance imaging nuclear medicine, positron emission tomography, mammography, and ultrasound goods and services.

(2) A "financial interest" includes, but is not limited to, any type of ownership interest, debt, loan, lease, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or other form of direct or indirect payment, whether in money or otherwise, between a licensee and a person or entity to whom the licensee refers a person for a good or service specified in subdivision (a). A financial interest also exists if there is an indirect financial relationship between a licensee and the referral recipient including, but not limited to, an arrangement whereby a licensee has an ownership interest in an entity that leases property to the referral recipient. Any financial interest transferred by a licensee to any person or entity or otherwise established in any person or entity for the purpose of avoiding the prohibition of this section shall be deemed a financial interest of the licensee. For purposes of this paragraph, "direct or indirect payment" shall not include a royalty or consulting fee received by a physician and surgeon who has completed a recognized residency training program in orthopedics from a manufacturer or distributor as a result of his or her research and development of medical devices and techniques for that manufacturer or distributor. For purposes of this paragraph, "consulting fees" means those fees paid by the manufacturer or distributor to a physician and surgeon who has completed a recognized residency training program in orthopedics only for his or

her ongoing services in making refinements to his or her medical devices or techniques marketed or distributed by the manufacturer or distributor, if the manufacturer or distributor does not own or control the facility to which the physician is referring the patient. A "financial interest" shall not include the receipt of capitation payments or other fixed amounts that are prepaid in exchange for a promise of a licensee to provide specified health care services to specified beneficiaries. A "financial interest" shall not include the receipt of remuneration by a medical director of a hospice, as defined in Section 1746 of the Health and Safety Code, for specified services if the arrangement is set out in writing, and specifies all services to be provided by the medical director, the term of the arrangement is for at least one year, and the compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value, and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between parties.

(3) For the purposes of this section, "immediate family" includes the spouse and children of the licensee, the parents of the licensee, and the spouses of the children of the licensee.

(4) "Licensee" means a physician as defined in Section 3209.3 of the Labor Code.

(5) "Licensee's office" means either of the following:

(A) An office of a licensee in solo practice.

(B) An office in which services or goods are personally provided by the licensee or by employees in that office, or personally by independent contractors in that office, in accordance with other provisions of law. Employees and independent contractors shall be licensed or certified when licensure or certification is required by law.

(6) "Office of a group practice" means an office or offices in which two or more licensees are legally organized as a partnership, professional corporation, or not-for-profit corporation, licensed pursuant to subdivision (a) of Section 1204 of the Health and Safety Code, for which all of the following apply:

(A) Each licensee who is a member of the group provides substantially the full range of services that the licensee routinely provides, including medical care, consultation, diagnosis, or treatment through the joint use of shared office space, facilities, equipment, and personnel.

(B) Substantially all of the services of the licensees who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group, except in the case of a multispecialty clinic, as defined in subdivision (j) of Section 1206 of the Health and Safety Code, physician services are billed in the name of the multispecialty clinic and amounts so received are treated as receipts of the multispecialty clinic.

(C) The overhead expenses of, and the income from, the practice are distributed in accordance with methods previously determined by members of the group.

(c) It is unlawful for a licensee to enter into an arrangement or scheme, such as a cross-referral arrangement, that the licensee knows, or should know, has a principal pur-

pose of ensuring referrals by the licensee to a particular entity that, if the licensee directly made referrals to that entity, would be in violation of this section.

(d) No claim for payment shall be presented by an entity to any individual, third party payer, or other entity for a good or service furnished pursuant to a referral prohibited under this section.

(e) No insurer, self-insurer, or other payer shall pay a charge or lien for any good or service resulting from a referral in violation of this section.

(f) A licensee who refers a person to, or seeks consultation from, an organization in which the licensee has a financial interest, other than as prohibited by subdivision (a), shall disclose the financial interest to the patient, or the parent or legal guardian of the patient, in writing, at the time of the referral or request for consultation.

(I) If a referral, billing, or other solicitation is between one or more licensees who contract with a multispecialty clinic pursuant to subdivision (j) of Section 1206 of the Health and Safety Code or who conduct their practice as members of the same professional corporation or partnership, and the services are rendered on the same physical premises, or under the same professional corporation or partnership name, the requirements of this subdivision may be met by posting a conspicuous disclosure statement at the registration area or by providing a patient with a written disclosure statement.

(2) If a licensee is under contract with the Department of Corrections or the California Youth Authority, and the patient is an inmate or parolee of either respective department, the requirements of this subdivision shall be satisfied by disclosing financial interests to either the Department of Corrections or the California Youth Authority.

(g) A violation of subdivision (a) shall be a misdemeanor. The Medical Board of California shall review the facts and circumstances of any conviction pursuant to subdivision (a) and take appropriate disciplinary action if the licensee has committed unprofessional conduct. Violations of this section may also be subject to civil penalties of up to five thousand dollars (\$5,000) for each offense, which may be enforced by the Insurance Commissioner, Attorney General, or a district attorney. A violation of subdivision (c), (d), or (e) is a public offense and is punishable upon conviction by a fine not exceeding fifteen thousand dollars (\$15,000) for each violation and appropriate disciplinary action, including revocation of professional licensure, by the Medical Board of California or other appropriate governmental agency.

(h) This section shall not apply to referrals for services that are described in and covered by Sections 139.3 and 139.31 of the Labor Code.

(i) This section shall become operative on January 1, 1995.

(Amended by Slals. 1996, Ch. 817.)

Ownership Referral Act

650.02. The prohibition of Section 650.01 shall not apply to or restrict any of the following:

(a) A licensee may refer a patient for a good or service otherwise prohibited by subdivision (a) of Section 650.01

if the licensee's regular practice is located where there is no alternative provider of the service within either 25 miles or 40 minutes traveling time, via the shortest route on a paved road. If an alternative provider commences furnishing the good or service for which a patient was referred pursuant to this subdivision, the licensee shall cease referrals under this subdivision within six months of the time at which the licensee knew or should have known that the alternative provider is furnishing the good or service. A licensee who refers to or seeks consultation from an organization in which the licensee has a financial interest under this subdivision shall disclose this interest to the patient or the patient's parents or legal guardian in writing at the time of referral.

(b) A licensee, when the licensee or his or her immediate family has one or more of the following arrangements with another licensee, a person, or an entity, is not prohibited from referring a patient to the licensee, person, or entity because of the arrangement:

(1) A loan between a licensee and the recipient of the referral, if the loan has commercially reasonable terms, bears interest at the prime rate or a higher rate that does not constitute usury, is adequately secured, and the loan terms are not affected by either party's referral of any person or the volume of services provided by either party.

(2) A lease of space or equipment between a licensee and the recipient of the referral, if the lease is written, has commercially reasonable terms, has a fixed periodic rent payment, has a term of one year or more, and the lease payments are not affected by either party's referral of any person or the volume of services provided by either party.

(3) Ownership of corporate investment securities, including shares, bonds, or other debt instruments that may be purchased on terms generally available to the public and that are traded on a licensed securities exchange or NASDAQ, do not base profit distributions or other transfers of value on the licensee's referral of persons to the corporation, do not have a separate class or accounting for any persons for any licensees who may refer persons to the corporation, and are in a corporation that had, at the end of the **corporation's most recent fiscal year, or on average during the previous three fiscal years**, stockholder equity exceeding seventy-five million dollars (\$75,000,000).

(4) Ownership of shares in a regulated investment company as defined in Section 851(a) of the federal Internal Revenue Code, if the company had, at the end of the company's most recent fiscal year, or on average during the previous three fiscal years, total assets exceeding seventy-five million dollars (\$75,000,000).

(5) A one-time sale or transfer of a practice or property or other financial interest between a licensee and the recipient of the referral if the sale or transfer is for commercially reasonable terms and the consideration is not affected by either party's referral of any person or the volume of services provided by either party.

(c) (1) A licensee may refer a person to a health facility, as defined in Section 1250 of the Health and Safety Code, or to any facility owned or leased by a health facility, if the recipient of the referral does not compensate the

licensee for the patient referral, and any equipment lease arrangement between the licensee and the referral recipient complies with the requirements of paragraph (2) of subdivision (b).

(2) Nothing shall preclude this subdivision from applying to a licensee solely because the licensee has an ownership or leasehold interest in an entire health facility or an entity that owns or leases an entire health facility.

(3) A licensee may refer a person to a health facility for any service classified as an emergency under subdivision (a) or (b) of Section 1317.1 of the Health and Safety Code.

(4) A licensee may refer a person to any organization that owns or leases a health facility licensed pursuant to subdivision (a), (b), or (f) of Section 1250 of the Health and Safety Code if the licensee is not compensated for the patient referral, the licensee does not receive any payment from the recipient of the referral that is based or determined on the number or value of any patient referrals, and any equipment lease arrangement between the licensee and the referral recipient complies with the requirements of paragraph (2) of subdivision (b). For purposes of this paragraph, the ownership may be through stock or membership, and may be represented by a parent holding company that solely owns or controls both the health facility organization and the affiliated organization.

(d) A licensee may refer a person to a nonprofit corporation that provides physician services pursuant to subdivision (I) of Section 1206 of the Health and Safety Code if the nonprofit corporation is controlled through membership by one or more health facilities or health facility systems and the amount of compensation or other transfer of funds from the health facility or nonprofit corporation to the licensee is fixed annually, except for adjustments caused by physicians joining or leaving the groups during the year, and is not based on the number of persons utilizing goods or services specified in Section 650.01.

(e) A licensee compensated or employed by a university may refer a person for a physician service, to any facility owned or operated by the university, or to another licensee employed by the university, provided that the facility or university does not compensate the referring licensee for the patient referral. In the case of a facility that is totally or partially owned by an entity other than the university, but that is staffed by university physicians, those physicians may not refer patients to the facility if the facility compensates the referring physicians for those referrals.

(f) The prohibition of Section 650.01 shall not apply to any service for a specific patient that is performed within, or goods that are supplied by, a licensee's office, or the office of a group practice. Further, the provisions of Section 650.01 shall not alter, limit, or expand a licensee's ability to deliver, or to direct or supervise the delivery of, in-office goods or services according to the laws, rules, and regulations governing his or her scope of practice.

(g) The prohibition of Section 650.01 shall not apply to cardiac rehabilitation services provided by a licensee or by a suitably trained individual under the direct or general su-

pervision of a licensee, if the services are provided to patients meeting the criteria for Medicare reimbursement for the services.

(h) The prohibition of Section 650.01 shall not apply if a licensee is in the office of a group practice and refers a person for services or goods specified in Section 650.01 to a multispecialty clinic, as defined in subdivision (l) of Section 1206 of the Health and Safety Code.

(i) The prohibition of Section 650.01 shall not apply to health care services provided to an enrollee of a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(j) The prohibition of Section 650.01 shall not apply to a request by a pathologist for clinical diagnostic laboratory tests and pathological examination services, a request by a radiologist for diagnostic radiology services, or a request by a radiation oncologist for radiation therapy if those services are furnished by, or under the supervision of, the pathologist, radiologist, or radiation oncologist pursuant to a consultation requested by another physician.

(k) This section shall not apply to referrals for services that are described in and covered by Sections 139.3 and 139.31 of the Labor Code.

(l) This section shall become operative on January 1, 1995.

(Amended by Stats. 1996, Ch. 817.)

Prohibited Arrangements: Pharmaceutical Services

650.1. (a) Any amount payable to any hospital, as defined in Section 4047, or any person or corporation prohibited from pharmacy permit ownership by subdivision (a) of Section 4080.5 under any rental, lease or service arrangement with respect to the furnishing or supply of pharmaceutical services and products, which is determined as a percentage, fraction, or portion of (1) the charges to patients or of (2) any measure of hospital or pharmacy revenue or cost, for pharmaceuticals and pharmaceutical services is prohibited.

(b) Any lease or rental arrangement existing on the effective date of this section shall be in full compliance with subdivision (a) by January 1, 1986.

(c) Any lease or rental agreement entered into prior to January 1, 1980, that extends beyond the effective date of this section shall be construed to be in compliance with this section until its expiration or the expiration of any option which is contained in any such lease or rental agreement provided that the lease or rental agreement contains provisions which limit pharmacy charges to the amounts not in excess of the prevailing charges in similar hospitals in the general geographic area.

(d) The California State Board of Pharmacy, the Medical Board of California, and the State Department of Health Services shall enforce this section and may require information from any person as is necessary for the enforcement of this section. It shall be the duty of the licensees of the respective regulatory agencies to produce the requisite evidence to show compliance with this section. Violations of this section shall be deemed to be the mutual

responsibility of both lessee and lessor, and shall be grounds for disciplinary action or other sanctions against both.

(Amended by Stats. 1989, Ch. 886.)

Marriage, Family and Child Counselors

650.4. (a) Notwithstanding Section 650, or subdivision (o) of Section 4982, or any other provision of law, it shall not be unlawful for a person licensed pursuant to Chapter 13 (commencing with Section 4980) or any other person, to participate in or operate a group advertising and referral service for marriage, family, and child counselors if all of the following conditions are met:

(1) The patient referrals by the service are the result of patient-initiated responses to service advertising.

(2) The service advertises, if at all, in conformity with Section 651 and subdivision (p) of Section 4982.

(3) The service does not employ a solicitor to solicit prospective patients or clients.

(4) The service does not impose a fee on the member marriage, family, and child counselors that is dependent upon the number of referrals or amount of professional fees paid by the patient to the marriage, family, and child counselor.

(5) Participating marriage, family, and child counselors charge no more than their usual and customary fees to any patient referred.

(6) The service registers with the Board of Behavioral Science Examiners, providing its name, street address, and telephone number.

(7) The service files with the Board of Behavioral Science Examiners a copy of the standard form contract that regulates its relationship with member marriage, family, and child counselors, which contract shall be confidential and not open to public inspection.

(8) If more than 50 percent of its referrals are made to **one individual, association, partnership, corporation, or group of three or more marriage, family, and child counselors**, the service discloses that fact in all public communications, including, but not limited to, communications by means of television, radio, motion picture, newspaper, book, list, or directory of healing arts practitioners.

(9) (A) When member marriage, family, and child counselors pay any fee to the service, any advertisement by the service shall clearly and conspicuously disclose that fact by including a statement as follows: "Paid for by participating marriage, family, and child counselors." In print advertisements, the required statement shall be in at least 9-point type. In radio advertisements, the required statement shall be articulated so as to be clearly audible and understandable by the radio audience. In television advertisements, the required statement shall be either clearly audible and understandable to the television audience, or displayed in a written form that remains clearly visible to the television audience for at least five seconds.

(B) The Board of Behavioral Science Examiners may suspend or revoke the registration of any service that fails to comply with paragraph (1). No service may reregister with the board if it has a registration that is currently under suspension for a violation of paragraph (1), not may a ser-

vice reregister with the board for period of one year after it has had a registration revoked by the board for a violation of paragraph (1).

(b) The Board of Behavioral Science Examiners may adopt regulations necessary to enforce and administer this section.

(c) The Board of Behavioral Science Examiners or 10 individual licensed marriage, family, and child counselors may petition the superior court of any county for the issuance of an injunction restraining any conduct that constitutes a violation of this section.

(d) It is unlawful and shall constitute a misdemeanor for a person to operate a group advertising and referral service for marriage, family, and child counselors without providing its name, address, and telephone number to the Board of Behavioral Science Examiners.

(e) It is the intent of the Legislature in enacting this section not to otherwise affect the prohibitions of Section 650. The Legislature intends to allow the pooling of resources by marriage, family, and child counselors for the purpose of advertising.

(f) This section shall not be construed in any manner that would authorize a referral service to engage in the practice of marriage, family, and child counseling.

(Added by Stats. 1995, Ch. 559.)

Advertising; Fraudulent, Misleading, or Deceptive

651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated, any form of public communication containing a false, fraudulent, misleading, or deceptive statement or claim, for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, **communication by means of television, radio, motion picture, newspaper, book, or list or directory of healing arts practitioners.**

(b) A false, fraudulent, misleading, or deceptive statement or claim includes a statement or claim that does any of the following:

- (1) Contains a misrepresentation of fact.
- (2) Is likely to mislead or deceive because of a failure to disclose material facts.
- (3) Is intended or is likely to create false or unjustified expectations of favorable results.
- (4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, "as low as," **"and up," "lowest prices" or words or phrases of similar import.** Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be

based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, **television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.**

(e) Any person so licensed may not use any **professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device** if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision but only to this subdivision.

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

- (1) A statement of the name of the practitioner.
- (2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.
- (3) A statement of office hours regularly maintained by the practitioner.
- (4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the **practitioner's office.**

(5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields. For the purposes of this section, the statement of a practitioner licensed under Chapter 4 (commencing with Section 1600) who limits his or her practice to a specific field or fields, shall only include a statement that he or she is certified or is eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board. A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.

(B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his

or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board certified" in reference to that certification is in accordance with subparagraph (A). A physician or surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicant's education, training, and experience.

For purposes of the term "board certified," as used in **this subparagraph, the terms "board" and "association"** mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon's licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.

(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including,

but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant's education, training, and experience. For purposes of the term "board certified," as used in **this subparagraph, the terms "board" and "association" mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.**

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph, to be deposited in the State Treasury in the Podiatry Fund, pursuant to Section 2499. The fee shall not exceed the cost of administering this subparagraph.

(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.

(7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, **make, trade name, brand name, color, size, or type of commodities** advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) of this section or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by business or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of **onerous disclosure requirements. However, any member** of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

(j) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate relief.

(k) A physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) by the Medical Board of California who knowingly and intentionally violates this section may

be cited and assessed an administrative fine not to exceed ten thousand dollars (\$10,000) per event. Section 125.9 shall govern the issuance of this citation and fine except that the fine limitations prescribed in paragraph (3) of subdivision (b) of Section 125.9 shall not apply to a fine under this subdivision.

(Amended by Slats. 1999, Ch. 856.)

Health Care Service Plans

651.3. (a) Any labor organization, bona fide employee group or bona fide employee association having contracted health care services from a health care service plan under the Knox-Keene Health Care Service Plan Act of 1975 (commencing with Section 1340 of the Health and Safety Code) may inform its members as to the benefits available and the charges therefor.

(b) Any new or revised written advertising or solicitation, or any form of evidence of coverage adopted by a health care service plan under the Knox-Keene Health Care Service Plan Act of 1975 (commencing with Section 1340 of the Health and Safety Code) for distribution to members pursuant to subdivision (a) shall comply with the provisions of the Knox-Keene Health Care Service Plan Act of 1975 and the regulations thereunder.

(c) Any labor organization, bona fide employee group or bona fide employee association, contracting for a health care service plan under Ibis section, shall not derive any profit from such plan.

Nothing contained in this section shall be construed as authorizing a provider of medical assistance, including a prepaid health plan, under the Medi-Cal Act or the Waxman-Duffy Prepaid Health Plan Act to advertise in violation of any of the provisions of such acts and regulations developed thereto.

(Amended by Stats. 1981, Ch. 662.)

Violation by Licensee

652. Violation of this article in the case of a licensed person constitutes unprofessional conduct and grounds for suspension or revocation of his or her license by the board by whom he or she is licensed, or if a license has been issued in connection with a place of business, then for the suspension or revocation of the place of business in connection with which the violation occurs. The proceedings for suspension or revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part I of Division 3 of Title 2 of the Government Code, and each board shall have all the powers granted therein. However, in the case of a licensee of the State Department of Health Services, the proceedings shall be conducted in accordance with Section 110171 of the Health and Safety Code. In addition, any violation constitutes a misdemeanor as to any and all persons offering, delivering, receiving, accepting, or participating in any rebate, refund, commission, preference, patronage dividend, unearned discount, or consideration, whether or not licensed under this division, and is punishable by imprisonment in the county jail

not exceeding six months, by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both the imprisonment and fine.

(Amended by Stats. 1997, Ch. 220.)

Violation Whether or not Licensed

652.5. Except as otherwise provided in this article, any violation of this article constitutes a misdemeanor as to any and all persons, whether or not licensed under this division, and is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both the imprisonment and fine.

(Amended by Stats. 1994, Ch. 1206.)

"Person" Defined

653. The word "person" as used in this article includes an individual, firm, partnership, association, corporation, limited liability company, or cooperative association.

(Amended by Stats. 1994, Ch. 1010.)

Prohibited Arrangements: Opticians and Physicians

654. No person licensed under Chapter 5 (commencing with Section 2000) of this division may have any membership, proprietary interest or coownership in any form in or with any person licensed under Chapter 5.5 (commencing with Section 2550) of this division to whom patients, clients or customers are referred or any profit-sharing arrangements.

(Amended by Stats. 1979, Ch. 688.)

Prohibited Referrals

654.1. Persons licensed under Chapter 4 (commencing with Section 1600) of this division or licensed under Chapter 5 (commencing with Section 2000) of this division or licensed under any initiative act referred to in this division relating to osteopaths may not refer patients, clients, or customers to any clinical laboratory licensed under Section 1265 in which the licensee has any membership, proprietary interest, or coownership in any form, or has any profit-sharing arrangement, unless the licensee at the time of making such referral discloses in writing such interest to the patient, client, or customer. The written disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having any laboratory work or assignment performed.

This section shall not apply to persons who are members of a medical group which contracts to provide medical care to members of a group practice prepayment plan registered under the Knox-Keene Health Care Service Act of 1975, Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

This section shall not apply to any referral to a clinical laboratory which is owned and operated by a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

This section does not prohibit the acceptance of evaluation specimens for proficiency testing or referral of specimens or such assignment from one clinical laboratory to

another clinical laboratory, either licensed or exempt under this chapter, providing the report indicates clearly the laboratory performing the test.

"Proprietary interest" does not include ownership of a building where space is leased to a clinical laboratory at the prevailing rate under a straight lease arrangement.

A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding ten thousand dollars (\$10,000), or by both such imprisonment and fine. A second or subsequent conviction shall be punishable by imprisonment in the state prison.

(Amended by Stats. 1981, Ch. 610.)

Prohibited Referrals and Billings

654.2. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to charge, bill, or otherwise solicit payment from a patient on behalf of, or refer a patient to, an organization in which the licensee, or the licensee's immediate family, has a significant beneficial interest, unless the licensee first discloses in writing to the patient, that there is such an interest and advises the patient that the patient may choose any organization for the purpose of obtaining the services ordered or requested by the licensee.

(b) The disclosure requirements of subdivision (a) may be met by posting a conspicuous sign in an area which is likely to be seen by all patients who use the facility or by providing those patients with a written disclosure statement. Where referrals, billings, or other solicitations are between licensees who contract with multispecialty clinics pursuant to subdivision (l) of Section 1206 of the Health and Safety Code or who conduct their practice as members of the same professional corporation or partnership, and the services are rendered on the same physical premises, or under the same professional corporation or partnership name, the requirements of subdivision (a) may be met by posting a conspicuous disclosure statement at a single location which is a common area or registration area or by providing those patients with a written disclosure statement.

(c) On and after July 1, 1987, persons licensed under this division or under any initiative act referred to in this division shall disclose in writing to any third-party payer for the patient, when requested by the payer, organizations in which the licensee, or any member of the licensee's immediate family, has a significant beneficial interest and to which patients are referred. The third-party payer shall not request this information from the provider more than once a year.

Nothing in this section shall be construed to serve as the sole basis for the denial or delay of payment of claims by third party payers.

(d) For the purposes of this section, the following terms have the following meanings:

(I) "Immediate family" includes the spouse and children of the licensee, the parents of the licensee and licensee's spouse, and the spouses of the children of the licensee.

(2) "Significant beneficial interest" means any financial interest that is equal to or greater than the lesser of the following:

- (A) Five percent of the whole.
- (B) Five thousand dollars (\$5,000).

(3) A third-party payer includes any health care service plan, self-insured employee welfare benefit plan, disability insurer, nonprofit hospital service plan, or private group or indemnification insurance program.

A third party payer does not include a prepaid capitated plan licensed under the Knox-Keene Health Care Service Plan Act of 1975 or Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(e) This section shall not apply to a "significant beneficial interest" which is limited to ownership of a building where the space is leased to the organization at the prevailing rate under a straight lease agreement or to any interest held in publicly traded stocks.

(f) (1) This section does not prohibit the acceptance of evaluation specimens for proficiency testing or referral of specimens or assignment from one clinical laboratory to another clinical laboratory, either licensed or exempt under this chapter, if the report indicates clearly the name of the laboratory performing the test.

(2) This section shall not apply to relationships governed by other provisions of this article nor is this section to be construed as permitting relationships or interests that are prohibited by existing law on the effective date of this section.

(3) The disclosure requirements of this section shall not be required to be given to any patient, customer, or his or her representative, if the licensee, organization, or entity is providing or arranging for health care services pursuant to a prepaid capitated contract with the State Department of Health Services.

(Amended by Stats. 1986, Ch. 881.)

Prohibited Arrangements: Optometrists and Dispensing Opticians

655. (a) No person licensed under Chapter 7 (commencing with Section 3000) of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, with any person licensed under Chapter 5.5 (commencing with Section 2550) of this division.

(b) No person licensed under Chapter 5.5 (commencing with Section 2550) of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit sharing arrangement in any form directly or indirectly with any person licensed under Chapter 7 (commencing with Section 3000) of this division.

(c) No person licensed under Chapter 7 (commencing with Section 3000) of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, either by stock ownership, interlocking directors, trusteeship, mortgage, trust deed, or otherwise with any person who is engaged in the manufacture, sale, or distribution to physicians and surgeons,

optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products.

Any violation of this section constitutes a misdemeanor as to such person licensed under Chapter 7 (commencing with Section 3000) of this division and as to any and all persons, whether or not so licensed under this division, who participate with such licensed person in a violation of any provision of this section.

(Amended by Stats. 1979, Ch. 975.)

Employment of Hearing Aid Dispensers

655.2. No physician and surgeon or medical corporation licensed under Chapter 5 (commencing with Section 2000), nor any audiologist who is not a licensed hearing aid dispenser shall employ any individual licensed pursuant to Chapter 7.5 (commencing with Section 3300) for the purpose of fitting or selling hearing aids.

This section shall not apply to any physician and surgeon or medical corporation which contracts with or is affiliated with a comprehensive group practice health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(Added by Stats. 1979, Ch. 970.)

Solicitation of Payment for Laboratory Services

655.5. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division, or any clinical laboratory, or any health facility when billing for a clinical laboratory of the facility, to charge, bill, or otherwise solicit payment from any patient, client, or customer for any clinical laboratory service not actually rendered by the person or clinical laboratory or under his, her or its direct supervision unless the patient, client, or customer is apprised at the first time of the charge, billing, or solicitation of the name, address, and charges of the clinical laboratory performing the service. The first such written charge, bill, or other solicitation of payment shall separately set forth the name, address, and charges of the clinical laboratory concerned and shall clearly show whether or not the charge is included in the total of the account, bill, or charge. This subdivision shall be satisfied if the required disclosures are made to the third-party payer of the patient, client, or customer. If the patient is responsible for submitting the bill for the charges to the third-party payer, the bill provided to the patient for that purpose shall include the disclosures required by this section. This subdivision shall not apply to a clinical laboratory of a health facility or a health facility when billing for a clinical laboratory of the facility nor to a person licensed under this division or under any initiative act referred to in this division if the standardized billing form used by the facility or person requires a summary entry for all clinical laboratory charges. For purposes of this subdivision, "health facility" has the same meaning as defined in Section 1250 of the Health and Safety Code.

(b) Commencing July 1, 1994, a clinical laboratory shall provide to each of its referring providers, upon request, a schedule of fees for services provided to patients

of the referring provider. The schedule shall be provided within two working days after the clinical laboratory receives the request. For the purposes of this subdivision, a "referring provider" means any provider who has referred a patient to the clinical laboratory in the preceding six-month period. Commencing July 1, 1994, a clinical laboratory that provides a list of laboratory services to a referring provider or to a potential referring provider shall include a schedule of fees for the laboratory services listed.

(c) It is also unlawful for any person licensed under this division or under any initiative act referred to in this division to charge additional charges for any clinical laboratory service that is not actually rendered by the licensee to the patient and itemized in the charge, bill, or other solicitation of payment. This section shall not be construed to prohibit any of the following:

(1) Any itemized charge for any service actually rendered to the patient by the licensee.

(2) Any summary charge for services actually rendered to a patient by a health facility, as defined in Section 1250 of the Health and Safety Code, or by a person licensed under this division or under any initiative act referred to in this division if the standardized billing form used by the facility or person requires a summary entry for all clinical laboratory charges.

(d) This section shall not apply to any person or clinical laboratory who or which contracts directly with a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code, if the services are to be provided to members of the plan on a prepaid basis and without additional charge or liability on account thereof.

(e) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding ten thousand dollars (\$10,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison.

(f) (1) Notwithstanding subdivision (e), a violation of this section by a physician and surgeon for a first offense shall be subject to the exclusive remedy of reprimand by the Medical Board of California if the transaction that is the subject of the violation involves a charge for a clinical laboratory service that is less than the charge would have been if the clinical laboratory providing the service billed a patient, client, or customer directly for the clinical laboratory service, and if that clinical laboratory charge is less than the charge listed in the clinical laboratory's schedule of fees pursuant to subdivision (b).

(2) Nothing in this subdivision shall be construed to permit a physician and surgeon to charge more than he or she was charged for the laboratory service by the clinical laboratory providing the service unless the additional charge is for service actually rendered by the physician and surgeon to the patient.

(Amended by Stats. 1996, Ch. 1035.)

Billing for Cytologic Examinations of Gynecologic Slides

655.6. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to charge, bill, or otherwise solicit payment from any patient, client, customer, or third-party payer for cytologic services relating to the examination of gynecologic slides if those services were not actually rendered by that person or under his or her direct supervision.

(b) Clinical laboratories performing cytologic examinations of gynecologic slides shall directly bill either the patient or the responsible third-party payer for the cytology services rendered by those laboratories. Clinical laboratories shall not bill the physician or surgeon who requests the tests.

(c) For the purposes of this section, any person or entity who is responsible to pay for cytologic examination of gynecologic slides services provided to that patient shall be considered a responsible third-party payer.

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

(1) Any person who, or clinical laboratory that, contracts directly with a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code, if services are to be provided to members of the plan on a prepaid basis.

(2) Any person who, or clinic that, provides cytologic examinations of gynecologic slides services without charge to the patient, or on a sliding scale payment basis where the patient's charge for services is determined by the patient's ability to pay.

(3) Health care programs operated by public entities, including, but not limited to, colleges and universities.

(4) Health care programs operated by private educational institutions to serve the health care needs of their students.

(5) Any person who, or clinic that, contracts with an employer to provide medical services to employees of the employer if the cytologic services relating to the examination of gynecologic slides are provided under the contract.

(Amended by Stats. 1992, Ch. 241.)

Injunctions

656. Whenever any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, a violation of this article, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining the conduct on application of the State Board of Optometry, the Medical Board of California, the Osteopathic Medical Board of California, the Attorney General, or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

The remedy provided for in this section shall be in addition to, and not a limitation upon, the authority provided by any other provision of this code.

(Amended by Stats. 1994, Ch. 1206.)

Discounts for Third Party Payors

657. (a) The Legislature finds and declares all of the following:

(1) Californians spend more than one hundred billion dollars (\$100,000,000,000) annually on health care.

(2) In 1994, an estimated 6.6 million of California's 32 million residents did not have any health insurance and were ineligible for Medi-Cal.

(3) Many of California's uninsured cannot afford basic, preventative health care resulting in these residents relying on emergency rooms for urgent health care, thus driving up health care costs.

(4) Health care should be affordable and accessible to all Californians.

(5) The public interest dictates that uninsured Californians have access to basic, preventative health care at affordable prices.

(b) To encourage the prompt payment of health or medical care claims, health care providers are hereby expressly authorized to grant discounts in health or medical care claims when payment is made promptly within time limits prescribed by the health care providers or institutions rendering the service or treatment.

(c) Notwithstanding any provision in any health care service plan contract or insurance contract to the contrary, health care providers are hereby expressly authorized to grant discounts for health or medical care provided to any patient the health care provider has reasonable cause to believe is not eligible for, or is not entitled to, insurance reimbursement, coverage under the Medi-Cal program, or coverage by a health care service plan for the health or medical care provided. Any discounted fee granted pursuant to this section shall not be deemed to be the health care provider's usual, customary, or reasonable fee for any other purposes, including, but not limited to, any health care service plan contract or insurance contract.

(d) "Health care provider," as used in this section, means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(Amended by Stats. 1998, Ch. 20.)

Securing Biological Specimens

681. (a) Commencing July 1, 2000, every person licensed pursuant to this division who collects human biological specimens for clinical testing or examination, shall secure, or ensure that his or her employees, agents, or contractors secure, those specimens in a locked container when those specimens are placed in a public location outside of the custodial control of the licensee, or his or her employees, agents, or contractors.

(b) Containers used for human biological specimens put into use on or after January 1, 2001, shall be marked

"Caution: Biohazardous Material-Please Do Not Touch or Handle," or words of similar meaning.

(c) This section shall not apply where the biological specimens have been placed in the mail in compliance with all applicable laws and regulations.

(d) The licensing board having jurisdiction of the licensee may impose appropriate sanctions for violations of this section, including, if otherwise authorized by the licensing act, the imposition of a fine not to exceed one thousand dollars (\$1,000).

(e) As used in this section, "locked container" means a secure container that is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device.

(Added by Stats. 1999, Ch. 748.)

690. (a) Except as provided in Section 4601 of the Labor Code and Section 2627 of the Unemployment Insurance Code, **neither the administrators, agents, or employees** of any program supported, in whole or in part, by funds of the State of California, nor any state agency, county, or city of the State of California, nor any officer, employee, agent, or governing board of a state agency, county, or city in the performance of its, his, or her duty, duties, function or functions, shall prohibit any person, who is entitled to vision care that may be rendered by either an optometrist or a physician and surgeon within the scope of his or her license, from selecting a duly licensed member of either profession to render the service, provided the member has not been removed or suspended from participation in the program for cause.

(b) Whenever any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, a violation of this section, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction or other appropriate order, restraining the conduct on application of the Attorney General, the district attorney of the county, or any person aggrieved.

For purposes of this subdivision, "person aggrieved" means the person who seeks the particular medical or optometric services mentioned herein, or the holder of any certificate who is discriminated against in violation of this section.

(c) Nothing contained in this section shall prohibit any agency operating a program of services, including, but not limited to, a program established pursuant to Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code or Chapter 10.5 (commencing with Section 6971), Chapter 11 (commencing with Section 7001), or Chapter 11.5 (commencing with Section 7041) of Division 6 of the Education Code, from preparing lists of healing arts licensees and requiring patients to elect a licensee on the list as a condition to payment by the program or the services, except that if the lists are established and a particular service may be performed by either a physician and surgeon or an optometrist the list shall contain a sufficient number of licensees so as to assure the patients an adequate choice.

SEC. 2. Section 1244 of the Business and Professions Code is amended to read:

1244. (a) Nothing in this chapter shall restrict, limit, or prevent program of nondiagnostic general health assessment provided that:

(I) The purpose of the program is to refer individuals to licensed sources of care as indicated.

(2) The program utilizes only those devices that comply with all of the following:

(A) Meet all applicable state and federal performance standards pursuant to Section 111245 of the Health and Safety Code.

(B) Are not adulterated as specified in Article 2 (commencing with Section 111250) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

(C) Are not misbranded as specified in Article 3 (commencing with Section 111330) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

(D) Are not new devices unless they meet the requirements of Section 111550 of the Health and Safety Code.

(3) The program maintains a supervisory committee consisting of, a minimum, a licensed physician and surgeon and a laboratory technologist licensed pursuant to this chapter.

(4) The supervisory committee for the program adopts written protocols that shall be followed in the program and that shall contain all of the following:

(A) Provision of written information to individuals to be assessed that shall include, but not be limited to, the following:

(i) The potential risks and benefits of assessment procedures to be performed in the program.

(ii) The limitations, including the nondiagnostic nature, of assessment examinations of biological specimens performed in the program.

(iii) Information regarding the risk factors or markers targeted by the program.

(iv) The need for followup with licensed sources of care for confirmation, diagnosis, and treatment as appropriate.

(B) Proper use of each device utilized in the program including the operation of analyzers, maintenance of equipment and supplies, and performance of quality control procedures including the determination of both accuracy and reproducibility of measurements in accordance with instructions provided by the manufacturer of the assessment device used.

(C) Proper procedures to be employed when drawing blood, if blood specimens are to be obtained.

(D) Proper procedures to be employed in handling and disposing of all biological specimens to be obtained and material contaminated by those biological specimens.

(E) Proper procedures to be employed in response to fainting, excessive bleeding, or other medical emergencies.

(F) Reporting of assessment results to the individual being assessed.

(G) Referral and followup to licensed sources of care as indicated.

The written protocols adopted by the supervisory committee shall be maintained for at least one year following completion of the assessment program during which period they shall be subject to review by department personnel and the local health officer or his or her designee, including the public health laboratory director.

(b) If skin puncture to obtain a blood specimen is to be performed in a program of nondiagnostic general health assessment, the individual performing the skin puncture shall be either:

(I) Authorized to perform skin puncture under this chapter.

(2) Any person who possesses a statement signed by a licensed physician and surgeon that attests that the named person has received adequate training in the proper procedure to be employed in skin puncture.

(c) A program of nondiagnostic general health assessment that fails to meet the requirements set forth in subdivisions (a) and (b) shall not operate.

(d) For purposes of this section, "skin puncture" means the collection of a blood specimen by the finger prick method only and does not include venipuncture, arterial puncture, or any other procedure for obtaining a blood specimen.

(e) Nothing in this chapter shall be interpreted as prohibiting a licensed clinical laboratory from operating a program of nondiagnostic general health assessment provided that the clinical laboratory complies with the requirements of this section.

(Amended by Stats. 1996, Ch. 1023.)

Article 9. Inactive License

Section

700	Legislative Intent
701	Issuance
702	Prohibited Practice
703	
704	Restoration to Active Status

Legislative Intent

700. It is the intent of the Legislature to establish in this article an inactive category of health professionals' licensure. Such inactive licenses or certificates are intended to allow a person who has a license or certificate in one of the healing arts, but who is not actively engaged in the practice of his or her profession, to maintain licensure or certification in a nonpracticing status.

Issuance

701. Each healing arts board referred to in this division shall issue, upon application and payment of the normal renewal fee, an inactive license or certificate to a current holder of an active license or certificate whose license or certificate is not suspended, revoked, or otherwise punitively restricted by that board.

As used in this article, "board" refers to any healing arts board, division, or examining committee which licenses or certifies health professionals.

Prohibited Practice

702. The holder of an inactive healing arts license or certificate issued pursuant to this article shall not engage in any activity for which an active license or certificate is required.

Renewal

703. An inactive healing arts license or certificate issued pursuant to this article shall be renewed during the same time period at which an active license or certificate is renewed. In order to renew a license or certificate issued pursuant to this article, the holder thereof need not comply with any continuing education requirement for renewal of an active license or certificate.

The renewal fee for a license or certificate in an active status shall apply also for renewal of a license or certificate in an inactive status.

Restoration to Active Status

704. In order for the holder of an inactive license or certificate issued pursuant to this article to restore his or her license or certificate to an active status, the holder of an inactive license or certificate shall comply with all the following:

(a) Pay the renewal fee; provided, that the renewal fee shall be waived for a physician and surgeon who certifies to the Medical Board of California that license restoration is for the sole purpose of providing voluntary, unpaid service to a public agency, not-for-profit agency, institution, or corporation which provides medical services to indigent patients in medically underserved or critical-need population areas of the state.

(b) If the board requires completion of continuing education for renewers of an active license or certificate, complete continuing education equivalent to that required for a single license renewal period.

(Amended by Stats. 1999, Ch. 631.)

Article 10. Federal Personnel

(Added by Stats. 1983, Ch. 239.)

Section

715	Exemption from Licensure
716	Denial of Licensure; Disciplinary Action
717	Scope of Practice Not Affected
718	Commissioned Officers-Residency Programs

Exemption from Licensure

715. Unless otherwise required by federal law or regulation, no board under this division which licenses dentists, physicians and surgeons, podiatrists, or nurses may require a person to obtain or maintain any license to practice a profession or render services in the State of California if one of the following applies:

(a) The person practicing a profession or rendering services does so exclusively as an employee of a department, bureau, office, division, or similarly constituted agency of the federal government, and provides medical services exclusively on a federal reservation or at any facility wholly supported by and maintained by the United States government.

(b) The person practicing a profession or rendering services does so solely pursuant to a contract with the federal government on a federal reservation or at any facility wholly supported and maintained by the United States government.

(c) The person practicing a profession or rendering services does so pursuant to, or as a part of a program or project conducted or administered by a department, bureau, office, division, or similarly constituted agency of the federal government which by federal statute expressly exempts persons practicing a profession or rendering services as part of the program or project from state laws requiring licensure.

(Amended by Stats. 1986, Ch. 220.)

Denial of Licensure; Disciplinary Action

716. Notwithstanding any other provision of law, a board under this division may deny issuance of a license to an applicant or take disciplinary action against the holder of a California license for acts or omissions committed by the applicant or licensee in the course of professional practice or rendering services described in Section 715 if both of the following apply:

(a) The acts or omissions committed by the applicant or licensee constituted grounds for denial or discipline pursuant to the laws of this state governing licensees or applicants for licensure for the profession or vocation in question.

(b) The acts or omissions constituting the basis for denial or discipline by the agency were not authorized, exempted or rendered inconsistent by federal statute.

Scope of Practice Not Affected

717. This article is not intended to address the scope of practice of a dentist, physician and surgeon, or nurse licensed under this division, and nothing in this article shall be construed to restrict, expand, alter, or modify the existing scope of practice established by federal statute or regulation.

Commissioned Officers-Residency Programs

718. A physician and surgeon who is not licensed in this state but who is a commissioned officer on active duty in the medical corps of any branch of the armed forces of the United States may engage in the practice of medicine as part of a residency, fellowship, or clinical training program if all the following conditions are met:

(a) The residency, fellowship, or clinical training program is conducted by a branch of the armed forces of the United States at a health facility on a federal reservation and limited in enrollment to military physicians on active duty in the medical corps of a branch of the armed forces of the United States.

(b) The residency, fellowship, or clinical training program, as part of its program, contracts with or affiliates with a similar program in or at a health facility not on a federal reservation to offer specific courses or training not available at the facility located on the federal reservation.

(c) The officers enrolled in the residency, fellowship, or clinical training program restrict their practice only to patients who are seen as part of their duties in the program.

(d) The compensation received by the officers enrolled in the residency, fellowship, or clinical training program is limited to their regular pay and allowances as commissioned officers.

(e) The officers enrolled in the training programs or portions of training programs not conducted on a federal reservation shall register with the Division of Licensing of the Medical Board of California on a form provided by the division.

(Amended by Stats. 1989, Ch. 886.)

Article 10.5. Unprofessional Conduct

Section

725	Excessive Prescribing or Treatment
726	Sexual Relations with Patients
727	Evidentiary Rule
728	Psychotherapists-Knowledge of Sexual Contact with Previous Psychotherapist
729	Psychotherapist Sexual Exploitation
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Excessive Prescribing or Treatment

725. Repeated acts of clearly excessive prescribing or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, or optometrist.

Any person who engages in repeated acts of clearly excessive prescribing or administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) nor more than six hundred dollars (\$600), or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both the fine and imprisonment.

(Amended by Stats. 1984, Ch. 769.)

Sexual Relations with Patients

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

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

(Amended by Stats. 1993, Ch. 1072.)

Evidentiary Rule

727. The provisions of subdivision (2) of Section 1103 of the Evidence Code shall apply in disciplinary proceedings brought against a licensee for acts in violation of Section 726.

(Renumbered by Stats. 1981, Ch. 714.)

Psychotherapists-Knowledge of Sexual Contact with Previous Psychotherapist

728. (a) Any psychotherapist or employer of a psychotherapist who becomes aware through a patient that the patient had alleged sexual intercourse or alleged sexual contact with a previous psychotherapist during the course of a prior treatment, shall provide to the patient a brochure promulgated by the department which delineates the rights of, and remedies for, patients who have been involved sexually with their psychotherapist. Further, the psychotherapist or employer shall discuss with the patient the brochure prepared by the department.

(b) Failure to comply with this section constitutes unprofessional conduct.

(c) For the purpose of this section, the following definitions apply:

(1) "Psychotherapist" means a physician specializing in the practice of psychiatry or practicing psychotherapy, a psychologist, a clinical social worker, a marriage, family, and child counselor, a psychological assistant, marriage, family, and child counselor registered intern, or associate clinical social worker.

(2) "Sexual contact" means the touching of an intimate part of another person.

(3) "Intimate part" and "touching" have the same meaning as defined in subdivision (d) of Section 243.4 of the Penal Code.

(4) "The course of a prior treatment" means the period of time during which a patient first commences treatment for services which a psychotherapist is authorized to provide under his or her scope of practice or which the psychotherapist represents to the patient as being within his or her scope of practice until such time as the psychotherapist-patient relationship is terminated.

(Amended by Stats. 1989, Ch. 1104.)

Psychotherapist Sexual Exploitation

729. (a) Any physician and surgeon, psychotherapist, alcohol and drug abuse counselor or any person holding himself or herself out to be a physician and surgeon, or psychotherapist, or alcohol and drug abuse counselor, who engages in an act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in those acts, unless the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the patient or client to an independent and objective physician and surgeon, psychotherapist, or alcohol and drug abuse counselor recommended by a third-party physician and surgeon, psychotherapist, or alcohol and drug abuse counselor for

treatment, is guilty of sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

(b) Sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor is a public offense:

(1) An act in violation of subdivision (a) shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(2) Multiple acts in violation of subdivision (a) with a single victim, when the offender has no prior conviction for sexual exploitation, shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(3) An act or acts in violation of subdivision (a) with two or more victims shall be punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars (\$10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(4) Two or more acts in violation of subdivision (a) with a single victim, when the offender has at least one prior conviction for sexual exploitation, shall be punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars (\$10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(5) An act or acts in violation of subdivision (a) with two more victims, and the offender has at least one prior conviction for sexual exploitation, shall be punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars (\$10,000).

For purposes of subdivision (a), in no instance shall consent of the patient or client be a defense. However, physicians and surgeons shall not be guilty of sexual exploitation for touching any intimate part of a patient or client unless the touching is outside the scope of medical examination and treatment, or the touching is done for sexual gratification.

(c) For purposes of this section:

(1) "Psychotherapist" has the same meaning as defined in Section 728.

(2) "Alcohol and drug abuse counselor" means an individual who holds himself or herself out to be an alcohol or drug abuse professional or paraprofessional.

(3) "Sexual contact" means sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse.

(4) "Intimate part" and "touching" have the same meanings as defined in Section 243.4 of the Penal Code.

(d) In the investigation and prosecution of a violation of this section, no person shall seek to obtain disclosure of any confidential files of other patients, clients, or former patients or clients of the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

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

(t) If a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in a professional partnership or similar group has sexual contact with a patient in violation of this section, another physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in the partnership or group shall not be subject to action under this section solely because of the occurrence of that sexual contact.

(Amended by Stats. 1995, Ch. 444.)

Required Certification

730. Any person licensed under this division or under any initiative act referred to in this division shall not perform any medical evaluation for which the evaluator is required to be certified as a qualified medical evaluator pursuant to Section 139.2 of the Labor Code without having first obtained that certification. No person shall be in violation of this section if the person is certified as a qualified medical evaluator at the time of assignment to a three-member panel under subdivision (h) of Section 139.2 of the Labor Code or, if the injured worker is represented, if the person is certified as a qualified medical evaluator at the time the injured worker is referred for a medical evaluation. A violation of this section constitutes unprofessional conduct and grounds for disciplinary action.

(Amended by Stats. 1994, Ch. 1118.)

Violation of Specific Penal Code

730.5. (a) It is unprofessional conduct and a crime, as provided in Section 4935, for a physician and surgeon, osteopathic physician, dentist, or podiatrist to direct or supervise the performance of acupuncture involving the application of a needle to the body of a human being by a person licensed under this division who is not licensed pursuant to the Acupuncture Licensure Act established by Chapter 12 (commencing with Section 4925).

(b) It is unprofessional conduct and a crime, as provided in Section 4935, for a person licensed under this division who is not licensed pursuant to the Acupuncture Licensure Act established by Chapter 12 (commencing with Section 4925) to perform acupuncture involving the application of a needle to the body of a human being at the direction or under the supervision of a physician and surgeon, osteopathic physician, dentist, or podiatrist.

(Renumbered by Stats. 1999, Ch. 83.)

Violation of Specified Penal Codes

731. (a) Any person licensed, certified, registered, or otherwise subject to regulation pursuant to this division

who engages in, or who aids or abets in, a violation of Section 266h, 266i, 315, 316, or 318 of, or subdivision (a) or (b) of Section 647 of, the Penal Code occurring in the work premises of, or work area under the direct professional supervision or control of, that person, shall be guilty of unprofessional conduct. The license, certification, or registration of that person shall be subject to denial, suspension, or revocation by the appropriate regulatory entity under this division.

(b) In addition to any penalty provided under any other provision of law, a violation of subdivision (a) shall subject the person to a civil penalty in an amount not to exceed two thousand five hundred dollars (\$2,500) for the first offense, and not to exceed five thousand dollars (\$5,000) for each subsequent offense, which may be assessed and recovered in a civil action brought by any district attorney. If the action is brought by a district attorney, the penalty recovered shall be paid to the treasurer of the county in which the judgment was entered.

(Added by Stats. 1998, Ch. 971.)

Refund of Payment

732. (a) A physician and surgeon and a dentist shall refund any amount that a patient has paid for services rendered that has subsequently been paid to the physician and surgeon or dentist by a third-party payor and that constitutes a duplicate payment. The refund shall be made as follows:

(1) If the patient requests a refund, within 30 days following the request from that patient for a refund if the duplicate payment has been received, or within 30 days of receipt of the duplicate payment if the duplicate payment has not been received.

(2) If the patient does not request a refund, within 90 days of the date the physician and surgeon or dentist knows, or should have known, of the receipt of the duplicate payment, the physician and surgeon or dentist shall notify the patient of the duplicate payment, and the duplicate payment shall be refunded within 30 days unless the patient requests that a credit balance be retained.

(b) Violation of this section shall constitute unprofessional conduct. Disciplinary proceedings shall be conducted in accordance with the Medical Practice Act (Chapter 5 (commencing with Section 2000)) or the Dental Practice Act (Chapter 4 (commencing with Section 1600)), as applicable.

(Added by Stats. 1993, Ch. 765.)

Article 11. Professional Reporting

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Central Files

800. (a) The Medical Board of California, the Board of Dental Examiners, the Osteopathic Medical Board of California, the Board of Chiropractic Examiners, the California Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, and the State Board of Pharmacy shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to (1) any conviction of a crime in this or any other state which constitutes unprofessional conduct pursuant to the reporting requirements of Section 803; (2) any judgment or settlement requiring the licensee or his or her insurer, to pay any amount of damages in excess of three thousand dollars (\$3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section OJ or 802; (3) any public complaints for which provision is hereafter made, pursuant to subdivision (b) of this section; (4) disciplinary information reported pursuant to Section 805.

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

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

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

(c) The contents of any central file which are not public records under any other provision of law shall be confi-

dential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications.

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

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

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

(Amended by Stats. 1999, Ch. 655.)

Reporting Requirements for Insurers

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

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act shall send a complete report to the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, as to any settlement over thirty thousand dollars (\$30,000), or arbitration award of any amount, of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(c) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (com-

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

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

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

(Amended by Stats. 1997, Ch. 359.)

Reporting Requirements for Self-Insured

801.1. (a) Every state or local governmental agency that self insures a person who holds a license, certificate or similar authority from or under any agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) of Division 2 or the Osteopathic Initiative Act) shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by **that person's negligence, error or omission in practice, or rendering of unauthorized professional services.** The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every state or local governmental agency that self-insures a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 or the Osteopathic Initiative Act shall send a complete report to the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, as to any settlement or arbitration award over thirty thousand dollars (\$30,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error or omission in practice, or rendering of unauthorized pro-

professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

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

(Added by Stats. 1995, Ch. 708.)

Reporting Requirements for Licensees

802. (a) Every settlement or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or the unauthorized rendering of professional services, by a person who holds a license, certificate or other similar authority from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) of Division 2) or the Osteopathic Initiative Act who does not possess professional liability insurance as to that claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the arbitration award on the parties, be reported to the agency which issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if the person is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the physician or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(b) Every settlement over thirty thousand dollars (\$30,000), or arbitration award of any amount, of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or the unau-

thorized rendering of professional services, by a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2, or the Osteopathic Initiative Act, who does not possess professional liability insurance as to the claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the arbitration award on the parties, be reported to the agency which issued the license, certificate or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the physician or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(c) Every settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by negligence, error, or omission in practice, or the unauthorized rendering of professional services, by a marriage, family, and child counselor or clinical social worker licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990), who does not possess professional liability insurance as to that claim shall within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the arbitration award on the parties, be reported to the agency which issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the arbitration award on the parties, counsel for the claimant (or if he or she is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make a complete report. Failure of the marriage, family, and child counselor or clinical social worker or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this

section, or to hinder or impede any other person in that compliance is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(Amended by Stats. 1997, Ch. 359.)

Reporting Requirements for Physicians

802.1. (a) A physician and surgeon shall report any of the following to the Medical Board of California in writing within 30 days:

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

(2) The conviction of the physician and surgeon, including any verdict of guilty, or plea of guilty or no contest, of any felony.

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars (\$5,000).

(Added by Stats. 1995, Ch. 708.)

Reporting Requirements for Coroners

802.5. (a) When a coroner receives information that is based on findings that were reached by, or documented and approved by a board-certified or board-eligible pathologist indicating that a death may be the result of a **physician's or podiatrist's gross negligence or incompetence**, a report shall be filed with the Medical Board of California or the California Board of Podiatric Medicine. The initial report shall include the name of the decedent, date and place of death, attending physicians or podiatrists, and all other relevant information available. The initial report shall be followed, within 90 days, by copies of the coroner's report, autopsy protocol, and all other relevant information.

(b) The report required by this section shall be confidential. No coroner, physician and surgeon, or medical examiner, nor any authorized agent, shall be liable for damages in any civil action as a result of his or her acting in compliance with this section. No board-certified or board-eligible pathologist, nor any authorized agent, shall be liable for damages in any civil action as a result of his or her providing information under subdivision (a).

(Added by Stats. 1990, Ch. 1597.)

Reporting Requirements for Court Clerks-Judgments

803. (a) (1) Except as provided in paragraph (2), within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from the Board of Behavioral Science Examiners or from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200)) has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars (\$30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court which rendered the judgment shall report that fact to the agency that issued the license, certificate, or other similar authority.

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

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) shall send a complete report to the Medical Board of California as to any judgment of a claim for damages for death or personal injury caused by that licensee's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 calendar days after entry of judgment.

(c) Notwithstanding any other provision of law, the Medical Board of California and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public information received pursuant to subdivision (a) regarding felony convictions of, and judgments against, a physician and surgeon or doctor of podiatric medicine. The Division of Medical Quality and the California Board of Podiatric Medicine may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may, by regulation, establish categories of information that need not be disclosed to the public because that information is unreliable or not sufficiently related to the licensee's professional practice.

(Amended by Stats. 1997, Ch. 359.)

Public Disclosure

803.1. (a) Notwithstanding any other provision of law, the Board of Podiatric Medicine shall disclose to an inquiring member of the public information regarding the status of the license of a licensee and any enforcement actions taken against a licensee by either board or by another state or jurisdiction, including, but not limited to, all of the following:

- (1) Temporary restraining orders issued.
- (2) Interim suspension orders issued.
- (3) Limitations on practice ordered by the board.
- (4) Public letters of reprimand issued.
- (5) Infractions, citations, or fines imposed.

(b) Notwithstanding any other provision of law, the Medical Board of California shall disclose to an inquiring member of the public information regarding the status of the license of a licensee, any malpractice judgments, any arbitration awards, or any summaries of hospital disciplinary actions that result in the termination or revocation of a licensee's staff privileges for a medical disciplinary cause or reason, and any enforcement actions taken against a licensee by the board or by another state or jurisdiction, including, but not limited to, any of the actions described in paragraphs (1) to (5), inclusive, of subdivision (a).

(c) The Medical Board of California and the Board of Podiatric Medicine may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may, by regulation, establish categories of information that need not be disclosed to the public

because that information is unreliable or not sufficiently related to the licensee's professional practice.

(Amended by Stats. 1997, Ch. 359.)

Reporting Payments Over \$30,000

803.2. Every entry of settlement agreement over thirty thousand dollars (\$30,000), or judgment or arbitration award of any amount, of a claim or action for damages for death or personal injury caused by, or alleging, the negligence, error, or omission in practice, or the unauthorized rendering of professional services, by a physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Luitiative Act, when that judgment, settlement agreement, or arbitration award is entered against, or paid by, the employer of that licensee and not the licensee himself or herself, shall be reported to the appropriate board by the entity required to report the information in accordance with Sections 801, 801.1, 802, and 803 as an entry of judgment, settlement, or arbitration award against the negligent licensee.

"Employer" as used in this section means a professional corporation, a group practice, a health care facility or clinic licensed or exempt from licensure under the Health and Safety Code, a licensed health care service plan, a medical care foundation, an educational institution, a professional institution, a professional school or college, a general law corporation, a public entity, or a nonprofit organization that employs, retains, or contracts with a licensee referred to in this section. Nothing in this section shall be construed to authorize the employment of, or contracting with, any licensee in violation of Section 2400.

(Amended by Stats. 1997, Ch. 359.)

Arbitration-Health Care Service Plan

803.3. Any arbitration under a health care service plan contract for any death or personal injury resulting in an award for an amount in excess of thirty thousand dollars (\$30,000) shall be a judgment for purposes of subdivision (b) of Section 803.

(Added by Stats. 1994, Ch. 653.)

Reporting Requirements-Felony Convictions

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

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

conviction to the applicable board. Where the licensee is regulated by an allied health board, the record of conviction shall be transmitted to that allied health board and the Medical Board of California.

(Amended by Stats. 1995, Ch. 708.)

Hearing Transcripts-Probation Reports

803.6. (a) The clerk of the court shall transmit any felony preliminary hearing transcript concerning a defendant licensee to the Medical Board of California and the applicable allied health board, or the California Board of Podiatric Medicine, as applicable, where the total length of the transcript is under 800 pages and shall notify the appropriate board of any proceeding where the transcript exceeds that length.

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

(Added by Stats. 1993, Ch. 1267.)

Reporting Forms

804: (a) Any agency to whom reports are to be sent under Section 801, 801.1, 802, or 803, may develop a prescribed form for the making of the reports, usage of which it may, but need not, by regulation, require in all cases.

(b) A report required to be made by Sections 801, 801.1, or 802 shall be deemed complete only if it includes the following information: (1) the name and last known business and residential addresses of every plaintiff or claimant involved in the matter, whether or not each plaintiff or claimant recovered anything; (2) the name and last known business and residential addresses of every physician or provider of health care services who was claimed or alleged to have acted improperly, whether or not that person was a named defendant and whether or not any recovery or judgment was had against that person; (3) the name, address, and principal place of business of every insurer providing professional liability insurance as to any person named in (2), and the insured's policy number; (4) the name of the court in which the action or any part of the action was filed along with the date of filing and docket number of each action; (5) a brief description or summary of the facts upon which each claim, charge or judgment rested including the date of occurrence; (6) the names and last known business and residential addresses of every person who acted as counsel for any party in the litigation or negotiations, along with an identification of the party whom said person represented; (7) the date and amount of final judgment or settlement; and (8) any other information the agency to whom the reports are to be sent may, by regulation, require.

(c) Every person named in the report, who is notified by the board within 60 days of the filing of the report, shall maintain for the period of three years from the filing of the report any records he or she has as to the matter in question and shall make those available upon request to the agency with which the report was filed.

(d) Every professional liability insurer that makes a report under Section 801, or self-insured governmental

agency that makes a report pursuant to Section 801.1, and has received a copy of any written patient medical or hospital records prepared by the treating physician or the staff of the treating physician or hospital, describing the medical condition, history, care, or treatment of the person whose death or injury is the subject of the claim prompting the Section 801 or 801.1 report, or a copy of any depositions in the matter that discuss the care, treatment, or medical condition of the person, shall provide with the report copies of the records and depositions, subject to reasonable costs to be paid by the Medical Board of California to the insurer, except when confidentiality is required by court order. If confidentiality is required by court order and, as a result, the insurer is unable to provide the records and depositions, documentation to that effect shall accompany the original report. The applicable board may, upon prior notification of the parties to the action, petition the appropriate court for modification of any protective order to permit disclosure to the board. A professional liability insurer or self-insured governmental agency shall maintain the records and depositions referred to in this subdivision for at least one year from the date of the Section 801 or 801.1 report.

(Amended by Stats. 1995, Ch. 708.)

Reporting Compliance

804.5. The Medical Board of California may request a licensee, health care facility, self-insured governmental agency, or professional liability insurer that is required pursuant to Section 804 to comply with a request for medical records of a patient, or a copy of any depositions in a case that discusses the care, treatment, or medical condition of a person, to permit representatives of the board to obtain copies of these records from the custodians of these records subject to reasonable costs to be paid by the Medical Board of California.

(Added by Stats. 1995, Ch. 708.)

Reporting Requirements for Peer Review Bodies

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

(1) "Peer review body" includes:

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

(B) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a nonprofit hospital service plan regulated under Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

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

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

(2) "Licentiate" means a physician and surgeon, podiatrist, clinical psychologist, marriage and family therapist, **clinical social worker, or dentist. "Licentiate" also includes a person authorized to practice medicine pursuant to Section 2113.**

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

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

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

(6) "Medical disciplinary cause or reason" means that aspect of a licentiate's competence or professional conduct which is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) "805 report" means the written report required under subdivision (b).

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency whenever any of the following actions are taken as a result of a determination of a peer review body:

(1) A licentiate's application for staff privileges or membership is denied or rejected for a **medical disciplinary cause or reason.**

(2) A licentiate's membership, staff privileges, or employment is terminated or revoked for a **medical disciplinary cause or reason.**

(3) Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a **medical disciplinary cause or reason.**

In addition to the duty to report as set forth in paragraphs (1), (2), and (3), the peer review body also has a duty to report under this section a licentiate's resignation or leave of absence from membership, staff, or employment following notice of an impending investigation based on information indicating **medical disciplinary cause or reason,**

The 805 report shall be filed within 15 days after the effective date of the denial, termination, restriction, resignation, or leave of absence, or after the exhaustion of administrative procedures, without regard to any filing for judicial review.

An 805 report shall also be filed within 15 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days.

A copy of the 805 report, and a notice advising the licensee of his or her right to submit additional statements or other information pursuant to Section 800, shall be sent by the peer review body to the licensee named in the report.

The information to be reported in an 805 report shall include the name of the licensee involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

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

In those instances where another peer review body is required to file an 805 report, a health care service plan or nonprofit hospital service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason.

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

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

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

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

(g) An intentional failure to make a report pursuant to this section is a public offense punishable by a fine not to exceed ten thousand dollars (\$10,000).

(h) A failure by the administrator of any peer review body or the chief executive officer or administrator of any health care facility who is designated to transmit a report pursuant to this section whether or not the failure is intentional is punishable by a civil penalty not exceeding five thousand dollars (\$5,000) per violation payable to the

board with jurisdiction over the licensee in any action brought by the Attorney General.

(Amended by Stats. 1999, Ch. 252.)

Inspection of Records

805.1. (a) The Medical Board of California, the Osteopathic Medical Board of California, and the Board of Dental Examiners shall be entitled to inspect and copy the following documents in the record of any disciplinary proceeding resulting in action which is required to be reported pursuant to Section 805:

(1) Any statement of charges.

(2) Any document, medical chart, or exhibits in evidence.

(3) Any opinion, findings, or conclusions.

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

(Amended by Stats. 1991, Ch. 359.)

Request for Report

805.5. (a) Prior to granting or renewing staff privileges for any physician and surgeon, clinical psychologist, podiatrist, or dentist, any health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, or any health care service plan or medical care foundation, or the medical staff of any such institution, shall request a report from the Medical Board of California, the Osteopathic Medical Board of California, or the Board of Dental Examiners to determine if any report has been made pursuant to Section 805 indicating that the applying physician and surgeon, clinical psychologist, podiatrist, or dentist has been denied staff privileges, been removed from a medical staff, or had his or her staff privileges restricted as provided in Section 805. The request shall include the name and California license number of the physician and surgeon, clinical psychologist, podiatrist, or dentist. Furnishing of a copy of the 805 report shall not cause the 805 report to be a public record.

(b) Upon a request made by, or on behalf of, an institution described in subdivision (a) or its medical staff, which is received on or after January 1, 1980, the board shall furnish a copy of any report made pursuant to Section 805. However, the board shall not send a copy of a report (1) where the denial, removal, or restriction was imposed solely because of the failure to complete medical records, (2) where the board has found the information reported is without merit, or (3) where a period of three years has elapsed since the report was submitted.

In the event that the board fails to advise the institution within 30 working days following its request for a report required by this section, the institution may grant or renew staff privileges for the physician and surgeon, clinical psychologist, podiatrist, or dentist.

(c) Any institution described in subdivision (a) or its medical staff which violates subdivision (a) is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars (\$200) nor more than one thousand two hundred dollars (\$1,200).

(Amended by Stats. 1991, Ch. 359.)

Statistical Report to Legislature

806. Each agency in the department receiving reports pursuant to the preceding sections shall prepare a statistical report based upon such records for presentation to the Legislature not later than 30 days after the commencement of each regular session of the Legislature, including a summary of administrative and disciplinary action taken with respect to such reports and any recommendations for corrective legislation if the agency considers such legislation to be necessary.

Notification of Provisions

807. Each agency in the department shall notify every person licensed, certified or holding similar authority issued by it, and the department shall notify every insurance company doing business in this state and every institution mentioned in Section 805 of the provisions of this article.

Respiratory Care Practitioners

808. For purposes of this article, reports affecting respiratory care practitioners required to be filed under Sections 801, 802, and 803 shall be filed with the Respiratory Care Examining Committee.

(Added by Stats. 1987, Ch. 839.)

"Health Care Quality Improvement Act of 1986"

809.. (a) The Legislature hereby finds and declares the following:

(1) In 1986, Congress enacted the Health Care Quality Improvement Act of 1986 (Chapter 117 (commencing with Section 11101) Title 42, United States Code), to encourage physicians to engage in effective professional peer review, but giving each state the opportunity to "opt-out" of some of the provisions of the federal act.

(2) Because of deficiencies in the federal act and the possible adverse interpretations by the courts of the federal act, it is preferable for California to "opt-out" of the federal act and design its own peer review system.

(3) Peer review, fairly conducted, is essential to preserving the highest standards of medical practice.

(4) Peer review which is not conducted fairly results in harm both to patients and healing arts practitioners by limiting access to care.

(5) Peer review, fairly conducted, will aid the appropriate state licensing boards in the irresponsibility to regulate and discipline errant healing arts practitioners.

(6) To protect the health and welfare of the people of California, it is the policy of the State of California to exclude, through the peer review mechanism as provided for by California law, those healing arts practitioners who provide substandard care or who engage in professional misconduct, regardless of the effect of that exclusion on competition.

(7) It is the intent of the Legislature that peer review of professional health care services be done efficiently, on an ongoing basis, with an emphasis on early detection of potential quality problems and resolutions through informal educational interventions.

(8) Sections 809 to 809.8, inclusive, shall not affect the respective responsibilities of the organized medical staff or the governing body of an acute care hospital with respect to peer review in the acute care hospital setting. It is the intent of the Legislature that written provisions implementing Sections 809 to 809.8, inclusive, in the acute care hospital setting shall be included in medical staff bylaws which shall be adopted by a vote of the members of the organized medical staff and which shall be subject to governing body approval, which approval shall not be withheld unreasonably.

(9) (A) The Legislature thus finds and declares that the laws of this state pertaining to the peer review of healing arts practitioners shall apply in lieu of Chapter 117 (commencing with Section 11101) of Title 42 of the United States Code, because the laws of this state provide a more careful articulation of the protections for both those undertaking peerreview activity and those subject to review, and better integrates public and private systems of peer review. Therefore, California exercises its right to opt out of specified provisions of the Health Care Quality Improvement Act relating to professional review actions, pursuant to subparagraph (B) of paragraph (2) of subdivision (c) of Section 11111 of Chapter 117 of Title 42 of the United States Code. This election shall not affect the availability of any immunity under California law.

(B) The Legislature further declares that it is not the intent or purposes of Sections 809 to 809.8, inclusive, to opt out of any mandatory national data bank established pursuant to Subchapter II (commencing with Section 11131) of Chapter 117 of Title 42 of the United States Code.

(b) For the purpose of this section and Sections 809.1 to 809.8, inclusive, "**healing arts practitioner**" or "**licentiate**" means a physician and surgeon, podiatrist, clinical **psychologist, or dentist; and "peer review body" means a peer review body as specified in paragraph (!) of subdivision (a) of Section 805, and includes any designee of the peer review body.**

(Added by Stats. 1989, Ch. 336.)

Peer Review by Licentiates

809.05. It is the policy of this state that peer review be performed by licentiates. This policy is subject to the following limitations:

(a) The governing bodies of acute care hospitals have a legitimate function in the peer review process. In all peer review matters, the governing body shall give great weight to the actions of peer review bodies and, in no event, shall **act in an arbitrary or capricious manner.**

(b) In those instances in which the peer review body's failure to investigate, or initiate disciplinary action, is contrary to the weight of the evidence, the governing body shall have the authority to direct the peer review body to initiate an investigation or a disciplinary action, but only

after consultation with the peer review body. No such action shall be taken in an unreasonable manner.

(c) In the event the peer review body fails to take action in response to a direction from the governing body, the governing body shall have the authority to take action against a licentiate. Such action shall only be taken after written notice to the peer review body and shall fully comply with the procedures and rules applicable to peer review proceedings established by Sections 809.1 to 809.6, inclusive.

(d) A governing body and the medical staff shall act exclusively in the interest of maintaining and enhancing quality patient care.

(e) It is not the intent or purpose of this section to prohibit or discourage public members on stale licensing boards and medical quality review committees from participating in disciplinary actions as authorized by law.

(Added by Stats. 1989, Ch. 354.)

Written Notice of Final Proposed Action

809.1. (a) A licentiate who is the subject of a final proposed action of a peer review body for which a report is required to be filed under Section 805 shall be entitled to written notice as set forth in subdivisions (b) and (c). For the purposes of this section, the "final proposed action" shall be the final decision or recommendation of the peer review body after informal investigatory activity or pre-hearing meetings, if any.

(b) The peer review body shall give the licentiate written notice of the final proposed action. This notice shall include all the following information:

(1) That an action against the licentiate has been proposed by the peer review body which, if adopted, shall be taken and reported pursuant to Section 805.

(2) The final proposed action.

(3) That the licentiate has the right to request a hearing on the final proposed action.

(4) The time limit, within which to request such a hearing.

(c) If a hearing is requested on a timely basis, the peer review body shall give the licentiate a written notice stating all of the following:

(1) The reasons for the final proposed action taken or recommended, including the acts or omissions with which the licentiate is charged.

(2) The place, time, and date of the hearing.

(Added by Stats. 1989, Ch. 336.)

Hearing Procedures

809.2. If a licentiate timely requests a hearing concerning a final proposed action for which a report is required to be filed under Section 805, the following shall apply:

(a) The hearing shall be held, as determined by the peer review body, before a trier of fact, which shall be an arbitrator or arbitrators selected by a process mutually acceptable to the licentiate and the peer review body, or before a panel of unbiased individuals who shall gain no direct financial benefit from the outcome, who have not acted as an accuser, investigator, factfinder, or initial decisionmaker in

the same matter, and which shall include, where feasible, an individual practicing the same specialty as the licentiate.

(b) If a hearing officer is selected to preside at a hearing held before a panel, the hearing officer shall gain no direct financial benefit from the outcome, shall not act as a prosecuting officer or advocate, and shall not be entitled to vote.

(c) The licentiate shall have the right to a reasonable opportunity to voir dire the panel members and any hearing officer, and the right to challenge the impartiality of any member or hearing officer. Challenges to the impartiality of any member or hearing officer shall be ruled on by the presiding officer, who shall be the hearing officer if one has been selected.

(d) The licentiate shall have the right to inspect and copy at the licentiate's expense any documentary information relevant to the charges which the peer review body has in its possession or under its control, as soon as practicable after the receipt of the licentiate's request for a hearing. The peer review body shall have the right to inspect and copy at the peer review body's expense any documentary information relevant to the charges which the licentiate has in his or her possession or control as soon as practicable after receipt of the peer review body's request. The failure by either party to provide access to this information at least 30 days before the hearing shall constitute good cause for a continuance. The right to inspect and copy by either party does not extend to confidential information referring solely to individually identifiable licentiates, other than the licentiate under review. The arbitrator or presiding officer shall consider and rule upon any request for access to information, and may impose any safeguards the protection of the peer review process and justice requires.

(e) When ruling upon requests for access to information and determining the relevancy thereof, the arbitrator or presiding officer shall, among other factors, consider the following:

(1) Whether the information sought may be introduced to support or defend the charges.

(2) The exculpatory or inculpatory nature of the information sought, if any.

(3) The burden imposed on the party in possession of the information sought, if access is granted.

(4) Any previous requests for access to information submitted or resisted by the parties to the same proceeding.

(t) At the request of either side, the parties shall exchange lists of witnesses expected to testify and copies of all documents expected to be introduced at the hearing. Failure to disclose the identity of a witness or produce copies of all documents expected to be produced at least 10 days before the commencement of the hearing shall constitute good cause for a continuance.

(g) Continuances shall be granted upon agreement of the parties or by the arbitrator or presiding officer on a showing of good cause.

(h) A hearing under this section shall be commenced within 60 days after receipt of the request for hearing, and the peer review process shall be completed within a rea-

sonable time, after a licentiate receives notice of a final proposed action or an immediate suspension or restriction of clinical privileges, unless the arbitrator or presiding officer issues a written decision finding that the licentiate failed to comply with subdivisions (d) and (e) in a timely manner, or consented to the delay.

(Added by Stats. 1989, Ch. 336.)

Rights of the Parties

809.3. (a) during a hearing concerning a final proposed action for which reporting is required to be filed under Section 805, both parties shall have all of the following rights:

(1) To be provided with all of the information made available to the trier of fact.

(2) To have a record made of the proceedings, copies of which may be obtained by the licentiate upon payment of any reasonable charges associated with the preparation thereof.

(3) To call, examine, and cross-examine witnesses.

(4) To present and rebut evidence determined by the arbitrator or presiding officer to be relevant.

(5) To submit a written statement at the close of the hearing.

(b) The burden of presenting evidence and proof during the hearing shall be as follows:

(1) The peer review body shall have the initial duty to present evidence which supports the charge or recommended action.

(2) Initial applicants shall bear the burden of persuading the trier of fact by a preponderance of the evidence of their qualifications by producing information which allows for adequate evaluation and resolution of reasonable doubts concerning their current qualifications for staff privileges, membership, or employment. Initial applicants shall not be permitted to introduce information not produced upon request of the peer review body during the application process, unless the initial applicant establishes that the information could not have been produced previously in the exercise of reasonable diligence.

(3) Except as provided above for initial applicants, the peer review body shall bear the burden of persuading the trier of fact by a preponderance of the evidence that the action or recommendation is reasonable and warranted.

(c) The peer review body shall adopt written provisions governing whether a licentiate shall have the option of being represented by an attorney at the licentiate's expense. No peer review body shall be represented by an attorney if the licentiate is not so represented, except dental professional society peer review bodies may be represented by an attorney provided that the peer review body grants each licentiate the option of being represented by an attorney at the licentiate's expense, even if the licentiate declines to be represented by an attorney.

(Amended by Stats. 1990, Ch. 332.)

Rights Upon Completion of a Hearing

809.4. (a) Upon the completion of a hearing concerning a final proposed action for which a report is required to

be filed under Section 805, the licentiate and the peer review body involved have the right to receive all of the following:

(1) A written decision of the trier of fact, including findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached.

(2) A written explanation of the procedure for appealing the decision, if any appellate mechanism exists.

(b) If an appellate mechanism is provided, it need not provide for de novo review, but it shall include the following minimum rights for both parties:

(1) The right to appear and respond.

(2) The right to be represented by an attorney or any other representative designated by the party.

(3) The right to receive the written decision of the appellate body.

(Added by Stats. 1989, Ch. 336.)

Immediate Suspension or Restriction

809.5. (a) Notwithstanding Sections 809 to 809.4, inclusive, a peer review body may immediately suspend or restrict clinical privileges of a licentiate where the failure to take that action may result in an imminent danger to the health of any individual, provided that the licentiate is subsequently provided with the notice and hearing rights set forth in Sections 809.1 to 809.4, inclusive, or, with respect to organizations specified in Section 809.7, with the rights specified in that section.

(b) When no person authorized by the peer review body is available to summarily suspend or restrict clinical privileges under circumstances specified in subdivision (a), the governing body of an acute care hospital, or its designee, may immediately suspend a licentiate's clinical privileges if a failure to summarily suspend those privileges is likely to result in an imminent danger to the health of any individual, provided the governing body of the acute care hospital has, before the suspension, made reasonable attempts to contact the peer review body. A suspension by the governing body of an acute care hospital which has not been ratified by the peer review body within two working days, excluding weekends and holidays, after the suspension shall terminate automatically.

(Amended by Stats. 1990, Ch. 332.)

Binding Agreements

809.6. (a) The parties are bound by any additional notice and hearing provisions contained in any applicable professional society or medical staff bylaws which are not inconsistent with Sections 809.1 to 809.4, inclusive.

(b) The parties are bound by any additional notice and hearing provisions contained in any applicable agreement or contract between the licentiate and peer review body or health care entity which are not inconsistent with Sections 809.1 to 809.4, inclusive.

(c) The provisions of Sections 809.1 to 809.4, inclusive, may not be waived in any instrument specified in subdivision (a) or (b) for a final proposed action for which a report is required to be filed under Section 805.

(Added by Stats. 1989, Ch. 336.)

State, County, and UC Hospitals

809.7. Sections 809.1 to 809.4, inclusive, shall not apply to peer review proceedings conducted in state or county hospitals, in hospitals owned by, operated by, or licensed to the Regents of the University of California or any of its subsidiary corporations which serve as a primary teaching facility, or in health facilities which serve as the primary teaching facility for medical schools approved pursuant to Section 2084. In addition, Sections 809.1 to 809.4, inclusive, shall not apply to licentiates engaged in postgraduate medical education under the auspices of a medical school approved pursuant to Section 2084. This section shall not affect the obligation to afford due process of law to licentiates involved in peer review proceedings in these hospitals.

(Added by Stats. 1989, Ch. 336.)

Judicial Review

809.8. Nothing in Sections 809 to 809.7, inclusive, shall affect the availability of judicial review under Section 1094.5 of the Code of Civil Procedure nor the provisions relating to discovery and testimony in Section 1157 of the Evidence Code or Sections 1370 and 1370.1 of the Health and Safety Code.

(Added by Stats. 1989, Ch. 336.)

Cost and Attorney Fees

809.9. In any suit brought to challenge an action taken or a restriction imposed which is required to be reported pursuant to Section 805, the court shall, at the conclusion of the action, award to a substantially prevailing party the cost of the suit, including a reasonable attorney's fee, if the other party's conduct in bringing, defending, or litigating the suit was frivolous, unreasonable, without foundation, or in bad faith. For the purposes of this section, a defendant shall not be considered to have substantially prevailed when the plaintiff obtains an award for damages or permanent injunctive or declaratory relief. For the purpose of this section, a plaintiff shall not be considered to have substantially prevailed when the plaintiff does not obtain an award of damages or permanent injunctive or declaratory relief.

(Added by Stats. 1989, Ch. 336.)

Article 12. Insurance Fraud**Section**

810 Unprofessional Conduct

Unprofessional Conduct

810. (a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 550 of the Penal Code,

(c) As used in this section, health care professional means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act.

(Amended by Stats. 1997, Ch. 758.)

Article 12.5. Mental Illness or Physical Illness

(Added by Stats. 1982, Ch. 1183)

Section

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Order of Examination

820. Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

(Amended by Stats. 1989, Ch. 1104.)

Failure to Comply

821. The licentiate's failure to comply with an order issued under Section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate or license.

Investigation Peer Review Body

821.5. (a) A peer review body, as defined in Section 805, that reviews physicians and surgeons, shall, within 15 days of initiating a formal investigation of a physician and surgeon's ability to practice medicine safely based upon information indicating that the physician and surgeon may be suffering from a disabling mental or physical condition that poses a threat to patient care, report to the diversion program of the Medical Board the name of the physician and surgeon under investigation and the general nature of the investigation. A peer review body that has made a report to the diversion program under this section shall also notify the diversion program when it has completed or closed an investigation.

(b) The diversion program administrator, upon receipt of a report pursuant to subdivision (a), shall contact the peer review body that made the report within 60 days in order to determine the status of the peer review body's investigation. The diversion program administrator shall contact the peer review body periodically thereafter to monitor the progress of the investigation. At any time, if the diversion program administrator determines that the progress of the investigation is not adequate to protect the public, the diversion program administrator shall notify the chief of enforcement of the Division of Medical Quality of the Medical Board of California, who shall promptly conduct an investigation of the matter. Concurrently with notifying the chief of enforcement, the diversion program administrator shall notify the reporting peer review body and the chief executive officer or an equivalent officer of the hospital of its decision to refer the case for investigation by the chief of enforcement.

(c) For purposes of this section "formal investigation" means an investigation ordered by the peer review body's medical executive committee or its equivalent, based upon information indicating that the physician and surgeon may be suffering from a disabling mental or physical condition that poses a threat to patient care. "Formal investigation" does not include the usual activities of the well-being or assistance committee or the usual quality assessment and improvement activities undertaken by the medical staff of a health facility in compliance with the licensing and certification requirements for health facilities set forth in Title 22 of the California Code of Regulations, or preliminary deliberations or inquiries of the executive committee to determine whether to order a formal investigation.

For purposes of this section, "usual activities" of the well-being or assistance committee are activities to assist medical staff members who may be impaired by chemical dependency or mental illness to obtain necessary evaluation and rehabilitation services that do not result in referral to the medical executive committee.

(d) Information received by the diversion program pursuant to this section shall be governed by, and shall be deemed confidential to the same extent as program records under, Section 2355. The records shall not be further disclosed by the diversion program, except as provided in subdivision (b).

(e) Upon receipt of notice from a peer review body that an investigation has been closed and that the peer review body has determined that there is no need for further action to protect the public, the diversion program shall purge and destroy all records in its possession pertaining to the investigation unless the diversion program administrator has referred the matter to the chief of enforcement pursuant to subdivision (b).

(t) A peer review body that has made a report under subdivision (a) shall not be deemed to have waived the protections of Section 1157 of the Evidence Code. It is not the intent of the Legislature in enacting this subdivision to affect pending litigation concerning Section 1157 or to create any new confidentiality protection except as specified in subdivision (d). "Pending litigation" shall include Ar-

nett v. Dal Cielo (No. S048308), pending before the California Supreme Court.

(g) The report required by this section shall be submitted on a short form developed by the board. The board shall develop the short form, the contents of which shall reflect the requirements of this section, within 30 days of the effective date of this section. The board shall not require the filing of any report until the short form is made available by the board.

(h) This section shall become operative on January 1, 1997, unless the regulations required to be adopted pursuant to Section 821.6 are adopted prior to that date, in which case this section shall become operative on the effective date of the regulations.

(Added by Stats. 1996, Ch. 644.)

Monitoring Responsibilities

821.6. The board shall adopt regulations to implement the monitoring responsibility of the diversion program administrator described in subdivision (b) of Section 821.5, and the short form required to be developed pursuant to subdivision (g), on or before January 1, 1997.

(Added to Stats, 1996, Ch. 644.)

Action Taken

822. If a licensing agency determines that its licensee's ability to practice his or her profession safely is impaired because the licensee is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

(a) Revoking the licensee's certificate or license.

(b) Suspending the licensee's right to practice.

(c) Placing the licensee on probation.

(d) Taking such other action in relation to the licensee as the licensing agency in its discretion deems proper.

The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

Terms and Conditions for Reinstatement

823. Notwithstanding any other provisions of law, reinstatement of a licensee against whom action has been taken pursuant to Section 822 shall be governed by the procedures in this article. In reinstating a certificate or license which has been revoked or suspended under Section 822, the licensing agency may impose terms and conditions to be complied with by the licensee after the certificate or license has been reinstated. The authority of the licensing agency to impose terms and conditions includes, but is not limited to, the following:

(a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training.

(b) Requiring the licensee to pass an oral, written, practical, or clinical examination, or any combination

thereof to determine his or her present fitness to engage in the practice of his or her profession.

(c) Requiring the licentiate to submit to a complete diagnostic examination by one or more physicians and surgeons or psychologists appointed by the licensing agency. If the licensing agency requires the licentiate to submit to such an examination, the licensing agency shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons or psychologists of the licentiate's choice.

(d) Requiring the licentiate to undergo continuing treatment.

(e) Restricting or limiting the extent, scope or type of practice of the licentiate.

Choice of Actions

824. The licensing agency may proceed against a licentiate under either Section 820, or 822, or under both sections.

Division of Medical Quality

825. As used in this article with reference to persons holding licenses as physicians and surgeons, "licensing agency" means a panel of the Division of Medical Quality.

(Amended by Stats. 1993, Ch. 1267.)

Administrative Proceedings

826. The proceedings under Sections 821 and 822 shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the licensing agency and the licentiate shall have all the rights and powers granted therein.

Closed Session

827. Notwithstanding the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to public meetings, the licensing agency may convene in closed session to consider any evidence relating to the licentiate's mental or physical illness obtained pursuant to the proceedings under Section 820. The licensing agency shall only convene in closed session to the extent that it is necessary to protect the privacy of a licentiate.

Insufficient Evidence

828. If the licensing agency determines, pursuant to proceedings conducted under Section 820, that there is insufficient evidence to bring an action against the licentiate pursuant to Section 822, then all licensiug agency records of the proceedings, including the order for the examination, investigative reports, if any, and the report of the physicians and surgeons or psychologists, shall be kept confidential and are not subject to discovery or subpoena. If no further proceedings are conducted to determine the licentiates fitness to practice during a period of five years from the date of the determination by the licensing agency of the proceeding pursuant to Section 820, then the licensing agency shall purge and destroy all records pertaining to the proceedings. If new proceedings are instituted during the

five-year period against the licentiate by the licensing agency, the records, including the report of the physicians and surgeons or psychologists, may be used in the proceedings and shall be available to the respondent pursuant to the provisions of Section 11507.6 of the Government Code.

Article 13. Standards for Licensure or Certification

Section

850 Prohibited Requirements

851 Authorized Requirements

Prohibited Requirements

850. No healing arts licensing board or examining committee under the Department of Consumer Affairs shall by regulation require an applicant for licensure or certification to be a member of, to be certified by, to be eligible to be certified or registered by, or otherwise meet the standards of a specified private voluntary association or professional society except as provided for in this article.

Authorized Requirements

851. A healing arts licensure board or examining committee may by regulation require an applicant for licensure or certification to meet the standards of a specified private voluntary association or professional society wheu either of the following conditions is met:

(a) There is direct statutory authority or requirement that the board or examining committee utilize the standards of the specified private voluntary association or professional society; or

(b) The board or examining committee specifies in the regulation the amount of education, training, experience, examinations, or other requirements of the private voluntary association or professional society, which standards shall be consistent with the provisions of law regulating such licensees, and the board or examining committee adopts such standards in public hearing. The board or examining committee may, by regulation, require an applicant to successfully complete an examination conducted by or created by a relevant national certification association, testing firm, private voluntary association, or professional society.

Nothing in this section authorizes the Medical Board of California to limit the licensure of physicians and surgeons by specialty.

(Amended by Stats. 1989, Ch. 886.)

CHAPTER 1.5. EXEMPTION FROM LICENSURE

Exemptions During Disaster

900. (a) Nothing in this division applies to a health care practitioner licensed in another state or territory of the United States who offers or provides health care for which he or she is licensed, if the health care is provided only during a state of emergency as defined in subdivision (b) of Section 8558 of the Government Code, which emergency overwhelms the response capabilities of California health

care practitioners and only upon the request of the Director of the Emergency Medical Services Authority.

(b) The director shall be the medical control and shall designate the licensure and specialty health care practitioners required for the specific emergency and shall designate the areas to which they may be deployed.

(c) Health care practitioners shall provide, upon request, a valid copy of a professional license and a photograph identification issued by the state in which the practitioner holds licensure before being deployed by the director.

(d) Health care practitioners deployed pursuant to this chapter shall provide the appropriate California licensing authority with verification of licensure upon request.

(e) **Health** care practitioners providing health care pursuant to this chapter shall have immunity from liability for services rendered as specified in Section 8659 of the Government Code.

(f) For the purposes of this chapter, "health care practitioner" means any person who engages in acts which are the subject of licensure or regulation under this division or under any initiative act referred to in this division.

(g) For purposes of this chapter, "director" means the Director of the Emergency Medical Services Authority who shall have the powers specified in Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(Added by Stats. 1989, Ch. 97.)

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Article 1. Administration

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Medical Practice Act

2000. This chapter shall be known and may be cited as the Medical Practice Act. Whenever a reference is made to

the Medical Practice Act by the provisions of any statute, it is to be construed as referring to the provisions of this chapter.

Medical Board of California

2001. There is in the Department of Consumer Affairs a Medical Board of California which consists of 19 members, seven of whom shall be public members.

The Governor shall appoint 17 members to the board, subject to confirmation by the Senate, five of whom shall be public members. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies which occur on or after January 1, 1983.

This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

(Amended by Stats. 1998, Ch. 736.)

"Board" Defined

2002. Unless otherwise expressly provided, the term "board" as used in this chapter means the Medical Board of California.

(Amended by Stats. 1989, Ch. 886.)

Composition of Board

2003. The board shall consist of the following three divisions: a Division of Medical Quality, a Division of Licensing, and a Division of Allied Health Professions.

Division of Medical Quality: Responsibilities

2004. The Division of Medical Quality shall have the responsibility for the following:

(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

(b) The administration and hearing of disciplinary actions.

(c) Carrying out disciplinary actions appropriate to findings made by a medical quality review committee, the division, or an administrative law judge.

(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

Division of Licensing: Responsibilities

2005. The Division of Licensing shall have the responsibility for the following:

(a) Approving undergraduate and graduate medical education programs.

(b) Approving clinical clerkship and special programs and hospitals for such programs.

(c) Developing and administering the physician's and surgeon's licensure examination.

(d) Issuing licenses and certificates under the board's jurisdiction.

(e) Administering the board's continuing medical education program.

(f) Administering the student loan program.

Division of Allied Health Professions: Responsibilities

2006. The Division of Allied Health Professions shall have the responsibility for the following:

(a) The activities of examining advisory committees and nonphysician licentiates under the jurisdiction of the board.

(b) The administration and hearing of disciplinary actions on nonphysician licentiates to the extent such actions are directly within the jurisdiction of the board.

(c) Carrying out disciplinary actions appropriate to findings made by examining committees within the board which have direct authority under law to administer such **actions**.

(d) Acting as liaison with other healing arts boards and agencies concerning the activities of the licentiates of such boards and agencies.

Pain Management Guidelines

2025. The board through its regular mailing shall notify **all** licensees of the existence of pain management guidelines published by the Agency for Health Care Policy and Research of the Public Health Service within the United States Department of Health and Human Services, and shall provide the published guidelines to licensees upon request.

(Added by Stats. 1993, Ch. 949.)

Internet Postings

2027. (a) On or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, the board shall post on the Internet the following information regarding licensed physicians and surgeons:

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

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

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

(4) All current accusations filed by the Attorney General.

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

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

(7) Appropriate disclaimers and explanatory statements to accompany the above information.

(b) The board shall provide links to other websites on the Internet that provide information on board certifications that meet the requirements of subdivision (b) of Sec-

tion 651. The board may provide links to other websites on the Internet that provide information on health care service plans, health insurers, hospitals, or other facilities. The board may also provide links to any other sites that would provide information on the affiliations of licensed physicians and surgeons.

(Amended by Stats. 1999, Ch. 784.)

Article 2. General Provisions

Section

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2034	"Medical Licensing Authority" Defined
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2040	"License" Synonymous with "Certificate"
2041	"License" Defined

Continuation of Prior Laws

2030. The provisions of this chapter insofar as they are substantially the same as provisions relating to the same subject matter of previous medical practice acts shall be construed as restatements and continuations thereof, and not as new enactments.

Continuation of Rights

2031. The rights given by any certificate issued under any preceding medical practice act are not affected by the enactment of this chapter, nor by the repeal of any law upon which such rights are based, but such rights shall hereafter be exercised according to the provisions of this chapter.

"Person" Defined

2032. "Person" means any individual, partnership, corporation, limited liability company, or other organization, or any combination thereof, except that only natural persons shall be licensed under this chapter,

(Amended by Stats. 1994, Ch. 1010.)

"Professional" Defined

2033. "Professional" relates to the art and science of medicine and surgery and to such other arts and sciences as may be included within the field of medicine and surgery.

"Medical Licensing Authority" Defined

2034. "Medical licensing authority" refers to any officer, board, commission, or department of another state upon whose certificate a reciprocity certificate may be issued.

Requirements

2035. Whenever any requirement is provided for any certificate, it shall be satisfied in a manner satisfactory to the appropriate division of the board charged with the responsibility of administering such requirement.

Resident Course of Instruction

2036. Whenever a course of instruction is required for any certificate, it shall be satisfied by a resident course of medical instruction. Whenever a resident course of instruction is mentioned in this chapter, it shall be interpreted to mean classroom, laboratory, practical, and clinical instruction, received and given the person physically present, wherever prescribed as a part of his or her instruction and for the period prescribed for such instruction.

Approved Schools and Hospitals

2037. Whenever any requirement is provided for any certificate relating to a medical school or hospital, or any reference is made to a medical school or hospital, the medical school and hospital shall be ones approved by the Division of Licensing.

"Diagnose" Defined

2038. Whenever the words "diagnose" or "diagnosis" are used in this chapter, they include any undertaking by any method, device, or procedure whatsoever, and whether gratuitous or not, to ascertain or establish whether a person is suffering from any physical or mental disorder. Such terms shall also include the taking of a person's blood pressure and the use of mechanical devices or machines for the purpose of making a diagnosis and representing to such person any conclusion regarding his or her physical or mental condition. Machines or mechanical devices for measuring or ascertaining height or weight are excluded from this section.

Certificates

2039. All certificates issued by the board shall state the extent and character of the practice which is permitted.

"License" Synonymous with "Certificate"

2040. The terms "license" and "certificate" as used in this chapter are deemed to be synonymous.

"License" Defined

2041. The term "licensee" as used in this chapter means the holder of a physician's and surgeon's certificate or podiatrist's certificate, as the case may be, who is engaged in the professional practice authorized by such certificate under the jurisdiction of the appropriate division or examining committee.

Article 3. License Required and Exemptions

Section

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Physician and Surgeon Certificates

2050. The Division of Licensing shall issue one form of certificate to all physicians and surgeons licensed by the board which shall be designated as a "physician's and surgeon's certificate."

Authorization of Physician's and Surgeon's Certificate

2051. The physician's and surgeon's certificate authorizes the holder to use drugs or devices in or upon human beings and to sever or penetrate the tissues of human beings and to use any and all other methods in the treatment of diseases, injuries, deformities, and other physical and mental conditions.

"Unlawful Practice of Medicine" Defined

2052. Any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter, or without being authorized to perform such act pursuant to a certificate obtained in accordance with some other provision of law, is guilty of a misdemeanor.

Practicing Across State Lines

2052.5. (a) The proposed registration program developed pursuant to subdivision (b) shall provide that, for purposes of the proposed registration program:

(1) A physician and surgeon practices medicine in this state across state lines when that person is located outside of this state but, through the use of any medium, including an electronic medium, practices or attempts to practice, or advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person in this state.

(2) A doctor of podiatric medicine practices podiatric medicine in this state across state lines when that person is located outside of this state but, through the use of any medium, including an electronic medium; practices or attempts to practice podiatric medicine, as defined in Section 2472, in this state.

(3) The proposed registration program shall not apply to any consultation described in Section 2060.

(b) The board may, at its discretion, develop a proposed registration program to permit a physician and surgeon, or a doctor of podiatric medicine, located outside this state to register with the board to practice medicine or podiatric medicine in this state across state lines.

(1) The proposed registration program shall include proposed requirements for registration, including, but not limited to, licensure in the state or country where the physician and surgeon, or the doctor of podiatric medicine, resides, and education and training requirements.

(2) The proposed registration program may also include all of the following: (A) standards for confidentiality, format, and retention of medical records, (B) access to medical records by the board, (C) registration fees, renewal fees, delinquency fees, and replacement document fees in an amount not to exceed the actual cost of administering the registration program, and (D) provisions ensuring that enforcement and consumer education shall be integral parts of administering the registration program.

(3) The proposed registration program may also provide all of the following:

(A) All laws, rules, and regulations that govern the practice of medicine or podiatric medicine in this state, including, but not limited to, confidentiality and reporting requirements, shall apply to a physician and surgeon, or a doctor of podiatric medicine, who is registered by the board to practice medicine or podiatric medicine in this state across state lines.

(B) The board may deny an application for registration or may suspend, revoke, or otherwise discipline a registrant for any of the following: (i) on any ground prescribed by this chapter, (ii) failure to possess or to maintain a valid license in the state where the registrant resides, or (iii) if the applicant or registrant is not licensed by the state or country in which he or she resides, and that state or country prohibits the practice of medicine or podiatric medicine from that state or country into any other state or country without a valid registration or license issued by the state or country in which the applicant or registrant practices. Action to deny or discipline a registrant shall be taken in the manner provided for in this chapter.

(C) Any of the following shall be grounds for discipline of a registrant: (i) to allow any person to engage in the practice of medicine or podiatric medicine in this state across state lines under his or her registration, including, but not limited to, any nurse, physician assistant, medical assistant, or other person, (ii) to fail to include his or her registration number on any invoice or other type of billing statement submitted for care or treatment provided to a patient located in this state, (iii) to practice medicine or podiatric medicine in any other state or country without

meeting the legal requirements to practice medicine or podiatric medicine in that state or country, or (iv) to fail to notify the board, in a manner prescribed by the board, of any restrictions placed on his or her medical license, or podiatric medical license, in any state.

(D) A registration issued pursuant to the registration program shall automatically be suspended upon receipt of a copy, from the state that issued the license, of the surrender, revocation, suspension, or other similar type of action taken by another state or country against a medical license, or podiatric medical license, issued to a registrant. The board shall notify the registrant in writing of the suspension and of the registrant's right to a hearing.

(4) Section 2314 shall not apply to the registration program.

(c) This section shall not be construed to authorize the board to implement a registration program for physicians and surgeons or doctors of podiatric medicine located outside this state. This section is intended to authorize the board to develop a proposed registration program to be authorized for implementation by future legislation.

(Amended by Stats. 1997, Ch. 17.)

Unlawful Practice With Serious Injury

2053. Any person who willfully, under circumstances or conditions which cause or create risk of great bodily harm, serious physical or mental illness, or death, practices or attempts to practice, or advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked and unsuspended certificate as provided in this chapter, or without being authorized to perform that act pursuant to a certificate obtained in accordance with some other provision of law, is punishable by imprisonment in the county jail for not exceeding one year or in the state prison.

The remedy provided in this section shall not preclude any other remedy provided by law.

(Amended by Stats. 1987, Ch. 1336.)

Unlawful Representation as a Physician

2054. Any person who uses in any sign, business card, or letterhead, or, in an advertisement, the words "doctor" or "physician," the letters or prefix "Dr.," the initials "M.D.," or any other terms or letters indicating or implying that he or she is a physician and surgeon, physician, surgeon, or practitioner under the terms of this or any other law, or that he or she is entitled to practice hereunder, or who represents or holds himself or herself out as a physician and surgeon, physician, surgeon, or practitioner under the terms of this or any other law, without having at the time of so doing a valid, unrevoked, and unsuspended certificate as a physician and surgeon under this chapter, is guilty of a misdemeanor.

Use of "M.D."

2055. Notwithstanding any other provision of law, a person issued a physician's and surgeon's certificate by the Medical Board of California pursuant to the provisions of this chapter shall be entitled to use of the initials "M.D."

(Amended by Stats. 1989, Ch. 886.)

Protection Against Retaliation

2056. (a) The purpose of this section is to provide protection against retaliation for physicians who advocate for medically appropriate health care for their patients pursuant to *Wickline v. State of California* 192 Cal. App. 3d 1630.

(b) It is the public policy of the State of California that a physician and surgeon be encouraged to advocate for medically appropriate health care for his or her patients. For purposes of this section, "to advocate for medically appropriate health care" means to appeal a payor's decision to deny payment for a service pursuant to the reasonable grievance or appeal procedure established by a medical group, independent practice association, preferred provider organization, foundation, hospital medical staff and governing body, or payer, or to protest a decision, policy, or practice that the physician, consistent with that degree of learning and skill ordinarily possessed by reputable physicians practicing according to the applicable legal standard of care, reasonably believes impairs the physician's ability to provide medically appropriate health care to his or her patients.

(c) The application and rendering by any person of a decision to terminate an employment or other contractual relationship with, or otherwise penalize, a physician and surgeon principally for advocating for medically appropriate health care consistent with that degree of learning and skill ordinarily possessed by reputable physicians practicing according to the applicable legal standard of care violates the public policy of this state. No person shall terminate, retaliate against, or otherwise penalize a physician and surgeon for that advocacy, nor shall any person prohibit, restrict, or in any way discourage a physician and surgeon from communicating to a patient information in furtherance of medically appropriate health care.

(d) This section shall not be construed to prohibit a payer from making a determination not to pay for a particular medical treatment or service, or to prohibit a medical group, independent practice association, preferred provider organization, foundation, hospital medical staff, hospital governing body acting pursuant to Section 809.05, or payer from enforcing reasonable peer review or utilization review protocols or determining whether a physician has complied with those protocols.

(e) Medically appropriate health care in a hospital licensed pursuant to Section 1250 of the Health and Safety Code shall be defined by the hospital medical staff and approved by the governing body, consistent with that degree of learning and skill ordinarily possessed by reputable physicians practicing according to the applicable legal standard of care.

(t) Nothing in this section shall be construed to prohibit the governing body of a hospital from taking disciplinary actions against a physician and surgeon as authorized by Sections 809.05, 809.4, and 809.5.

(g) Nothing in this section shall be construed to prohibit the Medical Board of California from taking disciplinary actions against a physician and surgeon under Article 12 (commencing with Section 2220).

(h) For purposes of this section, "person" has the same meaning as set forth in Section 2032.

(Amended by Stats. 1996, Ch. 260.)

Health Care Service Plans

2056.1. (a) The purpose of this section is to ensure that health care service plans and their contracting entities do not enter into contracts with physicians and surgeons or other licensed health care providers that interfere with any ethical responsibility or legal right of physicians and surgeons or other licensed health care providers to discuss with their patients information relevant to their patients' health care. It is the intent of the Legislature to guarantee that a physician and surgeon or other licensed health care provider can communicate freely with, and act as advocate for, his or her patient.

(b) Health care service plans and their contracting entities shall not include provisions in their contracts that interfere with the ability of a physician and surgeon or other licensed health care provider to communicate with a patient regarding his or her health care, including, but not limited to communications regarding treatment options, alternative plans, or other coverage arrangements. Nothing in this section shall preclude a contract provision that provides that a physician and surgeon, or other licensed health care provider, may not solicit for alternative coverage arrangements for the primary purpose of securing financial gain.

(c) Any contractual provision inconsistent with this section shall be void and unenforceable.

(d) For purposes of this section, "licensed health care provider" means any person licensed or certified pursuant to this division or licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act.

(e) No communication regarding treatment options shall be represented or construed to expand or revise the scope of benefits or covered services under a health care service plan or insurance contract.

(Added by Stats. 1996, Ch. 1089.)

Exemption: Emergency Care

2058. (a) Nothing in this chapter prohibits service in the case of emergency, or the domestic administration of family remedies.

(b) Nothing in this chapter shall be construed to prohibit obtaining a blood specimen by skin puncture for the purpose of performing blood glucose testing for the purposes of monitoring a minor child in accordance with paragraph (6) of subdivision (b) of Section 1241.

(Amended by Stats. 1997, Ch. 550.)

Exemption: Consultants and Guests

2060. Nothing in this chapter applies to any practitioner located outside this state, when in actual consultation, whether within this state or across state lines, with a licensed practitioner of this state, or when an invited guest of the California Medical Association or the California Podiatric Medical Association, or one of their component county societies, or of an approved medical or podiatric medical school or college for the sole purpose of engaging in professional education through lectures, clinics, or demonstrations, if he or she is, at the time of the consultation, lecture, or demonstration a licensed physician and surgeon in the state or country in which he or she resides. This practitioner shall not open an office, appoint a place to meet patients, receive calls from patients within the limits of this state, give orders, or have ultimate authority over the care or primary diagnosis of a patient who is located within this state.

(Amended by Stats. 1996, Ch. 864.)

Exemption: Other Healing Arts Licensees

2061. Nothing in this chapter shall be construed as limiting the practice of other persons licensed, certified, or registered under any other provision of law relating to the healing arts when such person is engaged in his or her authorized and licensed practice.

Exemption: Testing and Guidance Programs

2062. Testing and guidance programs in schools, colleges, and universities and physical fitness tests given by public and private agencies in connection with employment or issuance or renewal of licenses or permits do not constitute the practice of medicine within the meaning or intent of this chapter.

Discrimination Prohibited

2063. Nothing in this chapter shall be construed so as to discriminate against any particular school of medicine or surgery, school or college of podiatric medicine, or any other treatment, nor shall it regulate, prohibit, or apply to any kind of treatment by prayer, nor interfere in any way with the practice of religion.

Exemption: Medical Students

2064. Nothing in this chapter shall be construed to prevent a regularly matriculated student undertaking a course of professional instruction in an approved medical school, or to prevent a foreign medical student who is enrolled in an approved medical school or clinical training program in this state, or to students enrolled in a program of supervised clinical training under the direction of an approved medical school pursuant to Section 2104, from engaging in the practice of medicine whenever and wherever prescribed as a part of his or her course of study.

Osteopathic Students

2064.1. Notwithstanding the provisions of Section 2064 or any other provisions of this chapter, a regularly matriculated student undertaking a course of professional instruction in a medical school approved by the American

Osteopathic Association or the Osteopathic Medical Board of California is eligible for enrollment in elective clerkships or preceptorships in any medical school or clinical training program in this state.

(Amended by Stats. 1991, Ch. 359.)

Osteopathic Students

2064.2. No medical school or clinical training program shall deny access to elective clerkships or preceptorships in any medical school or clinical training program in this state solely on the basis that a student is enrolled in an osteopathic medical school.

Any violation of this section or Section 2064.1 may be enjoined in an action brought in the name of the people of the State of California by the district attorney of the county in which the violation occurs, upon receipt of a complaint by an aggrieved student.

(Added by Stats. 1989, Ch. 425.)

Exemption: Postgraduate Training-U.S. Graduates

2065. Unless otherwise provided by law, no postgraduate trainee, intern, resident, postdoctoral fellow, or instructor may engage in the practice of medicine, or receive compensation therefor, or offer to engage in the practice of medicine unless he or she holds a valid, unrevoked, and unsuspended physician's and surgeon's certificate issued by the board. However, a graduate of an approved medical school, who is registered with the Division of Licensing and who is enrolled in a postgraduate training program approved by the division, may engage in the practice of medicine whenever and wherever required as a part of such program under the following conditions:

(a) A graduate enrolled in an approved first-year postgraduate training program may so engage in the practice of medicine for a period not to exceed one year whenever and wherever required as a part of the training program, and may receive compensation for such practice.

(b) A graduate who has completed the first year of postgraduate training may, in an approved residency or fellowship, engage in the practice of medicine whenever and wherever required as part of such residency or fellowship, and may receive compensation for such practice. Such a resident or fellow shall qualify for, take, and pass the next succeeding written examination for licensure given by the division, or shall qualify for and receive a physician's and surgeon's certificate by one of the other methods specified in this chapter. If such a resident or fellow shall fail to receive a license to practice medicine under this chapter within one year from the commencement of the residency or fellowship, all privileges and exemptions under this section shall automatically cease.

Exemption: Postgraduate Training-Foreign Graduates

2066. (a) Nothing in this chapter shall be construed to prohibit a foreign medical graduate from engaging in the practice of medicine whenever and wherever required as a part of a clinical service program under the following conditions:

(1) The clinical service is in a postgraduate training program approved by the Division of Licensing.

(2) The graduate is registered with the division for the clinical service.

(b) A graduate may engage in the practice of medicine under this section until the receipt of his or her physician and surgeon's certificate. If the graduate fails to pass the examination and receive a certificate by the completion of the graduate's second year of postgraduate training, all privileges and exemptions under this section shall automatically cease.

(c) Nothing in this section shall preclude a foreign medical graduate from engaging in the practice of medicine under any other exemption contained in this chapter.

(Amended by Stat8, 1998, Ch. 736.)

Exemption: Nutritional Advice-Notice Required

2068. This chapter shall not be construed to prohibit any person from providing nutritional advice or giving advice concerning proper nutrition. However, this section confers no authority to practice medicine or surgery or to undertake the prevention, treatment, or cure of disease, pain, injury, deformity, or physical or mental conditions or to state that any product might cure any disease, disorder, or condition in violation of any provision of law.

For purposes of this section the terms "providing nutritional advice or giving advice concerning proper nutrition" means the giving of information as to the use and role of food and food ingredients, including dietary supplements.

Any person in commercial practice providing nutritional advice or giving advice concerning proper nutrition shall post in an easily visible and prominent place the following statement in his or her place of business:

"NOTICE"

"State law allows any person to provide nutritional advice or give advice concerning proper nutrition-which is the giving of advice as to the role of food and food ingredients, including dietary supplements. This state law does NOT confer authority to practice medicine or to undertake the diagnosis, prevention, treatment, or cure of any disease, pain, deformity, injury, or physical or mental condition and specifically does not authorize any person other than one who is a licensed health practitioner to state that any product might cure any disease, disorder, or condition."

The notice required by this section shall not be smaller than 8½ inches by 11 inches and shall be legibly printed with lettering no smaller than ½ inch in length, except the lettering of the word "NOTICE" shall not be smaller than 1 inch in length.

Medical Assistants

2069. (a) Notwithstanding any other provision of law, a medical assistant may administer medication only by intradermal, subcutaneous, or intramuscular injections and perform skin tests and additional technical supportive ser-

vices upon the specific authorization and supervision of a licensed physician and surgeon or a licensed podiatrist.

(b) As used in this section and Sections 2070 and 2071, the following definitions shall apply:

(1) "Medical assistant" means a person who may be unlicensed, who performs basic administrative, clerical, and technical supportive services in compliance with this section and Section 2070 for a licensed physician and surgeon or a licensed podiatrist, or group thereof, for a medical or podiatry corporation, or for a health care services plan, who is at least 18 years of age, and who has had at least the minimum amount of hours of appropriate training pursuant to standards established by the Division of Licensing. The medical assistant shall be issued a certificate by the training institution or instructor indicating satisfactory completion of the required training. A copy of the certificate shall be retained as a record by each employer of the medical assistant.

(2) "Specific authorization" means a specific written order prepared by the supervising physician and surgeon or the supervising podiatrist authorizing the procedures to be performed on a patient, which shall be placed in the patient's medical record; or a standing order prepared by the supervising physician and surgeon or the supervising podiatrist authorizing the procedures to be performed, the duration of which shall be consistent with accepted medical practice. A notation of the standing order shall be placed on the patient's medical record.

(3) "Supervision" means the supervision of procedures authorized by this section by a licensed physician and surgeon or by a licensed podiatrist, within the scope of his or her practice, who shall be physically present in the treatment facility during the performance of those procedures.

(4) "Technical supportive services" means simple routine medical tasks and procedures that may be safely performed by a medical assistant who has limited training and who functions under the supervision of a licensed physician and surgeon or a licensed podiatrist.

(c) Nothing in this section shall be construed as authorizing the licensure of medical assistants. Nothing in this section shall be construed as authorizing the administration of local anesthetic agents by a medical assistant. Nothing in this section shall be construed as authorizing the division to adopt any regulations that violate the prohibitions on diagnosis or treatment in Section 2052.

(d) Notwithstanding any other provision of law, a medical assistant may not be employed for inpatient care in a licensed general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code.

(Amended by Stats. 1995, Ch. 279.)

Medical Assistants-Venipuncture

2070. Notwithstanding any other provision of law, a medical assistant may perform venipuncture or skin puncture for the purposes of withdrawing blood upon specific authorization and under the supervision of a licensed physician and surgeon or a licensed podiatrist, if prior thereto the medical assistant has had at least the minimum amount of hours of appropriate training pursuant to standards established by the Division of Licensing. The medical assis-

tant shall be issued a certificate by the training institution or instructor indicating satisfactory completion of the training required. A copy of the certificate shall be retained as a record by each employer of the medical assistant.

(Amended by Stats. 1995, Ch. 279.)

Medical Assistants-Technical Supportive Services

2071. The Division of Licensing shall adopt and administer regulations that establish standards for technical supportive services that may be performed by a medical assistant. Nothing in this section shall prohibit the board or division from amending or repealing regulations covering medical assistants. The board or division shall, prior to the adoption of any regulations, request recommendations regarding these standards from appropriate public agencies, including, but not limited to, the State Board of Optometry, the Board of Registered Nursing, the Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California, the Laboratory Field Services division of the State Department of Health Services, those divisions of the State Department of Education that pertain to private post-secondary education and career and vocational preparation, the Chancellor of the California Community Colleges, the California Board of Podiatric Medicine, the Physician Assistant Examining Committee, and the Physical Therapy Examining Committee. The Division of Licensing shall also request recommendations regarding these standards from associations of medical assistants, physicians, nurses, doctors of podiatric medicine, physician assistants, physical therapists, laboratory technologists, optometrists, and others as the board or division finds appropriate, including, but not limited to, the California Optometric Association, the California Nurses Association, the California Medical Association, the California Society of Medical Assistants, the California Medical Assistants' Association, and the California Chapter of the American Physical Therapy Association. Nothing in this section shall be construed to supersede or modify that portion of the Administrative Procedure Act which relates to the procedure for the adoption of regulations and which is set forth in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1995, Ch. 279.)

Exemption: Practice in State Institutions

2072. Notwithstanding any other provision of law and subject to the provisions of the State Civil Service Act, any person who is licensed to practice medicine in any other state, who meets the requirements for application and examination set forth in this chapter, and who complies with the provisions of Section 2065 with respect to registration with the Division of Licensing, may be appointed to the medical staff within a state institution and, under the supervision of a physician and surgeon licensed in this state, may engage in the practice of medicine on persons under the jurisdiction of any such state institution. Qualified physicians and surgeons licensed in this state shall not be recruited pursuant to this section.

No person appointed pursuant to this section shall be employed in any state institution for a period in excess of two years from the date such person was first employed and such appointment shall not be extended beyond such two-year period. At the end of such two-year period such physician shall have been issued a physician's and surgeon's certificate by the board in order to continue such employment. Until such physician has obtained a physician's and surgeon's certificate from the board he or she shall not engage in the practice of medicine in this state except to the extent expressly permitted herein.

Exemption: Practice in County Institutions

2073. Notwithstanding any other provision of law, any person who is licensed to practice medicine in any other state who meets the requirements for application and examination set forth in this chapter, and who complies with the provisions of Section 2065 with respect to registration with the Division of Licensing, may be employed on the resident medical staff within a county general hospital and, under the supervision of a physician and surgeon licensed in this state, may engage in the practice of medicine on persons within such county institution. Employment pursuant to this section is authorized only when an adequate number of qualified resident physicians cannot be recruited from intern staffs in this state.

No person appointed pursuant to this section shall be employed in any county general hospital for a period in excess of two years from the date such person was first employed and such employment shall not be extended beyond such two-year period. At the end of such two-year period such physician shall have been issued a physician's and surgeon's certificate by the board in order to continue as a member of such resident staff. Until such physician has obtained a physician's and surgeon's certificate from the board he or she shall not engage in the practice of medicine in this state except to the extent expressly permitted herein.

Employment of Ophthalmologists

2074. Nothing in this chapter shall prohibit the employment of a licensed physician and surgeon practicing in the specialty of ophthalmology by an optometrist licensed under the provisions of Chapter 7 (commencing with Section 3000) or by an optometric corporation certificated under that chapter.

Exemption: Acupuncture Research Programs

2075. The performance of acupuncture by a certified acupuncturist or other licentiate legally authorized to practice acupuncture within his or her scope of practice or a person licensed or certified in another state to perform acupuncture or other forms of traditional oriental medicine, alone or in conjunction with other forms of traditional oriental medicine, when carried on in a program affiliated with and under the jurisdiction of an approved medical school or approved acupuncture school, for the primary purpose of scientific investigation of acupuncture, shall not be in violation of this chapter, but those procedures shall be carried on only under the supervision of a licensed physician and surgeon.

Any medical school or approved acupuncture school conducting research into acupuncture under this section shall report to the Legislature annually on the fifth legislative day of the regular session of the Legislature concerning the results of that research, the suitability of acupuncture as a therapeutic technique, and performance standards for persons who perform acupuncture.

(Amended by Stats. 1987, Ch. 1173.)

Exemption: U.S. Olympic Committee Physicians

2076.5. (a) Notwithstanding any other provision of law, a physician and surgeon lawfully practicing medicine in another state or country may be exempted from licensure while practicing medicine in this state under the following conditions:

(1) The physician and surgeon has been invited by the United States Olympic Committee to provide medical services at training sites designated by the olympic training center or to provide medical services at an event in this state sanctioned by the committee.

(2) The United States Olympic Committee certifies to the board the name of the physician and surgeon, the state or country of the applicant's licensure, and the dates within which the applicant has been invited to provide medical services.

(3) The physician and surgeon's practice is limited to that required by the United States Olympic Committee. Those medical services shall be within the area of the physician's and surgeon's competence and shall only be provided to athletes or team personnel registered to train at the olympic training center or registered to compete in an event conducted under the sanction of the United States Olympic Committee.

(b) The exemption provided in this section shall remain in force while the holder is providing medical services at the invitation of the United States Olympic Committee and only during the time certified to the board, but in no event longer than 90 days.

(c) Notwithstanding any other provision of law, the official team manager who is responsible for any team member participating in events at the invitation of the United States Olympic Committee in California may give consent to the furnishing of hospital, medical, and surgical care to a minor who is a team member and that consent shall not be subject to disaffirmance because of minority. The consent of the parent, or parents, of that person shall not be necessary in order to authorize hospital, medical, and surgical care.

(Amended by Stats. 1997, Ch. 654.)

Orthopaedic Medical Tasks

2077. (a) Notwithstanding any other provision of law, a physician and surgeon may delegate various orthopaedic medical tasks to individuals who have completed training as orthopaedic physician assistants and who are working under the supervision and direction of a physician and surgeon. Those assistants who perform only those tasks which may under existing law be so delegated shall not be required to be licensed as physician assistants under Chapter 7.7 (commencing with Section 3500).

(b) As used in this section, "orthopaedic physician assistant" means an individual who meets all of the following requirements:

(1) Successful completion of training as an orthopaedic physician assistant from an approved California orthopaedic physician assistant's program in any year between 1971 and 1974, inclusive. As used in this section, "approved California orthopaedic physician assistant's program" means an orthopaedic physician assistant's course of training that has been accredited by the American Medical Association Council on Medical Education.

(2) Continuous experience as an orthopaedic physician assistant upon completion of the program described in paragraph (1), which may include experience in the United States Armed Services.

(3) Successful fulfillment of the certification requirements of the National Board for Certification of Orthopaedic Physician Assistants.

(c) Nothing in this section shall authorize any individual to hold himself or herself out as a licensed physician assistant in violation of Section 3503.

(Added by Stats. 1996, Ch. 1030.)

Written Disclosure of FDA Approval of DMSO

2078. (a) As used in this section, "DMSO" means dimethyl sulfoxide.

(b) A licensed physician and surgeon shall, prior to treating a patient with a DMSO preparation, inform the patient in writing if DMSO has not been approved as a treatment or cure by the Food and Drug Administration for the disorder for which it is being prescribed.

(c) If DMSO is prescribed for any purpose other than for those purposes approved pursuant to Section 111550 of the Health and Safety Code, informed consent shall first be obtained from the patient.

As used in this subdivision, "informed consent" means the authorization given by the patient for treatment with DMSO after each of the following conditions have been satisfied:

(1) The patient is informed verbally, in nontechnical terms, about all of the following:

(A) A description of treatment procedures to be used in administering DMSO.

(B) A description of any attendant discomfort and risks to the patient that can be reasonably expected from treatment with DMSO.

(C) An explanation of any benefits to the patient that can be reasonably expected.

(D) An explanation of any appropriate alternative procedures, drugs, or devices that might be advantageous to the patient, and their relative risks and benefits.

(E) An offer to answer any inquiries concerning the treatment of the procedures involved.

(2) The patient signs and dates a written consent form acknowledging that disclosure has been given pursuant to paragraph (1), and acknowledging consent to treatment with DMSO pursuant to this section. The patient shall be provided with a copy of the signed and dated form.

(d) An organized health care system may require that the administration of DMSO within the organized health

care system be performed pursuant to standardized procedures developed by the organized health care system through collaboration among administrators and health professionals.

(Added by Stats. 1996, Ch. 890.)

Dentist's Office-General Anesthesia

2079. (a) A physician and surgeon who desires to administer general anesthesia in the office of a dentist pursuant to Section 1646.9 shall provide the Medical Board of California with a copy of the application submitted to the Board of Dental Examiners of California pursuant to subdivision (b) of Section 1646.9 and a fee established by the board not to exceed the costs of processing the application as provided in this section.

(b) The Medical Board of California shall review the information submitted and take action as follows:

(1) Inform the Board of Dental Examiners of California whether the physician and surgeon has a current license in good standing to practice medicine in this state.

(2) Verify whether the applicant has successfully completed a postgraduate residency training program in anesthesiology and whether the program has been recognized by the American Council on Graduate Medical Education.

(3) Inform the Board of Dental Examiners of California whether the Medical Board of California has determined that the applicant has successfully completed the postgraduate residency training program in anesthesiology recognized by the American Council on Graduate Medicine.

(c) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2002, deletes or extends that date.

(Amended by Stats. 1999, Ch. 177.)

Article 4. Requirements for Licensure

Section

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Applications Generally

2080. (a) Except as otherwise provided, the provisions of this article applicable to applications generally shall apply to all certificates issued.

(b) Every applicant for a physician's and surgeon's certificate shall comply with the requirements of this article

unless other specific requirements of this chapter are applicable to a particular class of applicant.

Application Form Provided

2081. Each application shall be made upon a form provided by the Division of Licensing, and each application form shall contain a legal verification to be signed by the applicant verifying under penalty of perjury that the information provided by the applicant is true and correct and that any information in supporting documents provided by the applicant is true and correct.

(Amended by Stats. 1986, Ch. 220.)

Contents of Application

2082. Each application shall include the following:

(a) A diploma issued by an approved medical school. The requirements of the school shall have been at the time of granting the diploma in no degree less than those required under this chapter or by any preceding medical practice act at the time that the diploma was granted. In lieu of a diploma, the applicant may submit evidence satisfactory to the Division of Licensing of having possessed the same.

(b) An official transcript or other official evidence satisfactory to the division showing each approved medical school in which a resident course of professional instruction was pursued covering the minimum requirements for certification as a physician and surgeon, and that a diploma and degree were granted by the school.

(c) Such other information concerning the professional instruction and preliminary education of the applicant as the division may require.

(d) An affidavit showing to the satisfaction of the division that the applicant is the person named in each diploma and transcript that he or she submits, that he or she is the lawful holder thereof, and that the diploma or transcript was procured in the regular course of professional instruction and examination without fraud or misrepresentation.

(e) Fingerprint cards from the applicant in order to establish the identity of the applicant and in order to determine whether the applicant has a record of any criminal convictions in this state or in any other jurisdiction, including foreign countries. The information obtained as a result of the fingerprinting of the applicant shall be used in accordance with Section 11105 of the Penal Code, and to determine whether the applicant is subject to denial of licensure under the provisions of Division 1.5 (commencing with Section 475) and Section 2221.

(Amended by Stats. 1990, Ch. 1597.)

Filing

2083. (a) Except as provided in subdivision (b), each application for a certificate shall be accompanied by the fee required by this chapter and shall be filed with the Division of Licensing.

(b) The fee shall be waived for a physician and surgeon who certifies to the Medical Board of California that license renewal is for the sole purpose of providing voluntary, unpaid service to a public agency, not-for-profit agency, institution, or corporation that provides medical

services to indigent patients in medically underserved or critical-need population areas of the state.

(Amended by Stats. 1999, Ch. 631.)

Approval of Schools

2084. The Division of Licensing may approve every school which substantially complies with the requirements of this chapter for resident courses of professional instruction. Graduates of medical schools approved under this section shall be deemed to meet the requirements of Section 2089. Medical schools accredited by a national accrediting agency approved by the division and recognized by the United States Department of Education shall be deemed approved by the division under this section. Nothing in this chapter prohibits the division from considering the quality of the resident courses of professional instruction required for certification as a physician and surgeon.

(Amended by Stats. 1985, Ch. J178.)

Special Medical School Programs

2085. (a) Notwithstanding Section 2084, a graduate of an approved medical school located in the United States or Canada who has graduated from a special medical school program that does not substantially meet the requirements of Section 2089 with respect to any aspect of curriculum length or content may be approved by the Division of Licensing if the division determines that the applicant has otherwise received adequate instruction in the subjects listed in subdivision (b) of Section 2089.

"Adequate instruction" means the applicant has received instruction adequate to prepare the applicant to engage in the practice of medicine in the United States. This definition applies to the sufficiency of instruction of the following courses:

- (1) Anatomy, including gross anatomy, embryology, histology, and neuroanatomy.
- (2) Bacteriology and immunology.
- (3) Biochemistry.
- (4) Pathology.
- (5) Pharmacology.
- (6) Physiology.

The division may require an applicant under this section to undertake additional education to bring up to standard, instruction in the subjects listed in subdivision (b) of Section 2089 as a condition of issuing a physician and surgeon's certificate. In approving an applicant under this section, the division may take into account the applicant's total relevant academic experience, including performance on standardized national examinations.

(b) (1) Notwithstanding subdivision (a) or Sections 2084 and 2089, an applicant who is a graduate of an approved medical school located in the United States or Canada who has graduated from a special medical school program that does not substantially meet the requirements of Section 2089 with respect to any aspect of curriculum length or content shall be presumed to meet the requirements of Sections 2084 and 2089 if the special medical school program has been reviewed and approved by a national accrediting agency approved by the division and recognized by the United States Department of Education.

(2) This presumption may be overcome upon a finding by the division that the medical education received by the applicant is not the educational equivalent of the medical education received by graduates of medical schools approved pursuant to subdivision (a) or Section 2084. In making its finding, the division shall consider, at a minimum, the applicant's total academic and medical training experience prior to, and following, as well as during, medical school, the applicant's performance on standardized national examinations, including the National Board Examinations, the applicant's achievements as a house staff officer, and the number of years of postgraduate medical training completed by the applicant.

(3) An applicant under this subdivision who (A) has satisfactorily completed at least two years of postgraduate clinical training approved by the Accreditation Council for Graduate Medical Education or the Coordinating Council of Medical Education of the Canadian Medical Association and whose postgraduate training has included at least one year of clinical contact with patients and (B) has achieved a passing score on the written examination required for licensure, satisfies the requirements of Sections 2084 and 2089. For purposes of this subdivision, an applicant who has satisfactorily completed at least two years of approved postgraduate clinical training on or before July 1, 1987, shall not be required to have at least one year of clinical contact with patients.

(4) Applicants under this subdivision who apply after satisfactorily completing one year of approved postgraduate training shall have their applications reviewed by the division and shall be informed by the division either that satisfactory completion of a second year of approved postgraduate training will result in their being deemed to meet the requirements of Sections 2084 and 2089, or informed of any deficiencies in their qualifications or documentation and the specific remediation, if any, required by the division to meet the requirements of Sections 2084 and 2089. Upon satisfactory completion of the specified remediation, the division shall promptly issue a license to the applicant.

(Amended by Stats. 1999, Ch. 655.)

Evaluation of Medical Curricula

2086. The Division of Licensing may utilize medical consultants and investigators employed by the board pursuant to Section 2020 to evaluate the curricula of medical schools. A medical consultant or investigator shall meet such reasonable standards of experience and education, to be determined by the division, as will enable him or her to competently perform such duties of evaluation.

Judicial Relief From Disapproval

2087. If any medical school is not approved by the Division of Licensing or any applicant for examination is rejected by it, then the school or the applicant may commence an action in the superior court as provided in Section 2019 against the division to compel it to approve the school or to admit the applicant to examination or for any other appropriate relief. If the applicant is denied admittance to the examination or a certificate on the grounds of unprofessional conduct, the provisions of Article 12

(commencing with Section 2220) shall apply. In such an action the court shall proceed under Section 1094.5 of the Code of Civil Procedure, except that the court may not exercise an independent judgment on the evidence. The action shall be speedily determined by the court and shall take precedence over all matters pending therein except criminal cases, applications for injunction, or other matters to which special precedence may be given by law.

Requirements: Premedical

2088. Each applicant shall present an official transcript or other official evidence to the Division of Licensing that he or she has completed two years of preprofessional postsecondary education, or its equivalent, before completing the resident course of professional instruction.

The two-year preprofessional postsecondary education shall include the subjects of physics, chemistry, and biology. In the event that one of the above subjects was not completed as a part of that postsecondary education, an applicant shall complete a course of instruction in such subjects in an accredited postsecondary educational institution prior to taking the written examination for licensure.

Requirements: Medical Curriculum

2089. (a) Each applicant for a physician's and surgeon's certificate shall show by official transcript or other official evidence satisfactory to the Division of Licensing that he or she has successfully completed a medical curriculum extending over a period of at least four academic years, or 32 months of actual instruction, in a medical school or schools located in the United States or Canada approved by the division, or in a medical school or schools located outside the United States or Canada which otherwise meets the requirements of this section. The total number of hours of all courses shall consist of a minimum of 4,000 hours. At least 80 percent of actual attendance shall be required. If an applicant has matriculated in more than one medical school, the applicant must have matriculated in the medical school awarding the degree of doctor of medicine or its equivalent for at least the last full academic year of medical education received prior to the granting of the degree.

(b) The curriculum for all applicants shall provide for adequate instruction in the following subjects:

Alcoholism and other chemical substance dependency, detection and treatment.

Anatomy, including embryology, histology, and neuroanatomy.

Anesthesia.

Biochemistry.

Child abuse detection and treatment.

Dermatology.

Geriatric medicine.

Human sexuality.

Medicine, including pediatrics.

Neurology.

Obstetrics and gynecology.

Ophthalmology.

Otolaryngology.

Pain management and end-of-life care.

Pathology, bacteriology, and immunology.

Pharmacology.

Physical medicine.

Physiology.

Preventive medicine, including nutrition.

Psychiatry.

Radiology, including radiation safety.

Spousal or partner abuse detection and treatment.

Surgery, including orthopedic surgery.

Therapeutics.

Tropical medicine.

Urology.

(c) The requirement that an applicant successfully complete a medical curriculum that provides instruction in pain management and end-of-life care shall only apply to a person entering medical school on or after June 1, 2000.

(Amended by Stats. 1999, Ch. 403.)

Clinical Instruction

2089.5. (a) Clinical instruction in the subjects listed in subdivision (b) of Section 2089 shall meet the requirements of this section and shall be considered adequate if the requirements of subdivision (a) of Section 2089 and the requirements of this section are satisfied.

(b) Instruction in the clinical courses shall total a minimum of 72 weeks in length.

(c) Instruction in the core clinical courses of surgery, medicine, family medicine, pediatrics, obstetrics and gynecology, and psychiatry shall total a minimum of 40 weeks in length with a minimum of eight weeks instruction in surgery, eight weeks in medicine, six weeks in pediatrics, six weeks in obstetrics and gynecology, a minimum of four weeks in family medicine, and four weeks in psychiatry.

(d) Of the instruction required by subdivision (b), including all of the instruction required by subdivision (c), 54 weeks shall be performed in a hospital that sponsors the instruction and shall meet one of the following:

(1) Is a formal part of the medical school or school of osteopathic medicine.

(2) Has an approved residency program in family practice or in the clinical area of the instruction for which credit is being sought.

(3) Is formally affiliated with an approved medical school or school of osteopathic medicine located in the United States or Canada. If the affiliation is limited in nature, credit shall be given only in the subject areas covered by the affiliation agreement.

(4) Is formally affiliated with a medical school or a school of osteopathic medicine located outside the United States or Canada.

(e) If the institution, specified in subdivision (d), is formally affiliated with a medical school or a school of osteopathic medicine located outside the United States or Canada, it shall meet the following:

(1) The formal affiliation shall be documented by a written contract detailing the relationship between the medical school, or a school of osteopathic medicine, and hospital and the responsibilities of each.

(2) The school and hospital shall provide to the division a description of the clinical program. The description shall be in sufficient detail to enable the division to determine whether or not the program provides students an adequate medical education. The division shall approve the program if it determines that the program provides an adequate medical education. If the division does not approve the program, it shall provide its reasons for disapproval to the school and hospital in writing specifying its findings about each aspect of the program that it considers to be deficient and the changes required to obtain approval.

(3) The hospital, if located in the United States, shall be accredited by the Joint Commission on Accreditation of Hospitals, and if located in another country, shall be accredited in accordance with the law of that country.

(4) The clinical instruction shall be supervised by a full-time director of medical education, and the head of the department for each core clinical course shall hold a full-time faculty appointment of the medical school or school of osteopathic medicine and shall be board certified or eligible, or have an equivalent credential in that specialty area appropriate to the country in which the hospital is located.

(5) The clinical instruction shall be conducted pursuant to a written program of instruction provided by the school.

(6) The school shall supervise the implementation of the program on a regular basis, documenting the level and extent of its supervision.

(7) The hospital-based faculty shall evaluate each student on a regular basis and shall document the completion of each aspect of the program for each student.

(8) The hospital shall ensure a minimum daily census adequate to meet the instructional needs of the number of students enrolled in each course area of clinical instruction, but not less than 15 patients in each course area of clinical instruction.

(9) The division, in reviewing the application of a foreign medical graduate, may require the applicant to submit a description of the clinical program, if the division has not previously approved the program, and may require the applicant to submit documentation to demonstrate that the applicant's clinical training met the requirements of this subdivision.

(10) The medical school or school of osteopathic medicine shall bear the reasonable cost of any site inspection by the division or its agents necessary to determine whether the clinical program offered is in compliance with this subdivision.

(Amended by Stats. 1994, Ch. 657.)

Clinical Instruction-Family Medicine

2089.7. (a) The requirement of four weeks of clinical course instruction in family medicine shall apply only to those applicants for licensure who graduate from medical school or a school of osteopathic medicine after May 1, 1998.

(b) For medical schools located outside of California, a required clinical course in primary care medicine may be deemed to fulfill the requirement in subdivision (a) if the division determines that the family medicine physicians

who have a university appointment in the department or division of family medicine at the medical school located outside of California have significantly contributed to the development and implementation of the clinical course instruction in primary care medicine. If a medical school located outside of California does not have a division or department of family medicine, the family physician shall be a member in good standing of the chapter of the American Academy of Family Physicians of the state where the medical school is located.

(c) This section shall remain in effect only until June 30, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before June 30, 1999, deletes or extends that date.

(Added by Stats. 1994, Ch. 657.)

"Human Sexuality" Defined

2090. "Human sexuality" as used in Sections 2089 and 2191 means the study of a human being as asexual being and how he or she functions with respect thereto.

Applicants Exempt From Instruction in Child Abuse Detection and Treatment

2091. The requirement that instruction in child abuse detection and treatment be provided shall apply only to applicants who matriculate on or after September 1, 1979.

Instruction in Alcoholism and Chemical Dependency

2091.1. The requirement that instruction in alcoholism and other chemical substance dependency be provided applies only to applicants who matriculate on or after September 1, 1985.

(Added by Stats. 1984, Ch. 1149.)

Abuse Detection

2091.2. The requirements that instruction in spousal or partner abuse detection and treatment be provided shall apply only to applicants who matriculate on or after September 1, 1994. The requirement for coursework in spousal or partner abuse detection and treatment 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.

(Added by Stats. 1993, Ch. 1234.)

Postgraduate Training Required

2096. In addition to other requirements of this chapter, before a physician's and surgeon's license may be issued, each applicant, including an applicant applying pursuant to Article 5 (commencing with Section 2100), shall show by evidence satisfactory to the Division of Licensing that he or she has satisfactorily completed at least one year of postgraduate training, which includes at least four months of general medicine, in an approved postgraduate training program.

The amendments made to this section at the 1987 portion of the 1987-88 session of the Legislature shall not ap-

ply to applicants who completed their one year of post-graduate training on or before July 1, 1990.

(Amended by Stats. 1987, Ch. 546.)

Delegation of Authority

2099. Notwithstanding any other provision of this chapter, the Division of Licensing may delegate to any member of the division its authority to approve the admission of candidates to examinations and to approve the issuance of physician's and surgeon's certificates to applicants who have met the specific requirements therefor. The division may further delegate to the executive director or other official of the board the authority to approve the admission of candidates to examinations and to approve the issuance of physician's and surgeon's certificates to applicants who have met the specific requirements therefor in routine cases to candidates and applicants who clearly meet the requirements of this chapter.

Article 4.5. Osteopathic Requirements

Section

2099.5 Requirements for Licensure

Requirements for Licensure

2099.5. Notwithstanding any other provision of law, an originating license for an osteopathic physician's and surgeon's certificate issued by the Osteopathic Medical Board of California shall require the following:

(a) A written examination, as prepared by the National Board of Osteopathic Examiners or by the Osteopathic Medical Board of California which includes osteopathic principles and practices and all applicable provisions of Article 4 (commencing with Section 2080). The board may utilize an examination prepared by the Federation of State Medical Boards until December 31, 1993. An applicant shall successfully complete the written examination, as determined by the board.

(b) An oral, clinical, and practical examination administered by the board which the applicant shall successfully complete, as determined by the board.

(Amended by Stats. 1991, Ch. 359.)

Article 7.5. Osteopathic Reciprocity Applications

Section

2154 Requirements for Issuance of Certificate on Reciprocity

2154. Notwithstanding any other provisions of law, the Osteopathic Medical Board of California shall issue an osteopathic physician's and surgeon's certificate on reciprocity to an applicant providing he or she meets the following requirements:

(a) The applicant holds an unlimited license to engage in the practice of osteopathic medicine in another state whose written licensing examination is recognized and approved by the board to be equivalent in content to that administered in California. For the purposes of this section, the board may recognize and approve as equivalent, along with other examinations, an examination prepared by the Federation of State Medical Boards if an applicant had

been licensed in another state as a result of the successful completion, prior to December 31, 1993, of that examination. In lieu of a board recognized and approved state written license examination, the board may require the applicant to successfully complete a special examination in general medicine and osteopathic principles prepared by the National Board of Osteopathic Medical Examiners, or the Osteopathic Medical Board of California. The board may also utilize a special purpose examination prepared by the Federation of State Medical Boards.

(b) The board determines that no disciplinary action has been taken against the applicant by any medical licensing authority and that the applicant has not been the subject of adverse judgments or settlements resulting from the practice of medicine which the board determines constitutes evidence of a pattern of negligence or incompetence.

(c) The applicant successfully completes an oral, clinical, and practical examination, as determined by the board.

(Amended by Stats. 1994, Ch. 895.)

Article 9. Examinations

Section

2170	Examination Required
2171	Scope of Examination
2172	Examination Commissioners
2173	Examination in English; Use of Interpreters
2174	Place of Examination
2175	Examination Records Retained
2176	Uniform Examination
2177	Partial Examination
2179	Subject Matter in Nutrition
2179.5	Subject Matter in Problems of the Elderly
2183	Physician's and Surgeon's Examination-Subjects
2184	Passing Score

Examination Required

2170. (a) All applicants for a physician's and surgeon's certificate shall take the examination provided for in this article unless provisions of this chapter otherwise provide.

(b) The provisions of this article shall apply to all examinations administered by the Division of Licensing unless provisions of this chapter otherwise provide.

Scope of Examination

2171. All examinations shall be designed to ascertain the applicant's fitness to practice medicine. Unless otherwise provided the examination shall be in writing.

Examination Commissioners

2172. The Division of Licensing may appoint qualified persons to give the whole or any portion of any examination as provided in this chapter, who shall be designated as examination commissioners. The board may fix the compensation of such persons subject to the provisions of applicable state laws and regulations.

Examination in English; Use of Interpreters

2173. The examination shall be conducted in the English language. Upon the submission of satisfactory proof from the applicant that he or she is unable to meet the requirements of the examination in English, the Division of

Licensing may allow the use of an interpreter, either to be present in the examination room or thereafter to interpret and transcribe the answers of the applicant. The division in its discretion may select an examinee's interpreter or approve the selection of an interpreter by the examinee. The expenses of the interpreter shall be paid by the examinee and shall be paid before the examination is administered.

Place of Examination

2174. The examinations may be conducted in any part of the state or another state designated by the Division of Licensing. A notice of each examination administered by the division shall specify the time and place of the examination.

Examination Records Retained

2175. Examination records shall be kept on file by the Division of Licensing for a period of two years or more. Examinees shall be known and designated by number only, and the name attached to the number shall be kept secret until the examinee is sent notification of the results of the examinations.

(Amended by Stats. 1991, Ch. 983.)

Uniform Examination

2176. Examinations for a physician's and surgeon's certificate may be conducted by the Division of Licensing under a uniform examinations system, and for that purpose the division may make such arrangements with organizations furnishing examination material as it may deem desirable.

The Division of Licensing may, in its discretion, designate other written examinations for a physician's and surgeon's certificate that the division determines are equivalent to any other written examination for a physician's and surgeon's certificate conducted by the division.

(Amended by Stats. 1991, Ch. 983.)

Partial Examination

2177. (a) A passing score is required for an entire examination or for each part of an examination, as established by resolution of the Division of Licensing.

(b) Applicants may elect to take the written examinations conducted or accepted by the division in separate parts.

(Added by Stats. 1992, Ch. 311.)

Subject Matter in Nutrition

2179. The Division of Licensing shall insure that nutrition is included on the examination for a certificate as a physician and surgeon.

(Repealed and added by Stats. 1984, Ch. 889.)

Subject Matter in Problems of the Elderly

2179.5. It is the intent of the Legislature that the Division of Licensing strongly urge those organizations responsible for the development of physician licensing examinations to include within those examinations increased emphasis on medical problems of the elderly.

(Added by Stats. 1984, Ch. 1620.)

Physician's and Surgeon's Examination-Subjects

2183. Applicants for a physician's and surgeon's certificate shall pass an examination in biomedical sciences and clinical sciences, as determined by the Division of Licensing.

Such applicants shall also pass an examination designed to test biomedical sciences and clinical sciences determined by the Division of Licensing to be essential for the unsupervised practice of medicine.

(Amended by Stats. 1992, Ch. 331.)

Passing Score

2184. (a) Each applicant shall obtain on the written examination a passing score, established by the division pursuant to Section 2177.

(b) Passing scores on a written examination shall be valid for a period of 10 years from the month of the examination for purposes of qualification for licensure in California.

This period of validity may be extended by the division for good cause and for time spent in a postgraduate training program, including, but not limited to, residency training, fellowship training, remedial or refresher training, or other training that is intended to maintain or improve medical skills.

Upon expiration of the 10-year period plus any extension granted by the division, the applicant shall pass the Special Purpose Examination of the Federation of State Medical Boards or a clinical competency written examination determined by the division to be equivalent.

This subdivision applies to all passing scores achieved in a written examination for a physician's and surgeon's certificate conducted by the division.

(Amended by Stats. 1992, Ch. 331.)

Article 11.5. Surgery in Certain Outpatient Settings

Section

- 2215 Outpatient Settings
- 2216 Outpatient Settings-Local Anesthesia
- 2216.1 Outpatient Settings-Staff
- 2216.2 Security by Liability Insurance
- 2217 Outpatient Settings-Regulations

Outpatient Settings

2215. **The Legislature finds and declares that in this state, significant surgeries are being performed in unregulated out-of-hospital settings. The Legislature further finds and declares that without appropriate oversight, some of these settings may be operating in a manner which is injurious to the public health, welfare, and safety. Although the health professionals delivering health care services in these settings are licensed, further quality assurance is needed to ensure that health care services are safely and effectively performed in these settings. The Legislature further recognizes that there is a wide range of surgical procedures safely performed in a myriad of outpatient settings, and the degree of patient risk varies greatly. It is the intent of the Legislature to create regulations that directly impact patient safety. It is not the intent of the Leg-**

islature to require standards in excess of those requirements in Section 1248.15, or to require physical modifications to facilities unless the modifications or standards directly impact patient safety and are cost-effective. The cost effectiveness of any modifications shall be taken into consideration by the Division of Licensing of the Medical Board of California, and shall ensure that the least costly and effective method of achieving patient safety is required.

(Added by Stats. 1994, Ch. 1276.)

Outpatient Settings-Local Anesthesia

2216. On or after July 1, 1996, no physician and surgeon shall perform procedures in an outpatient setting using anesthesia, except local anesthesia or peripheral nerve blocks, or both, complying with the community standard of practice, in doses that, when administered, have the probability of placing a patient at risk for loss of the patient's life-preserving protective reflexes, unless the setting is specified in Section 1248.1. Outpatient settings where anxiolytics and analgesics are administered are excluded when administered, in compliance with the community standard of practice, in doses that do not have the probability of placing the patient at risk for loss of the patient's life-preserving protective reflexes.

The definition of "outpatient settings" contained in subdivision (c) of Section 1248 shall apply to this section.

(Added by Stats. 1994, Ch. 1276.)

Outpatient Settings-Staff

2216.1. On and after July 1, 2000, it is unprofessional conduct for a physician and surgeon to perform procedures in any outpatient setting except in compliance with Section 2216, unless the setting has a minimum of two staff persons on the premises, one of whom shall either be a licensed physician and surgeon or a licensed health care professional with current certification in advanced cardiac life support (ACLS), as long as a patient is present who has not been discharged from supervised care.

(Added by Stats. 1999, Ch. 944.)

Security by Liability Insurance

2216.2. (a) It is unprofessional conduct for a physician and surgeon to fail to provide adequate security by liability insurance, or by participation in an interindemnity trust, for claims by patients arising out of surgical procedures performed outside of a general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code.

(b) For purposes of this section, the board shall determine what constitutes adequate security.

(c) Nothing in this section shall require an insurer admitted to transact liability insurance in this state to provide coverage to a physician and surgeon.

(d) The security required by this section shall be acceptable only if provided by any one of the following:

(I) An insurer admitted pursuant to Section 700 of the Insurance Code to transact liability insurance in this state.

(2) An insurer that appears on the list of eligible surplus line insurers pursuant to subdivision (f) of Section 1765.1 of the Insurance Code.

(3) A cooperative corporation authorized by Section 1280.7 of the Insurance Code.

(Added by Stats. 1999, Ch. 944.)

Outpatient Settings-Regulations

2217. The Division of Licensing of the Medical Board of California may adopt regulations to implement this article and Chapter 1.3 (commencing with Section 1248) of Division 2 of the Health and Safety Code.

(Added by Stats. 1994, Ch. 1276.)

Article 12. Enforcement

Section

- 2220 **Division of Medical Quality: Authority**
- 2220.5 **Limitation of Action**
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Division of Medical Quality: Authority

2220. Except as otherwise provided by law, the Division of Medical Quality may take action against all persons guilty of violating this chapter. The division shall enforce and administer this article as to physician and surgeon certificate holders, and the division shall have all the powers granted in this chapter for these purposes including, but not limited to:

(a) Investigating complaints from the public, from other licensees, from health care facilities, or from a division of the board that a physician and surgeon may be guilty of unprofessional conduct. The board shall investigate the circumstances underlying any report received pursuant to Section 805 within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to Section 805.

(b) Investigating the circumstances of practice of any physician and surgeon where there have been any judgments, settlements, or arbitration awards requiring the physician and surgeon or his or her professional liability insurer to pay an amount in damages in excess of a cumulative total of thirty thousand dollars (\$30,000) with respect to any claim that injury or damage was proximately caused by the physician's and surgeon's error, negligence, or omission.

(c) Investigating the nature and causes of injuries from cases which shall be reported of a high number of judgments, settlements, or arbitration awards against a physician and surgeon.

(Amended by Stats. 1996, Ch.644.)

Limitation of Action

2220.5. (a) The Medical Board of California is the only licensing board that is authorized to investigate or commence disciplinary actions relating to physicians and surgeons who have been issued a certificate pursuant to Section 2050.

(b) For purposes of this section, "investigate or commence disciplinary actions" shall mean written, oral, or telephonic communication with a physician or surgeon concerning his or her violation of the Medical Practice Act.

(c) Written complaints that are subject to Section 43.96 of the Civil Code, relating to the professional conduct or professional competence of physicians and surgeons, shall be processed in accordance with that section.

(Added by Stats. 1997, Ch.200.)

Division of Licensing: Authority; Conditioned Licensure

2221. (a) The Division of Licensing may deny a physician's and surgeon's license to any applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her license; or, the division in its sole discretion, may issue a probationary license to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:

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

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

(3) Continuing medical or psychiatric treatment.

(4) Ongoing participation in a specified rehabilitation program.

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

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

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

(8) Compliance with all provisions of this chapter.

(b) The Division of Licensing may modify or terminate the terms and conditions imposed on the probationary license upon receipt of a petition from the licensee.

(c) Enforcement and monitoring of the probationary conditions shall be under the jurisdiction of the Division of Medical Quality which may initiate disciplinary proceedings to revoke or suspend the probationary license for any violation of probation or for any cause that would subject a licensee to revocation or suspension. Upon satisfactory completion of probation, the Division of Licensing shall convert the probationary license to a regular license free from conditions.

(Amended by Stats. 1991, Ch.983.)

Failure to Follow Infection Control Guidelines

2221.1. (a) The Medical Board of California shall investigate and may take disciplinary action, including, but not limited to, revocation or suspension of licenses, against physicians and surgeons and all others licensed or regulated by the board who, except for good cause, knowingly fail to protect patients by failing to follow infection control guidelines, thereby risking transmission of blood-home infectious diseases from the physician and surgeon or other health care provider licensed or regulated by the board to patient, from patients, and from patient to physician or other health care provider regulated by the board. In so doing, the board shall consider the standards, regulations, and recommendations of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300), Division 5, Labor Code) for preventing the transmission of HIV, Hepatitis B, and other blood-home pathogens in health care settings. As necessary, the board shall consult with the Board of Dental Examiners, the Board of Registered Nursing, and the Board of Vocational Nurse and Psychiatric Technician Examiners, to encourage appropriate consistency in the implementation of this section.

(b) The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates to follow infection control guidelines and of the most recent scientifically recognized safeguards for minimizing the transmission of blood-home infectious diseases.

(Added by Stats. 1991, Ch. 1180.)

Board of Podiatric Medicine: Authority

2222. The California Board of Podiatric Medicine shall enforce and administer this article as to podiatry certificate holders. Any acts of unprofessional conduct or other violations proscribed by this chapter are applicable to licensed podiatrists and wherever the Division of Medical Quality or a medical quality review committee or a panel of a committee is vested with the authority to enforce and carry out this chapter as to licensed physicians and surgeons, the California Board of Podiatric Medicine also possesses that same authority as to licensed podiatrists.

The California Board of Podiatric Medicine may order the denial of an application or issue a certificate subject to conditions as set forth in Section 2221, or order the **revocation, suspension, or other restriction of, or the modification** of that penalty, and the reinstatement of any podiatrist's certificate within its authority as granted by this chapter.

For these purposes, the California Board of Podiatric Medicine shall exercise the powers granted and be governed by the procedures set forth in this chapter.

(Amended by Stats. 1987, Ch. 1413.)

Delegation of Authority

2224. The Division of Medical Quality may delegate the authority under this chapter to conduct investigations

and inspections and to institute proceedings to the executive director of the board or such other personnel as set forth in Section 2020, but shall not delegate its authority to take final disciplinary action against a licensee as provided in Section 2227 and other provisions of this chapter, and may not delegate any authority of the Senior Assistant Attorney General of the Health Quality Enforcement Section, and may not delegate any powers vested in the administrative law judges of the Office of Administrative Hearings, as designated in Section 11371 of the Government Code.

(Amended by Stats. 1991, Ch. 1091.)

Investigation: Confidentiality Required

2225. Notwithstanding Section 2263 and any other provision of law making a communication between a physician and surgeon or a podiatrist and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted under this chapter. Members of the board, the Senior Assistant Attorney General of the Health Quality Enforcement Section, and the California Board of Podiatric Medicine, employees, agents, and representatives of the board, and the Senior Assistant Attorney General of the Health Quality Enforcement Section shall keep in confidence during the course of investigations, the names of any patients whose records are reviewed and may not disclose or reveal, except as is necessary during the course of an investigation, those names unless and until proceedings are instituted. The board's and the Senior Assistant Attorney General of the Health Quality Enforcement Section's authority to examine records of patients in the office of a physician and surgeon or a podiatrist is limited to records of patients who have complained to the board about that licensee.

Waiver of privileges shall not apply to investigations under Section 2297 relating to mental illness.

(Amended by Stats. 1990, Ch. 1597.)

Records Request Compliance

2225.5. (a) (I) A licensee who fails or refuses to comply with a request for the medical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, unless the licensee is unable to provide the documents within this time period for good **cause**.

(2) A health care facility shall comply with a request for the medical records of a patient that is accompanied by that patient's written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's medical records to the board within 30 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 30th day,

up to ten thousand dollars (\$10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the medical records.

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

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

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced, up to ten thousand dollars (\$10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

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

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

be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

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

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code).

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

(Amended by Stats. 1998, Ch. 878.)

Authority to Inspect Hospitals

2226. The Division of Medical Quality or the Senior Assistant Attorney General of the Health Quality Enforcement Section may inspect a licensed general or specialized hospital and require reports from them to determine if the hospital has adopted and is complying with the provisions of Sections 2282 and 2283. They may inspect medical staff and patient hospital medical records subject to the provisions of Section 2225. Notwithstanding Section 2224, the division's authority under this section shall be delegated only to a licensed physician and surgeon.

(Amended by Stats. 1990, Ch. 1597.)

Disciplinary Actions

2227. (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the division.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the division.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the division.

(4) Be publicly reprimanded by the division.

(5) Have any other action taken in relation to discipline as the division or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board.

(Amended by Stats. 1995, Ch. 708.)

Probation

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

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

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

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

(d) Providing the option of alternative community service in cases other than violations relating to quality of care, as defined by the Division of Medical Quality.

(Amended by Stats. 1995, Ch. 279.)

Rehabilitation

2229. (a) Protection of the public shall be the highest priority for the Division of Medical Quality, a medical quality review committee, the California Board of Podiatric Medicine, and administrative law judges in exercising its disciplinary authority.

(b) In exercising its disciplinary authority the Division of Medical Quality, Board of Podiatric Medicine, a medical quality review committee or panel thereof, or an administrative law judge, shall, wherever possible, take action as is calculated to aid in the rehabilitation of the licensee, or where, due to lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence.

(c) It is the intent of the Legislature that the division, the enforcement program, and committees shall seek out those licensees who have demonstrated deficiencies in competency and then take those actions as are indicated, with priority given to those measures, including further education, restrictions from practice or other means that will remove those deficiencies. Where rehabilitation and protection are inconsistent, protection shall be paramount.

(Amended by Stats. 1990, Ch. 1597.)

Administrative Procedure Act

2230. All proceedings against a licensee for unprofessional conduct, or against an applicant for licensure for unprofessional conduct or cause, shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) except as provided in this chapter, and shall be prosecuted by the Senior Assistant Attorney General of the Health Quality Enforcement Section.

(b) For the purpose of exercising its disciplinary authority against a physician and surgeon pursuant to this chapter and the Administrative Procedure Act, the Division of Medical Quality shall organize itself as two panels

of six members. Two members of each panel shall be public members. For purposes of this article, "agency itself," as used in the Administrative Procedure Act, means a panel of the division as described in this subdivision. The decision or order of a panel imposing any disciplinary action pursuant to this chapter and the Administrative Procedure Act shall be final.

(Amended by Stats. 1994, Ch. 1206.)

Limitation of Action

2230.5. (a) Except as provided in subdivision (b), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years after the board, or a division thereof, discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitation provided for by subdivision (a).

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the Medical Board of California to enforce actions involving physician and surgeon licensure in the most appropriate and timely manner, it is necessary that this act take effect immediately.

(Added by Stats. 1998, Ch. 301.)

Administrative Law Judge

2231. An administrative law judge as designated in Section 11371 of the Government Code may utilize the procedures in Section 11515 of the Government Code concerning any matters which may be officially or judicially noticed.

(Amended by Stats. 1990, Ch. 1575.)

Public Letter of Reprimand

2233. The Division of Medical Quality may, by stipulation or settlement with the affected physician and surgeon, issue a public letter of reprimand after it has conducted an investigation or inspection as provided in this article, in lieu of filing or prosecuting a formal accusation. The affected physician and surgeon shall indicate agreement or nonagreement in writing within 30 days of formal notification by the division of its intention to issue the letter. The division, at its option, may extend the response time. Use of a public reprimand shall be limited to minor violations and shall be issued under guidelines established by regulations of the board. A public letter of reprimand issued pursuant to this section may be disclosed to an inquiring member of the public.

(Added by Stats. 1993, Ch. 1267.)

"Unprofessional Conduct" Defined

2234. The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

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

(b) Gross negligence.

(c) Repeated negligent acts.

(d) Incompetence.

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

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

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

(Amended by Stats. 1996, Ch. 902.)

Procuring License by Fraud

2235. Upon referral from the division, the Senior Assistant Attorney General of the Health Quality Enforcement Section shall initiate action against any licensee who obtains a certificate by fraud or misrepresentation, including a reciprocity certificate which is based upon a certificate or license obtained by fraud or mistake. The division shall take action against any licensee whose certificate was issued by mistake.

(Amended by Stats. 1990, Ch. 1597.)

Conviction of Crime

2236. (a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances

surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

(Amended by Stats. 1994, Ch. 1206.)

Incarceration After Conviction of a Crime

2236.1. (a) A physician and surgeon's certificate shall be suspended automatically during any time that the holder of the certificate is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The Division of Medical Quality shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the certificate of the physician and surgeon has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The division shall notify the physician and surgeon of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in this section.

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing it is determined therefrom that the felony of which the licensee was convicted was substantially related to the qualifications, functions, or duties of a physician and surgeon, the Division of Medical Quality shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the division. The issue of substantial relationship shall be heard by an administrative law judge from the Medical Quality Hearing Panel sitting alone or with a panel of the division, in the discretion of the division.

(c) Notwithstanding subdivision (b), a conviction of any crime referred to in Section 2237, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a physician and surgeon and no hearing shall be held on this issue. Upon its own motion or for good cause shown, the division may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the medical profession.

(d) (1) Discipline may be ordered in accordance with Section 2227, or the Division of Licensing may order the denial of the license when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

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

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

(t) The other provisions of this article setting forth a procedure for the suspension or revocation of a physician and surgeon's certificate shall not apply to proceedings conducted pursuant to this section.

(Amended by Stats. 1996, Ch. 1075.)

Conviction of Drug Violations

2237. (a) The conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs, or controlled substances, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

(b) Discipline may be ordered in accordance with Section 2227 or the Division of Licensing may order the denial of the license when the time for appeal has elapsed, or when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, **complaint, or indictment**.

(Amended by Stats. 1984, Ch. 1635.)

Violation of Drug Statutes

2238. A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

(Amended by Stats. 1984, Ch. 1635.)

Unlawful Use or Prescribing

2239. (a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Division of Medical Quality may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation **complaint, information, or indictment**.

(Amended by Stats. 1998, Ch. 878.)

Outpatient Settings

2240. (a) Any physician and surgeon who performs a scheduled medical procedure outside of a general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, that results in the death of any patient on whom that medical treatment was performed by the physician and surgeon, or by a person acting under the physician and surgeon's orders or supervision, shall report, in writing, on a form prescribed by the board, that occurrence to the board within 15 days after the occurrence.

(b) Any physician and surgeon who performs a scheduled medical procedure outside of a general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, that results in the transfer to a hospital or emergency center for medical treatment for a period exceeding 24 hours, of any patient on whom that medical treatment was performed by the physician and surgeon, or by a person acting under the physician and surgeon's orders or supervision, shall report, in writing, on a form prescribed by the board that occurrence, within 15 days after the occurrence. The form shall contain all of the following information:

(9) Name of the patient's physician in the outpatient setting.

(2) Name of the physician with hospital privileges.

() Name of the patient and patient identifying information.

(4) Name of the hospital or emergency center where the patient was transferred.

(5) Type of outpatient procedures being performed.

(6) Events triggering the transfer.

(7) Duration of the hospital stay.

(8) Final disposition or status, if not released from the hospital, of the patient.

(9) Physician's practice specialty and ABMS certification, if applicable.

(c) The form described in subdivision (b) shall be constructed in a format to enable the physician and surgeon to transmit the information in paragraphs (5) to (9), inclusive, to the board in a manner that the physician and surgeon and the patient are anonymous and their identifying information is not transmitted to the board. The entire form containing information described in paragraphs (1) to (9), inclusive, shall be placed in the patient's medical record.

(d) The board shall aggregate the data and publish an annual report on the information collected pursuant to subdivisions (a) and (b).

(e) On and after January 1, 2002, the data required in subdivision (b) shall be sent to the Office of Statewide Health Planning and Development (OSHPD) instead of the board. OSHPD may revise the reporting requirements to fit state and national standards, as applicable. The board shall work with OSHPD in developing the reporting mechanism to satisfy the data collection requirements of this section.

(t) The failure to comply with this section constitutes unprofessional conduct.

(Added by Stats. 1999, Ch. 944.)

Prescribing to Addicts

2241. Unless otherwise provided by this section, the prescribing, selling, furnishing, giving away, or administering or offering to prescribe, sell, furnish, give away, or administer any of the drugs or compounds mentioned in Section 2239 to an addict or habitué constitutes unprofessional conduct.

If the drugs or compounds are administered or applied by a licensed physician and surgeon or by a registered nurse acting under his or her instruction and supervision, this section shall not apply to any of the following cases:

(a) Emergency treatment of a patient whose addiction is complicated by the presence of incurable disease, serious accident or injury, or the infirmities attendant upon age.

(b) Treatment of addicts or habités in state licensed institutions where the patient is kept under restraint and control, or in city or county jails or state prisons.

(c) Treatment of addicts as provided for by Section 11217.5 of the Health and Safety Code.

Intractable Pain Treatment Act

2241.5. (a) Notwithstanding any other provision of law, a physician and surgeon may prescribe or administer controlled substances to a person in the course of the physician and surgeon's treatment of that person for a diagnosed condition causing intractable pain.

(b) "Intractable pain," as used in this section, means a pain state in which the cause of the pain cannot be removed or otherwise treated and which in the generally ac-

cepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts including, but not limited to, evaluation by the attending physician and surgeon and one or more physicians and surgeons specializing in the treatment of the area, system, or organ of the body perceived as the source of the pain.

(c) No physician and surgeon shall be subject to disciplinary action by the board for prescribing or administering controlled substances in the course of treatment of a person for intractable pain.

(d) This section shall not apply to those persons being treated by the physician and surgeon for chemical dependency because of their use of drugs or controlled substances.

(e) This section shall not authorize a physician and surgeon to prescribe or administer controlled substances to a person the physician and surgeon knows to be using drugs or substances for nontherapeutic purposes.

(t) This section shall not affect the power of the board to deny, revoke, or suspend the license of any physician and surgeon who does any of the following:

(1) Prescribes or administers a controlled substance or treatment that is nontherapeutic in nature or nontherapeutic in the manner the controlled substance or treatment is administered or prescribed or is for a nontherapeutic purpose in a nontherapeutic manner.

(2) Fails to keep complete and accurate records of purchases and disposals of substances listed in the California Controlled Substances Act, or of controlled substances schedule in, or pursuant to, the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. A physician and surgeon shall keep records of his or her purchases and disposals of these drugs, including the date of purchase, the date and records of the sale or disposal of the drugs by the physician and surgeon, the name and address of the person receiving the drugs, and the reason for the disposal of or the dispensing of the drugs to the person and shall otherwise comply with all state recordkeeping requirements for controlled substances.

(3) Writes false or fictitious prescriptions for controlled substances listed in the California Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(4) Prescribes, administers, or dispenses in a manner not consistent with public health and welfare controlled substances listed in the California Controlled Substance Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(5) Prescribes, administers, or dispenses in violation of either Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210) of Division 10 of the Health and Safety Code or this chapter.

(g) Nothing in this section shall be construed to prohibit the governing body of a hospital from taking disciplinary actions against a physician and surgeon, as authorized pursuant to Sections 809.05, 809.4, and 809.5.

(Amended by Stats. 1994, Ch. 222.)

Prescribing Without Prior Examination

2242. (a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without a good faith prior examination and medical indication therefor, constitutes unprofessional conduct.

(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, provided such drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

(2) The licensee transmitted the order for such drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility (A) if such practitioner had consulted with such registered nurse or licensed vocational nurse who had reviewed the patient's records and (B) if such practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refilling.

(Amended by Stats. 1998, Ch. 878.)

Failure to Provide Service as Required by Federal Grant Agreement; Disciplinary Action

2243. Upon referral by the National Health Services Corps to the Attorney General of the United States of any physician or surgeon who fails to provide service as a general practitioner or physician and surgeon as required pursuant to the grant agreement entered into between the physician and surgeon and the National Health Services Corps program (42 U.S.C. Sec. 254d), or the federal loan insurance program (42 U.S.C. Sec. 294), the board, upon notification by the Attorney General of the United States, shall review the facts and circumstances of the default and take appropriate disciplinary action where the board determines that the licensee has committed unprofessional conduct in violation of Section 2234.

(Formerly § 2430, added by Stats. 1992, Ch. 1002 (A.B. 3077), § 1. Renumbered § 2243 and amended by Stats. 1995, c. 708 (S.B. 609), § 11.7.)

Collecting Biological Specimens

2244. A physician and surgeon who collects biological specimens for clinical testing or examination shall secure or ensure that his or her employees, agents, or contractors secure those specimens in a locked container when those specimens are placed in a public location outside of the custodial control of the licensee, or his or her employees, agents, or contractors, pursuant to the requirements of Section 681.

Commencing July 1, 2000, the board may impose a fine against a licensee not to exceed the sum of one thousand dollars (\$1,000) for a violation of this section.

This section shall not apply when the biological specimens have been received by mail in compliance with all applicable laws and regulations.

(Added by Stats. 1999, Ch. 922.)

Dental Office Use of General Anesthesia

2245. (a) A violation of Article 2.7 (commencing with Section 1646) of Chapter 4 of Division 2 or Section 1682 by a physician and surgeon who possesses a permit issued by the Board of Dental Examiners of California to administer general anesthesia in a dental office may constitute unprofessional conduct.

(b) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2002, deletes or extends that date.

(Amended by Stats. 1999, Ch. 177.)

Failure to Comply With Requirements for Sterilization

2250. The willful failure to comply with the requirements of Article 6 (commencing with Section 14191) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code and the regulations promulgated thereunder, relating to informed consent for sterilization procedures, constitutes unprofessional conduct.

Liquid Silicone Prohibited

2251. The prescribing, dispensing, administering, or furnishing of liquid silicone for the purpose of injecting such substance into a human breast or manuary constitutes unprofessional conduct.

Violation of Laws Relating to Treatment of Cancer

2252. The violation of any provision of Chapter 4 (commencing with Section 109250) of Part 4 of Division 104 of the Health and Safety Code, or any violation of an injunction or cease and desist order issued under those provisions, relating to the treatment of cancer, constitutes unprofessional conduct.

(Amended by Stats. 1996, Ch. 1023.)

Violation of Laws Relating to Criminal Abortions

2253. The procuring or aiding or abetting or attempting or agreeing or offering to procure an illegal abortion constitutes unprofessional conduct, unless the act is done in compliance with the provisions of the Therapeutic Abortion Act (Article 2 commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code).

(Amended by Stats. 1996, Ch. 1023.)

Violation of Laws Relating to Research on Aborted Products

2254. The violation of Section 123440 of the Health and Safety Code, relating to research on aborted products of human conception, constitutes unprofessional conduct.

(Amended by Stats. 1996, Ch. 1023.)

Violation of Laws Relating to Patient Referrals

2255. The violation of any provision of Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, relating to the unlawful referral of patients to extended care facilities, constitutes unprofessional conduct.

Violation of Laws Relating to Patient Rights

2256. Any intentional violation of Sections 5326.2 to 5326.8, inclusive, of the Welfare and Institutions Code, relating to the rights of involuntarily confined inpatients, constitutes unprofessional conduct.

Violation of the Laws Relating to Informed Consent for Breast Cancer Treatment

2257. The violation of Section 109275 of the Health and Safety Code, relating to informed consent for the treatment of breast cancer, constitutes unprofessional conduct.

(Amended by Stats. 1996, Ch. 1023.)

Violation of the Laws Relating to the Use of Laetrile

2258. The violation of Section 1708.5 of the Health and Safety Code, relating to the use of laetrile or amygdalin with respect to cancer therapy, constitutes unprofessional conduct.

Patient Information

2259. (a) A physician and surgeon shall give each patient a copy of the standardized written summary, as developed pursuant to subdivision (e), describing **silicone implants used in cosmetic, plastic, reconstructive, or similar surgery**, before the physician and surgeon performs the surgery. A physician and surgeon may substitute, in place of the standardized written summary for silicone implants, written information authorized for use by the federal Food and Drug Administration prepared by the manufacturer based upon the physician package insert. The furnishing of a copy of the standardized written summary or written information shall constitute compliance with the requirements of this section.

(b) Prior to performance of surgery, the physician and surgeon shall note on the patient's chart that he or she has given the patient the standardized written summary or written information required by this section.

(c) The failure of a physician and surgeon to comply with this section constitutes unprofessional conduct. The provision of the standardized written summary or written information shall not alter, diminish, or modify existing duties of physicians and surgeons, including duties relating to informed consent. However, no physician and surgeon shall be liable as a distributor of a standardized written summary or written information alleged to contain erroneous or incomplete information.

(d) The facility where the surgery is performed shall not be responsible for enforcement of, or verification of, compliance with the requirements of this section.

(e) If the State Department of Health Services determines that the federal Food and Drug Administration has not authorized written information on silicone implants intended for the layperson, the state department shall de-

velop a standardized written summary to inform the patient of the risks and possible side effects of **silicone implants as used in cosmetic, plastic, reconstructive, or similar surgery**. In developing these summaries, the state department shall do all of the following:

(1) Use only language that is simple and readily understood by a layperson.

(2) Include a disclaimer that the state in no way endorses any procedures, nor does the state claim to provide an exhaustive analysis of all the potential benefits or risks associated with any procedure.

(3) Provide only information approved by the federal Food and Drug Administration.

(f) The State Department of Health Services shall update the written summary described in subdivision (e) as determined necessary by the state department to protect the public health and safety.

(g) The Medical Board of California shall publish the standardized written summaries prepared pursuant to subdivision (e), and shall distribute copies of the summaries, upon request, to physicians and surgeons. The Medical Board of California shall make the summaries available for a fee not exceeding, in the aggregate, the actual costs to the State Department of Health Services and the Medical Board of California for developing, updating, publishing, and distributing the summaries. Physicians and surgeons performing surgical procedures described in subdivision (a) shall purchase the summaries from the Medical Board of California for distribution to their patients, as required in this section. Any person or entity may purchase the summaries if he, she, or it desires. The Medical Board of California shall fund the State Department of Health Services for the actual cost of developing and updating the summaries incurred by the State Department of Health Services, through an interagency agreement entered into between the Medical Board of California and the State Department of Health Services for that purpose.

The Medical Board of California and the State Department of Health Services may distribute the written information described in subdivision (a) if a manufacturer of silicone implants provides the board and state department with a sufficient number of copies of this information, as determined by the state department.

(h) Section 2314 shall not apply to this section.

(i) For purpose of this section, "silicone implant" means any implant containing silicone, including implants using a silicone gel or silicone shell. This definition includes implants using a saline solution with a silicone shell.

G) A physician and surgeon shall not be responsible for complying with this section until the written summaries are published pursuant to subdivision (g).

(Added by Stats. 1992, Ch. 1140.)

Patient Information

2259.5. (a) A physician and surgeon shall give each patient a copy of the standardized written summary, as developed pursuant to subdivision (e), describing **collagen injections used in cosmetic, plastic, reconstructive, or similar surgery**, before the physician and surgeon performs

the surgery. A physician and surgeon may substitute, in place of the standardized written summary for collagen injections, written information authorized for use by the federal Food and Drug Administration prepared by the manufacturer based upon the physician package insert. The furnishing of a copy of the standardized written summary or written information shall constitute compliance with the requirements of this section.

(b) Prior to the performance of surgery, the physician and surgeon shall note on the patient's chart that he or she has given the patient the standardized written summary or written information required by this section.

(c) The failure of a physician and surgeon to comply with this section constitutes unprofessional conduct. The provision of the standardized written summary or written information shall not alter, diminish, or modify existing duties relating to informed consent. However, no physician and surgeon shall be liable as a distributor of a standardized written summary or written information alleged to contain erroneous or incomplete information.

(d) The facility where the surgery is performed shall not be responsible for enforcement of, or verification of, compliance with the requirements of this section.

(e) If the State Department of Health Services determines that the federal Food and Drug Administration has not authorized written information intended for the layperson on collagen injections used in cosmetic, plastic, reconstructive, or similar surgery, the state department shall develop a standardized written summary to inform the patient of the risks and possible side effects of collagen injections as used in cosmetic, plastic, reconstructive, or similar surgery. In developing this summary, the state department shall do all of the following:

(1) Use only language that is simple and readily understood by a layperson.

(2) Include a disclaimer that the state in no way endorses any procedure, nor does the state claim to provide an exhaustive analysis of all the potential benefits or risks associated with any procedure.

(3) Identify the type of animal used to produce the collagen and identify the situations where the federal Food and Drug Administration has given its approval for the procedure.

(4) Provide only information approved by the federal Food and Drug Administration.

(!) The State Department of Health Services shall update the written summary described in subdivision (e) as determined necessary by the state department to protect the public health and safety.

(g) The Medical Board of California shall publish the standardized written summary prepared pursuant to subdivision (e) and shall distribute copies of the summary, upon request, to physicians and surgeons. The Medical Board of California shall make the summary available for a fee not exceeding, in the aggregate, the actual costs to the State Department of Health Services and the Medical Board of California for developing, updating, publishing, and distributing the summary. A physician and surgeon performing surgical procedures described in subdivision (a) shall

purchase the summary from the Medical Board of California for distribution to his or her patients, as required in this section. Any person or entity may purchase the summary if he, she or it desires. The Medical Board of California shall fund the State Department of Health Services for the actual cost of developing and updating the summary incurred by the State Department of Health Services, through an inter-agency agreement entered into between the Medical Board of California and the State Department of Health Services.

The Medical Board of California and the State Department of Health Services may distribute the written information described in subdivision (a) if a manufacturer of collagen provides the board and state department with a sufficient number of copies of this information, as determined by the state department.

(h) Section 2314 shall not apply to this section.

(i) For purposes of this section, "collagen" includes, but is not limited to, any substance derived from animal protein, or combined with animal protein, that is implanted into the body for purposes of cosmetic, plastic, reconstructive, or similar surgery. **However, "collagen" does not include absorbable gelatin medical devices intended for application to bleeding surfaces as a hemostatic or any other medical device used for purposes other than beautifying, promoting attractiveness, or altering the appearance of any part of the human body.**

G) A physician and surgeon shall not be responsible for complying with this section until the written summary is published pursuant to subdivision (g).

(Added by Stats. 1992, Ch. 1140.)

Liposuction-Outside Hospital

2259.7. The Medical Board of California shall adopt extraction and postoperative care standards in regard to body liposuction procedures performed by a physician and surgeon outside of a general acute care hospital, as defined in Section 1250 of the Health and Safety Code. In adopting those regulations, the Medical Board of California shall take into account the most current clinical and scientific information available. A violation of those extraction and postoperative care standards constitutes unprofessional conduct.

(Added by Stats. 1999, Ch. 631.)

Sperm or Ova Removal

2260. A physician and surgeon who removes sperm or ova from a patient shall, before the sperm or ova are used for a purpose other than reimplantation in the same patient or implantation in the spouse of the patient, obtain the written consent of the patient as provided in subdivision (b).

(b) The consent required by subdivision (a) shall conform to all of the following requirements:

(1) The consent shall be in writing and shall contain the following statement: I (name of donor) do hereby donate (type and number, if applicable, of sperm or ova); to (name of clinic or other donee) for (specify purpose).

(2) The consent shall contain a statement by the donor that specifies the disposition of any unused donated material.

(3) The consent shall be signed by the patient and by the physician and surgeon who removes the sperm or ova.

(4) The physician and surgeon shall retain the original consent in the medical record of the patient and give a copy of the consent to the patient.

(5) The consent shall contain a notification to the patient that the written consent is an important document that should be retained with other vital records.

(6) If the procedure to remove the sperm or ova is performed in a hospital, the physician and surgeon shall provide a copy of the consent to the hospital.

(c) Nothing in this section shall affect the obligation of a physician and surgeon under current law to obtain the informed consent of a patient before performing a medical procedure on the patient that may significantly affect the patient's reproductive health or ability to conceive, or both.

(d) A violation of this section constitutes unprofessional conduct. Section 2314 shall not apply to this section.

(e) A physician and surgeon who fails, for the second time, to obtain any consent required in subdivision (a) or (b) before transferring sperm or ova from a provider of sperm or ova to a recipient, shall be assessed a civil penalty in an amount not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the individual whose required consent was not obtained. A separate penalty shall be assessed for each individual from whom the consent was not obtained. The penalties in this section shall be available in addition to any other remedies that may be available under other provisions of law.

(Added by Stats. 1996, Ch. 863.)

Human Cloning

2260.5, (a) A violation of Section 24185 of the Health and Safety Code, relating to human cloning, constitutes unprofessional conduct.

(b) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

Making False Statements

2261. Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct.

Alteration of Medical Records

2262. Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct.

In addition to any other disciplinary action, the Division of Medical Quality or the California Board of Podiatric Medicine may impose a civil penalty of five hundred dollars (\$500) for a violation of this section.

(Amended by S- 1986, Ch. 655.)

Violation of Professional Confidence

2263. The willful, unauthorized violation of professional confidence constitutes unprofessional conduct.

Aiding Unlicensed Practice of Medicine Prohibited

2264. The employing, directly or indirectly, the aiding, or the abetting of any unlicensed person or any suspended, revoked, or unlicensed practitioner to engage in the practice of medicine or any other mode of treating the sick or afflicted which requires a license to practice constitutes unprofessional conduct

Use of Physician's Assistant Without Approval

2265. The supervision, use, or employment of a physician's assistant who is licensed or practicing under interim approval, without the approval of the Division of Licensing, constitutes unprofessional conduct.

(Amended by Stats. 1995, Ch. 279.)

Record Maintenance

2266. The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

(Added by Stats. 1996, Ch. 13.)

False or Misleading Advertising

2271. Any advertising in violation of Section 17500, relating to false or misleading advertising, constitutes unprofessional conduct.

Advertising Without Use of Name

2272. Any advertising of the practice of medicine in which the licensee fails to use his or her own name or approved fictitious name constitutes unprofessional conduct.

Employment of Cappers and Steerers

2273. Except as otherwise allowed by law, the employment of runners, cappers, steerers, or other persons to procure patients constitutes unprofessional conduct.

(Amended by Stats. 1991, Ch. 116.)

Misuse of Titles

2274. The use by any licensee of any certificate, of any letter, letters, word, words, or terms either as a prefix, affix, or suffix indicating that he or she is entitled to engage in a medical practice for which he or she is not licensed constitutes unprofessional conduct.

Election of "M.D."

2275. Any person who held a physician's and surgeon's certificate under the jurisdiction of the Osteopathic Medical Board of California and a degree of doctor of medicine issued by a medical school located in the state at any time prior to September 30, 1962, and approved by either the Osteopathic Medical Board of California or the Board of Medical Examiners of the State of California at the time such degree was issued, who applied in writing to such Board of Medical Examiners for permission to utilize his or her degree of doctor of medicine, shall be authorized

to use the term or suffix "M.D." and such use shall not constitute unprofessional conduct, so long as such person advised both boards, in writing, that he or she has elected to use such term or suffix and further has elected not to use the term or suffix "D.O." In the event of such election, the use of the term or suffix "D.O." constitutes unprofessional conduct within the meaning of this chapter.

Use of "D.O."

2276. Unless the holder of any certificate provided for in this chapter has been granted the degree of doctor of osteopathy after the completion of a full course of study as prescribed by an approved osteopathic medical school in accordance with the provisions of this chapter, the use of the term or suffix "D.O." constitutes unprofessional conduct.

Use of "D.P.M." or "D.S.P."

2277. Unless the holder of any certificate provided for in this chapter has been granted the degree of doctor of podiatric medicine or doctor of surgical podiatry after the completion of a full course of study as prescribed by a school or college of podiatric medicine in accordance with the provisions of this chapter, the use of the terms or suffixes **"D.P.M." or "D.S.P." constitutes unprofessional conduct.**

Use of Title "Doctor"

2278. Unless a person authorized under this chapter to use the title "doctor" or the letters or prefix "Dr." holds a physician's and surgeon's certificate, the use of such title, letters, or prefix without further indicating the type of certificate held, constitutes unprofessional conduct.

Practice of Medicine While Under the Influence of Narcotic Drug or Alcohol; Unprofessional Conduct; Misdemeanor

2280. No licensee shall practice medicine while under the influence of any narcotic drug or alcohol to such an extent as to impair his or her ability to conduct the practice of medicine with safety to the public and his or her patients. Violation of this section constitutes unprofessional conduct and is a misdemeanor.

(Added by Stats. 1993, Ch. 1267.)

Medical Staff Requirements-Staff of 5 or More

2282. The regular practice of medicine in a licensed general or specialized hospital having five or more physicians and surgeons on the medical staff, which does not have rules established by the board of directors thereof to govern the operation of the hospital, which rules include, among other provisions, all the following, constitutes unprofessional conduct:

(a) Provision for the organization of physicians and surgeons licensed to practice in this state who are permitted to practice in the hospital into a formal medical staff with appropriate officers and bylaws and with staff appointments on an annual or biennial basis.

(b) Provision that membership on the medical staff shall be restricted to physicians and surgeons and other li-

censed practitioners competent in their respective fields and worthy in professional ethics. In this respect the division of profits from professional fees in any manner shall be prohibited and any such division shall be cause for exclusion from the staff.

(c) Provision that the medical staff shall be self-governing with respect to the professional work performed in the hospital; that the medical staff shall meet periodically and review and analyze at regular intervals their clinical experience; and the medical records of patients shall be the basis for such review and analysis.

(d) Provision that adequate and accurate medical records be prepared and maintained for all patients.

Medical Staff Requirements-Staff of Less Than 5

2283. The regular practice of medicine in a licensed general or specialized hospital having less than five physicians and surgeons on the medical staff, which does not have rules established by the board of directors thereof to govern the operation of the hospital, which rules include, among other provisions, all of the following, constitutes unprofessional conduct:

(a) Provision that membership on the medical staff shall be restricted to physicians and surgeons and other licensed practitioners competent in their respective fields and worthy in professional ethics. In this respect the division of profits for professional fees in any manner shall be prohibited and any such division shall be cause for exclusion from the staff.

(b) Provision that adequate and accurate medical records be prepared and maintained for all patients.

Fee Sharing Prohibited; Employment of Acupuncturists

2284. (a) A licensed physician and surgeon or a licensed podiatrist, or a group of physicians and surgeons or podiatrists, or a medical or podiatry corporation shall not share in any fee charged by an acupuncturist or receive any consideration from or on behalf of such acupuncturist for any referral or diagnosis.

(b) A licensed physician and surgeon or podiatrist shall not employ more than one acupuncturist.

(c) A group of physicians and surgeons or podiatrists, or a medical or podiatry corporation, shall not employ more than one acupuncturist for every 20 practitioners in such group or corporation.

Practice Under False or Fictitious Name

2285. The use of any fictitious, false, or assumed name, or any name other than his or her own by a licensee either alone, in conjunction with a partnership or group, or as the name of a professional corporation, in any public **communication, advertisement, sign, or announcement** of his or her practice without a fictitious-name permit obtained pursuant to Section 2415 constitutes unprofessional conduct. This section shall not apply to licensees who contract with, are employed by, or are on the staff of, any clinic licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code or any medical

school approved by the division or a faculty practice plan connected with such a medical school.

(Amended by Stats. 1988, Ch. 1325.)

Violation of Professional Corporation Act

2286. It shall constitute unprofessional conduct for any licensee to violate, to attempt to violate, directly or indirectly, to assist in or abet the violation of, or to conspire to violate any provision or term of Article 18 (commencing with Section 2400), of the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title I of the Corporations Code), or of any rules and regulations duly adopted under those laws.

Purchase and Sale of Degrees and Certificates

2287. The purchase, sale, or barter, or offering to purchase, sell, or barter any medical or podiatric degree, or any degree, diploma, certificate, affidavit, transcript, or other evidence made or purporting to be made, pursuant to any laws regulating the licensure of persons under this chapter, or any preceding medical practice act or for use in connection with the granting of any certificates or diplomas or the purchase, procurement, or altering in any material regard, with fraudulent intent, a diploma, certificate, affidavit, transcript, or other evidence required for issuing any certificate or diploma that has been purchased, fraudulently issued, counterfeited, or materially altered constitutes unprofessional conduct. The attempt to or conspiring to violate this section also constitutes unprofessional conduct.

Impersonation-Examination

2288. The impersonation of any applicant or acting as proxy for any applicant in any examination required under this chapter for a certificate constitutes unprofessional conduct.

Impersonation-Practice of Medicine

2289. The impersonation of another licensed practitioner or permitting or allowing another person to use his or her certificate to engage in the practice of medicine or podiatric medicine constitutes unprofessional conduct.

Frauds on Medical Records

2290. The provisions of Article 4 (commencing with Section 580) of Chapter 1, relating to frauds of medical records, degrees, diplomas, certificates, and transcripts are not affected by the provisions of this article and, so far as any act is a crime within their scope, such provisions control over the provisions of this article.

Telemedicine; Informed Consent

2290.5. (a) For the purposes of this section, "telemedicine" means the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. Neither a telephone conversation nor an electronic mail message between a health care practitioner and patient constitutes "telemedicine" for purposes of this section.

(b) For the purposes of this section, "health care practitioner" has the same meaning as "licentiate" as defined in paragraph (2) of subdivision (a) of Section 805.

(c) Prior to the delivery of health care via telemedicine, the health care practitioner who has ultimate authority over the care or primary diagnosis of the patient shall obtain verbal and written informed consent from the patient or the patient's legal representative. The informed consent procedure shall ensure that at least all of the following information is given to the patient or the patient's legal representative verbally and in writing:

(1) The patient or the patient's legal representative retains the option to withhold or withdraw consent at any time without affecting the right to future care or treatment nor risking the loss or withdrawal of any program benefits to which the patient or the patient's legal representative would otherwise be entitled.

(2) A description of the potential risks, consequences, and benefits of telemedicine.

(3) All existing confidentiality protections apply.

(4) All existing laws regarding patient access to medical information and copies of medical records apply.

(5) Dissemination of any patient identifiable images or information from the telemedicine interaction to researchers or other entities shall not occur without the consent of the patient.

(d) A patient or the patient's legal representative shall sign a written statement prior to the delivery of health care via telemedicine, indicating that the patient or the patient's legal representative understands the written information provided pursuant to subdivision (a), and that this information has been discussed with the health care practitioner, or his or her designee.

(e) The written consent statement signed by the patient or the patient's legal representative shall become part of the patient's medical record.

(f) The failure of a health care practitioner to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(g) All existing laws regarding surrogate decisionmaking shall apply. For purposes of this section, "surrogate decisionmaking" means any decision made in the practice of medicine by a parent or legal representative for a minor or an incapacitated or incompetent individual.

(h) Except as provided in paragraph (3) of subdivision (c), this section shall not apply when the patient is not directly involved in the telemedicine interaction, for example when one health care practitioner consults with another health care practitioner.

(i) This section shall not apply in an emergency situation in which a patient is unable to give informed consent and the representative of that patient is not available in a timely manner.

(j) This section shall not apply to a patient under the jurisdiction of the Department of Corrections or any other correctional facility.

(Amended by Stats. 1997, Ch. 199.)

Issuance of Certificates

2291. It is unprofessional conduct for any licensee not a member or authorized official of the board, or of the California Board of Podiatric Medicine in the case of a doctor of podiatric medicine, to sign or issue or cause to be signed or issued any certificate authorized by this chapter.

(Amended by Stats. 1986, Ch. 655.)

Professional Competency Examination

2292. (a) A physician may be ordered to undergo a professional competency examination if, after investigation and review by a medical expert designated by the division, there is reasonable cause to believe that the physician is unable to practice medicine with reasonable skill and safety to patients. Reasonable cause shall be demonstrated one or more of the following: (1) a single incident of gross negligence; (2) a pattern of inappropriate prescribing; (3) an act of incompetence or negligence causing death or serious bodily injury; or (4) a pattern of substandard care.

(b) Upon referral from the division, the matter shall be drafted and presented by the Senior Assistant Attorney General of the Health Quality Enforcement Section or his or her designee by way of a written petition detailing the reasonable cause. The petition shall contain all conclusions and facts upon which the presumption of reasonable cause is based. A copy of the petition shall be served on the physician who shall have the opportunity to file written opposition to the petition within 45 days after service. Service of the petition and any orders shall be in accordance with the methods of service authorized by subdivision (c) of Section 11505 of the Government Code.

(c) The petition may be considered by the Division of Medical Quality, or the division may assign the petition for consideration to a panel of a medical quality review committee, formed pursuant to Section 2323.

(d) The division or a committee panel shall review the petition and any opposition paper from the physician, or the division or panel may hold a hearing in accordance with the provisions of the Administrative Procedure Act to determine if reasonable cause exists, as specified in subdivision (a). The physician shall have the right to be represented at that hearing by the person of his or her choice. If the division or panel is satisfied that reasonable cause exists as to the circumstances specified in subdivision (a), the division or panel shall issue an order compelling the physician to undergo an examination of professional competency as measured by community standards. For purposes of this section, "**community standards**" means the statewide standards of the community of licensees. Failure to comply with the order duly served on the physician shall constitute unprofessional conduct for purposes of disciplinary proceedings.

(Amended by Stats. 1990, Ch. 1597.)

Administration of Competency Examination

2293. (a) The professional competency examination shall be in the form of an oral clinical examination to be administered by three physician examiners selected by the

division or its designee, who shall test for medical knowledge specific to the physician's speciality or specific suspected deficiency. The examination shall be tape recorded.

(b) A failing grade from two of the examiners shall constitute a failure of an examination. In the event of a failure, the board shall supply a true and correct copy of a tape of the examination to the unsuccessful examinee.

(c) Within 45 days following receipt of the tape of the examination, a physician who fails the examination may request a hearing before the administrative law judge as designated in Section 11371 of the Government Code to determine whether he or she is entitled to take a second **examination**.

(d) If the physician timely requests a hearing concerning the right to reexamination under subdivision (c), the hearing shall be held in accordance with the Administrative Procedure Act. Upon a finding that the examination or procedure is unfair or that one or more of the examiners manifest bias towards the examinee, a reexamination shall be ordered.

(e) If the examinee fails the examination and is not afforded the right to reexamination, the division may take action pursuant to Section 2230 by directing that an accusation be filed charging the examinee with incompetency under subdivision (d) of Section 2234. The modes of discipline are set forth in Sections 2227 and 2228.

(f) Findings and conclusions reported by the examiners may be received in the administrative hearing on the accusation. The passing of the examination shall constitute prima facie evidence of present competence in the area of coverage of the examination.

(g) Competency examinations shall be conducted under a uniform examination system, and for that purpose the division may make arrangements with organizations furnishing examination material as deemed desirable.

(Added by Stats. 1990, Ch. 1597.)

Confidentiality of Examination Records

2294. (a) If the division proceeds pursuant to the provisions of Sections 2292 and 2293 and the physician passes the professional competency examination administered, the division shall be precluded from filing an accusation of incompetency based solely on the circumstances giving rise to the reasonable cause for the examination.

(b) If the division determines there is insufficient cause to file an accusation based on the examination results, then all agency records of the proceedings, including the petition and order for the examination, investigative reports, if any, reports of staff or outside medical consultants, and the reports of the examiners, shall be kept confidential and shall not be subject to discovery or subpoena.

(c) If no further proceedings are conducted to determine the physician's fitness to practice during a period of five years from the date of the petition under Section 2292, then the agency shall purge and destroy all records pertaining to the proceedings.

(Amended by Stats. 1985, Ch. 1070.)

Revocation or Suspension by Another State

2305. The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

(Amended by Stats, 1995, Ch. 708.)

Practice During Suspension Prohibited

2306. If a licensee's right to practice medicine is suspended, he or she shall not engage in the practice of medicine during the term of such suspension. Upon the expiration of the term of suspension, the certificate shall be reinstated by the Division of Medical Quality, unless the licensee during the term of suspension is found to have engaged in the practice of medicine in this state. In that event, the division shall revoke the licensee's certificate to engage in the practice of medicine.

Petition for Reinstatement or Modification of Penalty

2307. A person whose certificate has been revoked or suspended or who has been placed on probation may petition the Division of Medical Quality for reinstatement or modification of penalty, including modification or termination of probation, after a period of not less than the following minimum periods have elapsed from the effective date of the decision ordering that disciplinary action:

(a) At least three years for reinstatement of a license revoked for unprofessional conduct, except that the division may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

(b) At least two years for early termination of probation of three years or more.

(c) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

The petition shall state any facts as may be required by the division. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed by the board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

The petition may be heard by a panel of the division. The division may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the division or the California Board of Podiatric Medicine, as applicable, which shall be acted upon in accordance with Section 2335.

The panel of the division or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's

activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

The administrative law judge designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary.

No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The division may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

This section is applicable to and may be carried out with regard to licensees of the California Board of Podiatric Medicine. In lieu of two verified recommendations from physicians and surgeons, the petition shall be accompanied by at least two verified recommendations from podiatrists licensed by the board who have personal knowledge of the activities of the petitioner since the date the disciplinary penalty was imposed.

(d) Nothing in this section shall be deemed to alter Sections 822 and 823 of the Business and Professions Code.

(Amended by Stats, 1993, Ch. 1267.)

Physician License Suspension

2310. (a) If a physician and surgeon possesses a license or is otherwise authorized to practice medicine (1) in any state other than California or (2) by any agency of the federal government and that license or authority is suspended or revoked outright and is reported to the National Practitioners Data Bank, the physician and surgeon's certificate shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The division shall notify the physician and surgeon of the license suspension and of his or her right to have the issue of penalty heard as provided in this section,

(b) Upon its own motion or for good cause shown, the division may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the medical profession.

(c) The issue of penalty shall be heard by an administrative law judge from the Medical Quality Panel sitting alone or with a panel of the division, in the discretion of the division. A physician and surgeon may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the physician and surgeon's license or authority to practice medicine is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon the showing to the administrative law judge or

panel by the physician and surgeon that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded.

If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the physician and surgeon's license or authority to practice medicine, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a physician and surgeon who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a physician's and surgeon's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a physician and surgeon whose license has been surrendered whose only discipline is a medical staff disciplinary action at a federal hospital not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the physician and surgeon remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the physician and surgeon by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a physician and surgeon's certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the physician or surgeon may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(Added by Stats. 1997, Ch. 514.)

Injunctive Relief

2311. Whenever any person has engaged in or is about to engage in any acts or practices which constitute or will constitute an offense against this chapter, the superior court of any county, on application of the board, any division of the board, or of 10 or more persons licensed as physicians and surgeons or as podiatrists in this state may issue an injunction or other appropriate order restraining such conduct. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(Amended by Stats. 1982, Ch. 517.)

Injunctions-Division of Medical Quality

2312. The Division of Medical Quality shall seek to obtain an injunction against any physician and surgeon within its jurisdiction if the division has reasonable cause to believe that allowing such person to continue to engage in the practice of medicine would endanger the public health, safety, or welfare.

Annual Report to the Legislature

2313. The Division of Medical Quality shall report annually to the Legislature, no later than October 1 of each year, the following information:

(a) The total number of temporary restraining orders or interim suspension orders sought by the board or the division to enjoin licensees pursuant to Sections 125.7, 125.8 and 2311, the circumstances in each case that prompted the board or division to seek that injunctive relief, and whether a restraining order or interim suspension order was actually issued.

(b) The total number and types of actions for unprofessional conduct taken by the board or a division against licensees, the number and types of actions taken against licensees for unprofessional conduct related to prescribing drugs, narcotics, or other controlled substances.

(c) Information relative to the performance of the division, including the following: number of consumer calls received; number of consumer calls or letters designated as discipline-related complaints; number of calls resulting in complaint forms being sent to complainants and number of forms returned; number of Section 805 reports by type; number of Section 801 and Section 803 reports; coroner reports received; number of convictions reported to the division; number of criminal filings reported to the division; number of complaints and referrals closed, referred out, or resolved without discipline, respectively, prior to accusation; number of accusations filed and final disposition of accusations through the division and court review, respectively; final physician discipline by category; number of citations issued with fines and without fines, and number of public reprimands issued; number of cases in process more than six months from receipt by the division of information concerning the relevant acts to the filing of an accusation; average and median time in processing complaints from original receipt of complaint by the division for all cases at each stage of discipline and court review, respectively; number of persons in diversion, and number successfully completing diversion programs and failing to do so, respectively; probation violation reports and probation revocation filings and dispositions; number of petitions for reinstatement and their dispositions; and case-loads of investigators for original cases and for probation cases, respectively.

"Action," for purposes of this section, includes proceedings brought by, or on behalf of, the division against licensees for unprofessional conduct which have not been finally adjudicated, as well as disciplinary actions taken against licensees.

(Amended by Stats. 1994, Ch. 1206.)

Violations Constitute a Misdemeanor

2314. (a) Unless it is otherwise expressly provided, any person, whether licensed under this chapter or not, who violates any provision of this article is guilty of a misdemeanor.

(b) A person, whether licensed under this chapter or not, who violates Section 2273 is punishable pursuant to subdivision (b) of Section 2315.

(Amended by Stats. 1991, Ch. 116.)

Penalty for Violations

2315. (a) Except as otherwise provided by law, any person found guilty of a misdemeanor for a violation of this chapter shall be punished by a fine of not less than two hundred dollars (\$200) nor more than one thousand two hundred dollars (\$1,200) or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both such fine and imprisonment.

(b) A violation of Section 2273 is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year. A second or subsequent conviction is punishable by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16 months or 2 or 3 years, or by a fine not exceeding ten thousand dollars (\$10,000) or by both the fine and imprisonment.

(Amended by Stats. 1991, Ch. 116.)

Defense of Board Experts

2317. If a person, not a regular employee of the board, is hired, under contract, or retained under any other arrangement, paid or unpaid, to provide expertise or nonexpert testimony to the Division of Medical Quality or to the California Board of Podiatric Medicine in the evaluation of the conduct of a licensee, and that person is named as a defendant in an action for defamation, malicious prosecution, or any other civil cause of action directly resulting from opinions rendered, statements made, or testimony given to, or on behalf of, the division or committee or its representatives, the board shall provide for representation required to defend the defendant in that civil action. The board shall be liable for any judgment rendered against that person, except that the board shall not be liable for any punitive damages award. If the plaintiff prevails in a claim for punitive damages, the defendant shall be liable to the board for the full costs incurred in providing representation to the defendant. The Attorney General shall be utilized in those actions as provided in Section 2020.

(Amended by Stats. 1995, Ch. 708.)

Immunity from Liability

2318. In addition to any immunity afforded by Sections 43.8 and 47 of the Civil Code, if applicable, any person, including, but not limited to, a physician and surgeon, hospital, health facility as defined in Section 1250 of the Health and Safety Code, nursing home, convalescent home, peer review body as defined in Section 805, medical society, professional association, patient, nurse, or other healing arts licensee who provides information to the board, to the California Board of Podiatric Medicine, or to the Department of Justice indicating that a board licensee may be guilty of unprofessional conduct or may be impaired because of drug or alcohol abuse or mental illness, shall not be liable for any damages in any civil action on account of the communication of that information to the board. The immunities afforded by this section shall not affect the availability of any absolute privilege which may be afforded by Section 47 of the Civil Code.

(Added by Stats. 1990, Ch. 1597.)

Investigations

2319. (a) The board shall set as a goal the improvement of its disciplinary system by January 1, 1992, so that an average of no more than six months will elapse from the receipt of complaint to the completion of an investigation.

(b) Notwithstanding subdivision (a), the goal for cases which, in the opinion of the board, involve complex medical or fraud issues or complex business or financial arrangements should be no more than one year to investigate.

(Amended by Stats. 1990, Ch. 1597.)

Article 15. Osteopathic Physician and Surgeon Diversion Evaluation Committee

Section

2360	Legislative Intent
2361	Definitions
2362	Creation
2363	Per Diem and Expenses
2364	Administration
2365	Acceptance Criteria
2366	Duties and Responsibilities of Committee
2367	Participants Cooperation With Treatment Program
2368	Fees
2369	Confidentiality
2370	Defamation Actions; Representation of Persons Making Reports

Legislative Intent

2360. It is the intent of the Legislature that the Osteopathic Medical Board of California seek ways and means to identify and rehabilitate osteopathic physicians and surgeons whose competency may be impaired due to abuse of dangerous drugs and alcohol, so that osteopathic physicians and surgeons so afflicted may be treated and returned to the practice of medicine in a manner which will not endanger the public health and safety. It is also the intent of the Legislature that the Osteopathic Medical Board of California shall implement this legislation by establishing a diversion program as a voluntary alternative approach to traditional disciplinary actions.

(Amended by Stats. 1991, Ch. 359.)

Definitions

2361. As used in this article:

(a) "Board" means the Osteopathic Medical Board of California.

(b) "Diversion program" means a treatment program created by this article for osteopathic physicians and surgeons whose competency may be threatened or diminished due to abuse of drugs or alcohol.

(c) "Committee" means a diversion evaluation committee created by this article.

(d) "Participant" means a California licensed osteopathic physician and surgeon.

(Amended by Stats. 1991, Ch. 359.)

Creation

2362. One or more diversion evaluation committees are hereby created in the state to be established by the

board. The board shall establish criteria and appoint the members of the committee pursuant thereto.

Per Diem and Expenses

2363. Each member of the committee shall receive per diem and expenses as provided in Section 103.

Administration

2364. The board shall administer this article.

Acceptance Criteria

2365. (a) The board shall establish criteria for the acceptance, denial, or termination of participants in the diversion program. Unless ordered by the board as a condition of disciplinary probation, only those participants who have voluntarily requested diversion treatment and supervision by a committee shall participate in the diversion program.

(b) A participant who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (t).

(c) A participant under current investigation by the board may also request entry into the diversion program by contacting the board's Diversion Program Manager. The Diversion Program Manager may refer the participant requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licentiate to enter into the diversion program, the Diversion Program Manager may require the licentiate, while under current investigation for any violations of the Medical Practice Act or other violations, to execute a statement of understanding that states that the licentiate understands that his or her violations of the Medical Practice Act or other statutes that would otherwise be the basis for discipline, may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a participant are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 2239 of the Business and Professions Code, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board may close the investigation without further action if the licentiate is accepted into the board's diversion program and successfully completes the requirements of the program. If the participant withdraws or is terminated from the program by a diversion evaluation committee, the investigation may be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any participant for any unprofessional conduct committed before, during, or after participation in the diversion program.

(t) All participants shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation

committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any participant terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed, before, during, and after participation in the diversion program. A participant who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

(Amended by Stats. 19%, Ch. 149.)

Duties and Responsibilities of Committee

2366. Each committee shall have the following duties and responsibilities:

(a) To evaluate those licensees who request participation in the program according to the guidelines prescribed by the board.

(b) To review and designate those treatment facilities and services to which a participant in the program may be referred.

(c) To receive and review information concerning participants in the program.

(d) To consider whether each participant in the treatment program may safely continue or resume the practice of medicine.

(e) To prepare quarterly reports to be submitted to the board, which include, but are not limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance and a cost analysis of the program.

(t) To promote the program to the public and within the profession, including providing all current licensees with written information concerning the program.

(g) To perform such other related duties as the board may by regulation require.

Participants Cooperation With Treatment Program

2367. (a) Each licensee who requests participation in a treatment program shall agree to cooperate with the treatment program designed by the committee. The committee shall inform each participant in the program of the procedures followed, the rights and responsibilities of the participant, and the possible results of noncompliance with the program. Any failure to comply with the treatment program may result in termination of participation.

(b) Participation in a program under this article shall not be a defense to any disciplinary action which may be taken by the board. Further no provision of this article shall preclude the board from commencing disciplinary action against a licensee who is terminated from a program established pursuant to this article.

Fees

2368. An administrative fee to be established by the board, may be charged for participation in the program; all costs of treatment shall be paid by the participant. These

fees shall be deposited into the Contingent Fund of the Osteopathic Medical Board of California.

(Amended by Stats. 1991, Ch. 359.)

Confidentiality

2369. (a) After a committee, in its discretion, has determined that a participant has been rehabilitated and the program is completed, the committee shall purge and destroy all records pertaining to the participation in a treatment program.

(b) Except as authorized by subdivision (f) of Section 2365, all board and committee records and records of proceedings pertaining to the treatment of a participant in a program shall be confidential and are not subject to discovery or subpoena except in the case of discovery or subpoena in any criminal proceeding.

(Amended by Stats. 1996, Ch. 149.)

Defamation Actions; Representation of Persons Making Reports

2370. The board shall provide for the representation of any persons making reports to the diversion evaluation committee or to the board under this article in any action for defamation for reports or information given to the committee or the board regarding a licensee's participation in the diversion program.

Article 17. Exemptions from Liability

Section

2395	Emergency Care; Scene of an Emergency
2395.5	Emergency Care; Obstetrical Services
2396	Emergency Care; Medical Complications
2397	Emergency Care; Informed Consent
2398	Emergency Care; Athletic Events

Emergency Care; Scene of an Emergency

2395. No licensee, who in good faith renders emergency care at the scene of an emergency, shall be liable for any civil damages as a result of any acts or omissions by such person in rendering the emergency care.

"The scene of an emergency" as used in this section shall include, but not be limited to, the emergency rooms of hospitals in the event of a medical disaster. "Medical disaster" means a duly proclaimed state of emergency or local emergency declared pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code).

Acts or omissions exempted from liability pursuant to this section shall include those acts or omissions which occur after the declaration of a medical disaster and those which occurred prior to such declaration but after the commencement of such medical disaster. The immunity granted in this section shall not apply in the event of a willful act or omission.

Emergency Care; Obstetrical Services

2395.5. (a) A licensee who serves on an on-call basis to a hospital emergency room, who in good faith renders emergency obstetrical services to a person while serving on-call, shall not be liable for any civil damages as a result of any negligent act or omission by the licensee in render-

ing the emergency obstetrical services. The immunity granted by this section shall not apply to acts or omissions constituting gross negligence, recklessness, or willful misconduct.

(b) The protections of subdivision (a) shall not apply to the licensee in any of the following cases:

(1) Consideration in any form was provided to the licensee for serving, or the licensee was required to serve, on an on-call basis to the hospital emergency room. In either event, the protections of subdivision (a) shall not apply unless the hospital expressly, in writing, accepts liability for the licensee's negligent acts or omissions.

(2) The licensee had provided prior medical diagnosis or treatment to the same patient for a condition having a bearing on or relevance to the treatment of the obstetrical condition which required emergency services.

(3) Before rendering emergency obstetrical services, the licensee had a contractual obligation or agreement with the patient, another licensee, or a third-party payer on the patient's behalf to provide obstetrical care for the patient, or the licensee had a reasonable expectation of payment for the emergency services provided to the patient.

(c) Except as provided in subdivision (b), nothing in this section shall be construed to affect or modify the liability of the hospital for ordinary or gross negligence.

SEC. 2. The Legislature finds and declares that there is a crucial need for the people of this state to receive knowledgeable and experienced emergency medical care. The Legislature further finds that physicians who serve on an "on-call" basis to hospital emergency rooms are regularly required to provide obstetrical care to persons with whom they have no preexisting physician-patient relationship. It is the public policy of this state to provide incentive and protection for physicians who, despite these hardships, respond to calls to provide emergency medical care.

(Added by Stats. 1988, Ch. 1306.)

Emergency Care; Medical Complications

2396. No licensee, who in good faith upon the request of another person so licensed, renders emergency medical care to a person for medical complication arising from prior care by another person so licensed, shall be liable for any civil damages as a result of any acts or omissions by such licensed person in rendering such emergency medical care.

Emergency Care; Informed Consent

2397. (a) A licensee shall not be liable for civil damages for injury or death caused in an emergency situation occurring in the licensee's office or in a hospital on account of a failure to inform a patient of the possible consequences of a medical procedure where the failure to inform is caused by any of the following:

(1) The patient was unconscious.

(2) The medical procedure was undertaken without the consent of the patient because the licensee reasonably believed that a medical procedure should be undertaken immediately and that there was insufficient time to fully inform the patient.

(3) A medical procedure was performed on a person legally incapable of giving consent, and the licensee reasonably believed that a medical procedure should be undertaken immediately and that there was insufficient time to obtain the informed consent of a person authorized to give such consent for the patient.

(b) This section is applicable only to actions for damages for injuries or death arising because of a licensee's failure to inform, and not to actions for damages arising because of a licensee's negligence in rendering or failing to render treatment.

(c) As used in this section:

(1) "Hospital" means a licensed general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code.

(2) "Emergency situation occurring in the licensee's office" means a situation occurring in an office, other than a hospital, used by a licensee for the examination or treatment of patients, requiring immediate services for alleviation of severe pain, or immediate diagnosis and treatment of unforeseeable medical conditions, which, if not immediately diagnosed and treated, would lead to serious disability or death.

(3) "Emergency situation occurring in a hospital" means a situation occurring in a hospital, whether or not it occurs in an emergency room, requiring immediate services for alleviation of severe pain, or immediate diagnosis and treatment of unforeseeable medical conditions, which, if not immediately diagnosed and treated, would lead to serious disability or death.

(d) Nothing in this article shall be construed to authorize practice by a podiatrist beyond that set forth in Section 2473.

Emergency Care; Athletic Events

2398. No licensee, who in good faith and without compensation renders voluntary emergency medical assistance to a participant in a community college or high school athletic event or contest, at the site of the event or contest, or during transportation to a health care facility, for an injury suffered in the course of such event or contest, shall be liable for any civil damages as a result of any acts or omissions by such person in rendering such voluntary medical assistance. The immunity granted by this section shall not apply to acts or omissions constituting gross negligence.

Article 18. Corporations

Section

2400 Corporate Practice of Medicine
 2401 Medical School Clinics Exempt
 2402 Professional Corporations Exempt
 2406 ..Medical/Podiatry Corporation" Defined
 2407 Namestyle
 2408 Shareholder, Officer and Director Restrictions
 2409 Disqualified Persons
 2410 Unprofessional Conduct
 2411 Health Care Service Plans
 2412 Regulations
 2413 Applicable to Osteopathic Physicians and Surgeons
 2415 Fictitious Name Permits
 2416 Professional Partnerships

Corporate Practice of Medicine

2400. Corporations and other artificial legal entities shall have no professional rights, privileges, or powers. However, the Division of Licensing may in its discretion, after such investigation and review of such documentary evidence as it may require, and under regulations adopted by it, grant approval of the employment of licensees on a salary basis by licensed charitable institutions, foundations, or clinics, if no charge for professional services rendered patients is made by any such institution, foundation, or clinic.

(Amended by Slats. 1997, Ch. 673.)

Medical School Clinics Exempt

2401. (a) Notwithstanding Section 2400, a clinic operated primarily for the purpose of medical education by a public or private nonprofit university medical school, which is approved by the Division of Licensing or the Osteopathic Medical Board of California, may charge for professional services rendered to teaching patients by licensees who hold academic appointments on the faculty of the university, if the charges are approved by the physician and surgeon in whose name the charges are made.

(b) Notwithstanding Section 2400, a clinic operated under subdivision (p) of Section 1206 of the Health and Safety Code may employ licensees and charge for professional services rendered by those licensees. However, the clinic shall not interfere with, control, or otherwise direct a physician and surgeon's professional judgment in a manner prohibited by Section 2400 or any other provision of law.

(Amended by Stats. 1997, Ch. 673.)

Professional Corporations Exempt

2402. The provisions of Section 2400 do not apply to a medical or podiatry corporation practicing pursuant to the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code) and this article, when such corporation is in compliance with the requirements of these statutes and all other statutes and regulations now or hereafter enacted or adopted pertaining to such corporations and the conduct of their affairs.

"Medical/Podiatry Corporation" Defined

2406. A medical corporation or podiatry corporation is a corporation which is authorized to render professional services, as defined in Sections 13401 and 13401.5 of the Corporations Code, so long as that corporation and its shareholders, officers, directors and employees rendering professional services who are physicians, psychologists, registered nurses, optometrists, podiatrists or, in the case of a medical corporation only, physicians' assistants, are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article and all other statutes and regulations now or hereafter enacted or adopted pertaining to such corporation and the conduct of its affairs.

With respect to a medical corporation or podiatry corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Division of Licensing.

(Amended by Stats. 1982, Ch. 1304.)

Namestyle

2407. A medical or podiatry corporation shall be subject to the provisions of Section 2285 and 2415.

(Added by Stats. 1980, Ch. 1314.)

Shareholder, Officer and Director Restrictions

2408. Except as provided in Sections 13401.5 and 13403 of the Corporations Code, each shareholder, director and officer of a medical or podiatry corporation, except an assistant secretary or an assistant treasurer, shall be a licensed person as defined in Section 13401 of the Corporations Code.

Notwithstanding the provisions of this section or Sections 13401.5, 13403, 13406, and 13407 of the Corporations Code, a shareholder of a medical corporation which renders professional services may be a medical corporation which has only one shareholder who shall be a licensed person as defined in Section 13401 of the Corporations Code. The shareholder of the latter corporation may be an officer or director of the former corporation.

Nothing in this section shall be construed as prohibiting a nonlicensed person from using the business titles of executive vice president, chief executive officer, executive secretary, or any other title denoting an administrative function within the professional corporation.

(Amended by Stats. 1985, Ch. 505.)

Disqualified Persons

2409. The income of a medical and podiatry corporation attributable to professional services rendered while a shareholder is a disqualified person, as defined in Section 13401 of the Corporations Code, shall not in any manner accrue to the benefit of such shareholder or his or her shares in such a professional corporation.

(Added by Stats. 1980, Ch. 1314.)

Unprofessional Conduct

2410. A medical or podiatry corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute or regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by such statutes and regulations to the same extent as a licensee under this chapter.

(Added by Stats. 1980, Ch. 1314.)

Health Care Service Plans

2411. Notwithstanding any other provision of law, the offering and operation by a medical corporation of a health care service plan licensed pursuant to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code is hereby authorized. For such purpose a medical corporation may employ, or enter into contracts or other arrangements with, any person or

persons authorized to practice any of the healing arts, but no such employment, contract, or arrangement shall provide for the rendering, supervision, or control of professional services other than as authorized by law.

(Added by Stats. 1980, Ch. 1314.)

Regulations

2412. The Division of Licensing may adopt and enforce regulations to carry out the purposes and objectives of this article and the Moscone-Knox Professional Corporation Act including regulations requiring (a) that the by-laws of a medical or podiatry corporation shall include a provision whereby the capital stock of such corporation owned by a disqualified person (as defined in Section 13401 of the Corporations Code), or a deceased person, shall be sold to the corporation or to the remaining shareholders of such corporation within such time as such regulations may provide, and (b) that a medical or podiatry corporation shall provide adequate security by insurance or otherwise for claims against it by patients arising out of the rendering of professional services.

(Added by Stats. 1980, Ch. 1314.)

Applicable to Osteopathic Physicians and Surgeons

2413. The provisions of this article shall apply to medical corporations which have physicians and surgeons licensed by the Osteopathic Medical Board of California as shareholders, officers and directors only to the extent that the provisions of this article are not in conflict with or inconsistent with the provisions of Section 2454.

(Added by Stats. 1980, Ch. 1314.)

Fictitious Name Permits

2415. (a) Any physician and surgeon or any doctor of podiatric medicine, as the case may be, who as a sole proprietor, or in a partnership, group, or professional corporation, desires to practice under any name that would otherwise be a violation of Section 2285 may practice under that name if the proprietor, partnership, group, or corporation obtains and maintains in current status a fictitious-name permit issued by the Division of Licensing, or, in the case of doctors of podiatric medicine, the California Board of Podiatric Medicine, under the provisions of this section.

(b) The division or the board shall issue a fictitious-name permit authorizing the holder thereof to use the name specified in the permit in connection with his, her, or its practice if the division or the board finds to its satisfaction that:

(1) The applicant or applicants or shareholders of the professional corporation hold valid and current licenses as physicians and surgeons or doctors of podiatric medicine, as the case may be.

(2) The professional practice of the applicant or applicants is wholly owned and entirely controlled by the applicant or applicants.

(3) The name under which the applicant or applicants propose to practice is not deceptive, misleading, or confusing, and contains one of the following designations: "**medical group**," "**medical clinic**," "**medical corporation**," "**medical associates**," "**medical center**," or "**medi-**

cal office." In the case of doctors of podiatric medicine, the same designations may be used substituting the words "podiatric medical," "podiatric surgical," "podiatry," or "podiatrists" for the word "medical," or the designations "foot clinic" or "foot and ankle clinic" may be used.

(c) This section shall not apply to licensees who contract with, are employed by, or are on the staff of, any clinic licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code or any medical school approved by the division or a faculty practice plan connected with such a medical school.

(d) Fictitious-name permits issued under this section shall be subject to Article 19 (commencing with Section 2420) pertaining to renewal of licenses, except the division shall establish procedures for the renewal of fictitious-name permits every two years on an anniversary basis. For the purpose of the conversion of existing permits to this schedule the division may fix prorated renewal fees.

(e) The division or the board may revoke or suspend any permit issued if it finds that the holder or holders of the permit are not in compliance with the provisions of this section or any regulations adopted pursuant to this section. A proceeding to revoke or suspend a fictitious-name permit shall be conducted in accordance with Section 2230.

(1) A fictitious-name permit issued to any licensee in a sole practice is automatically revoked in the event the licensee's certificate to practice medicine or podiatric medicine is revoked.

(g) The division or the board may delegate to the executive director, or to another official of the board, its authority to review and approve applications for fictitious-name permits and to issue those permits.

(h) The California Board of Podiatric Medicine shall administer and enforce this section as to doctors of podiatric medicine.

(Amended by Stats. 1994, Ch. 26.)

Professional Partnerships

2416. Physicians and surgeons and podiatrists may conduct their professional practices in a partnership or group of physicians and surgeons or a partnership or group of podiatrists, respectively. Physicians and surgeons and podiatrists may establish a professional partnership that includes both physicians and surgeons and podiatrists, if both of the following conditions are satisfied:

(a) A majority of the partners and partnership interests in the professional partnership are physicians and surgeons or osteopathic physicians and surgeons.

(b) Notwithstanding Chapter 2 (commencing with Section 15001) of Title 1 of the Corporations Code, a partner who is not a physician and surgeon shall not practice in the partnership or vote on partnership matters related to the practice of medicine that are outside his or her scope of practice. All partners may vote on general administrative, management, and business matters.

(Amended by Stats. 1995, Ch. 708.)

Article 19. Renewal of Licenses

Section

2420	Applicability of Article
2421	Definitions
2422	Expiration of Licenses
2423	Expiration of Licenses-Physicians and Podiatrists
2424	Penalty Fee; Effect of Renewal
2425	Renewal Questionnaire
2426	Financial Interest of Licensee or Licensee's Family Member in Health-Related Facility License Renewal Report; Sanctions
2427	Renewal of Delinquent Licenses
2428	Failure to Renew License Within Five Years
2429	Renewal of Suspended or Revoked License
2432	Duplicate Certificate
2433	Endorsement of Licensure

Applicability of Article

2420. The provisions of this article apply to, determine the expiration of, and govern the renewal of, each of the following certificates, licenses, registrations, and permits issued by or under the Medical Board of California: physician's and surgeon's certificates, certificates to practice podiatric medicine, physical therapy licenses and approvals, registrations of dispensing opticians, registrations of contact lens dispensers, certificates of drugless practitioners, certificates to practice midwifery, and fictitious-name permits.

(Amended by Stats. 1989, Ch. 886.)

Definitions

2421. As used in this article, the terms:

(a) "License" includes "certificate," "permit," and "registration."

(b) "Licensee" includes the holder of a license.

(c) "Licensing authority" means the appropriate division or examining committee, under the board, which has jurisdiction over a particular licensee.

Expiration of Licenses

2422. All licenses expire and become invalid at 12 midnight on the last day of February of each even-numbered year if not renewed.

To renew an unexpired license, a licensee shall, on or before the date it would otherwise expire, apply for renewal on a form prescribed by the licensing authority and pay the prescribed renewal fee.

Expiration of Licenses-Physicians and Podiatrists

2423. Notwithstanding Section 2422, all physician's and surgeon's certificates, certificates to practice podiatric medicine, certificates of drugless practitioners, and certificates to practice midwifery shall expire at 12 midnight on the last day of the birth month of the licensee during the second year of a two-year term if not renewed.

The Division of Licensing shall establish by regulation procedures for the administration of a birth date renewal program, including, but not limited to, the establishment of a system of staggered license expiration dates such that a relatively equal number of licenses expire monthly.

To renew an unexpired license, the licensee shall, on or before the dates on which it would otherwise expire, apply

for renewal on a form prescribed by the licensing authority and pay the prescribed renewal fee.

Penalty Fee; Effect of Renewal

2424. (a) The Division of Licensing or the California Board of Podiatric Medicine, as the case may be, shall notify in writing by certified mail, return receipt requested, any physician and surgeon or any podiatrist who does not renew his or her license within 60 days from its date of expiration.

(b) Notwithstanding Section 163.5, any such licensee who does not renew his or her expired license within 90 days of its date of expiration shall pay all the following fees:

- (1) The renewal fee in effect at the time of renewal.
- (2) A penalty fee equal to 50 percent of the renewal fee.
- (3) The delinquency fee required by Section 2435 or 2499.5, as the case may be.

(c) Notwithstanding any other provision of law, the renewal of any expired physician's and surgeon's or podiatrist's license within six months from its date of expiration shall be retroactive to the date of expiration of that license. The division or board, for good cause, may waive the 50 percent penalty fee and may extend retroactivity up to two years from the expiration date of any such license.

(Amended by Stats. 1988, Ch. 1325.)

Renewal Questionnaire

2425. (a) The Division of Licensing may prepare and mail to every licensed physician at the time of license renewal a questionnaire containing any questions as are necessary to establish that the physician currently has no mental, physical, emotional, or behavioral disorder that would impair the physician's ability to practice medicine safely.

(b) Each licensed physician shall complete, sign, and return the questionnaire to the Division of Licensing as a condition of renewing his or her license.

(Added by Stats. 1995, Ch. 279.)

Financial Interest of Licensee or Licensee's Family Member in Health-Related Facility License Renewal Report; Sanctions

2426. (a) A licensee shall report to the board at the time of renewal of a license any financial interest that the licensee or a member of the licensee's immediate family may have in a health-related facility. The report shall be made on a form provided by the board,

(b) For purposes of this section, all of the following shall apply:

(1) A "financial interest" includes, but is not limited to, any type of ownership interest, debt, loan, lease, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or other form of direct or indirect payment, whether in money or otherwise, to a licensee or the licensee's immediate family from a health-related facility.

(2) A "financial interest" also exists if there is an indirect relationship between a licensee and the health-related facility including, but not limited to, an arrangement whereby a licensee has an ownership interest in an entity

that leases property to the health-related facility. Any financial interest transferred by a licensee to, or otherwise established in, any person or entity for the purpose of avoiding the reporting required by this section shall be deemed a financial interest of the licensee.

(3) A "financial interest" does not include a licensee's ownership of corporate investment securities, including shares, bonds, or other debt instruments that are purchased from a licensed securities broker on terms that are available to the general public through a licensed securities exchange or NASDAQ, do not base profit distributions or other transfers of value on the licensee's referral of persons to the corporation, do not have a separate class or accounting for any persons or for any licensees who may refer persons to the corporation, and are in a corporation that had, at the end of the corporation's most recent fiscal year, total gross assets exceeding one hundred million dollars (\$100,000,000).

(4) "Immediate family" includes a spouse, child, or parent of a licensee, and a spouse of a child of a licensee.

(5) "Licensee" means a physician and surgeon licensed pursuant to this chapter.

(6) A "health-related facility" shall include a facility for clinical laboratory services, radiation oncology, physical therapy, physical rehabilitation, psychometric testing, home infusion therapy, diagnostic imaging, and outpatient surgery centers. "Diagnostic imaging" shall include, but is not limited to, all X-ray, computed axial tomography, magnetic resonance imaging, nuclear medicine, positron emission tomography, manmography, and ultrasound goods and services.

(c) The information reported to the board shall be available to government agencies and public or private payers.

(d) The board may impose appropriate sanctions, including the issuance of a citation and civil penalty under Section 125.9, against any licensee who fails to comply with this section.

(e) This section shall become operative on July 1, 1994.

(Formerly § 2097, added by Stats. 1993, Ch. 1239.)

Renewal of Delinquent Licenses

2427. Except as provided in Section 2429, a license which has expired may be renewed at any time within five years after its expiration on filing an application for renewal on a form prescribed by the licensing authority and payment of all accrued renewal fees and any other fees required by Section 2424. If the license is not renewed within 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the prescribed delinquency fee, if any. Except as provided in Section 2424, renewal under this section shall be effective on the date on which the renewal application is filed, on the date on which the renewal fee or accrued renewal fees are paid, or on the date on which the delinquency fee or the delinquency fee and penalty fee, if any, are paid, whichever last occurs. If so renewed, the license shall continue in effect through the expiration date set forth in Section 2422 or 2423 which next occurs after the effective date of the renewal, when it shall expire and become invalid if it is not again renewed.

Failure to Renew License Within Five Years

2428. A person who fails to renew his or her license within five years after its expiration may not renew it, and it may not be reissued, reinstated, or restored thereafter, but such person may apply for and obtain a new license if he or she:

(a) Has not committed any acts or crimes constituting grounds for denial of licensure under Division 1.5 (commencing with Section 475).

(b) Takes and passes the examination, if any, which would be required of him or her if application for licensure was being made for the first time, or otherwise establishes to the satisfaction of the licensing authority which passes on the qualifications of applicants for such license that, with due regard for the public interest, he or she is qualified to practice the profession or activity for which the applicant was originally licensed.

(c) Pays all of the fees that would be required if application for licensure was being made for the first time.

The licensing authority may provide for the waiver or refund of all or any part of an examination fee in those cases in which a license is issued without an examination pursuant to this section.

Nothing in this section shall be construed to authorize the issuance of a license for a professional activity or system or mode of healing for which licenses are no longer issued.

Renewal of Suspended or Revoked License

2429. (a) A license which is suspended for unprofessional conduct is subject to expiration and shall be renewed as provided in this article, but such renewal does not entitle the licensee, while the license remains suspended, and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

(b) A license which is revoked for unprofessional conduct is subject to expiration as provided in this article, but it shall not be renewed. If it is reinstated by the licensing authority after its expiration, the licensee, as a condition precedent to reinstatement or restoration of licensure, shall pay a reinstatement fee which is an amount equal to the current renewal fee, plus the delinquency fee, if any.

Duplicate Certificate

2432. Upon filing an application therefor, containing such information as the licensing authority may require and accompanied by the required duplicate certificate fee, if any, a duplicate certificate may be issued to any person so licensed under the applicable provisions of law where the same certificate applied for has been previously issued or, where there has been a change in name, another certificate in lieu of one previously issued.

Endorsement of Licensure

2433. Upon filing an application therefor, containing such information as the licensing authority may require

and accompanied by the required endorsement fee, if any, the licensure or credentials of the person so licensed may be endorsed or certified.

Article 21. Provisions Applicable to Osteopathic Physicians and Surgeons

Section

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Osteopathic Medical Board of California Duties

2450. There is a Board of Osteopathic Examiners of the State of California, established by the Osteopathic Act, which shall be known as the Osteopathic Medical Board of California which enforces this chapter relating to persons holding or applying for physician's and surgeon's certificates issued by the Osteopathic Medical Board of California under the Osteopathic Act.

Persons who elect to practice using the term of suffix "M.D.," as provided in Section 2275, shall not be subject to this article, and the Medical Board of California shall enforce the provisions of this chapter relating to persons who made the election.

Medical Board of California, Board or Reference to Division of Medical Board to Mean Osteopathic Medical Board of California

2451. The words "Medical Board of California," the term "board," or any reference to a division of the Medical Board of California as used in this chapter shall be deemed to mean the Osteopathic Medical Board of California, where that board exercises the functions granted to it by the Osteopathic Act.

Application of Chapter, Administration of Provisions of Article

2452. This chapter applies to the Osteopathic Medical Board of California so far as consistent with the Osteopathic Act. Unless otherwise provided, this article is administered by the board.

M.D. and D.O. Degrees-Equal Status

2453. (a) It is the policy of this state that holders of M.D. degrees and D.O. degrees shall be accorded equal professional status and privileges as licensed physicians and surgeons.

(b) Notwithstanding any other provision of law, no health facility subject to licensure under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, no health care service plan, nonprofit hospital service plan, policy of disability insurance, self-insured employer welfare benefit plan, and no agency of the state or of any city, county, city and county, district, or other political subdivision of the state shall discriminate with respect to employment, staff privileges, or the **provision of, or contracts for, professional services against a licensed physician and surgeon on the basis of whether the physician and surgeon holds an M.D. or D.O. degree.** This section shall not be construed to require a disability insurer health care service plan or hospital service plan to employ, offer staff privileges, or contract for professional services with a class of physician who holds an M.D. or D.O. degree. However, this subdivision shall not prohibit a school of allopathic medicine or a school of osteopathic medicine from employing a physician and surgeon as an instructor on the basis of whether the physician and surgeon holds an M.D. or D.O. degree, where the subject matter to be taught specifically requires allopathic or osteopathic training and **experience.**

(c) Whenever the health facility staffing requirements for staff or department privileges mandate that the physician who has been granted privileges be certified or eligible for certification by an appropriate American medical board, that position must be made available on an equal basis to an osteopathic physician who is certified or eligible for certification by the appropriate American osteopathic board.

(d) Whenever an entity that contracts with physicians and surgeons or osteopathic physicians to provide managed care or risk-based care requires that the physician who is responsible for the contract be certified or eligible for certification by an appropriate American medical board, the contract reference to American medical board shall be construed to mean American Osteopathic Board when the contracting physician is an osteopathic physician.

(e) Staff self-government, involving M.D. and D.O. physicians and surgeons, with respect to the professional work performed in the health facility, shall be accomplished by holding periodic meetings of the staff to review and analyze at regular intervals their clinical experience. Patient medical records shall be the basis for such review and analysis.

(f) The physician and surgeon staff shall be required to establish controls that are designed to ensure the achievement and maintenance of high standards of professional and ethical practices including a provision that all members of the physician and surgeon staff be required to demonstrate their ability to perform surgical and other procedures competently and to the satisfaction of an appropriate committee or committees of the staff at the time of original application for appointment to the staff and at least every two years thereafter.

(g) No health facility may adopt written bylaws in accordance with legal requirements that in any way are construed to circumvent the intent of the Legislature or any other nondiscriminatory provisions contained in either the Medical Practice Act or in any provisions applicable to osteopathic physicians.

(h) No entity that contracts with physicians and surgeons to provide managed care or risk-based care may adopt written bylaws in accordance with legal requirements that in any way are construed to circumvent the intent of the Legislature or any other nondiscriminatory provisions contained in either the Medical Practice Act or in any provisions applicable to osteopathic physicians.

(i) For the purposes of this section, no professional medical or osteopathic association may mandate membership in their respective organizations as a prerequisite for a physician to obtain staff privileges, employment, or in the offering of a contract for services.

(j) Any violation of subdivisions (b), (c), (d), (e), (f), (g), (h), and (i) may be enjoined in an action brought in the name of the people of the State of California by the district attorney of the county in which the violation occurs, upon receipt of a complaint by an aggrieved physician and surgeon.

(Amended by Stats. 1992, Ch. 619.)

Board Certification

2453.5. Individuals possessing physician's and surgeon's certificates issued by the Osteopathic Medical Board of California shall not hold themselves out to be board certified unless the board certification has been granted by the appropriate certifying board, as authorized by the American Osteopathic Association or the American Board of Medical Specialties, or is the result of a postgraduate training program approved by the Accreditation Council for Graduate Medical Education.

(Added by Stats. 1993, Ch. 1987.)

Medical Corporation with Osteopathic Physicians and Surgeons as Shareholders

2454. A medical corporation which has physicians and surgeons licensed by the Osteopathic Medical Board of California as shareholders, officers, and directors shall comply with the provisions of this section and the provisions of Article 18 (commencing with Section 2400) which are not in conflict with or inconsistent with this section. "Board" as used in this section means the Osteopathic Medical Board of California.

A medical corporation is a corporation which is registered with the board with reference to corporations render-

ing professional services as osteopathic physicians and surgeons and has a currently effective certificate of registration from the board as set forth in the Moscone-Knox Professional Corporation Act (Section 13400 et seq. of the Corporations Code) and this section. Subject to all applicable statutes and regulations, a medical corporation is entitled to practice medicine. With respect to medical corporations rendering the professional services of osteopathic physicians and surgeons, the governmental agency referred to in subdivision (b) of Section 13401 of the Corporations Code is the Osteopathic Medical Board of California.

(b) An applicant for registration as a medical corporation consisting of osteopathic physicians and surgeons under this section shall supply to the board all necessary and pertinent documents and information requested by the board concerning the applicant's plan of operation, including, but not limited to, a copy of its articles of incorporation, certified by the Secretary of State, a copy of its bylaws, certified by the secretary of the corporation, the name and address of the corporation, the names and addresses of its shareholders, directors and officers and employees who will render professional services as osteopathic physicians and surgeons, the address of each office and an applicant for any fictitious name or names under which the corporation intends to render professional services. The board may provide forms of application. The application shall be signed and verified by an officer of the corporation. If the board finds that the corporation is in compliance with the Moscone-Knox Professional Corporation Act, Article 17, and this section, and any regulations adopted pursuant thereto, and that from the application it appears the affairs of the corporation will be conducted in compliance with those laws and regulations, the board shall upon payment of the registration fee in an amount as it may determine, issue a certificate of registration.

(c) Within such time as the board may by regulation provide, a medical corporation issued a certificate under this section shall report in writing to the board any changes in share ownership, directors, officers, professional employees rendering medical services and the name of the corporation or any name under which it may render professional services and any change of address and any amendments to its articles of incorporation or bylaws.

(d) Each medical corporation issued a certificate under this section shall file annually with the board at a time set forth in its regulations a report containing information pertaining to the qualification and compliance with the statutes and regulations referred to in this section. The board may provide forms for filing the report. All reports shall be signed and verified by an officer of the corporation. The fee for filing the report shall be fixed by the board.

(e) The board may adopt and enforce regulations to carry out the purposes and objectives of this article and the Moscone-Knox Professional Corporation Act including regulations requiring (a) that the bylaws of a medical corporation shall include a provision whereby the capital stock of the corporation owned by a disqualified person, as defined in Section 13401 of the Corporations Code, or a

deceased person, shall be sold to the corporation or to the remaining shareholders of the corporation within the time as the regulations may provide, and (b) that a medical corporation shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.

(f) The board may delegate to its executive officer, or other official or employee of the board, its authority to review and approve applications filed under this section and Section 2415 for fictitious name permits and to issue certificates of registration to medical corporations described in this section and to issue such fictitious name permits to corporations and physicians and surgeons who qualify therefor.

Adoption and Administration of Continuing Education Standards

2454.5. In order to ensure the continuing competence of licensed osteopathic physicians and surgeons, the board shall adopt and administer standards for the continuing education of those licensees. The board shall require each licensed osteopathic physician and surgeon to demonstrate satisfaction of the continuing education requirements as a condition for the renewal of a license at intervals of not less than one year nor more than three years. Commencing January 1, 1995, the board shall require each licensed osteopathic physician and surgeon to complete a minimum of 150 hours of American Osteopathic Association continuing education hours during each three-year cycle, of which 60 hours must be completed in American Osteopathic Association Category 1 continuing education hours as a condition for renewal of an active license.

For purposes of this section. "American Osteopathic Association Category I" means continuing education activities and programs approved for Category 1 credit by the Committee on Continuing Medical Education of the American Osteopathic Association.

(Amended by Stats, 1994, Ch. 895.)

Fees and Refunds; Schedules

2455. The amount of fees and refunds is that established by the following schedule for any certificate issued by the Osteopathic Medical Board of California. All other fees and refunds for any certificate issued by the Osteopathic Medical Board of California which are not prescribed in this schedule, are prescribed in Section 2456. Any and all fees received by the Osteopathic Medical Board of California shall be for the sole purpose of the operations of the board and shall not be expended for any other purpose.

(a) Each applicant for an original or reciprocity Physicians and Surgeons Certificate shall pay an application fee in a sum not to exceed two hundred dollars (\$200) at the time his or her application is filed. If the applicant's credentials are insufficient, or if he or she does not take the examination, the board may retain a sum equal to the actual cost of processing the application, not to exceed one hundred fifty dollars (\$150) and the remainder of the fee is returnable upon application.

(b) The oral and practical examination fee shall not exceed two hundred dollars (\$200) nor be less than fifty dollars (\$50).

(c) The annual tax and registration fee, unless otherwise provided, shall be set by the board on or before November 1 of each year for the ensuing calendar year at a sum as the board determines necessary to defray the expenses of administering this chapter, under the Osteopathic Act, relating to the issuance of certificates to those applicants, which sum, however, shall, not exceed three hundred dollars (\$300) nor be less than twenty-five dollars (\$25). *Eighty percent of the annual tax and registration fee that is in excess of two hundred dollars (\$200) shall be for the sole purposes of the board's enforcement activities.*

(d) The board shall set an annual tax and registration fee in an amount less than that levied pursuant to subdivision (c) that shall be paid by any applicant who indicates to the board in writing that he or she does not intend to practice under the Osteopathic Act during the renewal period covered by that annual tax and registration fee.

(e) The fee for failure to pay the annual tax and registration fee shall be 50 percent of the renewal fee but not more than one hundred fifty dollars (\$150). *Eighty percent of the fee for failure to pay the annual tax and registration fee that is in excess of one hundred dollars (\$100) shall be for the sole purpose of the board's enforcement activities.*

(f) This section shall become operative on, the later of, July 1, 1994, or the effective date of this section.

(Amended by Stats. 1994, Ch. 895.)

Certificate Holders; Annual Tax and Registration Fee; Fictitious Name Permits; Expiration; Renewal; Fee

2456. (a) Each person holding a certificate issued by the Osteopathic Medical Board of California residing in or out of California shall pay to the secretary-treasurer of the board an annual tax and registration fee.

(b) Fictitious name permits issued by the Osteopathic Medical Board of California as provided in Section 2415 shall expire on December 31 of each year. The initial permit fee shall not exceed one hundred dollars (\$100) and the renewal permit fee shall not exceed one hundred dollars (\$100).

(Amended by Stats. 1991, Ch. 359.)

Expiration and Renewal of Certificates

2456.1. All osteopathic physician's and surgeon's certificates shall expire 12 midnight on the last day of the birth month of the licensee during the second year of a two-year term if not renewed on or before that-day.

The board shall establish by regulation procedures for the administration of a birth date renewal program, including, but not limited to, the establishment of a system of staggered license expiration dates such that a relatively equal number of licenses expire monthly.

To renew an unexpired license, the licensee shall, on or before the dates on which it would otherwise expire, apply for renewal on a form prescribed by the board and pay the prescribed renewal fee.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or

safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The Osteopathic Medical Board of California is currently experiencing a fiscal crisis and in order to perform the enforcement and investigation functions that are vital to protecting the health and safety of the public, it is necessary that this act take effect immediately.

(Added by Stats. 1994, Ch. 895.)

Late Renewals; Fees

2456.2. (a) The board shall notify in writing by certified mail, return receipt requested, any physician and surgeon who does not renew his or her license within 60 days from its date of expiration.

(b) Any licensee who does not renew his or her expired license on or before its date of expiration shall pay all the following fees:

- (1) The renewal fee in effect at the time of renewal.
- (2) The delinquency fee required by Section 2455.

(c) Notwithstanding any other provision of law, the renewal of any expired physician's and surgeon's license within six months from its date of expiration shall be retroactive to the date of expiration of that license.

(Added by Stats. 1987, Ch. 934.)

Renewal Following Expiration; Fees

2456.3. Except as provided in Section 2429, a license which has expired may be renewed at any time within five years after its expiration by filing an application for renewal on a form prescribed by the board and payment of all accrued renewal fees and any other fees required by Section 2455. Except as provided in Section 2456.2, renewal under this section shall be effective on the date on which the renewal application is filed, on the date on which the renewal fee or accrued renewal fees are paid, or on the date on which the delinquency fee or the delinquency fee and penalty fee, if any, are paid, whichever last occurs. If so renewed, the license shall continue in effect through the expiration date set forth in Section 2456.1 which next occurs after the effective date of the renewal.

(Added by Stats. 1987, Ch. 934.)

Nonpayment of Tax and Registration Fee; Forfeiture of Certificate; Restoration

2457. The failure of any person holding a certificate issued by the Osteopathic Medical Board of California to pay the annual tax and registration fee during the time his or her certificate remains in force, shall automatically work a forfeiture of his or her certificate after a period of 60 days from the date of expiration.

The certificate shall not be restored except upon written application and the payment to the Osteopathic Medical Board of California of the fee provided by this article. No examination shall be required for the reissuance of a certificate that was forfeited under the provisions of this section.

(Amended by Stats. 1991, Ch. 359.)

Unconscionable Fee for Services; Unprofessional Conduct; Disciplinary Action

2457.5. (a) In addition to Article 12 (commencing with Section 2220), the charging, or obtaining of an unconscionable fee for professional services rendered to a patient by an osteopathic physician and surgeon constitutes unprofessional conduct and is grounds for disciplinary action.

(b) A fee is unconscionable within the meaning of this section when it is so exorbitant and wholly disproportionate to the services performed as to shock the conscience of physicians of ordinary prudence practicing in the same community. Factors to be considered, where appropriate, in determining the reasonableness of a fee, are based on the circumstances existing at the time of the service and shall include, but not be limited to, the following:

- (1) The time and effort required.
- (2) The novelty and difficulty of the procedure and treatment.
- (3) The skill required to perform the procedure or treatment properly.
- (4) The likelihood, if apparent to the patient, that the proper treatment of the patient will preclude the physician from remuneration from other sources.
- (5) Any requirements or conditions imposed by the patient or by the circumstances.
- (6) The nature and length of the professional relationship with the patient.
- (7) The experience, reputation, and ability of the physician performing the services.
- (8) The results obtained.
- (9) The existence of full fee disclosure and knowing patient consent.

(Added by Stats. 1988, Ch. 325.)

Disposition of Fines and Forfeitures of Bail

2458. When the prosecution for a violation of this chapter is initiated by the Osteopathic Medical Board of California, 75 percent of all fines and forfeitures of bail shall be paid upon the collection by the proper officer of the court to the board to be deposited by it to the credit of the contingent fund of the Osteopathic Medical Board of California.

The payment to the board shall be made without placing the fine or forfeiture of bail in any special, contingent, or general fund in any city, county, or city and county.

(Amended by Stats. 1991, Ch. 359.)

Abolishment of Drugless Practitioner's Certificates; Practice Under Former Certificates

2459. The Osteopathic Medical Board of California shall not issue any drugless practitioner's certificates under this chapter or any other law.

All persons holding drugless practitioner's certificates may continue to practice under the authorization of their certificates and may renew them, subject to this chapter.

Osteopathic Aides; Utilization in Rendering of Osteopathic Manipulative Treatment

2459.5. An osteopathic physician and surgeon licensed pursuant to the Osteopathic Initiative Act may utilize the services of an aide to assist the osteopathic physician and surgeon in the rendering of osteopathic manipulative treatment. The aide shall at all times be under the orders, direction, and immediate supervision of the osteopathic physician and surgeon. Nothing in this section shall authorize an aide to function independently of the osteopathic physician and surgeon or shall be construed as authorizing an osteopathic aide to practice medicine, surgery, or any other form of healing art.

(Added by Stats. 1990, Ch. 873.)

Definitions; Osteopathic Aides' Use of Roentgen Rays and Radioactive Materials, Orientation, and Supervision

2459.6. (a) For the purposes of Section 2459.5 and this section:

(1) "Osteopathic physician and surgeon" means a person defined in the Osteopathic Initiative Act.

(2) "Osteopathic manipulative treatment" means the therapeutic application of manually guided forces by an osteopathic physician and surgeon to alleviate somatic dysfunction.

(3) "Somatic dysfunction" means an impaired or altered function of related components of the somatic system.

(4) An "osteopathic aide" means an unlicensed person who assists an osteopathic physician and surgeon in the provision of osteopathic manipulative treatment provided that assistance is rendered under the supervision of an osteopathic physician and surgeon licensed pursuant to the Osteopathic Initiative Act. An aide is not authorized to perform osteopathic manipulative procedures.

(5) "Under the orders, direction and immediate supervision" means the evaluation of the patient by the osteopathic physician prior to the performing of an osteopathic manipulative treatment patient-related task by the aide, the formulation and recording in the patient's record by the osteopathic physician and surgeon of an osteopathic manipulative treatment program based upon the evaluation, and any other information available to the osteopathic physician and surgeon prior to any delegation of a task to an aide. The osteopathic physician and surgeon shall assign only those patient-related tasks that can be safely and effectively performed by the aide. The supervising osteopathic physician and surgeon shall be responsible at all times for the conduct of the aide while he or she is on duty and shall provide continuous and immediate supervision of the aide. The osteopathic physician and surgeon shall be in the same facility as, and in proximity to, the location where the aide is performing patient-related tasks and shall be readily available at all times to provide advice or instructions to the aide.

(6) A "patient-related task" is restricted to assisting the osteopathic physician and surgeon in the rendering of osteopathic manipulative treatment.

(b) Osteopathic aides may not use roentgen rays and radioactive materials.

(c) The board shall require the supervising osteopathic physician and surgeon to conduct orientation of the aide regarding patient-related tasks.

(d) No osteopathic physician and surgeon shall supervise more than two osteopathic aides at any one time.

(Added by Stats. 1990, Ch. 873.)

Utilization of Osteopathic Aides in Unauthorized Services; Disciplinary Action

2459.7. Notwithstanding any other provision of law, no osteopathic physician and surgeon shall utilize an osteopathic aide to perform services other than those specified in Sections 2459.5 and 2459.6. A violation of this section constitutes unprofessional conduct and is grounds for disciplinary action.

(Added by Stats. 1990, Ch. 873.)

CHAPTER 7.7. PHYSICIAN'S ASSISTANT

<i>Article/a</i>		<i>Section</i>
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Article 1. General Provisions

<i>Section</i>	
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3501	Definitions
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Legislative Intent

3500. In its concern with the growing shortage and geographic maldistribution of health care services in California, the Legislature intends to establish in this chapter a framework for development of a new category of health manpower-the physician assistant.

The purpose of this chapter is to encourage the more effective utilization of the skills of physicians, and physicians and podiatrists practicing in the same medical group practice, by enabling them to delegate health care tasks to qualified physician assistants where this delegation is consistent with the patient's health and welfare and with the laws and regulations relating to physician assistants.

This chapter is established to encourage the utilization of physician assistants by physicians, and by physicians and podiatrists practicing in the same medical group, and to provide that existing legal constraints should not be an unnecessary hindrance to the more effective provision of health care services. It is also the purpose of this chapter to allow for innovative development of programs for the education, training, and utilization of physician assistants.

(Amended by Stats. 1996, Ch. 454.)

Title

3500.5. This chapter shall be known and cited as the Physician Assistant Practice Act.

(Amended by Stats. 1989, Ch. 1104.)

Definitions

3501. As used in this chapter:

(a) "Board" means the Division of Allied Health Professions of the Medical Board of California.

(b) "Approved program" means a program for the education of physician assistants which has been formally approved by the committee.

(c) "Trainee" means a person who is currently enrolled in an approved program.

(d) "Physician assistant" means a person who meets the requirements of this chapter and is licensed by the committee.

(e) "Committee" or "examining committee" means the Physician Assistant Examining Committee.

(f) "Regulations" means the rules and regulations as contained in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.

(g) "Routine visual screening" means non-invasive non-pharmacological simple testing for visual acuity; for visual field defects; for color blindness; and depth perception.

(Amended by Stats. 1989, Ch. 1104.)

Services

3502. (a) Notwithstanding any other provision of law, a physician assistant may perform those medical services as set forth by the regulations of the board when the services are rendered under the supervision of a licensed physician and surgeon or of physicians and surgeons approved by the board, except as provided in Section 3502.5.

(b) Notwithstanding any other provision of law, a physician assistant performing medical services under the supervision of a physician and surgeon may assist a doctor of podiatric medicine who is a partner, shareholder, or employee in the same medical group as the supervising physician. A physician assistant who assists a doctor of podiatric medicine pursuant to this subdivision shall do so only according to patient-specific orders from the supervising physician and surgeon.

The supervising physician and surgeon shall be physically available to the physician assistant for consultation when such assistance is rendered. A physician assistant assisting a doctor of podiatric medicine shall be limited to performing those duties included within the scope of practice of a doctor of podiatric medicine.

(c) No medical services may be performed under this chapter in any of the following areas:

(1) The determination of the refractive states of the human eye, or the fitting or adaptation of lenses or frames for the aid thereof.

(2) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, or orthoptics.

(3) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye.

(4) The practice of dentistry or dental hygiene or the work of a dental auxiliary as defined in Chapter 4 (commencing with Section 1600).

(d) This section shall not be construed in a manner that shall preclude the performance of routine visual screening as defined in Section 3501.

(Amended by Stats. 1996, Ch. 454.)

Prescribing Medication

3502.1. (a) In addition to the services authorized in the regulations adopted by the board, and except as prohibited by Section 3502, while under the supervision of a licensed physician and surgeon or physicians and surgeons approved by the board, a physician assistant may administer or provide medication to a patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device pursuant to subdivisions (c) and (d).

(1) A supervising physician and surgeon who delegates authority to issue a drug order to a physician assistant may limit this authority by specifying the manner in which the physician assistant may issue delegated prescriptions.

(2) Each supervising physician and surgeon who delegates the authority to issue a drug order to a physician assistant shall first prepare and adopt a written, practice specific, formulary and protocols that specify all criteria for the use of a particular drug or device, and any contraindications for the selection. The drugs listed shall constitute the formulary and shall include only drugs that are appropriate for use in the type of practice engaged in by the supervising physician and surgeon. When issuing a drug order, the physician assistant is acting on behalf of and as an agent for a supervising physician and surgeon.

(b) "Drug order" for purposes of this section means an order for medication which is dispensed to or for a patient, issued and signed by a physician assistant acting as an individual practitioner within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this section shall be treated in the same manner as a prescription or order of the supervising physician, (2) all references to "prescription" in this code and the Health and Safety Code shall include drug orders issued by physician assistants pursuant to authority granted by their supervising physicians, and (3) the signature of a physician assistant on a drug order shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

(c) A drug order for any patient cared for by the physician assistant that is issued by the physician assistant shall either be based on the protocols described in subdivision (a) or shall be approved by the supervising physician before it is filled or carried out.

(1) A physician assistant shall not administer or provide a drug or issue a drug order for a drug other than for a drug listed in the formulary without advance approval from a supervising physician and surgeon for the particular patient. At the direction and under the supervision of a phy-

sician and surgeon, a physician assistant may hand to a patient of the supervising physician and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon, manufacturer as defined in the Pharmacy Law, or a pharmacist.

(2) A physician assistant may not administer, provide or issue a drug order for Schedule II through Schedule V controlled substances without advance approval by a supervising physician and surgeon for the particular patient.

(3) Any drug order issued by a physician assistant shall be subject to a reasonable quantitative limitation consistent with customary medical practice in the supervising physician and surgeon's practice.

(d) A written drug order issued pursuant to subdivision (a), except a written drug order in a patient's medical record in a health facility or medical practice, shall contain the printed name, address, and phone number of the supervising physician and surgeon, the printed or stamped name and license number of the physician assistant, and the signature of the physician assistant. Further, a written drug order for a controlled substance, except a written drug order in a patient's medical record in a health facility or a medical practice, shall include the federal controlled substances registration number of the physician assistant. The requirements of this subdivision may be met through stamping or otherwise imprinting on the supervising physician and surgeon's prescription blank to show the name, license number, and if applicable, the federal controlled substances number of the physician assistant, and shall be signed by the physician assistant. When using a drug order, the physician assistant is acting on behalf of and as the agent of a supervising physician and surgeon.

(e) The medical record of any patient cared for by a physician assistant for whom the supervising physician and surgeon's drug order has been issued or carried out shall be reviewed and countersigned and dated by a supervising physician and surgeon within seven days.

(f) All physician assistants who are authorized by their supervising physicians to issue drug orders for controlled substances shall register with the United States Drug Enforcement Administration (DEA).

(Amended by Stats. 1999, Ch. 749.)

Emergency Medical Services

3502.5. Notwithstanding any other provision of law, a physician assistant may perform those medical services permitted pursuant to Section 3502 during any state of war emergency, state of emergency, or state of local emergency, as defined in Section 8558 of the Government Code, and at the request of a responsible federal, state, or local official or agency, or pursuant to the terms of a mutual aid operation plan established and approved pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code), regardless of whether the physician assistant's approved supervising physician is available to supervise the physician assistant, so long as a licensed physician is available to render the appropriate supervision. "Appropriate supervision" shall not require the personal or electronic availability of a supervising phy-

sician if that availability is not possible or practical due to the emergency. The local health officers and their designees may act as supervising physicians during emergencies without being subject to approval by the board. At all times, the local health officers or their designees supervising the physician assistants shall be licensed physicians and surgeons. Supervising physicians acting pursuant to this section shall not be subject to the limitation on the number of physician assistants supervised under Section 3516.

No responsible official or mutual aid operation plan shall invoke this section except in the case of an emergency that endangers the health of individuals. Under no circumstances shall this section be invoked as the result of a labor dispute or other dispute concerning collective bargaining.

Limitation

3503. No person other than one who has been licensed to practice as a physician assistant or authorized to practice on interim approval under Section 3517 shall practice as a physician assistant or in a similar capacity to a physician and surgeon or podiatrist or hold himself or herself out as a "physician assistant," or shall use any other term indicating or implying that he or she is a physician assistant. SEC. 4. 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 XI B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

(Amended by Stats. 1996, Ch. 454.)

Article 3. Certification and Approval

Section

- 3515 Requirements
- 3516 Supervisor's Limitations

Requirements

3515. The board shall approve an application by a licensed physician to supervise a physician's assistant, where the applicant has met all of the requirements of this chapter and the board's regulations.

(Amended by Stats. 1983, Ch. 1026.)

Supervisor's Limitations

3516. Notwithstanding any other provision of law, any physician's assistant licensed by the committee shall be eligible for employment or supervision by any physician approved by the board to supervise physician's assistants, except that:

(a) No physician shall supervise more than two physician's assistants at any one time, except as provided in Section 3516.5, and

(b) The board may restrict physicians to supervising specific types of physician's assistants including, but not limited to, restricting physicians from supervising physician's assistants outside of the physician's field of specialty.

(Amended by Stats. 1983, Ch. 1026.)

Article 4. Revenue

Section

- 3522 Approval Renewal---- Supervising Physician

Approval Renewal-Supervising Physician

3522. All approvals to supervise a physician's assistant shall expire at 12 midnight on the last day of May of each even-numbered year if not renewed.

To renew an unexpired approval, the approved supervising physician, on or before the date of expiration, shall apply for renewal on a form prescribed by the board and pay the prescribed renewal fee.

(Amended by Stats. 1983, Ch. 1026.)

Article 7. Osteopathic Physician's Assistants

Section

- 3535 Osteopathic Physician's Assistants

Osteopathic Physician's Assistants

3535. Notwithstanding any other provision of law, physicians and surgeons licensed by the Osteopathic Medical Board of California may employ physician's assistants provided:

(a) Each physician's assistant so employed is a graduate of an approved program and is licensed by the Physician's Assistant Examining Committee.

(b) The scope of practice of the physician's assistant shall be the same as that which is approved by the Division of Allied Health Professions of the Medical Board of California for physicians and surgeons supervising physician's assistants in the same or a similar specialty.

(c) The supervising physician and surgeon is approved by the Osteopathic Medical Board of California. The Osteopathic Medical Board of California may deny an application, or suspend or revoke or impose probationary conditions upon any osteopathic physician and surgeons approved to supervise any physician's assistant in any decision made after a hearing as provided in Section 3528.

(d) Any physician's assistant licensed by the committee shall be eligible for employment by any physician and surgeon approved by the Osteopathic Medical Board of California; except that no physician and surgeon shall supervise more than two physician's assistants. The Osteopathic Medical Board of California may restrict physicians and surgeons to supervising specific types of physician's assistants including, but not limited to, restricting physicians and surgeons from supervising physician's assistants outside of the physician's and surgeon's field of specialty.

(e) Each physician and surgeon desiring to supervise a physician's assistant under this section shall file a separate application. The fees to be paid to the Osteopathic Medical Board of California for approval to supervise a physician's assistant are to be set as follows: An application fee not to exceed fifty dollars (\$50) shall be charged to each physician and surgeon applicant. An approval fee not to exceed one hundred dollars (\$100) shall be charged to each physician and surgeon upon approval of an application to supervise a physician's assistant. If the approval will expire less than one year after its issuance, the fee shall be 50 percent of the initial approval fee currently in effect. The Osteopathic Medical Board of California shall renew approval to supervise physician's assistants upon application

for that renewal. A biennial renewal fee not to exceed one hundred fifty dollars (\$150) shall be paid for the renewal of that approval. The delinquency fee is twenty-five dollars (\$25). The duplicate license fee is ten dollars (\$10). The fees collected by the Osteopathic Medical Board of California pursuant to this subdivision shall be deposited in the Osteopathic Medical Board of California Contingent Fund.

(t) Any person who violates subdivision (a), (b), (c), or (d) of this section shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000) or by both.

(Amended by Suits, 1991, Ch. 359.)