PHYSICIAN ASSISTANT BOARD
2005 Evergreen Street, Suite 1100, Sacramento, CA 95815
P (916) 561-8780 F (916) 263-2671 | www.pac.ca.gov

MEETING NOTICE
April 18, 2016
PHYSICIAN ASSISTANT BOARD
2005 Evergreen Street – Hearing Room #1150
Sacramento, CA 95815
9:00 A.M. – 5:00 P.M.

AGENDA

(Please see below for Webcast information)

EXCEPT "TIME CERTAIN"* ITEMS, ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE

1. Call to Order/Establishment of a Quorum by President (Sachs)

2. Roll Call (Winslow)

3. Review and Possible Approval of January 11, 2016, Meeting Minutes (Sachs)

4. Public Comment on items not on the Agenda (Sachs) (Note: The Board may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda for a future meeting. [Government Code Sections 11125, 11125.7(a).])

5. Reports
   a. President's Report (Sachs)
      1) Sunset Review Hearing: Update
      2) Introduction New Public Board Member Miriam Z. Valencia
   b. Executive Officer's Report (Mitchell)
      1) BreEZe Implementation: Update
      2) Controlled Substance Utilization Review and Evaluation System (CURES): Update
   c. Licensing Program Activity Report (Winslow)
      1) Statistics Regarding Licenses Issued and Renewed/Current Licenses
   d. Diversion Program Activity Report (Mitchell)
      1) Statistics Regarding Program Participants
   e. Enforcement Program Activity Report (Forsyth)
      1) Statistics Regarding Enforcement Actions Initiated/Taken and Probationers

6. Budget Update (Forsyth/Rumbaoa)

7. Presentation and Discussion Regarding BreEZe Security of Personal Data (Mitchell)

8. Department of Consumer Affairs
   a. Update from the Department of Consumer Affairs on Departmental Activities (Christine Lally)

9. Executive Office Recruitment and Selection Process
   a. Presentation from the Department of Consumer Affairs' Office of Human Resources Regarding the Selection Process of an Executive Officer
   b. Discussion of Executive Officer Recruitment and Selection Process, Possible Appointment of a Search Committee, and Review of Executive Officer's Duty Statement

10. Regulations
    a. Proposed Amendments to Title 16, California Code of Regulations, Section 1399.523 – Disciplinary Guidelines: Update (Mitchell)
    b. Proposed Amendments to Title 16, California Code of Regulations Section 1399.546 – Reporting of Physician Assistant Supervision: Update (Mitchell)
    c. Proposed Amendments to Title 16, California Code of Regulations, Section 1399.514 – Renewal of License: Amending conviction fine reporting amount (Sachs/Schieldge)

11. **CLOSED SESSION**:

    a. Pursuant to Section 11126(c)(3) of the Government Code, the Board will move into closed session to deliberate on disciplinary matters
    b. Pursuant to Government Code section 11126(a) to discuss the selection process and the possible appointment of an Executive Officer or Interim Executive Officer.

RETURN TO OPEN SESSION

12. Lunch break will be taken at some point during the day's meeting.

13. Business and Profession Code Section 3502.3(a)(3) Performance of a Physical Examination by a Physician Assistant and Certification of Disability Pursuant to Unemployment Insurance Code Section 2708 – Discussion Regarding Employment Development Department Implementation: Update (Sachs)

14. Discussion Regarding Requirements for an Approved Program for the Specialty Training of Physician Assistants: Program approval process (Sachs/Grant)

15. Discussion Regarding Interpretation of Title 16, California Code of Regulations Section 1399.540(b) – Delegation of Services Agreement (Sachs/Grant)
    a. Acceptance of Electronic Signatures
    b. Required Updates of the Delegation of Services Agreement

16. Public Inquiries Regarding Physician Assistant Laws and Regulations: Review and Approve Typical Written Responses (Sachs/Grant)

17. The Education/Workforce Development Advisory Committee: Update on Recent Activities (Grant/Alexander)

18. Developments since the February 2015 United States Supreme Court decision in North Carolina State Board of Dental Examiners v. Federal Trade Commission (FTC): Update (Schieldge)

19. Medical Board of California Activities (Bishop)

20. Discussion Regarding the Legislative Committee Report and Possible Positions on Legislation (Hazelton/Earley)
    a. Legislation of Interest to the Physician Assistant Board: AB 1566, AB 1707, AB 2193, AB 2701, SB 482, SB 960, SB 1140, SB 1155, SB 1195, SB 1217, SB 1334, and bills impacting the Board identified by staff after publication of the agenda.

21. Agenda Items for Next Meeting (Sachs)

22. Adjournment (Sachs)

Note: Agenda discussion and report items are subject to action being taken on them during the meeting by the Board at its discretion. Action may be taken on any item on the agenda. All times when stated are approximate and subject to change without prior notice at the discretion of the Board

unless listed as "time certain". The meeting may be canceled without notice. For meeting verification, call (916) 561-8780 or access the Board's website at http://www.pac.ca.gov. Public comments will be taken on agenda items at the time the item is heard and prior to the Board taking any action on said items. Agenda items may be taken out of order and total time allocated for public comment on particular issues may be limited at the discretion of the Chair.

While the Board intends to webcast this meeting, it may not be possible to webcast the meeting due to limitations on resources. The webcast can be located at www.dca.ca.gov. If you would like to ensure participation, please plan to attend at the physical location.

Notice: The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Anita Winslow at (916) 561-8782 or email Anita.Winslow@mbc.ca.gov send a written request to the Physician Assistant Board, 2005 Evergreen Street, Suite 1100, Sacramento, California 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the request.

Agenda Item 3

MEETING MINUTES

January 11, 2016
PHYSICIAN ASSISTANT BOARD
2005 Evergreen Street – Hearing Room #1150
Sacramento, CA 95815
9:00 A.M. – 5:00 P.M.

1. Call to Order by President

President Sachs called the meeting to order at 9:00 a.m.

2. Roll Call

Staff called the roll. A quorum was present.

Board Members Present:
Robert Sachs, PA-C
Charles Alexander, Ph.D.
Michael Bishop, M.D.
Jed Grant, PA-C
Sonya Earley, PA-C
Xavier Martinez
Catherine Hazelton
Javier Esquivel-Acosta, PA

Staff Present:
Glenn L. Mitchell, Jr., Executive Officer
Kristy Schieldge, Senior Staff Counsel,
Lynn Forsyth, Enforcement Analyst
Anita Winslow, Licensing Analyst

3. Approval of January 16, 2015 Teleconference Meeting Minutes

M/ Jed Grant S/ Sonya Earley C/ to:

Approve the January 16, 2015 teleconference meeting minutes.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Catherine Hazelton	X				
Xavier Martinez	X				
Robert Sachs	X				

Motion approved.

44 **4. Approval of November 2, 2015 Meeting Minutes**
45
46 Ms. Schieldge requested line 495 on page 12 of the minutes be amended to state:
47 "Amending the DCA Director's authority over certain Board decisions or providing
48 options for review upon request by the board."
49
50
51 M/ Jed Grant S/ Sonya Earley C/ to:
52
53 Approve the November 2, 2015 meeting minutes as amended.
54

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Catherine Hazelton	X				
Xavier Martinez	X				
Robert Sachs	X				

55
56 Motion approved.
57
58 **5. Public Comment on items not on the Agenda**
59
60 There was no public comment at this time.
61
62 **6. Reports**
63
64 a. President's Report
65
66 1) Mr. Sachs administered the Oath of Office to reappointed Board members Dr.
67 Charles Alexander, Dr. Michael Bishop, Ms. Sonya Earley, and Mr. Javier
68 Esquivel-Acosta.
69
70 2) Mr. Sachs reported on the new composition of the Board as defined in
71 Business and Professions Code section 3505 which states that the members
72 of the board shall include four physician assistants, one physician and
73 surgeon who is a member of the Medical Board of California, and four public
74 members.
75
76 He added that upon the expiration of the term of the member who is a
77 member of the Medical Board of California, that position shall be filled by a
78 physician assistant.
79
80 Mr. Sachs noted that upon the expiration of the term of the member who is a
81 member of the Medical Board, there shall be appointed to the Board a
82 physician who is a member of the Medical Board who shall serve as an ex
83 officio, nonvoting member and whose function shall include reporting to the
84 Medical Board on the actions or discussions of the Board.
85

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86 The Board now consists of five physician assistant professional members,
87 four public members, and one member who is a member of the Medical
88 Board of California (MBC).
89
90 3) Mr. Sachs reported that the Senate Committee on Business, Professions and
91 Economic Development and Assembly Committee on Business and
92 Professions have begun their Sunset Oversight Review. The Physician
93 Assistant Board is scheduled to be reviewed. The Board was last reviewed in
94 2012.
95
96 Mr. Sachs added that the Board reviewed and approved the draft report
97 prepared by staff at the November 2015 Board meeting.
98
99 Staff submitted the final version of the report to the Legislature on December
100 1, 2015. Sunset hearing dates are expected to be announced by the
101 Committees sometime early in 2016.
102
103 b. Executive Officer's Report
104
105 1) Update on BreEZe Implementation
106
107 Mr. Mitchell reported that the Department of Consumer Affairs (DCA) will be
108 deploying "Release 2" boards to BreEZe between 5 PM on Thursday, January
109 14, 2016 and 8 AM on Monday, January 19, 2016. Impact to the Release 1
110 Boards, including the Physician Assistant Board (PAB), will be that during
111 deployment of the R2 boards BreEZe will be down. Additionally, the on-line
112 licensing look up will not be available during the cutover and deployment
113 period.
114
115 Mr. Mitchell noted that DCA recognizes the need to provide current license
116 status data to the public during the time BreEZe is down. Therefore, DCA and
117 the BreEZe team will develop PDF reports to be published on the DCA and
118 Board websites that will contain basic licensee information (including first and
119 last name, license type, license number, and primary status code) consumers
120 may use to verify the status licenses. The reports will contain information as
121 of January 14, 2016.
122
123 Mr. Mitchell reported that the online renewal system continues to function
124 without any issues and we continue to receive fewer paper renewals in the
125 office.
126
127 Mr. Mitchell thanked the BreEZe team and MBC ISB for their continued
128 support.
129
130 2) CURES update
131
132 Mr. Mitchell report that a "soft launch and phased rollout" of CURES 2.0 took
133 place in July 2015. It appears that there are no major issues during this
134 implementation phase.
135
136 Mr. Mitchell stated beginning January 8, 2016, CURES 2.0 will be released to
137 all users in compliance with the system's minimum security requirements.

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Compliant browsers include Internet Explorer version 11 or greater, Chrome, Safari, or Foxfire.

c. Licensing Program Activity Report

Between October 23, 2015 and January 4, 2016, 148 physician assistant licenses were issued. As of January 4, 2016, 10,456 physician assistant licenses are renewed and current.

Ms. Winslow reported that the decrease in renewed and current licenses was due to the status of several licenses having to change to "canceled" status.

From January 1, 2015 to December 31, 2015 there were 910 physician assistant initial licenses issued.

d. Diversion Program Activity Report

As of January 1, 2016, the Board's Diversion Program has 14 participants, which includes five self-referral participants and nine board-referral participants.

A total of 136 participants have participated in the program since implementation in 1990.

e. Enforcement Program Activity Report

Between November 1, 2015 and December 31, 2015, there were two accusations filed; there were no Statement of Issues filed; there were two probationary licenses issued; there was one license Surrender; there was one Petition to Revoked, there was one licensed denied, there was one licensee placed on probation and we have five pending citations. There are currently 59 probationers.

7. Department of Consumer Affairs: Update

There was no report from the Department of Consumer Affairs.

8. Discussion on Board meeting locations and possible action to seek exemption from requirements under Business and Professions Code section 101.7

The following 2016 Board meeting dates were approved by the Board at the November 2016 meeting:

Monday, January 11, 2016
Monday, April 18, 2016
Monday, July 11, 2016
Monday, October 17, 2016

Business and Professions Code section 101.7 requires that boards meet at least three times each calendar year. Additionally, boards shall meet at least once each calendar year in northern California and once each year in southern California in order to facilitate participation by the public and its licensees.

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189 In order to comply with Business and Professions Code section 101.7, the Board
190 discussed rescheduling a 2016 meeting to take place at a location in Southern
191 California.
192
193 M/ Jed Grant S/ Sonya Earley C/ to:
194
195 Reschedule the location of the October 17, 2016 Board meeting to Southern
196 California.
197

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Catherine Hazelton	X				
Xavier Martinez	X				
Robert Sachs	X				

198
199 Motion approved.
200
201 **9. Discussion and review of Health and Safety Code section 1799.110 (Standard**
202 **of Care in Medical Malpractice Cases).**
203
204 Mr. Grant started the discussion with a review of the pertinent part of Health and
205 Safety Code section 1799.110 (c) "...the court shall admit expert medical testimony
206 only from physician and surgeons who have had substantial professional
207 experience..." Mr. Grant asked whether or not this code should be amended to
208 include physician assistants and opened the floor for discussion.
209
210 Dr. Bishop stated that in discipline cases that he has reviewed it appears that the
211 administrative law judge does due diligence in reviewing the background of all expert
212 witnesses.
213
214 Mr. Sachs added that when called upon to act as an expert witness, a physician
215 assistant providing expert testimony may wish to excuse themselves if they are not
216 qualified to answer the questions put forth by the attorney. Mr. Sachs added that he
217 believes that sufficient safeguards are in place and that the Board does not need to
218 take action on this item at this time.
219
220 Ms. Schieldge commented that this code applies to private litigation for medical
221 malpractice and is not something the boards would typically intercede on as it does
222 not pertain to public protection.
223
224 Ms. Hazelton noted that she believes it is the responsibility of the attorney to qualify
225 the expert witnesses.
226
227 Mr. Grant concluded that this could be resolved through "artful lawyering", but the
228 Board would not get involved because it is not part of our mission of public
229 protection.
230
231
232

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233 **10. Regulations**
234
235 a. Proposed amendments Title 16 California Code of Regulations
236 Section 1399.523 – Disciplinary Guidelines: Update
237
238 A regulatory hearing on the Proposed Language for Guidelines for Imposing
239 Discipline/Uniform Standards Regarding Substance-Abusing Healing Arts
240 Licensees, Section 1399.523 of Division 13.8 of Title 16 of the California Code of
241 Regulations was held on February 9, 2015.
242
243 The rulemaking file has been submitted to the Department of Consumer Affairs
244 for their review. Upon their approval, the file will be forwarded to the Office of
245 Administrative Law (OAL). OAL has thirty working days to review the file.
246
247 b. Proposed amendments to Title 16 California Code of Regulations Section
248 1399.546 – Reporting of Physician Assistant Supervision. Related to the
249 implementation of SB 337.
250
251 Ms. Schieldge opened the discussion citing the reason to update this regulation
252 is so that it is consistent with the intent of Business and Professions Code
253 section 3502 which was amended by the implementation of SB 337. As
254 discussed at the last board meeting, it was determined that the legislation was
255 intended to alleviate the need to manually enter the supervising physician name
256 in the patient electronic record for each episode of care. It appears that Section
257 1399.546 needs to be clarified that the supervising physician's name does not
258 need to be entered in the patient record each time the physician assistant
259 provides care to the patient. The proposed amendments included striking out the
260 words, "enter the name of his or her" and adding in the text, "record in the
261 medical record for that episode of care the..." Ms. Schieldge recommended the
262 following subparagraph, "(b): If the electronic medical record software used by
263 the physician assistant is designed to, and actually does, enter the name of the
264 supervising physician assistant for each episode of care into the patient's
265 medical record, such automatic entry shall be sufficient for compliance with this
266 recordkeeping requirement."
267
268 Mr. Grant requested that the word "assistant" be removed from the paragraph
269 after supervising physician.
270
271 Ms. Schieldge asked if there were any other changes needed. Without further
272 comment a motion was made by Mr. Grant to adopt the proposed amendments
273 to §1399.546. The motion was later withdrawn.
274
275 Ms. Hazelton asked for some clarification of the "episode of care" statement and
276 whether this would affect patient care and how that patient would be able to get
277 the information they might need from the chart. Ms. Hazelton was concerned that
278 when the supervising physician has changed for the same episode of care the
279 change would not be noted in the patient's record. She was concerned that a
280 licensee may not change the supervising physician when the current name was
281 automatically populating in the record. She also asked if the physician assistant
282 would be required to change the name of the supervising physician, in the
283 electronic record based on the phrase "episode of care".
284

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285 Ms. Schieldge clarified that for each episode of care the information would be
286 available. As currently drafted, the supervising physician's name must be
287 manually entered into the electronic patient record each time the physician
288 assistant updates the patient medical record whether the supervising physician
289 has been previously listed or not. This proposed regulatory change is an attempt
290 to update the regulation to reflect current practice standards with regard to
291 entering the name of the supervising physician in an electronic medical record.
292
293 Ms. Schieldge noted that each supervising physician's name would remain on
294 the electronic medical record.
295
296 Mr. Grant provided a general description of how electronic medical records
297 (EMR) function. Each time there is a shift change a new supervising physician is
298 assigned and noted in the patient's chart. Mr. Grant stressed that the purpose of
299 the regulation is not to be less accurate, but to reduce unnecessary and
300 duplicating documentation. It is incumbent on the licensee to always document
301 their supervising physician. Mr. Grant believes that the current regulation makes
302 it difficult to accomplish this using EMR's. Mr. Grant clarified that the regulation
303 requires physician assistants to list their supervising physician. This regulation is
304 reflecting what physician assistants are already doing; it's just eliminating the
305 manual entry at the bottom of the chart. He noted that there is a requirement to
306 document who is taking care of the patient and who the supervising physician is
307 and that this proposed regulation change is only modifying how the licensee is
308 required to document their supervising physician.
309
310 Ms. Hazelton's concerns were addressed and she was satisfied that the
311 regulation was only changing how the information was documented on the
312 patient's medical record.
313
314 Ms. Schieldge reiterated that the purpose is to make sure there is no duplicative
315 record keeping. Licensees would not be subjected to burdensome regulations in
316 complying with this reporting requirement. This proposed change will not relieve
317 the licensees from compliance with this requirement. If the supervising physician
318 is not noted in the record then the licensee is not in compliance with the
319 regulation. The regulation is being updated to reflect the legislative intent of SB
320 337.
321
322 Public Comment: Teresa Anderson, Public Policy Director, California Academy
323 of PAs (CAPA), stated that at first glance CAPA feels that this is in line and
324 consistent with the intent of SB 337. CAPA appreciates the "and actually does"
325 language since there are so many EMR products available. She noted that CAPA
326 is appreciative of the time and effort the Board has put into this regulation and
327 feels it reflects the intent of SB 337.
328
329 M/ Jed Grant S/ Sonya Earley C/ to:
330
331 Direct staff to take all steps necessary to initiate the formal rulemaking process to
332 adopt proposed amendments to Title 16, California Code of Regulations section
333 1399.546 with this text and the amendments that include the new addition of
334 subparagraph (b), authorize the Executive Officer to make any non-substantive
335 changes to the rulemaking package, and set the proposed regulations for a hearing.
336

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Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Catherine Hazelton	X				
Xavier Martinez	X				
Robert Sachs	X				

337
338 Motion approved.
339
340 **11. Closed Session**
341
342 a. Pursuant to Section 11126(c)(3) of the Government Code, the Board moved into
343 closed session to deliberate on disciplinary matters.
344
345 **Return to open session**
346
347 **12. A lunch break was not taken**
348
349 **13. The Education/Workforce Development Committee: Update**
350
351 a. Letter to ARC-PA – New California Physician Assistant Training Programs
352 As directed by the Board, a letter was sent to the ARC-PA asking that they:
353 • Provide the Board with annual updates regarding the provisional accreditation
354 status of new California PA programs
355 • Provide the Board with the approximate number of students each new
356 California program plans to enroll, and when the provision programs
357 anticipate matriculating the first class.
358 • To better understand ARC-PA's role and responsibilities within the PA
359 education and training process, what agency has oversight responsibilities
360 over ARC-PA
361
362 Mr. Grant reported that the Board had not received a response from the ARC-PA
363 and was hopeful that they would respond by the next meeting.
364
365 b. New State of Georgia Law (SB 391): Tax deductions for preceptors who are not
366 otherwise reimbursed.
367
368 Mr. Grant noted that the State of Georgia recently passed legislation providing tax
369 deductions for physicians who serve as a community based faculty physician for a
370 medical core clerkship provided by the community based faculty. In other words,
371 physicians who serve as a preceptor for the education of mid-level health care
372 providers such as physician assistants.
373
374 Mr. Grant opened the discussion with a brief explanation of the importance of
375 preceptors for the education of physician assistants in California. One of the
376 factors for training physician assistants is clinical training and the use of
377 preceptors in this aspect of their training. This clinical instruction may come from
378 other PAs or physicians who are not generally paid for their time but may receive
379 CME credit for being preceptors. Therefore, it is often difficult to find health care
380 providers to be preceptors because they are not financially reimbursed. Statistics

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381 show the 70% of PAs that are trained in California remain in the state and practice
382 as PAs. He questioned whether the Board can seek legislation to adopt a tax
383 credit for preceptors, which may allow for individuals to become preceptors.
384
385 Ms. Hazelton explained the process to research and build a case for proposed
386 legislation:
387 - Define the problem
388 - How many people would it affect
389 - Effect of public health
390 - How this solution would address the problem, including data that it would
391 be affective
392 - Fiscal impact
393 - Have a workshop with stake holders
394
395 Ms. Hazelton stated that this type of legislation may be challenging to pass. She
396 recommended that perhaps another organization would be better suited to pursue
397 this legislation rather than the Board.
398
399 Ms. Schieldge noted that the Board would have to make a good argument as to
400 why they should pursue this legislation. The Board must consider how this
401 legislative proposal would benefit consumers.
402
403 Dr. Bishop stated that he believes that it would benefit consumers because it
404 would increase the number of physician assistants who would stay in California
405 and be of assistance to the consumer, thus benefitting the health care needs of
406 the consumer population.
407
408 Ms. Earley requested the California Academy of PAs opinion on this subject.
409
410 Public Comment: Teresa Anderson, Public Policy Director, California Academy of
411 PAs (CAPA), stated that anything that would increase the benefits to preceptors
412 would be helpful. This has been an ongoing discussion with CAPA members. She
413 suggested that the legislation not be physician assistant specific, but should
414 include all primary care providers, including physician assistants, which would
415 increase the fiscal impact. Ms. Anderson stated that CAPA would be supportive of
416 the concept and offered their assistance.
417
418 M/ Sonya Earley S Xavier Martinez C/ to:
419
420 Adopt an advisory committee to the Education/Workforce Development
421 Committee of two members to include Jed Grant and Catherine Hazelton to assist
422 staff to explore the proposal of tax deductions for preceptors who are not
423 otherwise reimbursed.
424

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Catherine Hazelton	X				
Xavier Martinez	X				
Robert Sachs	X				

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Motion approved.

c. Office of Statewide Health Planning and Development's (OSHPD) 2014 Report on Physician Assistants in California – OSHPD data and healthcare workforce analysis

Mr. Grant reported that OSHPD conducted this study in 2013 and published the report in 2014. He noted that there was a lot of good information in it and it was available to the public. He commented on the large amount of growth and that the report was reflective of the national outlook on physician assistants.

Public Comment: Gay Breyman, Executive Director, California Academy of PAs (CAPA), stated that CAPA worked with OSHPD in creating the report by promoting several different ways in which to have physician assistants respond to the survey. She added that CAPA was pleased with the number of responses received. She added that OSHPD had never done a PA-specific survey before and it has been used by several groups, such as the Legislature and educators. She noted that once the new PA programs graduate a few classes, it might be feasible to repeat the study.

Dr. Alexander found the report to be informative but was discouraged about the lack of diversity represented in the survey. He also noticed that the authors said that the numbers were so small that it was hard to generalize across and that the study may not truly reflect what is actually occurring.

Public Comment: Teresa Anderson, Public Policy Director, California Academy of PAs (CAPA), commented that one of the important things the report did was generate conversations around work force issues. She spoke of previous legislation that required collecting additional data on licensee applications to increase the participation numbers, which would provide a better idea on how to collect and project some of the information the Board is looking for. The report highlighted that there needs to be more investigations to identify the increases in the health care workforce. The report was a good first step in looking at the needs of the health care workforce.

14. Board Customer Satisfaction Survey: Update

During the discussion of the Sunset Review at the November 2, 2015 Board meeting, there was concern with the low response rate to the Board's customer satisfaction survey included in the report. The Board requested that staff proactively solicit licensees and consumers to encourage them to complete the survey, thus increasing the survey response rate.

Ms. Winslow reported that the following was implemented to accommodate the Board's request:

- Adding a link to the survey on the congratulatory email/letter to newly licensed physician assistants.
- Adding a link to the survey to all staff email signatures.
- Verbally encouraging consumers and licensees to complete the survey at the end of a phone call.

Ms. Winslow noted that now the Board is receiving approximately a 10% return on the survey requests and most of the responses were very positive.

15. California Fair Political Practices Commission, Statement of Economic Interests (Form 700) E-file: New Filing Procedures: Update

Ms. Winslow reported that effective with the 2016 filing period, filers, including Board members will now be able to file their Form 700s online, thus eliminating paper documents. The new procedure should make the filing process more user-friendly, quicker, and more efficient.

16. Developments since the February 2015 United States Supreme Court decision in North Carolina State Board of Dental Examiners v. Federal Trade Commission (FTC)

a. Public comment dated November 13, 2015 was submitted to the Physician Assistant Board by Joseph Elfelt. Ms. Schieldge reported that there is current litigation pending between Mr. Elfelt and the Department of Consumer Affairs' Board for Professional Engineers, Land Surveyors, and Geologists. Ms. Schieldge reported that this litigation does not impact the Board.

b. California Little Hoover Commission: Review of Occupational Licensing in California

Ms. Schieldge noted that the Little Hoover Commission notified boards within the Department of Consumer Affairs about the Commission's upcoming study of occupational licensing. She explained how the Commission is an independent state agency comprised of members of the Legislature and public appointees of the Governor and Legislature. The Commission studies various topics related to government operations and provides reports and recommendations on improvements. The Commission recommendations may result in legislation.

Ms. Schieldge reported that the Commission will be holding a meeting on February 4, 2016 at 9:30 A.M. in the State Capitol room 437. The meeting will discuss the impact of occupational licensing on upward mobility and opportunities for entrepreneurship and innovations for Californians, particularly those of modest means. The Commission will explore the balance between protecting consumers and enabling Californians to enter the occupation of their choice. The meeting will be a live broadcast as well as archived for future viewing.

17. Medical Board of California Activities Report

Dr. Bishop reported that the Medical Board's next meeting will take place January 21 and 22, 2016 in Sacramento, therefore, there is nothing to report at this time.

18. Budget Report

a. Budget update

Ms. Forsyth reported that the report provided is for Month 5 (November 2015.) She informed the Board that the Governor signed the budget for Fiscal Year 2015/2016 and all allocated funds will be reflected at the next meeting budget

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528 report. Ms. Forsyth stated that the AG budget augmentation for $90,000 was
529 approved and this should help with our enforcement efforts. She noted that there
530 are no unexpected expenditures at this time.
531
532 b. Discussion regarding Pro-Rata costs to DCA Boards and survey by DCA.
533
534 Senate Bill 1243 (Hill, Chapter 395, Statutes 2014) required the Department of
535 Consumer Affairs (DCA) to conduct a one-time study of its process for
536 distributing administrative costs (pro rata) among the 39 boards, bureaus,
537 committees, commissions, and programs, including the PAB.
538
539 Mr. Martinez reported that DCA identified a number of improvements to promote
540 a more equitable and transparent pro rata process. Each recommendation was
541 reviewed by DCA as it looks to improve the process for distributing costs. Mr.
542 Martinez noted that the report would be conducted every 2 years instead of
543 annually.
544
545 **19. The Legislative Committee Report**
546
547 Ms. Hazelton informed the Board that currently there is no new legislation at this
548 time to discuss.
549
550 **20. Discussion and Possible Action Regarding Proposed Updates to Application**
551 **for Licensure as a Physician Assistant**
552
553 Ms. Winslow reported that the instructions and application for licensure as a
554 Physician Assistant was updated to include the changes in law that were effective in
555 January 2016 as well as minor style and layout changes.
556
557 M Jed Grant S/ Sonya Earley C/ to:
558
559 To approve the instructions and application for licensure as a physician assistant
560 with the following changes:
561 • Question 14 – delete the reference to "BPC"
562 • Question 24 – delete the reference to "BPC"
563

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Cristina Gomez-Vidal Diaz	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Catherine Hazelton	X				
Xavier Martinez	X				
Robert Sachs	X				

564
565 Motion approved.
566
567 **21. Agenda Items for the next Board Meeting**
568
569 a. Title 16, California Code of Regulations Section 1399.514 possible amendments
570 to conviction fine amounts.

DRAFT

571
572 b. North Carolina State Board of Dental Examiners v. Federal Trade Commission:
573 developments since the decision – update.
574
575 c. BreEZe update: status of online application.
576
577 d. Title 16, California Code of Regulations Section 1399.546 – update.
578
579 e. The Education/Workforce Development Committee - update.
580 • Advisory Committee – tax deduction
581
582 f. Location of October Board Meeting – update.
583
584 g. BreEZe personal data security.
585
586 **22. Adjournment**
587
588 With no further business the meeting was adjourned at 12:30 P.M.

DRAFT

Agenda Item 5.a

Joint Oversight Hearing, March 9, 2016

Senate Committee on Business, Professions and Economic Development and Assembly Committee on Business and Professions

Response from the Physician Assistant Board to Issues Raised by Committees Staff in the Background Paper for Sunset Review 2016

BUDGET ISSUES

ISSUE #1: Is the PAB concerned about its long-term fund condition?

Staff Recommendation: The PAB should advise the Committees on whether its current reserve will be sufficient to accommodate the number of licensees and whether it believes it needs a fee increase.

PAB Response: In addition to staff, the PAB's budget is reviewed by a Department of Consumer Affairs Budget Analyst. The DCA Budget Analyst works closely with PAB staff to address any issues and take corrective action to ensure that the budget remains fiscally sound.

Upon review by PAB staff and the DCA Budget Analyst, we believe that a fee increase will not be necessary at this time.

It has been projected that the PAB's fund balance will be sufficient for the next several years to address its operational needs.

The Fiscal Year 2016/17 Funds Months in Reserve are projected to be about 23 months. This is due to the repayment of the Board's outstanding loan to the General fund of $1.5 million. Budget language does not allow a board's months in reserve to exceed 24 months. If a board's months in reserve exceed 24 months, fees must be lowered to reduce this number. Therefore, a fee increase would not be appropriate at this time.

The PAB's fiscal issues have generally arisen out of an increase in enforcement costs, specifically Attorney General costs. To address this shortfall, the PAB has sought and received budget augmentations to cover these costs.

STAFFING ISSUES

ISSUE #2: Does the PAB need more staff in order to meet its performance goals?

Staff Recommendation: The PAB should advise the Committees on whether it anticipates it will need additional staff to handle the increased number of licensees, particularly since the Office/Licensing Technician position is only part-time.

PAB Response: The PAB has not increased staffing levels in many years. Additionally, the PAB wants to ensure that adequate staffing levels exist to ensure physician assistant applications are reviewed and licenses issued on a timely basis. Adequate staffing levels will ensure that the PAB is able to meet its performance goals.

To address potential increase in licensing workload, PAB staff will be conducting work load studies to determine if additional personnel will be required.

ENFORCEMENT ISSUES

ISSUE #3: Does the PAB need additional authority to take disciplinary action against PAs dually-licensed by another California health care licensing board?

Staff Recommendation: The PAB should advise the Committees on the frequency with which these types of violations are occurring in order that the Committees might determine if a statutory change is necessitated.

PAB Response: The PAB is requesting that the Physician Assistant Practice Act be amended to allow it to take disciplinary action against a licensee or deny an application for a license based on the denial of licensure, revocation, suspension, restriction, surrender, or any other action against a health care professional by another California health care professional licensing board.

The Board of Registered Nursing has a similar law. (Business and Professions Code Section 2761(a)(4)).

Business and Professions Code Section 141 gives the PAB the ability to take disciplinary action against a licensee who has been disciplined by an out-of-state licensing or governmental agency.

As the PAB currently has dually-licensed physician assistants, this change would allow us to pursue disciplinary action in a more cost efficient and timely manner. This would avoid the PAB needing to "reprove" cases which would involve investigative and

attorney general time and funds. Often, the need to "reprove" a case can present difficulties such as witnesses that are no longer interested in cooperating or they are no longer available to be interviewed. These and other difficulties can result in delays in imposing appropriate discipline. It should be pointed out that the licensee would have the opportunity for due process in any proposed disciplinary matter. The PAB believes that investigative and attorney general time is valuable and these resources could be better spent pursuing other disciplinary matters.

Additionally, this inconsistency is confusing to consumers who for example would verify another health care license which would indicate disciplinary action. They would then view the physician assistant license and our records would indicate a clear license. Consumers may interpret this inconsistency as a lack of disciplinary consequences to violations of the law.

As a consumer protection agency, it is imperative that the PAB be able to take disciplinary action as soon as possible. There have been cases, for example, when a licensee surrenders their nursing license and is then able to continue practicing as a physician assistant. The PAB does not have the ability to quickly mirror the discipline taken by the Board of Registered Nursing. However, the Board of Registered Nursing has the ability to swiftly discipline a dually-licensed individual, such as a physician assistant. There is also a possibility that the PAB would not prevail in obtaining disciplinary action against the licensee. Again, the public finds this confusing and inconsistent in what they may perceive as a consumer protection board not protecting the public.

While the PAB may have no more than five or six cases a year that fit this category, the PAB believes that this amendment to the Physician Assistant Practice Act is a valuable tool in assisting it in its role of consumer protection. As a public protection agency, it is imperative that the PAB possess the necessary tools to quickly discipline licensees who have violated laws and regulations, including those who are dually-licensed. Consumers deserve consistent discipline for dually-licensed health care providers. The PAB would like to have the same ability to discipline dually-licensed individuals as the Board of Registered Nursing.

We respectfully ask that the Committees consider our request to amend the Physician Assistant Practice Act include this important provision.

TECHNOLOGY ISSUES

ISSUE #4: What can be done about the PAB's issues with BreEZe?

Staff Recommendation: The PAB should update the Committees about the current status of its implementation of BreEZe, discuss the current and anticipated challenges, and recommend potential solutions that the DCA should utilize to assist in the PAB's use of BreEZe.

PAB Response: As was stated in the PAB's Sunset Report, implementation of BreEZe by the PAB has been an ongoing challenge. PAB staff feels that, while many issues concerning the implementation of the system continue, they are now being sufficiently supported by DCA and BreEZe staff to continue full implementation and utilization of the system. This support has greatly assisted staff in addressing implementation issues and gaining confidence in using the system.

Highlights of the PAB's implementation of BreEZe include:

- On line license renewals. This feature was implemented in May 2015 and continues to function appropriately. On line renewals are popular with our licensees and their employers and we continue to see fewer "paper" renewals submitted. On line renewals also allow for more efficiencies in the office as there are fewer inquiries and paper renewals to process.

  Staff encourages licensees to renew on line promoting the time-saving benefits of this feature.

- On line initial application for licensure: The PAB has updated its initial application for licensure. The new version will be added to BreEZe later this year.

  Additionally, the PAB is simplifying the on line application so that applicants are no longer required to also submit a paper application when applying on line. This enhancement should be popular with applicants as they will no longer need to submit a paper application which will save time and allow for quicker issuance of a license.

- CME Audit. The PAB is working with another DCA board to implement a CME auditing system that will be appropriate for our needs. We anticipate that the audit feature will be available later this summer.

- BreEZe licensing and enforcement reports. The reliability and accuracy of BreEZe licensing and enforcement reports has been an issue for the PAB as it relies heavily on reports to track licensing and enforcement matters. Without accurate reports the PAB is not able to track licensing and enforcement data to determine if performance targets are being met.

  It appears that the licensing and enforcement reports being generated by BreEZe are becoming more accurate and useable. PAB staff continues to work with the BreEZe team to ensure that the reports are able to report accurate and useable data.

Potential challenges to the PAB with regard to BreEZe include assistance to understand and implement BreEZe. This is especially critical for a small board like the PAB. Staff does not have technical backgrounds or the time to devote exclusively to BreEZe. We

must rely on the expertise of the BreEZe staff to address technical or programing issues. These issues were discussed in our Sunset Report.

We can now report that the BreEZe team has been very helpful with the implementation of changes to the system. They now spend time explaining the system, set up meetings with us to review requests and ensuring that we understand the process or procedure. They are very knowledgeable, helpful, and available to answer questions. Because of this enhanced communication, staff is able gain confidence in the system which allows them to fully utilize it. This has been a major positive outcome for the PAB.

Staff has requested additional training post-implementation. It appears that BreEZe is now scheduling training for DCA employees already using the system.

PAB staff also attends licensing and enforcement user groups. These groups have proven to be beneficial in discussing and offering solutions to BreEZe issues. The groups provide PAB staff the opportunity to network with staff from other boards.

In addition to the BreEZe team, the PAB also receives a great deal of support from the Medical Board of California's Information Systems Branch staff in assisting us with implementation and user issues. They have supported and guided us during development and during implementation of the system.

PAB appreciates the ongoing interest and oversight the Legislature is providing with regard to the BreEZe project. The Board also believes that the audit by the California State Auditor was valuable and validated many of the concerns of PAB staff regarding the development and implementation of BreEZe. The PAB supports continued oversight by the Legislature of the BreEZe project as it helps to ensure that the project remains focused on resolving implementation and production issues.

ISSUE #5: Should the PAB utilize social media?

Staff Recommendation: The PAB should advise the Committees on of its efforts to utilize social media in order to keep licensees and the public aware of the PAB's activities.

PAB Response: We appreciate the recommendation that the PAB embrace the use of social media in its outreach to consumers, applicants, licensees, and interested others.

PAB staff will begin working with the Department of Consumer Affairs to assist us in establishing and using Twitter and Facebook accounts.

The PAB was concerned with the low response to the customer satisfaction survey. To address the low response rate, the PAB has taken steps to encourage individuals to complete the survey.

The following steps were recently implemented to increase survey participation:

- A link was added to the survey on the physician assistant congratulatory initial license letter to newly licensed physician assistants.
- A link to the survey was added to staff email signature lines.
- Staff verbally encourages applicants, licensees, and consumers to complete the survey.

These steps have increased the response rate to the customer satisfaction survey.

The PAB will continue to explore ways to increase response rates to the customer satisfaction survey.

ADMINISTRATIVE ISSUES

ISSUE #6: Should the PAB continue to have a voting physician and surgeon member who is also a member of the MBC?

Staff Recommendation: The PAB should provide additional information about this issue and discuss the feasibility of the alternatives that the Committee staff has raised.

PAB Response: As stated in the Sunset Report, the PAB is concerned that not allowing the physician member to vote will discourage Medical Board of California members from wishing to be appointed to the PAB. The PAB values the participation, guidance, and input of this member and believes that this relationship would be enhanced by allowing this member to vote.

However, the PAB respects the decision of the Legislature in the past sunset review to amend Business and Professions Code section 3505 in which the physician and surgeon member appointed by the Medical Board of California shall serve as an ex officio, nonvoting member whose functions shall include reporting to the Medical Board of California on the actions or discussions of the PAB.

The PAB recognizes that the Legislature believes that as an independent agency, the Medical Board of California member should now become a nonvoting member, provide input and guidance to the PAB, and report back to their board. The PAB is appreciative of the confidence the Legislature has in supporting an independent PAB.

While eliminating the physician member is a possible solution, the PAB believes that, even as a nonvoting member, this member provides valuable input which assists the PAB in carrying out their consumer protection mandate. The PAB would not want the collaborative relationship to change. Additionally, since the PAB has a shared services agreement with the Medical Board of California in which they provide IT, cashiering, consumer complaint, and disciplinary case functions, retaining a Medical Board of California member would be beneficial to both the PAB and Medical Board of California.

The PAB recognizes that this change recently took place, and, perhaps, it is too early to make a determination if the change would impact our relationship with the Medical Board of California.

The PAB respects and is committed to supporting the will of the Legislature and is committed to ensuring that the physician member of the Medical Board of California is able to successfully carry out their duties as a valued member of the PAB.

Perhaps this issue could be evaluated and included in a future PAB sunset review.

PRACTICE ISSUES

ISSUE #8: Should the PAB continue to explore ways to address the loss of the Associates Degree level PA programs?

Staff Recommendation: The PAB should advise the Committees on its progress in exploring alternatives to using ARC-PA accreditation and whether it has explored utilizing a study or cost benefit analysis of the PA profession to determine whether requiring licensees to graduate from a MS-level program is the appropriate minimum standard to protect consumers.

PAB Response:

1. Two of the three AS programs in California closed in the last two years. Loss of AS level programs was multi-factorial and ARC-PA was clear about there NOT being an agenda to close AS programs[1]. A pathway to compliance was provided for the AS programs to affiliate with an institution that could offer the graduate degree. While the degree issue certainly played a role in the loss of the two AS programs, it was only one of many factors leading to the closure of the two programs in California. The one remaining AS program in California has plans to transition to the MS by 2020.

2. The transition to the master's degree reflects the academic rigor required in PA education and was widely discussed prior to the change in the ARC-PA Standards. The professional, accrediting and certifying organizations all participated in the decision to make the master's degree the entry level degree with extensive study, analysis, discussion and input from the stakeholders. The profession has decided this will be the degree and trying to change that will put California at odds with the entire profession, lead to increased expense and complexity for licensing in California, may not actually increase workforce, and may decrease access to care for Californians in the long term[2]. Further study of the degree issue by the PAB would be duplicitous and counterproductive.

3. The ARC-PA has a similar mission to the Board and fulfills a vital role. They generally do an excellent job of ensuring the educational quality for PAs nationally. While we have a similar mission, the ARC-PA is clear about its independence and role being separate from any other entity. The problem, if there is one, is less in content and more in delivery; however more recent communications have been encouraging.

4. The applicant pool has changed with the progression of professional degrees, and is changing the face of the profession, but that issue is beyond the scope of the board. There are no shortages of PA applicants to programs which may have up to 20 qualified applicants for each seat. With 7 programs pending accreditation in the next few years in California, the number of PAs being educated in California is surpassing the number produced by the closure of the two programs.

5. The main limitation to expansion of PA programs in California, and nationally, is the availability of clinical training sites/preceptors. Approximately 50% of PA training occurs in the clinical environment with clinicians who are not paid, or have minimal non-monetary incentives to train PA students. There has been an expansion of PA programs from outside California that pay preceptors in our state, which has contributed to the already high cost of PA education and leads to a myriad of problems in PA training[3]. Georgia successfully implemented a modest tax incentive for clinical preceptors[4] which has been successful in overcoming these barriers and increased training sites. The PAB Education and Workforce Subcommittee is looking into how California may pursue similar legislation that would encourage PA training and retention in medically underserved areas in California

.

6. While this issue affects veterans, the effect is the same across the nation and even for applicants to the military PA program. There are several options for Veterans that want to attend PA school, but this is beyond the scope of the Board.

[1]ARC-PA, *Notes to Programs*, Spring 2015
[2]PAB, Education and Workforce Subcommittee, *Report on Alternative Accreditation*, 2015
[3]PAEA, *Payment of Clinical Sites and Preceptors in PA Education*, 2013
[4]Georgia Preceptor Tax Incentive Program, GA-PTIP

EDITS TO THE PAB PRACTICE ACT

ISSUE #9: Are there minor/non-substantive changes to the PAB's practice act that may improve the PAB's operations?

Staff Recommendation: The PAB should submit their proposal for any technical changes to its practice act to the Senate BP&ED Committee for possible inclusion in one of its annual committee omnibus bills.

PAB Response: The PAB appreciates the recommendation to submit technical changes to its practice act to the Senate BP&ED Committee for possible inclusion in annual omnibus bills.

The PAB, with the assistance of the Department of Consumer Affairs Legislative and Regulatory Review Unit, takes advantage of the opportunity to address minor/non-substantive changes to the Physician Assistant Practice Act with the annual omnibus bill. The PAB believes that the annual omnibus bill is an efficient method to address minor/non-substantive changes to the Physician Assistant Practice Act.

For example, last year, the PAB was included in the omnibus bill to amend Business and Professions Code section 3509.5 to change chairperson and vice chairperson to president and vice president.

It should be noted that references to "committee" or "committees" remain in the Physician Assistant Practice Act. Specifically, references in Article 6.5, Business and Professions Code sections 3534.1, 3534.2, 3534.3, and 3534.4. In this case, "committee" and "committees" refer to a "Diversion Evaluation Committee" which may be established by the PAB.

CONTINUED REGULATION OF THE PROFESSION

ISSUE #10: Should the licensing and regulation of PAs be continued and be regulated by the current PAB membership?

Staff Recommendation: The licensing and regulation of PAs should continue to be regulated by the current members of the PAB in order to protect the interests of the public and be reviewed once again in four years.

PAB Response: The PAB appreciates the recommendation that the licensing and regulation of physician assistants should be continued by the current members of the PAB in order to provide consumer protection.

Due to the implementation of the Patient Protection and Affordable Care Act in California, the PAB strongly believes that physician assistants provide a valuable role to address the health care shortages in California.

The PAB appreciates continuing its role as a consumer protection agency via its licensing and enforcement functions.

The PAB also wishes to continue its ongoing collaborative relationships with the Governor, the Legislature, the Department of Consumer Affairs, the Medical Board of California, and other state regulatory agencies. By working together we can ensure that California consumers can benefit from access to safe and competent health care services.

###

Agenda Item 5.c

PHYSICIAN ASSISTANT BOARD

LICENSING PROGRAM ACTIVITY REPORT

INITIAL LICENSES ISSUED

	January 4, 2016-April 11, 2016	January 1, 2015-April 30, 2015
Initial Licenses	198	179

SUMMARY OF RENEWED/CURRENT LICENSES

	As of April 11, 2016	As of April 30, 2015
Physician Assistant	10,732	10,093

Agenda Item 5.d

PHYSICIAN ASSISTANT BOARD DIVERSION PROGRAM

ACTIVITY REPORT

California licensed physician assistants participating in the Physician Assistant Board drug and alcohol diversion program:

	As of 1 April 2016	As of 1 April 2015	As of 1 April 2014
Voluntary referrals	05	03	04
Board referrals	09	11	10
Total number of participants	14	14	14

HISTORICAL STATISTICS

(Since program inception: 1990)

Total intakes into program as of 1 April 2016: 137

Closed Cases as of 1 April 2016

- Participant expired: 01
- Successful completion: 46
- Dismissed for failure to receive benefit: 04
- Dismissed for non-compliance: 25
- Voluntary withdrawal: 22
- Not eligible: 22

Total closed cases: 120

OTHER DCA BOARD DIVERSION PROGRAM PARTICIPANTS

(As of 31 December 2015)

Dental Board of California: 25
Osteopathic Medical Board of California: 11
Board of Pharmacy: 63
Physical Therapy Board of California: 20
Board of Registered Nursing: 441
Veterinary Board of California: 7

Agenda Item 5.e

PHYSICIAN ASSISTANT BOARD ENFORCEMENT ACTIVITY REPORT

January 1, 2016 to March 31, 2016

Disciplinary Decisions

License Denied	0
Probation	1
Public Reprimand/Reproval	2
Revocation	1
Surrender	0
Probationary Licenses Issued	0
Petition for Reinstatement Denied	0
Petition for Reinstatement Granted	0
Petition for Termination of Prob Denied	0
Petition for Termination of Prob Granted	0
Other	0

Accusation/Statement of Issues

Accusation Filed	7
Accusation Withdrawn	0
Statement of Issues Filed	0
Statement of Issues Withdrawn	0
Petition to Revoke Probation Filed	0
Petition to Compel Psychiatric Exam	0
Interim Suspension Orders (ISO)/PC23	2

Office of Attorney General Cases

Cases initiated	4
Pending Cases	42

Citation and Fines

Pending from previous FY	5
Issued	0
Closed	0
Withdrawn	0
Sent to AG/noncompliance	0
Pending	0
Initial Fines Issued	$0.00
Modified Fines Due	$0.00
Fines Received	$0.00

Current Probationers

Active	57
Tolled	5

COMPLAINTS

Total Received	65
Closed W/O Investigation	1
Assigned for Investigation	70

Agenda Item 6

PHYSICIAN ASSISTANT BOARD - FUND 0280
BUDGET REPORT
FY 2015-16 EXPENDITURE PROJECTION

FM 8

OBJECT DESCRIPTION	FY 2014-15 ACTUAL EXPENDITURES (MONTH 13)	FY 2014-15 PRIOR YEAR EXPENDITURES 2/28/2015	FY 2015-16 BUDGET STONE 2015-16	FY 2015-16 CURRENT YEAR EXPENDITURES 2/29/2016	FY 2015-16 PERCENT SPENT	FY 2015-16 PROJECTIONS TO YEAR END	FY 2015-16 UNENCUMBERED BALANCE
PERSONNEL SERVICES							
Civil Service-Perm	179,755	137,900	208,000	90,712	44%	138,309	69,691
Statutory Exempt (EO)	85,908	56,428	76,000	60,432	80%	90,648	(14,648)
Temp Help - Expert Examiner (903)							0
Temp Help Reg (907)	32,099	21,195	30,000	19,558	65%	33,966	(3,966)
Bd / Commsn (901, 920)			2,000	0	0%	0	2,000
Comm Member (911)	7,500	4,800		5,900		8,000	(8,000)
Overtime	1,702	1,702				0	0
Staff Benefits	116,885	81,825	135,000	73,872	55%	112,633	22,367
TOTALS, PERSONNEL SVC	423,849	303,850	451,000	250,474	56%	383,556	67,444
OPERATING EXPENSE AND EQUIPMENT							
General Expense	16,150	14,969	13,000	14,544	112%	16,200	(3,200)
Fingerprint Reports	15,582	9,163	15,000	10,388	69%	18,000	(3,000)
Minor Equipment	323	323	0			0	0
Printing	6,084	5,100	3,000	4,357	145%	5,500	(2,500)
Communication	1,802	1,078	6,000	917	15%	1,500	4,500
Postage	3,848	1,455	8,000	1,879	23%	4,000	4,000
Insurance			0			0	0
Travel In State	15,817	7,782	21,000	11,973	57%	15,500	5,500
Travel, Out-of-State			0			0	0
Training	0	0	1,000	0	0%	0	1,000
Facilities Operations	45,266	44,696	56,000	48,548	87%	48,548	7,452
Utilities			0			0	0
C & P Services - Interdept.	0	59,000	0			0	0
C & P Services - External	58,813	105,130	50,000	113,583	227%	113,583	(63,583)
DEPARTMENTAL SERVICES:							
OIS Pro Rata	77,436	57,318	144,000	108,000	75%	144,000	0
Administration Pro Rata	51,821	37,119	55,000	41,250	75%	55,000	0
Interagency Services	0	0	8,000	0	0%	0	8,000
Shared Svcs - MBC Only	90,112	90,112	93,000	90,112	97%	93,000	0
DOI - Pro Rata	910	1,161	1,000	750	75%	1,000	0
Public Affairs Pro Rata	2,057	1,134	3,000	2,250	75%	3,000	0
PCSD Pro Rata	1,988	1,239	0	0		0	0
INTERAGENCY SERVICES:							0
Consolidated Data Center	0	0	5,000	0	0%	0	5,000
DP Maintenance & Supply	160	131	3,000	219	7%	219	2,781
Statewide - Pro Rata	69,681	52,261	74,000	55,505	75%	74,000	0
ENFORCEMENT:							
Attorney General	363,002	248,304	451,000	347,798	77%	501,950	(50,950)
Office Admin. Hearings	57,102	41,198	75,000	45,745	61%	63,400	11,600
Court Reporters	3,817	3,079		1,254		4,000	(4,000)
Evidence/Witness Fees	44,713	26,550	0	11,100		32,000	(32,000)
Investigative Svcs - MBC Only	155,327	96,623	220,000	71,145	32%	155,000	65,000
Vehicle Operations						0	0
Major Equipment			9,000	0	0%	0	9,000
TOTALS, OE&E	1,081,811	904,924	1,314,000	981,317	75%	1,349,400	(35,400)
TOTAL EXPENSE	1,505,660	1,208,774	1,765,000	1,231,791	130%	1,732,956	32,044
Sched. Reimb. - Fingerprints	(11,493)	(5,221)	(25,000)	(11,466)	46%	(25,000)	0
Sched. Reimb. - Other	(940)	(470)	(25,000)	(705)	3%	(25,000)	0
Unsched. Reimb. - ICR - FTB Collection				(335)			0
Unsched. Reimb. - ICR	(50,421)	(34,181)		(32,282)			0
Unsched. Reimb. - ICR - Prob Monitor	(6,750)	(6,013)		(6,928)			0
NET APPROPRIATION	1,436,056	1,162,890	1,715,000	1,180,075	69%	1,682,956	32,044
						SURPLUS/(DEFICIT):	1.9%

0280 - Physician Assistant Board

1/7/2016

Analysis of Fund Condition

(Dollars in Thousands)

2016-17 Governor's Budget

	ACTUAL 2014-15	CY 2015-16	BY 2016-17
BEGINNING BALANCE	$ 1,531	$ 1,764	$ 1,886
Prior Year Adjustment	$ 24	$ -	$ -
Adjusted Beginning Balance	$ 1,555	$ 1,764	$ 1,886
REVENUES AND TRANSFERS			
Revenues:			
125600 Other regulatory fees	$ 12	$ 5	$ 5
125700 Other regulatory licenses and permits	$ 246	$ 250	$ 253
125800 Renewal fees	$ 1,378	$ 1,395	$ 1,410
125900 Delinquent fees	$ 4	$ 4	$ 4
141200 Sales of documents	$ -	$ -	$ -
142500 Miscellaneous services to the public	$ -	$ -	$ -
150300 Income from surplus money investments	$ 5	$ 6	$ 6
160400 Sale of fixed assets	$ -	$ -	$ -
161000 Escheat of unclaimed checks and warrants	$ 1	$ -	$ -
161400 Miscellaneous revenues	$ -	$ -	$ -
164300 Penalty Assessments	$ -	$ -	$ -
Totals, Revenues	$ 1,646	$ 1,660	$ 1,678
Transfers from Other Funds			
Proposed GF Loan Repay	$ -	$ -	$ 1,500
Totals, Revenues and Transfers	$ 1,646	$ 1,660	$ 3,178
Totals, Resources	$ 3,201	$ 3,424	$ 5,064
EXPENDITURES			
Disbursements:			
0840 State Controllers	$ -	$ -	$ -
1110 Program Expenditures (State Operations)	$ 1,436	$ 1,535	$ -
1111 Program Expenditures (State Operations)	$ -	$ -	$ 1,672
8880 FI$CAL (State Operations)	$ 1	$ 3	$ 1
Total Disbursements	$ 1,437	$ 1,538	$ 1,673
FUND BALANCE			
Reserve for economic uncertainties	$ 1,764	$ 1,886	$ 3,391
Months in Reserve	13.8	13.5	23.9

NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.

B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING IN BY+1.

C. ASSUMES INTEREST RATE AT 0.3%.

0280 - Physician Assistant Board
Analysis of Fund Condition

4/11/2016

(Dollars in Thousands)

2016-17 Governor's Budget

	ACTUAL 2014-15	CY 2015-16	BY 2016-17
BEGINNING BALANCE	$ 1,531	$ 1,764	$ 1,657
Prior Year Adjustment	$ 24	$ -	$ -
Adjusted Beginning Balance	$ 1,555	$ 1,764	$ 1,657
REVENUES AND TRANSFERS			
Revenues:			
125600 Other regulatory fees	$ 12	$ 6	$ 5
125700 Other regulatory licenses and permits	$ 246	$ 215	$ 253
125800 Renewal fees	$ 1,378	$ 1,337	$ 1,410
125900 Delinquent fees	$ 4	$ 4	$ 4
141200 Sales of documents	$ -	$ -	$ -
142500 Miscellaneous services to the public	$ -	$ -	$ -
150300 Income from surplus money investments	$ 5	$ 5	$ 6
160400 Sale of fixed assets	$ -	$ -	$ -
161000 Escheat of unclaimed checks and warrants	$ 1	$ -	$ -
161400 Miscellaneous revenues	$ -	$ -	$ -
164300 Penalty Assessments	$ -	$ -	$ -
Totals, Revenues	$ 1,646	$ 1,567	$ 1,678
Transfers from Other Funds			
Proposed GF Loan Repay	$ -	$ -	$ 1,500
Totals, Revenues and Transfers	$ 1,646	$ 1,567	$ 3,178
Totals, Resources	$ 3,201	$ 3,331	$ 4,835
EXPENDITURES			
Disbursements:			
0840 State Controllers	$ -	$ -	$ -
1110 Program Expenditures (State Operations)	$ 1,436	$ 1,671	$ -
1111 Program Expenditures (State Operations)	$ -	$ -	$ 1,672
8880 FI$CAL (State Operations)	$ 1	$ 3	$ 1
Total Disbursements	$ 1,437	$ 1,674	$ 1,673
FUND BALANCE			
Reserve for economic uncertainties	$ 1,764	$ 1,657	$ 3,162
Months in Reserve	12.6	11.9	22.3

NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.

B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING IN BY+1.

C. ASSUMES INTEREST RATE AT 0.3%.

D. ASSUMES EXPENDITURE AND REVENUE BASED ON FM 08

DEPARTMENT OF CONSUMER AFFAIRS

PHYSICIAN ASSISTANT COMMITTEE

BUDGET REPORT

AS OF 2/29/2016

FM 08

PHYSICIAN ASSISTANT BOARD

	DESCRIPTION	BUDGET	CURR. MONTH	YR-TO-DATE	ENCUMBRANCE	YTD + ENCUMBRANCE	BALANCE	PCNT REMAIN
PERSONAL SERVICES								
SALARIES AND WAGES								
003 00	CIVIL SERVICE-PERM	208,000	11,900	90,712	0	90,712	117,288	
033 04	TEMP HELP (907)	30,000	3,823	19,558	0	19,558	10,442	
063 00	STATUTORY-EXEMPT	76,000	7,554	60,432	0	60,432	15,568	
063 01	BD/COMMSN (901,920	2,000	0	0	0	0	2,000	
063 03	COMM MEMBER (904,9	0	0	5,900	0	5,900	(5,900)	
TOTAL SALARIES AND WAGES		**316,000**	**23,276**	**176,602**	**0**	**176,602**	**139,398**	**44.11%**
STAFF BENEFITS								
103 00	OASDI	17,000	1,181	9,170	0	9,170	7,831	
104 00	DENTAL INSURANCE	2,000	166	1,315	0	1,315	685	
105 00	HEALTH/WELFARE INS	42,000	2,041	15,630	0	15,630	26,370	
106 01	RETIREMENT	70,000	4,893	38,013	0	38,013	31,987	
125 00	WORKERS' COMPENSAT	4,000	0	0	0	0	4,000	
125 15	SCIF ALLOCATION CO	0	121	815	0	815	(815)	
134 00	OTHER-STAFF BENEFI	0	797	6,152	0	6,152	(6,152)	
135 00	LIFE INSURANCE	0	7	55	0	55	(55)	
136 00	VISION CARE	0	26	207	0	207	(207)	
137 00	MEDICARE TAXATION	0	332	2,515	0	2,515	(2,515)	
TOTAL STAFF BENEFITS		**135,000**	**9,562**	**73,872**	**0**	**73,872**	**61,128**	**45.28%**
TOTAL PERSONAL SERVICES		**451,000**	**32,839**	**250,474**	**0**	**250,474**	**200,526**	**44.46%**
OPERATING EXPENSES & EQUIPMENT								
FINGERPRINTS								
213 04	FINGERPRINT REPORT	15,000	1,029	10,388	0	10,388	4,612	
TOTAL FINGERPRINTS		**15,000**	**1,029**	**10,388**	**0**	**10,388**	**4,612**	**30.75%**
GENERAL EXPENSE								
201 00	GENERAL EXPENSE	13,000	0	0	0	0	13,000	
206 00	MISC OFFICE SUPPLI	0	0	1,646	0	1,646	(1,646)	
207 00	FREIGHT & DRAYAGE	0	84	734	0	734	(734)	
213 02	ADMIN OVERHEAD-OTH	0	0	1,695	0	1,695	(1,695)	
217 00	MTG/CONF/EXHIBIT/S	0	1,953	4,528	5,941	10,468	(10,468)	
TOTAL GENERAL EXPENSE		**13,000**	**2,037**	**8,603**	**5,941**	**14,544**	**(1,544)**	**-11.88%**

DEPARTMENT OF CONSUMER AFFAIRS

PHYSICIAN ASSISTANT BOARD

	DESCRIPTION	BUDGET	CURR. MONTH	YR-TO-DATE	ENCUMBRANCE	YTD + ENCUMBRANCE	BALANCE	PCNT REMAIN
PRINTING								
241 00	PRINTING	3,000	0	0	0	0	3,000	
242 03	COPY COSTS ALLO	0	0	90	0	90	(90)	
242 05	METRO PRINT/MAIL	0	0	3,937	0	3,937	(3,937)	
244 00	OFFICE COPIER EXP	0	0	309	21	330	(330)	
TOTAL PRINTING		**3,000**	**0**	**4,336**	**21**	**4,357**	**(1,357)**	**-45.24%**
COMMUNICATIONS								
251 00	COMMUNICATIONS	6,000	0	0	0	0	6,000	
252 00	CELL PHONES,PDA,PA	0	47	109	0	109	(109)	
257 01	TELEPHONE EXCHANGE	0	140	808	0	808	(808)	
TOTAL COMMUNICATIONS		**6,000**	**187**	**917**	**0**	**917**	**5,083**	**84.72%**
POSTAGE								
261 00	POSTAGE	8,000	0	0	0	0	8,000	
262 00	STAMPS, STAMP ENVE	0	0	513	0	513	(513)	
263 05	DCA POSTAGE ALLO	0	356	1,365	0	1,365	(1,365)	
TOTAL POSTAGE		**8,000**	**356**	**1,879**	**0**	**1,879**	**6,121**	**76.52%**
TRAVEL: IN-STATE								
291 00	TRAVEL: IN-STATE	21,000	0	0	0	0	21,000	
292 00	PER DIEM-I/S	0	1,039	3,724	0	3,724	(3,724)	
294 00	COMMERCIAL AIR-I/S	0	183	5,170	0	5,170	(5,170)	
296 00	PRIVATE CAR-I/S	0	530	1,657	0	1,657	(1,657)	
297 00	RENTAL CAR-I/S	0	9	1,009	0	1,009	(1,009)	
301 00	TAXI & SHUTTLE SER	0	42	114	0	114	(114)	
305 00	MGMT/TRANS FEE-I/S	0	45	179	0	179	(179)	
305 01	CALATERS SERVICE F	0	0	120	0	120	(120)	
TOTAL TRAVEL: IN-STATE		**21,000**	**1,848**	**11,973**	**0**	**11,973**	**9,027**	**42.99%**
TRAINING								
331 00	TRAINING	1,000	0	0	0	0	1,000	
TOTAL TRAINING		**1,000**	**0**	**0**	**0**	**0**	**1,000**	**100.00%**
FACILITIES OPERATIONS								
341 00	FACILITIES OPERATI	56,000	0	0	0	0	56,000	
343 00	RENT-BLDG/GRND(NON	0	7,379	33,222	14,796	48,018	(48,018)	
347 00	FACILITY PLNG-DGS	0	76	530	0	530	(530)	
TOTAL FACILITIES OPERATIONS		**56,000**	**7,455**	**33,752**	**14,796**	**48,548**	**7,452**	**13.31%**

PHYSICIAN ASSISTANT BOARD

	DESCRIPTION	BUDGET	CURR. MONTH	YR-TO-DATE	ENCUMBRANCE	YTD + ENCUMBRANCE	BALANCE	PCNT REMAIN
C/P SVS - EXTERNAL								
402 00	CONSULT/PROF SERV-	50,000	0	0	0	0	50,000	
404 05	C&P EXT ADMIN CR C	0	778	4,950	21,050	26,000	(26,000)	
408 00	COMPLY INSP/INVST-	0	0	3,600	0	3,600	(3,600)	
414 00	LEGAL-EXT SVS	0	0	110	0	110	(110)	
418 02	CONS/PROF SVS-EXTR	0	684	4,827	79,046	83,873	(83,873)	
TOTAL	**C/P SVS - EXTERNAL**	**50,000**	**1,462**	**13,487**	**100,096**	**113,583**	**(63,583)**	**-127.17%**
DEPARTMENTAL SERVICES								
424 03	OIS PRO RATA	144,000	36,500	108,000	0	108,000	36,000	
427 00	INDIRECT DISTRB CO	55,000	14,250	41,250	0	41,250	13,750	
427 01	INTERAGENCY SERVS	8,000	0	0	0	0	8,000	
427 02	SHARED SVS-MBC ONL	93,000	0	45,056	45,056	90,112	2,888	
427 30	DOI - ISU PRO RATA	1,000	250	750	0	750	250	
427 34	COMMUNICATIONS PRO	3,000	1,750	2,250	0	2,250	750	
427 35	PPRD PRO RATA	0	(1,000)	0	0	0	0	
TOTAL	**DEPARTMENTAL SERVICES**	**304,000**	**51,750**	**197,306**	**45,056**	**242,362**	**61,638**	**20.28%**
CONSOLIDATED DATA CENTERS								
428 00	CONSOLIDATED DATA	5,000	0	0	0	0	5,000	
TOTAL	**CONSOLIDATED DATA CENTERS**	**5,000**	**0**	**0**	**0**	**0**	**5,000**	**100.00%**
DATA PROCESSING								
431 00	INFORMATION TECHNO	3,000	0	0	0	0	3,000	
436 00	SUPPLIES-IT (PAPER	0	0	219	0	219	(219)	
TOTAL	**DATA PROCESSING**	**3,000**	**0**	**219**	**0**	**219**	**2,781**	**92.71%**
CENTRAL ADMINISTRATIVE SERVICES								
438 00	PRO RATA	74,000	18,502	55,505	0	55,505	18,496	
TOTAL	**CENTRAL ADMINISTRATIVE SERVICES**	**74,000**	**18,502**	**55,505**	**0**	**55,505**	**18,496**	**24.99%**
MAJOR EQUIPMENT								
452 00	REPLACEMENT-EQPT	9,000	0	0	0	0	9,000	
TOTAL	**MAJOR EQUIPMENT**	**9,000**	**0**	**0**	**0**	**0**	**9,000**	**100.00%**
ENFORCEMENT								
396 00	ATTORNEY GENL-INTE	271,000	58,517	252,745	0	252,745	18,256	
397 00	OFC ADMIN HEARNG-I	75,000	1,655	25,083	0	25,083	49,918	
414 31	EVIDENCE/WITNESS F	0	3,450	11,100	0	11,100	(11,100)	
418 97	COURT REPORTER SER	0	0	1,254	0	1,254	(1,254)	

DEPARTMENT OF CONSUMER AFFAIRS

BUDGET REPORT

AS OF 2/29/2016

FM 08

PHYSICIAN ASSISTANT BOARD

	DESCRIPTION	BUDGET	CURR. MONTH	YR-TO-DATE	ENCUMBRANCE	YTD + ENCUMBRANCE	BALANCE	PCNT REMAIN
427 31	DOI - INVESTIGATIO	218,870	0	0	0	0	218,870	
427 32	INVESTIGATIVE SVS-	1,130	7,998	57,567	0	57,567	(56,437)	
TOTAL	ENFORCEMENT	566,000	71,620	347,748	0	347,748	218,252	38.56%
TOTAL	OPERATING EXPENSES & EQUIPMEN	1,134,000	156,244	686,112	165,909	852,021	281,979	24.87%
	PHYSICIAN ASSISTANT BOARD	1,585,000	189,083	936,586	165,909	1,102,495	482,505	30.44%
		1,585,000	189,083	936,586	165,909	1,102,495	482,505	30.44%

Agenda Item 7

Presentation and Discussion Regarding BreEZe Security of Personal Data

Department of Consumer Affairs Privacy Policy

The California Department of Consumer Affairs is committed to the free flow of information that can help consumers make good marketplace decisions. The Department is also committed to promoting and protecting the privacy rights of individuals, as enumerated in Article 1 of the California Constitution, the Information Practices Act of 1977, and other state and federal statutes.

It is the policy of the Department of Consumer Affairs and its constituent agencies to limit the collection and safeguard the privacy of personal information collected or maintained by the Department or by any of its constituent agencies. The Department's information management practices are consistent with the Information Practices Act (Civil Code Section 1798 et seq.), the Public Records Act (Government Code Section 6250 et seq.), Government Code Sections 11015.5 and 11019.9, and with other applicable laws pertaining to information privacy.

The Department follows these principles in collecting and managing personal information:

We collect personal information on individuals only as allowed by law. We limit the collection of personal information to what is relevant and necessary to accomplish a lawful purpose of the Department. For example, we need to know someone's address, telephone number and social security number, among other things, to properly identify the person before issuing a professional license. Personal information, as defined in the Information Practices Act, is information that identifies or describes an individual including, name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history.
We do not collect home, business or e-mail addresses, or account information from persons who simply browse our Internet Web sites. The information that we automatically collect includes your domain name or Internet Protocol address, the type of browser and operating system you used, date and time you visited the site, Web pages you visited, and any forms you downloaded. Cookies are simple text files stored on your computer by your Web browser. We do not use cookies to collect or store personal information. We collect personal information about you through our Web site only if you provide it to us voluntarily through e-mail, registration forms, or surveys.

We tell people who provide personal information to the Department the purpose for which the information is collected. We tell persons who are asked to provide personal information about the general uses that we will make of that information. We do this at the time of collection. With each request for personal information, we provide information on the authority under which the request is made, the principal uses we make of the information and the possible disclosures we are obligated to make to other government agencies and to the public.

We tell people who provide personal information about their opportunity to review that information. The Department allows individuals who provide personal information to review the information and contest its accuracy or completeness.

We use personal information only for the specified purposes, or purposes consistent with those purposes, unless we get the consent of the subject of the information, or unless required by law or regulation. The Public Records Act exists to ensure that government is open and that the public has a right to have access to appropriate records and information possessed by state government. At the same time, there are exceptions in both state and federal law to the public's right to access public records. These exceptions serve various needs including maintaining the privacy of individuals. In the event of a conflict between this Policy and the Public Records Act, the Information Practices Act or other law governing the disclosure of records, the applicable law will control.

We use information security safeguards. We take reasonable precautions to protect the personal information on individuals collected or maintained by the Department against loss, unauthorized access, and illegal use or disclosure. On our Web sites, we protect the security your personal information during transmission by using Secure Sockets Layer (SSL) software, which encrypts the information you type in. Personal information is stored in secure locations. Our staff is trained on procedures for the release of information, and access to personal information is limited to those staff whose work requires it. Confidential information is destroyed according to the Department's records retention schedule. The Department conducts periodic audits to ensure that proper information management policies and procedures are being followed.

We will provide additional explanations of our privacy policy if requested. If you have further questions about the Department's privacy policy, you may email us.

Agenda

Item

9

CURRENT
DUTY
STATEMENT

Department of Consumer Affairs
Position Duty Statement
HR-041 (new 5/04)

Classification Title Executive Officer	**Board/Bureau/Division** Physician Assistant Board
Working Title EO	**Office/Unit/Section / Geographic Location** Office/Sacramento
Position Number 602-110-6606-001	**Effective Date**

The Executive Officer (EO) is exempt from civil service and, under the administrative direction of the Physician Assistant Board (Board) (becomes effective 1/1/2013 and was formerly Physician Assistant Committee), is the chief administrative and operating officer for the Board. The Executive Officer is further responsible for the interpreting and executing the intent of all board polices to the public and other governmental entities.

A. SPECIFIC ACTIVITIES [Essential (E) / Marginal (M) Functions]

50% (E) Provides administrative and management oversight of the Board's licensing, consumer protection (enforcement & diversion) and support services programs.
The EO administers the processing of applications for licensure to ensure only qualified practitioners are issued a license to practice as a physician assistant in California, coordinates the connection between the Board and the National Commission on Certification of Physician Assistant's (NCCPA); the NCCPA is the national origination that gives a written examination to Physician Assistant training program graduates that is recognized by all State regulatory boards for licensing purposes and has been given the approval by the Board to administer the examination. The results of this written examination are sent to the Board via e-mail and in writing, and are used to determine an applicant's qualifications for licensure in California. The EO also administers the continuing education program requirements for licensees, including ensuring that audits are conducted on a routine basis.

The EO oversees the processing of complaints, investigations, prosecution and disciplinary actions performed by the Office of the Attorney General, testifies as needed at negotiations for stipulated agreements to ensure proposed terms and conditions are in compliance with established Disciplinary Guidelines, monitors the Disciplinary Guidelines and directs staff to draft amendments as necessary to coordinate with legislative and/or policy changes, monitors and ensures deadlines and procedures mandated by the Administrative Procedure Act are met and ensures cost recovery is requested in all disciplinary actions.

The EO oversees all administrative and lead functions performed and managed by staff to ensure compliance with mandates, directs the implementation and execution of all Board policies and procedures, provides fiscal management including the oversight of budget preparations and supervises and directs all staff service functions. The EO serves as the official custodian of all Board records.

30% (E) Provides legislative and regulatory oversight on behalf of the PAB.
The EO identifies the need for new legislation, recommends modification of existing statute or regulations to conform with Board policy, oversee and ensures compliance of all aspects of the legislative and rulemaking processes, prepares author's statements and fact sheets, testifies before legislative Boards on the Board's behalf, advocates consumer protection, lobbies on behalf of the consumer and the Board, and obtains authors of legislation as needed.

15% (E) Provides public contact on behalf of the Board.
The EO interprets and elucidates the Board's practice act, regulations, protocols, and policies, prepares press and media releases, represents the PAB before professional and health associations, other State, local or Federal governmental agencies, health organizations and facilities, consumer groups, insurance organizations and other regulatory agencies to provide information regarding the PAB's practice act, programs, and policies, solicits support on issues affecting the PAB and obtains information for feedback to the Board as needed.

05% Provides management oversight of all meetings related to the PAB.
The EO directs the organization and coordination of Board, executive, and task force meetings and the compilation of data, directs activities specific to conducting official public meetings required by law and ensures the meetings are in compliance with the Open Public Meetings Act, coordinates closed sessions as authorized by statute and hearings specific to the requirements of the Administrative Procedures Act and/or the Office of Administrative Law.

B. Supervision Received

The incumbent is exempt from civil service and receives administrative direction only from the appointed members of the Physician Assistant Board.

C. Supervision Exercised

The incumbent is responsible for determining and participating in making policy, formulating long-range programs and objectives, and reviewing implementation of programs and conformance with policies and objectives, for the integration and coordination of multiple functions, and for planning, directing, assigning and reviewing the work performed by the staff of the Physician Assistant Board.

D. Administrative Responsibility

The incumbent is the chief administrative and operating officer for the Board and is responsible for the interpreting and executing the intent of all board policies to the public and other governmental entities.

E. Personal Contacts

The incumbent represents the Physician Assistant Board before the State legislature, professional and health associations, other State, local or Federal governmental agencies, health organizations, PA programs, consumer groups, and other regulatory agencies. In addition the incumbent interacts with peers, staff, applicants, licensees, consumers, attorneys, expert consultants, board members, various law enforcement agencies, and the Department of Consumer Affairs.

F. Actions and Consequences

Errors in judgment by the incumbent could have significant adverse impact on the California consumer of medical care, applicants for licensure, licensees, and on the operations and functions of the Physician Assistant Board and the Department of Consumer Affairs.

G. Functional Requirements

The incumbent works up to 40 hours a week in an office setting with artificial light and temperature control, restrooms are off site and the office has a two single doorway entrance that the EO must physically open; there is no access to an automatic door entry. Must have the ability to use a personal computer with Microsoft Excel, Microsoft Word, Novell; Microsoft outlook, GroupWise, e-mail and Internet. The EO must also have the ability to use the Department of Consumer Affairs, CAS system to enter, retrieve, delete and verify licensee's information. Effectively use a calculator, tape recorder, copier, fax machine shredder and telephone is essential. The ability to unlock the office security safe and to set and disarm the Board's security alarm on a daily basis is also required. Sitting and standing requirements are consistent with office work and attendance at numerous meetings. Frequent travel is an essential function of this position.

H. Other Information

The incumbent must possess sound management, organizational and administrative skills, be able to communicate orally and in writing, exercise good judgment and tact while representing the Board, demonstrate creativity and flexibility in problem solving, make effective use of time and resources available and possess an understanding of the legislative and regulatory mandates governing the administration of a regulatory board.

Fingerprinting

Title 11, section 703(d) California Code of Regulations requires criminal record checks of all personnel who have access to Criminal Offender Record Information (CORI). Pursuant to this requirement, applicants for this position will be required to submit fingerprints to the Department of Justice and be cleared before hiring.

Revised: 11/2012

PROPOSED DUTY STATEMENT

Department of Consumer Affairs PROPOSED

Position Duty Statement

HR-041E (new 1/2015)

Exempt Employee's Name	
Classification Title Executive Officer	**Board / Bureau / Commission / Committee** Physician Assistant Board
Exempt Level / Salary Range - / $6,584 – $7,554	**Geographic Location** Sacramento
Position Number 602-110-6606-001	**Effective Date of Appointment**

The Executive Officer (EO) is exempt from civil service and, under the administrative direction of the Physician Assistant Board (Board) (becomes effective 1/1/2013 and was formerly Physician Assistant Committee), is the chief administrative and operating officer for the Board. The Executive Officer is further responsible for the interpreting and executing the intent of all board polices to the public and other governmental entities. Duties include, but are not limited to:

A. SPECIFIC ACTIVITIES [Essential (E) / Marginal (M) Functions]

50% (E) Provides administrative and management oversight of the Board's licensing, consumer protection (enforcement & diversion) and support services programs.
Administers the processing of applications for licensure to ensure only qualified practitioners are issued a license to practice as a physician assistant in California, coordinates the connection between the Board and the National Commission on Certification of Physician Assistant's (NCCPA); the NCCPA is the national origination that gives a written examination to Physician Assistant training program graduates that is recognized by all State regulatory boards for licensing purposes and has been given the approval by the Board to administer the examination. The results of this written examination are sent to the Board via e-mail and in writing, and are used to determine an applicant's qualifications for licensure in California. Administers the continuing education program requirements for licensees, including ensuring that audits are conducted on a routine basis.

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F. Actions and Consequences

Errors in judgment by the incumbent could have significant adverse impact on the California consumer of medical care, applicants for licensure, licensees, and on the operations and functions of the Physician Assistant Board and the Department of Consumer Affairs.

G. Functional Requirements

The incumbent works in an office setting with artificial light and temperature control, restrooms are off site and the office has a two single doorway entrance that the EO must physically open; there is no access to an automatic door entry. Must have the ability to use a personal computer with Microsoft Excel, Microsoft Word, Novell; Microsoft outlook, GroupWise, e-mail and Internet. The EO must also have the ability to use the Department of Consumer Affairs, CAS system to enter, retrieve, delete and verify licensee's information. Effectively use a calculator, tape recorder, copier, fax machine shredder and telephone is essential. The ability to unlock the office security safe and to set and disarm the Board's security alarm on a daily basis is also required. Sitting and standing requirements are consistent with office work and attendance at numerous meetings. Frequent travel is an essential function of this position.

H. Other Information

The incumbent must possess sound management, organizational and administrative skills, be able to communicate orally and in writing, exercise good judgment and tact while representing the Board, demonstrate creativity and flexibility in problem solving, make effective use of time and resources available and possess an understanding of the legislative and regulatory mandates governing the administration of a regulatory board.

Fingerprinting

Title 11, section 703(d) California Code of Regulations requires criminal record checks of all personnel who have access to Criminal Offender Record Information (CORI). Pursuant to this requirement, applicants for this position will be required to submit fingerprints to the Department of Justice and be cleared before hiring.

I have read and understand the duties listed above and I can perform these duties with or without reasonable accommodation. (If you believe reasonable accommodation is necessary, discuss your concerns with the hiring supervisor. If unsure of a need for reasonable accommodation, inform the hiring supervisor, who will discuss your concerns with the Health & Safety analyst.)

____
Employee Signature Date

____
Employee's Printed Name, Classification

I have discussed the duties of this position with and have provided a copy of this duty statement to the employee named above.

____
Board President / Chairperson Signature Date

____
Board President / Chairperson's Printed Name

Revised: April 2016

SAMPLE DUTY STATEMENT

Department of Consumer Affairs
Exempt Position Duty Statement
HR-041E (new 1/2015)

Attachment B

Exempt Employee's Name	
Classification Title Executive Officer	**Board / Bureau / Commission / Committee**
Exempt Level / Salary Range	**Geographic Location** Sacramento
Position Number	**Effective Date of Appointment**

General Statement: Under the general direction and leadership of the X-member Board and its Administrative Committee, the Executive Officer of the Board functions as operations officer for management of the Board's resources and staff. The Executive Officer is further responsible for interpreting and executing the intent of all Board policies to the public and to other governmental agencies. This position is an at-will position and the incumbent serves at the pleasure of the Board. These duties include, but are not limited to, the following:

A. **Specific Assignments** [Essential (E) / Marginal (M) Functions]:

40% **(E)** Acts as principal operations officer for the Board; manages all Board offices; manages all personnel including recruitment, orientation, professional staff development and evaluation of senior level staff; oversees the procurement and management of space, equipment, and supplies; identifies need for augmentation of operating budget and ensures that all budget change proposals, finance letters, and other fiscal documents are accurate and that they support the Board's goals and mission.

30% **(E)** Functions as administrative agent for the Board; prepares agendas and minutes for all Board meetings and committee meetings; acts as Board spokesperson at all meetings and hearings as delegated by the Board; serves as liaison between Board, Board Committees, and staff; conducts orientation for new Board members. Delegates, but is responsible for evaluation of credentials of application, endorsement, and renewal for California, the United States, and out-of-country; sees that all meetings and hearings are notices to the public and follows proper administrative procedure; responsible for the regulatory change process from notice of hearing to implementation of approved regulations; provides for initial and continued approval of programs; implements legislation and legislative mandates.

10% **(E)** Responsible for interpretation and execution of the Business and Professions Code and all Board policies and guidelines related to the Board; seeks wide dissemination of the above information in a structured manner through informational hearings, workshops, and seminars conducted by Board staff and members; seeks legal counsel from the Department of Consumer Affairs in carrying out the above activities.

10% **(E)** Provides for investigation of complaints; preparation of accusations or statements of issue; signs final accusation; consults with legal counsel on problem cases, monitors flow of cases in system and monitors costs; advises Attorney General's Office and hearing officer of Board's disciplinary guidelines; ensures that Administrative Procedure Act timelines are followed and that all Board disciplinary decisions are appropriately implemented. Meets and confers with outside legal agencies on cases; serves as Board's liaison to media and public on all publicized cases. Maintains confidentiality of information and records in accordance with Public Records Act.

10% **(E)** Serves as the Board's liaison to a wide array of governmental and voluntary organizations; serves as liaison to professional organizations; participates and serves as Board's staff representative to various associations.

B. Supervision Received

The Executive Officer serves under the administrative direction of the Board and reports directly to the Board President or Chairperson.

C. Supervision Exercised

The Executive Officer is delegated the authority by the Board to provide leadership and oversight for all Board programs and activities. The Executive Officer directly supervises [list direct reports].

D. Administrative Responsibility

The Executive Officer is responsible for all administrative and fiscal functions and aspects of the Board.

E. Personal Contacts

The Executive Officer has regular contact with all levels of Board staff, DCA Executive Management and staff, legislators, the Governor's Office, members of the public and members of the trade and industry groups.

F. Functional Requirements

No specific physical requirements are present. The Executive Officer works in an office setting with artificial light and temperature control. Daily access to and use of a personal computer and telephone are essential. Sitting and standing requirements are consistent with office work. This position requires frequent travel including overnight travel by all available transportation methods.

G. Other Information

This position has access to Criminal Offender Record Information (CORI). Title 11, Section 703(d) of the California Code of Regulations requires criminal record checks of all personnel who have access to CORI. Pursuant to this requirement, incumbents in this position will be required to submit fingerprints to the Department of Justice and be cleared prior to appointment.

This position also requires the incumbent to take an Oath of Office prior to appointment.

Additionally, this position is subject to the Department of Consumer Affairs' Conflict of Interest Code (16 CCR § 3830) and the incumbent must file a Statement of Economic Interests Form upon appointment, annually, and upon separation.

I have read and understand the duties listed above and I can perform these duties with or without reasonable accommodation. (If you believe reasonable accommodation is necessary, discuss your concerns with the hiring supervisor. If unsure of a need for reasonable accommodation, inform the hiring supervisor, who will discuss your concerns with the Health & Safety analyst.)

Employee Signature Date

Employee's Printed Name, Classification

I have discussed the duties of this position with and have provided a copy of this duty statement to the employee named above.

Board President / Chairperson Signature Date

Board President / Chairperson's Printed Name

NEW (date) or Revision (date)

EXECUTIVE OFFICER RECRUITMENT OUTLINE

Prepared by
Department of Consumer Affairs
Office of Human Resources
1625 N. Market Blvd. Suite N-321
Sacramento, CA 95834

Revised January 2015

FOREWORD

The purpose of this outline is to provide a practical guide for Board Members in the recruitment of qualified Executive Officers (EO). This manual is intended as a useful reference and common terminology is used insofar as possible. It should be considered a supplement to working with the Deputy Director for Board and Bureau Relations and/or the Department of Consumer Affairs (DCA) Office of Human Resources (OHR) Personnel Officer (PO) or assigned Classification and Pay Analyst (C&P) in the selection of an EO.

A sample listing of activities and a timeline for EO recruitment is included as **Attachment A**.

Any inquiries or comments relating to this manual should be directed to the DCA OHR.

BOARD ACTION:
REVIEW DUTY STATEMENT

An updated and current EO duty statement that clearly and accurately describes the functions and responsibilities of the position, as determined by the Board is required. The duty statement provides the foundation upon which recruitment is based. See **Attachment B** for a sample EO duty statement.

The duty statement will be used to develop recruitment flyers (**Attachment C**) or advertisements for the position. In addition, it will be used to define the criteria for the screening of applications and the development of interview questions.

If a current duty statement is not available, the OHR C&P Analyst assigned to the Board will obtain a duty statement from another Board of similar size and activities and can assist the Board in developing an appropriate duty statement.

Any changes to the duty statement require Board review and approval at a publicly announced Board Meeting.

RECRUITMENT OF QUALIFIED CANDIDATES

Recruitment and appointments of EOs shall be made in accordance with the provisions of civil service laws to ensure consistency and transparency throughout the department.

Unless licensure is required, there are no specific qualifications established for EO positions. Board Members must determine the qualifications that will produce the best EO for that Board. Therefore, it is necessary for the Board (or the Selection Committee) to develop a set of qualifications to be used in the recruitment of EOs.

The following criteria are general in nature; however, they may be used for many of the EO positions:

✓	Demonstrated supervisory and management skills.
✓	Administrative experience including fiscal responsibility, budget preparation, development of regulations, policy development and implementation.
✓	Legislative or lobbying experience and a working knowledge of the State and federal statutes and rules pertaining to the particular Board.
✓	Regulatory and/or enforcement experience such as processing complaints, monitoring investigations or hearings on disciplinary matters.
✓	Ability to communicate effectively both orally and in writing and deal effectively with a broad spectrum of people interacting with the board.
✓	Prior experience working with Boards.
✓	Experience with licensure including, but not limited to, professional examination or testing procedures and techniques.
✓	Knowledge of current consumer issues in the licensed profession.

Initial recruitment will include advertising on the California Department of Human Resources' website (www.calhr.ca.gov). Other recruitment activities can include advertising the position in regional newspapers, minority publications and professional publications, depending on the

available budget and the needs of the Board. Reaching a group of candidates whom the Board considers to be the most likely to be excellent candidates will dictate the focus and direction of the advertising.

PUBLIC MEETING REQUIREMENTS

Your Board Attorney from the DCA Legal Affairs Office should address issues regarding public meeting requirements. When a committee of the Board, consists of more than two members, it is considered a public meeting and must be noticed, as required by law. Therefore, a Selection Committee, established by the Board to assist in the recruitment effort, should be limited to no more than two Members.

BOARD ACTION: ESTABLISH SELECTION COMMITTEE

The Board should identify two members who will have sufficient time and interest to commit to actively participating in the selection process. Certain Boards require the EO selection to be approved by the DCA Director, as noted on page seven herein. In those instances, the Board should consider whether or not a designee of the Director should be part of the Selection Committee.

COMMITTEE ACTION: SCREENING APPLICATIONS

The Selection Committee will work with the OHR PO or assigned C&P Analyst, and the DCA Deputy Director for Board and Bureau Relations to advertise, develop screening criteria, review applications, conduct initial interviews and obtain a manageable number of candidates to be interviewed by the full Board at a publicly noticed meeting.

Initial (pre-) screening of qualified applicants can be performed by the C&P Analyst or by the Selection Committee, in accordance with the qualifications established by the Board or the Selection Committee. The screening criteria can be very general in nature, and is intended to eliminate those candidates who clearly do not meet the criteria established by the Board or Selection Committee.

A final screening by the Selection Committee will identify a target number of candidates for an initial interview. Typically, a candidate pool of at least five to six applicants is recommended.

Applicants who were screened out during the initial screening process should be notified by mail of the results. These notifications can be done by Board staff or the C&P Analyst. Per Government Code Section 12946, OHR will retain the applications a minimum of two years following the completion of the selection process.

SELECTION COMMITTEE ACTION: INITIAL INTERVIEWS

If initial interviews are held to narrow the field of candidates, the Selection Committee is responsible for conducting the interviews. Board staff or the C&P Analyst may assist in scheduling the interviews, on the date(s) and at the location(s) selected by the Selection Committee. If interviews

are scheduled for more than one day, the interviews may be scheduled in different locations depending upon Board interest, candidate locations and budget considerations.

In scheduling interviews, the notifications should provide at least a one-week advance notice for the candidates. In determining the location of the interviews, consideration should be given to where the majority of candidates reside, as candidates must endure any costs associated with appearing for an interview.

If references were not requested in the recruitment advertisement, candidates should be advised to bring a list of at least three professional references to the first interview.

Forty-five to fifty minutes should be allowed for each candidate's interview. Prior to the interview, the duty statement should be provided. [Note: For confidentiality purposes, examples of effective interview questions will only be provided to the Selection Committee.]

In the initial interview, the following topics should be thoroughly covered:

✓	The exact duties of the position.
✓	The supervision given and/or received.
✓	The frequency and level of public contact.
✓	The value of independent decision-making.
✓	The responsibility of training staff, if applicable.
✓	The EO's relationship with the Board.
✓	The education desired/required.
✓	The qualifications of the position.

In closing the interview, advise the applicants when a decision is expected to be made and that all candidates will be notified in writing if they will proceed to the next step, a final interview before the full Board.

CHECKING REFERENCES

The references of the final candidates may be obtained and contacted prior to any final interviews. This can be done by the Board members or by the C&P Analyst assigned to the Board. This provides the Board with all necessary information to make a decision on the day of the interviews and eliminates the need for another public meeting on the same issue. See **Attachment D** for a sample of appropriate reference check questions.

BOARD ACTION:
CONDUCTING TOP CANDIDATE INTERVIEWS

Final interviews of the top two to three candidates are conducted by a quorum of the full Board in closed session. This meeting must conform to the notice requirements of the Bagley-Keene Act for all Board meetings. This interview gives all Board Members an opportunity to meet the candidates and assess their qualifications and to determine how well s/he will perform the duties of the position, in addition to how well s/he will work, on a personal level, with the Board.

A different set of interview questions should be developed for the final interviews and the questions should cover a range of topics that will give the Board a strong sense of the applicant's understanding of, and readiness for the position. The following four areas are typically covered:

1. Ability to communicate effectively, both orally and in writing.
2. Experience working with Boards.
3. Experience with licensure, enforcement, professional examinations/testing.
4. Knowledge of current consumer issues in the licensed profession(s).

In closing the interview, advise each applicant when a decision is expected to be made and that all candidates will be notified of the final outcome in writing.

BOARD ACTION:
SELECTION OF FINALIST

After all of the candidates are interviewed in closed session, the Board must vote to select the final candidate for the EO position. This vote is also held in closed session.

Setting the Salary

When the final selection has been voted on by the Board, the Board must also determine the appropriate salary in closed session. All appointments shall be within the salary range for the established Exempt level approved by the CalHR. Upon the initial appointment, the Exempt shall be entitled to the rate within the salary range five percent above the rate last received or the minimum within the salary range, whichever is higher.

All exceptions to the appointment salary must be submitted to the DCA Executive Office, the Business, Consumer Services and Housing Agency Secretary, the Governor's Office Appointments Secretary, and CalHR for approval.

After the Board has made its final selection and determined the salary to be offered in closed session, the Board President/Chairperson shall return to open session to generally announce that the Board has made a selection. The announcement of the selected successful candidate should wait until the candidate notification and acceptance process outlined below has been completed and the unsuccessful candidates have been notified (at least verbally).

Note: Some Boards[1] have statutes requiring that the DCA Director approve the Board's selection for EO and the proposed salary. In such case, the Board President/Chairperson should send a written notice to the Director of the DCA, via the Deputy Director for Board and Bureau Relations,

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1

- Board of Barbering and Cosmetology – BP7303(c). The appointment of the executive officer is subject to the approval of the director.
- Contractor's State License Board - BP7011. The board by and with the approval of the director shall appoint a registrar of contractors and fix his or her compensation.
- Dental Board – BP1616.5. The board, by and with the approval of the director, may appoint a person exempt from civil service who shall be designated as an executive officer..."
- Structural Pest Control Board - BP8528. With the approval of the director, the board shall appoint a registrar, fix his or her compensation and prescribe his or her duties. The registrar is the executive officer and secretary of the board.

indicating that the Board had selected its Executive Officer and the proposed salary and is requesting the Director's approval. See **Attachment E** for a sample Director's Office Approval letter.

Candidate Notification
After the Board has determined the candidate and salary, and if applicable, secured the approval of the Department's Director, the Board President/Chairperson will contact the selected candidate and offer the position. Once the candidate accepts, the effective date the candidate will begin the duties of EO must also be determined. After the discussion, the Board President/Chairperson will provide the candidate with a confirmation letter (**Attachment F**) drafted by the C&P Analyst, which outlines the facts of the appointment. The Board President/Chairperson will forward a copy of the confirmation letter to the C&P Analyst and the Deputy Director for Board and Bureau Relations, at DCA headquarters. The DCA OHR will provide an attachment for the confirmation letter outlining the State's benefits package.

CRIMINAL OFFENDER RECORD INFORATION (CORI) CLEARANCE REQUIREMENT

DCA is authorized to receive CORI from the Department of Justice. DCA is required to obtain fingerprints and conduct a criminal conviction record review for all individuals who have access to CORI. DCA Policy *Non-Sworn Employee Fingerprints Access to CORI* outlines the process for obtaining and reviewing the CORI of affected personnel.

All EOs will require CORI clearance before their start date and preferably before the selection is publically announced. The Board's CORI Coordinator or OHR can assist with the facilitation of the CORI clearance.

OATH OF OFFICE

Executive Officer Appointment
The Oath of Office (Std. 688) (**Attachment G**) must be administered on or prior to the effective date of the EO's appointment. The Oath of Office may be administered by any Board Member or by the DCA Director, Chief Deputy Director or their designee. The Deputy Director for Board and Bureau Relations can assist with arrangements for the Director or Chief Deputy to administer the Oath of Office.

Letters should be sent to all candidates notifying them of the hiring decision. Notifications can be performed by Board staff or DCA OHR staff.

Prior to a Board selecting a permanent EO, it may be necessary for the Board to select or designate an individual to a temporary appointment to the position in order to continue Board business without interruption. Two such temporary appointments are the Acting Assignment and the Interim Assignment.

Acting Assignment
In the absence of an EO, the Board President/Chairperson can designate a Board staff person to act as the EO, either until a Board meeting can be convened to appoint an *Interim* EO (who may be the same person as the *Acting*) or until a permanent EO takes office. An *Acting* assignment requires the administration of an Oath of Office and confirmation of the position's authority by a letter from the Board President/Chairperson. See **Attachment H** for a sample Acting Assignment

Confirmation Notice. An *Acting* assignment does not confer any status upon the individual and there is no additional monetary compensation, so these appointments should only be used for short-term needs.

Interim Assignment
Appointment of an *Interim* EO requires a vote by a quorum of Board Members at a publicly noticed meeting and administration of the Oath of Office. Typically, an *Interim* appointment is used to maintain the Board's daily activities during the recruitment process and to compensate an individual (usually a Board staff person) for taking on the additional responsibilities. See **Attachment I** for a sample Interim Assignment Confirmation Notice.

POST SELECTION

BOARD ACTION:
EXECUTIVE OFFICER PERFORMANCE EVALUATION AND SALARY INCREASES

Annually, each Board is expected to provide the EO with a written evaluation of his or her performance. The Board President/Chairperson should contact the DCA OHR PO to obtain a copy of the EO Performance Evaluation Form.

The Board President/Chairperson may request Board staff or OHR send out the Executive Officer Performance Evaluation Form to each Board Member to obtain an evaluation of the EO's performance.

Board Members should complete the Executive Officer Performance Evaluation Form, rating and commenting on the EO's performance in each category the Board Member can evaluate.

The Board President/Chairperson can collate all Board Member ratings and comments for discussion. In order to abide with the Bagley-Keene Act, the Board must discuss the EO ratings and the evaluation only during a properly noticed Board meeting.

Evaluations are usually discussed in a closed session under Government Code Section 11126(a). Your assigned Attorney may assist you during this process, if desired.

After the Board determines the contents of the final Executive Officer Performance Evaluation Form and any outcome, it should determine who will meet with the EO to discuss his/her performance, which must also be in compliance with the Bagley-Keene Act. When the EO's performance meets or exceeds the expectations of the Board, the Board may request a salary increase for the exempt level assigned to the EO for that Board. OHR will advise the Board of the current salary standards. Any request for a salary increase must be reported on the Executive Officer Performance Evaluation Form.

The original Executive Officer Performance Evaluation Form, signed by both the Board President/Chairperson and the EO, is forwarded to the DCA OHR PO to be filed in the EO's Official Personnel File. The EO must also receive a final signed copy of the evaluation.

The Bagley-Keene Act requires that after a closed session where there was an action taken to appoint, employ or dismiss a public employee, the Board must, during open session at a subsequent public meeting, report that action and the roll call vote, if any was taken.

CONTACT INFORMATION

DCA aims to make the EO recruitment process as seamless as possible. To ensure this, DCA has resources to assist the Board throughout the process. Please feel free to contact the following resources if you have any questions regarding the process:

Deputy Director for Board and Bureau Relations
(916) 574-8200

DCA Legal Affairs Office
(916) 574-8220

Office of Human Resources
Personnel Officer
(916) 574-8301

Department of Consumer Affairs Executive Officer Recruitment

Tasks/Events	Responsible Party	Tentative Target Completion Date
At (or prior to) scheduled/noticed Board Meeting: • Provide Duty Statement to Board for consideration (If there are changes, the Board will need approve the changes at a publicly announced Board meeting)	DCA OHR	
At scheduled/noticed Board Meeting: • Meet with Board to discuss recruitment options, recruitment timeline, etc. • Board discusses having Assistant EO (or other staff if no AEO) serve as *Interim* or *Acting* EO during recruitment period[1] • Board makes motion/votes to appoint Interim or Acting EO, if applicable • Board determines 2-member SCOM conduct preliminary recruitment activities	DCA OHR	
Subsequent to Board Meeting - Advise SCOM throughout recruitment period • Provide sample recruitment bulletin, timeline of events • Develop final recruitment bulletin; obtain SCOM and the Deputy Director for Board and Bureau Relations' approval • Advertise on State (CalHR) website and Board/DCA website (minimum 10 days; normally 3-4 weeks)	DCA OHR	
Advertise externally (optional) Copy external advertisement(s) for recruitments file	Board Staff DCA OHR	
During Recruitment Period • Meet/work with SCOM and the Deputy Director for Board and Bureau Relations to determine application screening criteria • Meet/work with SCOM to determine interview questions • Work with SCOM to determine interview dates • Receive applications; copy applications and provide to SCOM	DCA OHR	
Review applications using screening criteria; determine candidates for initial (optional) or final interview	SCOM	
Schedule initial Interviews, if applicable (optional step)	Board Staff or DCA OHR	

[1] An Interim appointment is placed into the position and receives the pay of the position; Acting appointments are typically of very short duration and do not receive the exempt pay. Both require the administration of the Oath of Office.

Continued.....

Tasks/Events	Responsible Party	Tentative Target Completion Date
Conduct initial interviews, if applicable Recommend top candidates for final interview with full Board at next noticed meeting	SCOM	
Conduct reference checks	SCOM or DCA OHR	
Schedule 2nd/final Interviews w/Full Board (quorum)	DCA OHR	
At scheduled/noticed Board meeting (in closed session) • Conduct interviews with top candidates • Determine finalist(s) • Select Finalist[2] • Determine appointment date • Determine salary[3]	Full Board (quorum)	
Post Selection Activities • Notify all candidates in writing • Candidate submits fingerprints for LiveScan (CORI clearance) [4]	DCA HR	
Formal announcement of Executive Officer	Board / DCA Board and Bureau Relations / DCA Public Affairs	
On day of appointment • Administer *Oath of Office*	Board Chair or DCA Director (or designee)	

[2] By statute, some EO appointments require the approval of the Director, DCA.
[3] Exempt salary for appointees is restricted.
[4] EOs typically have access to criminal record information in the course of reviewing accusations and, therefore, are required to receive clearance from the Department of Justice to review Criminal Offender Record Information (CORI). Refer to DCA Policy DOI 03-01: Non-Sworn Employee Fingerprints - Access to CORI.

SAMPLE RECRUITMENT FLYER

THE BOARD OF ___________________
INVITES APPLICATIONS FOR THE POSITION OF

EXECUTIVE OFFICER

[SALARY MONTHLY]

The Executive Officer is hired by the Board and serves at its pleasure. The Executive Officer is responsible for carrying out the policies of the xx-member Board. The mission of the Board is to ______________. The Board is responsible for __________________________. The Executive Officer position is exempt from civil service and is located in Sacramento, CA.

All applicants should possess the following desirable qualifications:

- Administrative experience; e.g., ability to prepare, understand, and work with a government budget, development of regulations, policy development and implementation, etc.
- Demonstrated supervisory experience, ability to organize and control the flow of work.
- Regulatory and/or enforcement experience such as processing complaints, monitoring investigations, keeping abreast of hearings on disciplinary matters, etc.
- Legislative or lobbying experience/coordination including appearing before legislative committees.
- Ability to communicate effectively both orally and in writing.
- Knowledge of current consumer issues in the licensed professions.
- Experience with and/or in taking direction from a board or committee.
- Candidates must have a baccalaureate degree from a WASC comparable accredited school and preferably an advanced or professional degree.

Interested persons should submit a resume by ______________________ to:

Department of Consumer Affairs
1625 N. Market Blvd. Suite
Sacramento, CA 95834
ATTN: __________________, Office of Human Resources

All applications will be screened and only the most qualified candidates will be scheduled for a preliminary interview. It is anticipated that interviews will be held during _____. Travel expenses for these interviews are the responsibility of each candidate. For further information, please contact ______ at (916) ___-_______.

The Department of Consumer Affairs provides equal employment opportunities to all regardless of race, color, creed, national origin, ancestry, sex, marital status, disability, religious or political affiliation, age or sexual orientation.

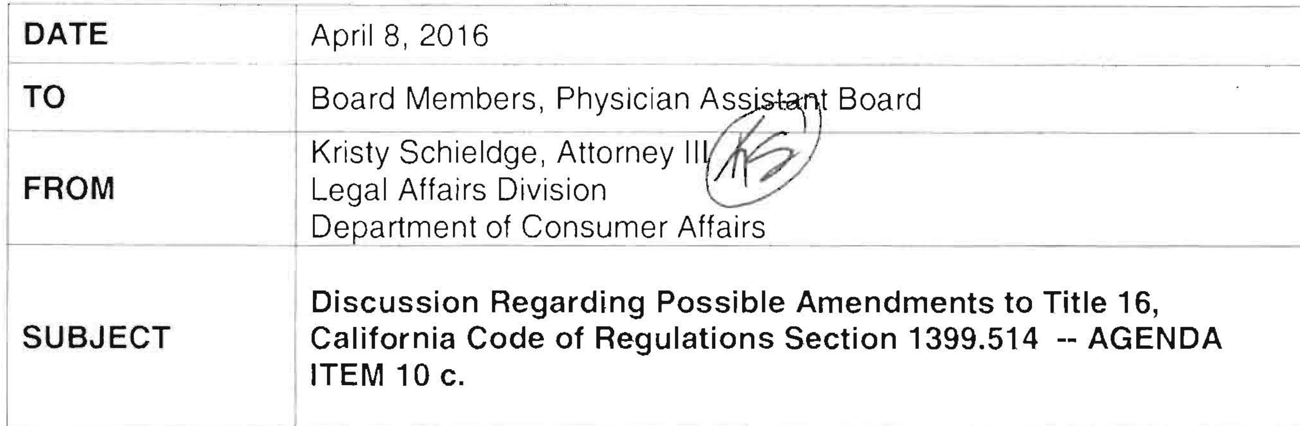
Agenda Item 10.c

AGENDA ITEM 10C

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

LEGAL AFFAIRS DIVISION
1625 N. Market Blvd., Suite S 309, Sacramento, CA 95834
P (916) 574-8220 F (916) 574-8623 | www.dca.ca.gov

MEMORANDUM



DATE	April 8, 2016
TO	Board Members, Physician Assistant Board
FROM	Kristy Schieldge, Attorney III Legal Affairs Division Department of Consumer Affairs
SUBJECT	**Discussion Regarding Possible Amendments to Title 16, California Code of Regulations Section 1399.514 -- AGENDA ITEM 10 c.**

At our last meeting, the Board raised questions about the Board's current criminal conviction disclosure requirements on applications for applicants or licensees as set forth in Title 16, California Code of Regulations section 1399.514. Specifically, concern was raised regarding whether the $300 trigger for reporting infractions was too low and that the Board might be receiving too many disclosures for convictions unrelated to the practice of medicine. It was requested that this issue be brought back for discussion at this meeting to review and evaluate section 1399.514, and that I provide an update on how other Boards in the Department have addressed this issue.

Section 1399.514 currently provides:

(a) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been convicted of any violation of the law in this or any other state, the United States, or other country, omitting traffic infractions under $300 not involving alcohol, dangerous drugs, or controlled substances.
(b) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been denied a license or had a license disciplined by another licensing authority of this state, of another state, of any agency of the federal government, or of another country.
(c) Failure to comply with the requirements of this section renders any application for renewal incomplete and the license will not be renewed until the licensee demonstrates compliance with all requirements.

Attached for your reference is a table prepared by staff showing the minimum dollar amount triggers for applicants to report infractions to various healing arts boards in the Department. Trigger amounts range from no minimum dollar requirement for reporting to $1,000.

I am also including information from a rulemaking conducted by the Dental Board of California where the issue of setting the dollar amount above $300 was discussed and considered. Concerns raised by the public in that rulemaking included concern that setting the dollar amount at $300 included the possibility of having to report minor traffic violations (red light violations are over $300) that are unrelated to the professional practice or public protection. Finally, I am attaching traffic infraction research performed by staff showing different monetary penalties imposed for violations.

BOARD OPTIONS:
(1) Take no action; or,
(2) Request that staff bring back text to the next board meeting showing the proposed changes discussed at this meeting for possible initiation of a rulemaking to amend Section 1399.514.

AGENDA ITEM 10 C

DCA HEALTH CARE RELATED BOARD	FINE AMOUNT
Acupuncture Board	$ 300
Board of Behavioral Sciences	$ 500
Board of Chiropractic Examiners	$ 500
Dental Board of California	$1000
Dental Hygiene Committee of California	$ 300
Medical Board of California	$ 300
Naturopathic Medicine Committee	No limit
Board of Optometry	$ 300
Osteopathic Medical Board	No limit
Board of Pharmacy	$ 500
Physical Therapy Board of California	No limit
Physician Assistant Board	**$ 300**
Board of Podiatric Medicine	$ 300
Board of Psychology	$ 500
Board of Registered Nursing	$1000
Respiratory Care Board	No limit
Speech-Language, Pathology & Audiology & Hearing Aid Board	$ 300
Board of Vocational Nursing & Psychiatric Technicians	$1000

TRAFFIC INFRACTION FIXED PENALTY SCHEDULE

(*See Preface, Section III) (See Preface, Section IV)**

(Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	Night Court	CAP Fee	"Total Bail" ** / Fee	Category	DMV Points
				10/10	**7.00**	**4/10**	**5.00**	**20%**	**2.00**	**4**		**40**	**35**	**1**	**0.00**			
2814.1 (b)	3	Failure to Stop and Submit to Vehicle Inspection Checkpoint for Exhaust Violations	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
2814.2 (a)	3	Failure to Stop and Submit to Sobriety Checkpoint Inspection	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
2815	4	Failure to Obey School Crossing Guard	50	50	35.00	20	25	10	10	4	204.00	40	35	1	0.00	280.00	4a	1
2816		Unlawful to Load/Unload Children Unless Traffic Is Controlled	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
2817		Failure to Obey Peace Officer–Funeral Procession	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
2818		Traversing Electronic Beacon/Flare/Cone Pattern Set by Public Safety Personnel	70	70	49.00	28	35	14	14	4	284.00	40	35	1	0.00	360.00	3a	1
4000 (a)(1)	A, 5	No Evidence of Current Registration	50	50	35.00	20	25	10	10	4	204.00	40	35	1	0.00	280.00	4a	0
4000 (a)(1)	B	No Evidence of Current Registration	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4000.4 (a)	A	Unregistered California-Based Vehicle	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
4000.4 (a)	B	Unregistered California-Based Vehicle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4000.6 (a)	A	Failure to Submit Application or Declare Accurate Combined Gross Vehicle Weight	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
4000.6 (a)	B	Failure to Submit Application or Declare Accurate Combined Gross Vehicle Weight	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4000.6 (d)		Commercial Vehicle With Gross Vehicle Weight Over 10,000 Pounds, 1,001–1,500 Pounds in Excess of Declared Gross Vehicle Weight	250	250	175.00	100	125	50	50	4	1,004.00	40	35	1	0.00	1,080.00	4a	0
4000.6 (d)		Commercial Vehicle With Gross Vehicle Weight Over 10,000 Pounds, 1,501–2,000 Pounds in Excess of Declared Gross Vehicle Weight	300	300	210.00	120	150	60	60	4	1,204.00	40	35	1	0.00	1,280.00	4a	0
4000.6 (d)		Commercial Vehicle With Gross Vehicle Weight Over 10,000 Pounds, 2,001–2,500 Pounds in Excess of Declared Gross Vehicle Weight	350	350	245.00	140	175	70	70	4	1,404.00	40	35	1	0.00	1,480.00	4a	0

TRAFFIC INFRACTION FIXED PENALTY SCHEDULE

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(Vehicle Code)

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				10/10	**7.00**	**4/10**	**5.00**	**20%**	**2.00**	**4**		**40**	**35**	**1**	**0.00**			
4301	B	Surrender Evidence of Foreign Registration	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4453.6		Failure to Furnish Name and Address to Officer Upon Request	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
4454 (a)	A	Failure to Maintain Registration Card With Vehicle	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
4454 (a)	B	Failure to Maintain Registration Card With Vehicle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4455	A	Failure to Display Temporary Permit–Foreign Commercial Vehicle	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
4455	B	Failure to Display Temporary Permit–Foreign Commercial Vehicle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4457	A	Failure to Replace Lost, Damaged Cards and/or Plates	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
4457	B	Failure to Replace Lost, Damaged Cards and/or Plates	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4458	A	Both Plates Lost or Stolen	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
4458	B	Both Plates Lost or Stolen	25	0	0.00	0	0	0	0	o	0.00	0	0	0	0.00	25.00	4a	0
4459	A	Failure to Replace Lost or Damaged Owner's Certificate	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
4459	B	Failure to Replace Lost or Damaged Owner's Certificate	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4461 (a)	6	Improper Use of Evidence of Registration	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
4462 (a)	A	Failure to Present Evidence of Registration to Officer	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
4462 (a)	B	Failure to Present Evidence of Registration to Officer	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4462 (b)	A	Registration Presented for Wrong Vehicle	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
4462 (b)	B	Registration Presented for Wrong Vehicle	25	0	0	0	0	0	0	0	0.00	0	0	0	0.00	25.00	1a	0
4463 (e)	7	Unlawful Act With Clean Air Sticker	150	150	105.00	60	75	30	30	4	604.00	40	35	1	0.00	680.00	4a	0
4464	A	Altered License Plates Displayed on Vehicle	25	30	21.00	12	15	5	6	0	114.00	40	35	1	0.00	190.00	1a	0
4464	B	Altered License Plates Displayed on Vehicle	25	0	0	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5011 (a)	A	Display of Special Construction Identification Plates	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0

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				10/10	**7.00**	**4/10**	**5.00**	**20%**	**2.00**	**4**		**40**	**35**	**1**	**0.00**			
12814.6 (a)(1)	B	Failure to Carry Instruction Permit as Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12814.6 (b)(1)	A,H	Failure to Obey Licensing Provisions	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
12814.6 (b)(1)	B	Failure to Obey Licensing Provisions	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12814.6 (b)(2)	A	Violation of Provisional License Driving Restrictions	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
12814.6 (b)(2)	B	Violation of Provisional License Driving Restrictions	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12815 (a)	A	Must Obtain Duplicate If Original License Lost, Destroyed, or Mutilated	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
12815 (a)	B	Must Obtain Duplicate If Original License Lost, Destroyed, or Mutilated	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12950	A	Failure to Sign Driver's License	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
12950	B	Failure to Sign Driver's License	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12951 (a)	A	No Valid License in Possession	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
12951 (a)	B	No Valid License in Possession	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12952	A	Failure to Display License to Court Upon Request	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
12952	B	Failure to Display License to Court Upon Request	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
13003		Failure to Apply for Replacement Identification Card Upon Mutilation and/or Failure to Surrender ID Card Within 10 Days of Notification That Card Is Mutilated	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
13007		Identification Card Holder to Notify DMV of Address Change Within 10 Days	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
13386 (b)(1)		Furnishing of Information by Manufacturer to Use Ignition Interlock Device Contrary to Certified Purpose	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
13386 (c)		Altering of Ignition Interlock Device Functionality by Installer, Service Center, or Technician	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0

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				10/10	**7.00**	**4/10**	**5.00**	**20%**	**2.00**	**4**		**40**	**35**	**1**	**0.00**			
14600 (a)	A	Failure to Notify DMV of Address Change Within 10 Days	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
14600 (a)	B	Failure to Notify DMV of Address Change Within 10 Days	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
14600 (b)	A	Failure to Present DMV Change of Address Form to Peace Officer	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
14600 (b)	B	Failure to Present DMV Change of Address Form to Peace Officer	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
14601.1 (a)	12	Driving Motor Vehicle or Off-Highway Motor Vehicle While Suspended or Revoked for Offenses Not Relating to Driving Ability	150	150	105.00	60	75	30	30	4	604.00	40	35	1	0.00	680.00	4a	2
14603	A	Violation of License Restrictions	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
14603	B	Violation of License Restrictions	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
14605 (a)		Permitting Unlicensed Parking Lot Attendant to Drive	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
14605 (b)		Hiring Unlicensed Parking Lot Attendant to Drive	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
14606 (a,b)		Hiring/Permitting Unlicensed Person to Drive on Highway	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
14607		Permitting Unlicensed Minor to Drive	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
14608 (a,b)		License Required for Rental of Vehicle	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
14611	13	Knowingly Permit Transportation of Radioactive Materials Without Required License	5,000	5,000	3,500.00	2,000	2500	1,000	1,000	4	20,004.00	40	35	1	0.00	20,080.00	4a	0
15240 (a-d)		Employer Allowing, Permitting, or Requiring Driving of Commercial Motor Vehicle as Prohibited	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
15250 (a)(1)	A	Commercial Driver's License Required	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
15250 (a)(1)	B	Commercial Driver's License Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
15250 (a)(2)	A	Commercial Driver's License With Hazardous Materials Endorsement Required	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
15250 (a)(2)	B	Commercial Driver's License With Hazardous Materials Endorsement Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0

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				10/10	**7.00**	**4/10**	**5.00**	**20%**	**2.00**	**4**		**40**	**35**	**1**	**0.00**			
21650.1		Bicycle to Travel in Same Direction as Vehicles	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
21651 (a)		Driving Across Dividing Section on Freeway Prohibited	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
21652		Improperly Entering or Leaving Highway or Service Road	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
21654 (a)		Slow-Moving Vehicles Keep to Right Edge of Roadway	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
21655 (b)		Failure to Use Designated Lanes	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
21655.5 (b)	24	Improper Use of Preferential Lanes	100	100	70.00	40	50	20	20	4	404.00	40	35	1	0.00	480.00	4a	0
21655.8 (a)	24	Driving Over Double Lines of Preferential Lanes	100	100	70.00	40	50	20	20	4	404.00	40	35	1	0.00	480.00	4a	1
21655.9 (b)		Driving Low Emission Vehicle Without Required Decal or Label	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
21656		Failure of Slow-Moving Vehicles to Turn Out	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
21657		Driving Against One-Way Traffic Patterns	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
21658 (a,b)		Lane Straddling/Failure to Use Specified Lanes	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
21659		Unsafe Driving on Three-Lane Highway	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
21660		Failure of Approaching Vehicles to Pass to the Right	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
21661		Right-of-Way Rule–Narrow Grades	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
21662 (a,b)		Mountains–Keep to Right–Use Horn	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
21663		Driving on Sidewalk Prohibited	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
21664		Failure to Use Designated Freeway On-/Off-Ramp Properly	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
21700		Load/Passengers Not to Obstruct Driver's View	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
21701		Interference With Driver's Control of Vehicle	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
21703		Following Too Closely Prohibited	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1

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				10/10	**7.00**	**4/10**	**5.00**	**20%**	**2.00**	**4**		**40**	**35**	**1**	**0.00**			
21954 (b)		Failure of Driver to Exercise Due Care for Safety of Pedestrian on Roadway	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
21955		Crossing Between Controlled Intersections (Jaywalking)	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
21956 (a)		Pedestrian on Roadway Prohibited	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
21957		Soliciting Ride (Hitchhiking) Prohibited	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
21959		Skiing or Tobogganing Across Highway Prohibited	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
21960 (a)	29	Violation of Freeway or Expressway Use Restrictions by Pedestrian, Motor-Driven Cycle, Motorized Bicycle, or Motorized Scooter	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	1
21966		Pedestrian Prohibited in Bicycle Lane	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
21968		Motorized Skateboard Prohibited	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
21970 (a)		Vehicle Stopped Unnecessarily and Blocking Crosswalk or Sidewalk	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
21971	30	Violating Specified Provisions and Causing Bodily Injury	220	220	154.00	88	110	44	44	4	884.00	40	35	1	0.00	960.00	4a	1
22100 (a,b)		Turn at Intersection From Wrong Position	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
22100.5		U-Turn at Controlled Intersection	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
22101 (d)		Violating Special Traffic Control Markers	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
22102		Illegal U-Turn in Business District	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
22103		Illegal U-Turn in Residential District	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
22104		Illegal U-Turn Near Fire Station	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
22105		Illegal U-Turn on Highway Without Unobstructed View	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
22106		Unsafe Starting or Backing on Highway	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
22107		Unsafe Turn or Lane Change Prohibited	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
22108		Signal Required Before Turning or Changing Lanes	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
22109		Sudden Stopping Without Signaling	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
22110 (a,b)		Hand/Lamp Signal Not Given	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1

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Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	Night Court	CAP Fee	"Total Bail" ** / Fee	Category	DMV Points
				10/10	**7.00**	**4/10**	**5.00**	**20%**	**2.00**	**4**		**40**	**35**	**1**	**0.00**			
22406 (a)	32	Truck or Tractor 10 MPH or More Over 55 MPH Limit	100	100	70.00	40	50	20	20	4	404.00	40	35	1	0.00	480.00	4a	1
22406 (b-f)	33	Posted Speed for Designated Vehicles	50	50	35.00	20	25	10	10	4	204.00	40	35	1	0.00	280.00	4a	1
22406 (b-f)	33	Posted Speed for Designated Vehicles--In Excess of Speed Limit by 10 MPH or More	100	100	70.00	40	50	20	20	4	404.00	40	35	1	0.00	480.00	4a	1
22406.5	34	Driving Tank Vehicle at Excessive Speed	500	500	350.00	200	250	100	100	4	2,004.00	40	35	1	0.00	2,080.00	4a	1
22407	35	Posted Speed for Designated Vehicles	50	50	35.00	20	25	10	10	4	204.00	40	35	1	0.00	280.00	4a	1
22407	35	Posted Speed for Designated Vehicles–In Excess of Speed Limit by 10 MPH or More	100	100	70.00	40	50	20	20	4	404.00	40	35	1	0.00	480.00	4a	1
22409		Speed Limit for Solid Tire Vehicle, 1-15 MPH Over Limit	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	4a	1
22409		Speed Limit for Solid Tire Vehicle 16-25 MPH Over Limit	70	70	49.00	28	35	14	14	4	284.00	40	35	1	0.00	360.00	4a	1
22409		Speed Limit for Solid Tire Vehicle ≥ 26 MPH Over Limit	100	100	70.00	40	50	20	20	4	404.00	40	35	1	0.00	480.00	4a	1
22410		Exceeding Speed Limit for Metal Tire Vehicles	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
22413		Violation of Speed Limit Set by Local Authority for Steep Grades			[See Speed Chart]												4a	1
22450 (a)		Failure to Stop at Stop Sign	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
22450 (b)	36	Failure to Stop at Stop Sign at Railroad Grade Crossing	100	100	70.00	40	50	20	20	4	404.00	40	35	1	0.00	480.00	4a	1
22451 (a,b)	37	Failure to Stop for Train Signals/Closed Gates	100	100	70.00	40	50	20	20	4	404.00	40	35	1	0.00	480.00	4a	1
22452 (b)	37	Failure of Certain Vehicles to Stop at Railroad Crossings	100	100	70.00	40	50	20	20	4	404.00	40	35	1	0.00	480.00	4a	1
22452 (c)	38	Failure of Commercial Vehicle to Stop at Railroad Crossings	100	100	70.00	40	50	20	20	4	404.00	40	35	1	0.00	480.00	4a	1
22454 (a)	39	Passing School Bus With Flashing Signals	150	150	105.00	60	75	30	30	4	604.00	40	35	1	0.00	680.00	4a	1
22455 (a)		Vending From Vehicle Without Coming to a Complete Stop or Parking the Vehicle Lawfully	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0

TRAFFIC INFRACTION FIXED PENALTY SCHEDULE

(*See Preface, Section III) (See Preface, Section IV)**

(Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	CAP Fee	"Total Bail" ** / Fee	Category	DMV Points
				10/10	**7.00**	**4/10**	**5.00**	**20%**	**2.00**	**4**		**40**	**35**	**1**	**0.00**			
21212 (a)	20	Under 18 Shall Not Operate Bicycle, Nonmotorized Scooter, or Skateboard/Wear In-line or Roller Skates/Ride Bicycle, Non-motorized Scooter, or Skateboard as Passenger Without a Helmet	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
21221		Motorized Scooter Operation Requirements	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
21221.5		Operating a Motor Scooter While Under the Influence	70	70	49.00	28	35	14	14	4	284.00	40	35	1	0.00	360.00	3a	0
21223 (a-c)		Motorized Scooter Equipment Requirements During Darkness	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
21226 (b,c)	20	Violation of Motorized Scooter Muffler Equipment Requirements	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
21226 (d)	20	Violation of Motorized Scooter Exhaust/Noise Level Requirements/Operation of Motorized Scooter With Unlawfully Modified Exhaust System	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
21228		Operating Motorized Scooter at Less Than Normal Speed of Traffic	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
21229 (a,b)		Failure to Operate Motorized Scooter in Bicycle Lane	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
21235 (a-j)		Illegal Operation of Motorized Scooter	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
21260 (a),(b)(2)		Illegal Operation of Low-Speed Vehicle	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
21281.5 (a-d)		Illegal Operation of Electrical Personal Assistive Mobility Device	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
21367 (b,c)		Failure to Obey Traffic Control/Devices at Construction Site	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
21451 (a,b)		"Green" Signal–Vehicular Responsibilities	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
21451 (c,d)		"Green" Signal–Pedestrian Responsibilities	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
21452 (b)		Failure of Pedestrian to Properly Respond to Signal of Yellow Light or Arrow	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
21453 (a,c)	22	"Red" Signal–Vehicular Responsibilities	100	100	70.00	40	50	20	20	4	404.00	40	35	1	0.00	480.00	4a	1
21453 (b)		"Red" Signal–Vehicular Responsibilities With Right Turn	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1

2015 TRAFFIC INFRACTION FIXED PENALTY SCHEDULE

(*See Preface, Section III) (See Preface, Section IV)**

(Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	Night Court	TAP Fee	"Total Bail" ** / Fee	Category	DMV Points
				10/10	7.00	5/10	5.00	20%	2.00	4		40	35	0	0.00			
23120		Side Vision Obstructed by Temple Width of Glasses	25	30	21.00	15	15	5	6	4	121.00	40	35	0	0.00	196.00	1a	0
[illegible]	[illegible]	Driving While [illegible] Wireless Telephone N[illegible] [illegible]	20	20	[illegible]	10	10	[illegible]	4	4	86.00	40	35	0	0.00	161.00	4a	0
		[illegible] Unless the Device Is Used in a Hands-free and Voice-operated Manner	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
23124 (b)	53	Driving While a Minor and Using a Wireless Telephone or Electronic Wireless Communications Device	20	20	14.00	10	10	4	4	4	86.00	40	35	0	0.00	161.00	4a	0
23125 (a)		Driving School Bus or Transit Vehicle While Using a Wireless Phone	35	40	28.00	20	20	7	8	4	162.00	40	35	0	0.00	237.00	2a	1
23128 (a)		Snow Mobile–Operation on Highway Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	0	0.00	237.00	2a	0
23128 (b-d)		Snow Mobile–Negligent Operation, Pursuing Game, or Trespassing Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	0	0.00	237.00	2a	0
23129		Unobstructed Camper Exit Required	25	30	21.00	15	15	5	6	4	121.00	40	35	0	0.00	196.00	1a	0
23135	54	Operation of Modified Motorized Bicycle Restricted	50	50	35.00	25	25	10	10	4	209.00	40	35	0	0.00	284.00	4a	0
23136 (a)		Minor (Under 21) Driving With Blood Alcohol Level of .01 or Greater	70	70	49.00	35	35	14	14	4	291.00	40	35	0	0.00	366.00	3a	0
23140 (a)	55	Minor (Under 21) Driving With Blood Alcohol Level of .05 or Greater	100	100	70.00	50	50	20	20	4	414.00	40	35	0	0.00	489.00	4a	2
23154 (a)		Driving With Blood Alcohol Level of .01 or Greater While on Probation for Violation of VC 23152 or VC 23153	70	70	49.00	35	35	14	14	4	291.00	40	35	0	0.00	366.00	3a	0
23220 (a)		Drinking Alcoholic Beverage While Driving Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	0	0.00	366.00	3a	1
23221 (a)		Drinking Alcoholic Beverage by Driver Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	0	0.00	366.00	3a	0
23221 (b)		Drinking Alcoholic Beverage by Passenger Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	0	0.00	366.00	3a	0

TRAFFIC INFRACTION FIXED PENALTY SCHEDULE

(*See Preface, Section III) (See Preface, Section IV)**

(Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	Night Court	CAP Fee	"Total Bail" ** / Fee	Category	DMV Points
				10/10	**7.00**	**4/10**	**5.00**	**20%**	**2.00**	**4**		**40**	**35**	**1**	**0.00**			
22111 (a-c)		Hand Signals Improperly Given	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
22112 (a-d)		School Bus Driver Misuse of Signals; Improper Stop; Failure to Escort Pupils	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
22348 (b)	31	Speeding Over 100 MPH Prohibited	200	200	140.00	80	100	40	40	4	804.00	40	35	1	0.00	880.00	4a	2
22348 (c)		Failure of Vehicles Subject to VC 22406 to Use Designated Lane	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
22349 (a)		Speeding 1–15 MPH Over 65 MPH Limit	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	4a	1
22349 (a)		Speeding 16–25 MPH Over 65 MPH Limit	70	70	49.00	28	35	14	14	4	284.00	40	35	1	0.00	360.00	4a	1
22349 (a)		Speeding ≥ 26 MPH Over 65 MPH Limit	100	100	70.00	40	50	20	20	4	404.00	40	35	1	0.00	480.00	4a	1
22349 (b)		Speeding 1–15 MPH Over 55 MPH Limit	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	4a	1
22349 (b)		Speeding 16–25 MPH Over 55 MPH Limit	70	70	49.00	28	35	14	14	4	284.00	40	35	1	0.00	360.00	4a	1
22349 (b)		Speeding ≥ 26 MPH Over 55 MPH Limit	100	100	70.00	40	50	20	20	4	404.00	40	35	1	0.00	480.00	4a	1
22350		Unsafe Speed for Prevailing Conditions 1–15 MPH Over Limit	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	4a	1
22350		Unsafe Speed for Prevailing Conditions 16–25 MPH Over Limit	70	70	49.00	28	35	14	14	4	284.00	40	35	1	0.00	360.00	4a	1
22350		Unsafe Speed-for Prevailing Conditions ≥ 26 MPH Over Limit	100	100	70.00	40	50	20	20	4	404.00	40	35	1	0.00	480.00	4a	1
22351 (a,b)		Driving in Excess of Prima Facie Speed Limits Established in VC 22352			[See Speed Chart]												4a	1
22352 (a) (1)		Operating Vehicle in Excess of 15 MPH at Railroad Crossing, at Freeway Intersection With No Clear Field of Vision, or in Alley			[See Speed Chart]												4a	1
22352 (a) (2)		Operation Vehicle in Excess of 25 MPH in Business District, by School, or by Senior Center			[See Speed Chart]												4a	1
22354		Failure to Abide by Speed Limits Set by the State Department of Transportation (DOT) on State Highways			[See Speed Chart]												4a	1
22355		Failure to Abide by Variable Speed Limits Set by the State Department of Transportation (DOT)			[See Speed Chart]												4a	1

TRAFFIC INFRACTION FIXED PENALTY SCHEDULE

(*See Preface, Section III) (See Preface, Section IV)**

(Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	CAP Fee	"Total Bail" ** / Fee	Category	DMV Points
				10/10	**7.00**	**4/10**	**5.00**	**20%**	**2.00**	**4**		**40**	**35**	**1**	**0.00**			
23120		Side Vision Obstructed by Temple Width of Glasses	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
23123 (a)	49	Driving While Using a Wireless Telephone Not Configured for Hands-free Use	20	20	14.00	8	10	4	4	4	84.00	40	35	1	0.00	160.00	4a	0
23123.5 (a)		Driving While Using a Wireless Device to Send, Read, or Write Text Communication	20	20	14.00	8	10	4	4	4	84.00	40	35	1	0.00	160.00	4a	0
23124 (b)	49	Driving While a Minor and Using a Wireless Telephone or Mobile Service Device	20	20	14.00	8	10	4	4	4	84.00	40	35	1	0.00	160.00	4a	0
23125 (a)		Driving School Bus or Transit Vehicle While Using a Wireless Phone	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
23128 (a)		Snow Mobile–Operation on Highway Prohibited	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
23128 (b-d)		Snow Mobile–Negligent Operation, Pursuing Game, or Trespassing Prohibited	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
23129		Unobstructed Camper Exit Required	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
23135	50	Operation of Modified Motorized Bicycle Restricted	50	50	35.00	20	25	10	10	4	204.00	40	35	1	0.00	280.00	4a	0
23136 (a)		Minor (Under 21) Driving With Blood Alcohol Level of .01 or Greater	70	70	49.00	28	35	14	14	4	284.00	40	35	1	0.00	360.00	3a	0
23140 (a)	51	Minor (Under 21) Driving With Blood Alcohol Level of .05 or Greater	100	100	70.00	40	50	20	20	4	404.00	40	35	1	0.00	480.00	4a	2
23154 (a)		Driving With Blood Alcohol Level of .01 or Greater While on Probation for Violation of VC 23152 or VC 23153	70	70	49.00	28	35	14	14	4	284.00	40	35	1	0.00	360.00	3a	0
23220 (a)		Drinking Alcoholic Beverage While Driving Prohibited	70	70	49.00	28	35	14	14	4	284.00	40	35	1	0.00	360.00	3a	1
23221 (a)		Drinking Alcoholic Beverage by Driver Prohibited	70	70	49.00	28	35	14	14	4	284.00	40	35	1	0.00	360.00	3a	0
23221 (b)		Drinking Alcoholic Beverage by Passenger Prohibited	70	70	49.00	28	35	14	14	4	284.00	40	35	1	0.00	360.00	3a	0
23222 (a)		Possession of Open Container While Driving Prohibited	70	70	49.00	28	35	14	14	4	284.00	40	35	1	0.00	360.00	3a	1
23222 (b)	52	Possession of Marijuana by Driver	70	70	49.00	28	35	14	14	4	284.00	40	35	1	0.00	360.00	4a	1

TRAFFIC INFRACTION FIXED PENALTY SCHEDULE

(*See Preface, Section III) (See Preface, Section IV)**

(Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	CAP Fee	"Total Bail" ** / Fee	Category	DMV Points
				10/10	**7.00**	**4/10**	**5.00**	**20%**	**2.00**	**4**		**40**	**35**	**1**	**0.00**			
23223 (a)		Possession of Open Container by Driver Prohibited	70	70	49.00	28	35	14	14	4	284.00	40	35	1	0.00	360.00	3a	0
23223 (b)		Possession of Open Container by Passenger Prohibited	70	70	49.00	28	35	14	14	4	284.00	40	35	1	0.00	360.00	3a	0
23225 (a)(1)		Storage of Open Container Restricted	70	70	49.00	28	35	14	14	4	284.00	40	35	1	0.00	360.00	3a	0
23226 (a)		Storage by Driver of Open Container in Passenger Compartment Prohibited	70	70	49.00	28	35	14	14	4	284.00	40	35	1	0.00	360.00	3a	0
23226 (b)		Storage by Passenger of Open Container in Passenger Compartment Prohibited	70	70	49.00	28	35	14	14	4	284.00	40	35	1	0.00	360.00	3a	0
23270 (a)		Unauthorized Towing on Bridge Prohibited	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
23270 (b)		Exceeding Maximum Towing Fee Prohibited	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
23302 (a)		Refusal to Pay Toll Charge Prohibited	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
23302 (b)		Failure to Display Transponder or Toll Device on Vehicular Crossing or Toll Highway	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
23302 (c)		Failure to Possess Money, Transponder, or Toll Device, or to Have License Plates Attached as Required on Vehicular Crossing or Toll Highway	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
23302 (d)		Failure to Possess Transponder or Toll Device as Required on Vehicular Crossing or Toll Highway With Pay-by-Plate Payment	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
23330 (a,d)		Unauthorized Use of Vehicle Crossing–Animals/Vehicles	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
23330 (b)		Unauthorized Use of Vehicle Crossing–Bicycles	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
23330 (c)		Unauthorized Use of Vehicle Crossing–Overwidth Vehicles	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1
23331		Unauthorized Use of Vehicle Crossing–Pedestrians	25	30	21.00	12	15	5	6	4	118.00	40	35	1	0.00	194.00	1a	0
23333	53	Vehicular Crossing–Unauthorized Stopping or Standing	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	0
23336	54	Failure to Obey Posted Signs on Vehicle Crossings	35	40	28.00	16	20	7	8	4	158.00	40	35	1	0.00	234.00	2a	1

Agenda Item 13

Business and Profession Code Section 3502.3(a)(3) Performance of a Physical Examination by a Physician Assistant and Certification of Disability Pursuant to Unemployment Insurance Code Section 2708 Discussion Regarding Employment Development Department Implementation

3502.3. Delegation of Services Agreement

(a) Notwithstanding any other provision of law, in addition to any other practices that meet the general criteria set forth in this chapter or the Medical Board of California's regulations for inclusion in a delegation of services agreement, a delegation of services agreement may authorize a physician assistant to do any of the following:
(1) Order durable medical equipment, subject to any limitations set forth in Section 3502 or the delegation of services agreement. Notwithstanding that authority, nothing in this paragraph shall operate to limit the ability of a third-party payer to require prior approval.
(2) For individuals receiving home health services or personal care services, after consultation with the supervising physician, approve, sign, modify, or add to a plan of treatment or plan of care.
(3) After performance of a physical examination by the physician assistant under the supervision of a physician and surgeon consistent with this chapter, certify disability pursuant to Section 2708 of the Unemployment Insurance Code. The Employment Development Department shall implement this paragraph on or before January 1, 2017.
(b) Nothing in this section shall be construed to affect the validity of any delegation of services agreement in effect prior to the enactment of this section or those adopted subsequent to enactment

STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

State of California

UNEMPLOYMENT INSURANCE CODE

Section 2708

2708. (a) (1) In accordance with the director's authorized regulations, and except as provided in subdivision (c) and Sections 2708.1 and 2709, a claimant shall establish medical eligibility for each uninterrupted period of disability by filing a first claim for disability benefits supported by the certificate of a treating physician or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee. For subsequent periods of uninterrupted disability after the period covered by the initial certificate or any preceding continued claim, a claimant shall file a continued claim for those benefits supported by the certificate of a treating physician or practitioner. A certificate filed to establish medical eligibility for the employee's own sickness, injury, or pregnancy shall contain a diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, if no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) A certificate filed to establish medical eligibility of the employee's own sickness, injury, or pregnancy shall also contain a statement of medical facts, including secondary diagnoses when applicable, within the physician's or practitioner's knowledge, based on a physical examination and a documented medical history of the claimant by the physician or practitioner, indicating the physician's or practitioner's conclusion as to the claimant's disability, and a statement of the physician's or practitioner's opinion as to the expected duration of the disability.

(b) An employee shall be required to file a certificate to establish eligibility when taking leave to care for a family member with a serious health condition. The certificate shall be developed by the department. In order to establish medical eligibility of the serious health condition of the family member that warrants the care of the employee, the information shall be within the physician's or practitioner's knowledge and shall be based on a physical examination and documented medical history of the family member and shall contain all of the following:

(1) A diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, if no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) The date, if known, on which the condition commenced.

(3) The probable duration of the condition.

(4) An estimate of the amount of time that the physician or practitioner believes the employee needs to care for the child, parent, grandparent, grandchild, sibling, spouse, or domestic partner.

(5) (A) A statement that the serious health condition warrants the participation of the employee to provide care for his or her child, parent, grandparent, grandchild, sibling, spouse, or domestic partner.

(B) "Warrants the participation of the employee" includes, but is not limited to, providing psychological comfort, and arranging "third party" care for the child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, as well as directly providing, or participating in, the medical care.

(c) The department shall develop a certification form for bonding that is separate and distinct from the certificate required in subdivision (a) for an employee taking leave to bond with a minor child within the first year of the child's birth or placement in connection with foster care or adoption.

(d) The first and any continuing claim of an individual who obtains care and treatment outside this state shall be supported by a certificate of a treating physician or practitioner duly licensed or certified by the state or foreign country in which the claimant is receiving the care and treatment. If a physician or practitioner licensed by and practicing in a foreign country is under investigation by the department for filing false claims and the department does not have legal remedies to conduct a criminal investigation or prosecution in that country, the department may suspend the processing of all further certifications until the physician or practitioner fully cooperates, and continues to cooperate, with the investigation. A physician or practitioner licensed by, and practicing in, a foreign country who has been convicted of filing false claims with the department may not file a certificate in support of a claim for disability benefits for a period of five years.

(e) For purposes of this part:

(1) "Physician" has the same meaning as defined in Section 3209.3 of the Labor Code.

(2) (A) "Practitioner" means a person duly licensed or certified in California acting within the scope of his or her license or certification who is a dentist, podiatrist, or a nurse practitioner, and in the case of a nurse practitioner, after performance of a physical examination by a nurse practitioner and collaboration with a physician and surgeon, or as to normal pregnancy or childbirth, a midwife or nurse midwife, or nurse practitioner.

(B) "Practitioner" also means a physician assistant who has performed a physical examination under the supervision of a physician and surgeon. Funds appropriated to cover the costs required to implement this subparagraph shall come from the Unemployment Compensation Disability Fund. This subparagraph shall be implemented on or before January 1, 2017.

(f) For a claimant who is hospitalized in or under the authority of a county hospital in this state, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart, and the certificate is signed by the hospital's registrar. For a claimant hospitalized in or under the care of a medical facility of the United States government, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart,

and the certificate is signed by a medical officer of the facility duly authorized to do so.

(g) Nothing in this section shall be construed to preclude the department from requesting additional medical evidence to supplement the first or any continued claim if the additional evidence can be procured without additional cost to the claimant. The department may require that the additional evidence include any or all of the following:

(1) Identification of diagnoses.

(2) Identification of symptoms.

(3) A statement setting forth the facts of the claimant's disability. The statement shall be completed by any of the following individuals:

(A) The physician or practitioner treating the claimant.

(B) The registrar, authorized medical officer, or other duly authorized official of the hospital or health facility treating the claimant.

(C) An examining physician or other representative of the department.

(h) This section shall become operative on July 1, 2014.

(Amended (as added by Stats. 2013, Ch. 350, Sec. 2) by Stats. 2014, Ch. 438, Sec. 2. (SB 1083) Effective January 1, 2015.)

Agenda Item 14

Requirements for an Approved Program for the Specialty Training of Physician Assistants: Program Approval Process

The ARC-PA does accredit some post-grad programs; however most are not ARC-PA accredited for a variety of reasons. There are some programs operating in CA that have not been approved by the Board, and one is pending board approval. Board staff is unaware of the number and types of post-grad programs operating in the state.

FOR BOARD DISCUSSION: Since post-grad programs are training licensed PAs, and those PAs are subject to all the same requirements as any other licensee, do we really need to approve the training program?

ALL programs not registered with the Board should be required to submit documents and be approved, or the law should be changed so that the board does not require post-grad program approval. Requiring some to be approved and not others is not an equal application of the law.

3513. Duties of Board

The board shall recognize the approval of training programs for physician assistants approved by a national accrediting organization. Physician assistant training programs accredited by a national accrediting agency approved by the board shall be deemed approved by the board under this section. If no national accrediting organization is approved by the board, the board may examine and pass upon the qualification of, and may issue certificates of approval for, programs for the education and training of physician assistants that meet board standards.

1399.530. General Requirements for an Approved Program.

(a) A program for instruction of physician assistants shall meet the following requirements for approval:
(1) The educational program shall be established in educational institutions accredited by an accrediting agency recognized by Council for Higher Education Accreditation ("CHEA") or its successor organization, or the U.S. Department of Education, Division of Accreditation, which are affiliated with clinical facilities that have been evaluated by the educational program.
(2) The educational program shall develop an evaluation mechanism to determine the effectiveness of its theoretical and clinical program.
(3) Course work shall carry academic credit; however, an educational program may enroll students who elect to complete such course work without academic credit.
(4) The medical director of the educational program shall be a physician who holds a current license to practice medicine from any state or territory of the United States or, if the program is located in California, holds a current California license to practice medicine.
(5) The educational program shall require a three-month preceptorship for each student in the outpatient practice of a physician or equivalent experience which may be integrated throughout the program or may occur as the final part of the educational program in accordance with Sections 1399.535 and 1399.536.
(6) Each program shall submit an annual report regarding its compliance with this section on a form provided by the board.
(b) Those educational programs accredited by the Accreditation Review Commission on Education for the Physician Assistant ("ARC-PA") shall be deemed approved by the board.

Nothing in this section shall be construed to prohibit the board from disapproving an educational program which does not comply with the requirements of this article. Approval under this section terminates automatically upon termination of an educational program's accreditation of ARC-PA.

1399.531. Curriculum Requirements for an Approved Program for Primary Care Physician Assistants.

(a) The curriculum of a program for instruction of primary care physician assistants shall include adequate theoretical instruction in or shall require as prerequisites to entry into the program the following basic education core:
(1) Chemistry
(2) Mathematics, which includes coursework in algebra
(3) English
(4) Anatomy and Physiology
(5) Microbiology
(6) Sociology or cultural anthropology
(7) Psychology
All instruction in the basic education core shall be at the junior college level or its equivalent with the exception of chemistry which may be at the junior college or high school level.
(b) The curriculum of an educational program shall also include or require as prerequisites adequate theoretical and clinical instruction which includes direct patient contact where appropriate, in the following clinical science core:
(1) Community Health and Preventive Medicine
(2) Mental Health
(3) History taking and physical diagnosis
(4) Management of common diseases (acute, chronic, and emergent) including first aid
(5) Concepts in clinical medicine and surgery, such as:
    growth and development
    nutrition
    aging
    infection
    allergy and sensitivity
    tissue healing and repair
    oncology
(6) Common laboratory and screening techniques
(7) Common medical and surgical procedures
(8) Therapeutics, including pharmacology
(9) Medical ethics and law
(10) Medical socioeconomics
(11) Counseling techniques and interpersonal dynamics

1399.532. Requirements for an Approved Program for the Specialty Training of Physician Assistants.

A program for the specialty training of physician assistants shall meet the general requirements of Section 1399.530, except that a specialty training program need not be located in an educational institution and need not provide academic credit for its coursework, and shall either
(a) accept only trainees who have completed a primary care training program; or,
(b) provide the curriculum set forth in Section 1399.531 in addition to any specialty instruction it may provide.

Agenda Item 15

Title 16, California Code of Regulations Section 1399.540(b) Delegation of Services Agreement

ELECTRONIC SIGNATURE

Board staff has made a policy of requiring pen/ink signature on the DSA. The Board has not had opportunity to vote on this policy, which does not appear to be supported by law.

Electronic signatures are used every day in a variety of settings, and are legally recognized by the California Civil Code as equivalent to pen and ink signatures. (CCC §1633.7) There some specific situations where pen/ink are required, however the PA Practice Act is not listed as one of those in the code.

Electronic signatures are used widely in the medical environment, and are appropriate for use on the DSA, particularly if the electronic signature includes a time stamp and requires the use of a passcode. From an enforcement perspective this type of electronic signature verifies when all parties signed the DSA and agreed to its terms, and is perhaps more useful than a pen and ink signed DSA.

RECOMMENDATION: Board staff should not implement policy without approval of the Board. PAB policy should be to accept electronic signature on the DSA.

1399.540. Limitation on Medical Services.

(a) A physician assistant may only provide those medical services which he or she is competent to perform and which are consistent with the physician assistant's education, training, and experience, and which are delegated in writing by a supervising physician who is responsible for the patients cared for by that physician assistant.
(b) The writing which delegates the medical services shall be known as a delegation of services agreement. A delegation of services agreement shall be signed and dated by the physician assistant and each supervising physician. A delegation of services agreement may be signed by more than one supervising physician only if the same medical services have been delegated by each supervising physician. A physician assistant may provide medical services pursuant to more than one delegation of services agreement.
(c) The board or Medical Board of California or their representative may require proof or demonstration of competence from any physician assistant for any tasks, procedures or management he or she is performing.
(d) A physician assistant shall consult with a physician regarding any task, procedure or diagnostic problem which the physician assistant determines exceeds his or her level of competence or shall refer such cases to a physician.

NOTE: Authority cited: Sections 2018, 3502 and 3510, Business and Professions Code. Reference: Section 3502, Business and Professions Code.
HISTORY:
1. Repealer and new section filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39). For prior history, see Register 79, No. 34.
2. Amendment filed 7-12-85; effective thirtieth day thereafter (Register 85, No. 28).
3. Renumbering and amendment of former Article 3 (sections 1399.540–1399.545, not consecutive) to Article 4 filed 7-18-85; effective thirtieth day thereafter (Register 85, No. 32).
4. Amendment filed 7-8-2008; operative 8-7-2008 (Register 2008, No. 28).
5. Change without regulatory effect amending subsection (c) filed 8-7-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 32).

ORDER OF ADOPTION

The Medical Board of California, on behalf of the Physician Assistant Committee, hereby amends regulations in Division 13.8 of Title 16 of the California Code of Regulations, to read as follows:

Amend Section 1399.540 to read as follows:

1399.540. Limitation on Medical Services.

(a) A physician assistant may only provide those medical services which he or she is competent to perform and which are consistent with the physician assistant's education, training, and experience, and which are delegated in writing by a supervising physician who is responsible for the patients cared for by that physician assistant.

(b) The writing which delegates the medical services shall be known as a delegation of services agreement. A delegation of services agreement shall be signed and dated by the physician assistant and each supervising physician. A delegation of services agreement may be signed by more than one supervising physician only if the same medical services have been delegated by each supervising physician. A physician assistant may provide medical services pursuant to more than one delegation of services agreement.

(c) The committee or division or their representative may require proof or demonstration of competence from any physician assistant for any tasks, procedures or management he or she is performing.

(d) A physician assistant shall consult with a physician regarding any task, procedure or diagnostic problem which the physician assistant determines exceeds his or her level of competence or shall refer such cases to a physician.

NOTE: Authority: Sections 2018, 3502 and 3510, Business and Professions Code.
Reference: Section 3502, Business and Professions Code.

DATED: 3-13-2008

BARB JOHNSTON
Executive Director
Medical Board of California

MEDICAL BOARD OF CALIFORNIA

INITIAL STATEMENT OF REASONS

Hearing Date: 1 February 2008

Subject Matter of Proposed Regulations: Delegation of Services – Physician Assistants

Section Affected: 1399.540

Specific Purpose of each adoption, amendment, or repeal:

The existing regulation requires that a physician assistant may only provide medical services which he or she is competent to perform and which are consistent with the physician assistant's education, training, and experience and which are delegated in writing by a supervising physician.

This proposal would formally recognize that the writing which delegates the medical services to the physician assistant be known as a "Delegation of Services Agreement" and require that it now be signed and dated by both the supervising physician and physician assistant.

This proposal would also allow the delegation of services agreement to be signed by more than one supervising physician only if the same medical services have been delegated by each supervising physician. Also, a physician assistant may provide medical services pursuant to more than one delegation of services agreement.

Factual Basis/Rationale

Section 1399.540 of the Physician Assistant regulations states, in part, "A physician assistant may only provide those medical services which he or she is competent to perform and which are consistent with the physician assistant's education, training, and experience, and which are delegated in writing by a supervising physician who is responsible for the patients cared for by that physician assistant."

These writings which delegate the medical services performed by the physician assistant are the foundation of the physician assistant's practice. The document specifies the names of the supervising physicians who will supervise the physician assistant. It also specifies what type of medical services the physician assistant will perform, how they are performed, how the patient charts will be reviewed and countersigned, and what type of medications the physician assistant will transmit on behalf of the supervising physician. Additionally, the

document describes emergency transport procedures for medical situations beyond the physician assistant's scope of practice.

These documents which are used by physician assistants and their supervising physicians to meet the requirements of Section 1399.540 are universally known in the medical community as a "Delegation of Services Agreement."

The current regulation, although it requires a delegation to be in writing, does not mandate that the physician assistant and his or her supervising physician sign it.

Requiring both parties to sign the document makes it more likely they understand and agree to the contents of the document and the nature of their relationship. Consumer protection would be enhanced by ensuring complete and full understanding of the contents of the delegation of services agreement. Also, with the signature of both parties, the document takes on the flavor of a true document.

Additionally, a document signed by the physician assistant and supervising physician would assist the committee with enforcement duties. Neither party could claim that they didn't agree to the delegated medical tasks or the existence of the document.

The Physician Assistant Committee lacks legal authority to adopt, amend, or repeal regulations affecting the scope of practice of physician assistants and supervising physicians. This authority has been statutorily granted to the Medical Board of California.

On April 26, 2007 Elberta Portman, Executive Officer of the Physician Assistant Committee, made a presentation to the members of the Division of Licensing of the Medical Board of California to request that they consider regulatory action on this matter.

After discussion, members of the Board requested that staff of the Division of Licensing schedule a work group meeting to discuss the proposed regulatory change.

A work group meeting was held on July 18, 2007. Key members from the Medical Board Division of Licensing and Legislative/Regulatory Unit, Physician Assistant Committee, Department of Consumer Affairs Legal Office, California Medical Association, and the California Academy of Physician Assistants participated in this meeting. Participants developed the proposed language.

At the November 1, 2007 Medical Board of California meeting, members requested that staff set this regulatory proposal for a hearing at their February 1, 2008 board meeting.

Underlying Data

Technical, theoretical or empirical studies or reports relied upon:

None.

Business Impact

This regulation will not have a significant adverse economic impact on businesses. Because the document is already required by the regulations, the only effort is in signing the document.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1) Not amend regulation. This alternative was rejected because the writings defined by section 1399.540 are known to the physician assistant community as a Delegation of Services Agreement.

2) Amend the regulation to require that the writings defined by section 1399.540 as a Delegation of Services Agreement and require that the document be signed and dated by both the physician assistant and supervising physician.

The committee determined that the second alternative was the most feasible because the title, "Delegation of Services Agreement" is now universally understood by the medical community as the title for this document. Having the document signed by both the physician assistant and supervising physician would ensure that both parties understand and agree with the contents of the document.

Additionally, the signed document would assist the committee with enforcement duties. Neither party could claim that they didn't agree to the delegated medical tasks or the existence of the document.

Agenda Item 16

Public Inquiries Regarding Physician Assistant Laws and Regulations
Review and Approve Typical Written Responses

Board staff gets regular phone calls from the general public, licensees, and medical staff offices. Over the years board staff has come up with a list of "40-50 canned answers" they will give to callers. In response to callers board staff has been recommending licensees update the DSA annually or every few years. This has resulted in some medical staff offices *requiring* a new DSA every 1-2 years. The PA Practice Act and associated regulations (CCR Title 16.8, Division 13.8, Article 4 §1399.540-546) makes no temporal review requirement of the DSA. It is up to each physician/PA team to determine whether or not the DSA reflects current practice and update it accordingly. Board staff should not be giving legal advice, offering interpretation of the law, or making legal recommendations, but simply referring callers to the law. Legal advice is the domain of counsel, not board staff.

The Board should have opportunity to review, revise, and approve the "canned answers" board staff is using to respond to callers.

FOR BOARD DISCUSSION: The Board may want to implement a policy that the board staff is only to answer questions from the approved scripted text or by email to avoid public confusion.

Acupuncture

Dear @

Thank you for your email in which you ask questions regarding physician assistant scope of practice.

More specifically, you ask if physician assistants may practice acupuncture.

This response does not address any laws that may exist outside of the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code of Regulations (Physician Assistant Regulations) that may apply to this issue.

We know of no specific statutes in the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code which would prohibit a physician assistant from performing acupuncture. The following regulations set forth below may govern the procedures described in your email.

Title 16 of the California Code of Regulations section 1399.540 provides in pertinent part:

> "A physician assistant may only provide those medical services which he or she is competent to perform and which are consistent with the physician assistant's education, training, and experience, and which are delegated in writing by a supervising physician who is responsible for the patients cared for by that physician assistant...A physician assistant shall consult with a physician regarding any task, procedure or diagnostic problem which the physician assistant determines exceeds his or her level of competence or shall refer such cases to a physician."

Title 16 of the California Code of Regulations section 1399.541(i)(1) permits a physician assistant to:

> "Perform surgical procedures without the personal presence of the supervising physician which are customarily performed under local anesthesia. Prior to delegating any such surgical procedures, the supervising physician shall review documentation which indicates that the physician assistant is trained to perform the surgical procedures. All other surgical procedures requiring other forms of anesthesia may be performed by a physician assistant only in the personal presence of an approved supervising physician."

Title 16 of the California Code of Regulations section 1399.543 provides:

> "A physician assistant may be trained to perform medical services which augment his or her current areas of competency in the following settings:
> (a) In the physical presence of a supervising physician who is directly in attendance and assisting the physician assistant in the performance of the procedure;
> (b) In an approved program;
> (c) In a medical school approved by the Division of Licensing under Section 1314;
> (d) In a residency or fellowship program approved by the Division of Licensing under Section 1321;
> (e) In a facility or clinic operated by the Federal government;
> (f) In a training program which leads to licensure in a healing arts profession or is approved as Category I continuing medical education or continuing nursing education by the Board of Registered Nursing."

Title 16 of the California Code or Regulations section 1399.545(b) provides:

> "A supervising physician shall delegate to a physician assistant only those tasks and procedures consistent with the supervising physician's specialty or usual and customary practice and with the patient's health and condition."

Title 16 of the California Code of Regulations section 1399.545(c) provides in pertinent part:

> "A supervising physician shall observe or review evidence of the physician assistant's performance of all tasks and procedures to be delegated to the physician assistant until assured of competency."

It is our understanding that only individuals who are issued and maintain a valid acupuncture license issued by the Acupuncture Board of California and physicians licensed by the Medical Board of California may perform acupuncture. For information regarding acupuncture licensure and acupuncture scope of practice please contact the California Acupuncture Board at (916) 515-5200 or acupuncture@dca.ca.gov. You may also visit their website at: www.acupuncture.ca.gov.

Please consult the full text of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Q. WHAT IS AN ACUPUNCTURIST ALLOWED TO DO?

A. An acupuncturist is allowed to engage in the practice of acupuncture, electroacupuncture, perform or prescribe the use of oriental massage, acupressure, moxibustion, cupping, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements to promote, maintain, and restore health pursuant to **Business & Professions Code Section 4937**

http://www.acupuncture.ca.gov/

Address of Record

Dear @:

Thank you for your email in which you ask questions regarding physician assistant licensure.

More specifically, you seek clarification regarding physician assistant licensee address of record information @available to the public.

The law and regulation set forth below govern the question described in your email.

Business and Professions Code section 3518 states:

> The board shall keep current, two separate registers, one for approved supervising physicians and one for licensed physicians assistants, by specialty if applicable. These registers shall show the name of each licensee, his or her last known address of record, and the date of his or her licensure or approval. Any interested person is entitled to obtain a copy of the register in accordance with the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) upon application to the board together with a sum as may be fixed by the board, which amount shall not exceed the cost of this list so furnished.

Title 16 of the California Code of Regulations section 1399.511 provides:

> a) Each person or approved program holding a license or approval and each person or program who has an application on file with the board shall notify the board at its office of any and all changes of mailing address within thirty (30) calendar days after each change, giving both the old and new address.
> (b) If an address reported to the board is a post office box, the licensee shall also provide the board with a street address, but he or she may request that the second address not be disclosed to the public.

Therefore, California law requires the Physician Assistant Board to provide upon written or verbal request, the address of record of any licensed physician assistant. The address of record will be released to any individual or entity who inquires and is also available to the public on the Board's web site. **We encourage every licensee to carefully consider the address of record provided to the Board**. As an alternate to a home address, licensees may wish to use an office, employer's address, or a post office box as the address of record.

Please be aware that the Board will also use the address of record to mail all licenses, renewal notices and ALL other official correspondence.

Please consult the full text of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Administering and Ordering Scheduled Drugs

Dear @:

Thank you for your email in which you ask questions regarding physician assistant scope of practice.

More specifically, you seek clarification regarding physician assistants ordering and writing drug orders for @(specific drug).

This letter does not address any laws that may exist outside of the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code of Regulations that may apply to this issue.

We know of no specific statute in the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code of Regulations which would prohibit a physician assistant from ordering or administering @(specific drug). Applicable standards of care for physicians supervising and delegating this practice, as well as the standards of care for physician assistants, govern the administration and delegation to administer @(specific drug). The following regulations set forth below may also govern this practice.

Title 16 of the California Code of Regulations section 1399.540 provides in pertinent part:

> "A physician assistant may only provide those medical services which he or she is competent to perform and which are consistent with the physician assistant's education, training, and experience, and which are delegated in writing by a supervising physician who is responsible for the patients cared for by that physician assistant.
>
> A physician assistant shall consult with a physician regarding any task, procedure or diagnostic problem which the physician assistant determines exceeds his or her level of competence or shall refer such cases to a physician."

Title 16 of the California Code or Regulations section 1399.545(b) provides:

> "A supervising physician shall delegate to a physician assistant only those tasks and procedures consistent with the supervising physician's specialty or usual and customary practice and with the patient's health and condition."

Title 16 of the California Code of Regulations section 1399.545(c) provides in pertinent part:

> "A supervising physician shall observe or review evidence of the physician assistant's performance of all tasks and procedures to be delegated to the physician assistant until assured of competency."

Title 16 of the California Code of Regulations section 1399.541(h) permits a physician assistant to:

> "Administer or provide medication to a patient, or issue or transmit drug orders orally or in writing in accordance with the provisions of subdivisions (a) – (f), inclusive, of Section 3502.1 of the [Business and Professions] Code.

Business and Professions Code section 3502.1(a)(2) provides:

> "Each supervising physician and surgeon who delegates the authority to issue a drug order to a physician assistant shall first prepare and adopt, or 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. Protocols for Schedule II controlled substances shall address the diagnosis of illness, injury, or condition for which the Schedule II controlled substance is being administered, provided, or issued. The drugs listed in the protocols 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."

Business and Professions Code section 3502.1(c) provides:

> "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 and surgeon before it is filled or carried out."

Business and Professions Code section 3502.1(c)(3) provides:

> "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."

Title 16 of the California Code of Regulations section 1399.543 provides:

> "A physician assistant may be trained to perform medical services which augment his or her current areas of competency in the following settings:
> (a) In the physical presence of a supervising physician who is directly in attendance and assisting the physician assistant in the performance of the procedure;
> (b) In an approved program;
> (c) In a medical school approved by the Medical Board of California under Section 1314;
> (d) In a residency or fellowship program approved by the Medical Board of California under Section 1321;
> (e) In a facility or clinic operated by the Federal government;
> (f) In a training program which leads to licensure in a healing arts profession or is approved as Category I continuing medical education or continuing nursing education by the Board of Registered Nursing."

In other words, a physician assistant in one situation may be deemed competent to order and administer @(specific drug) while another may not, based on education, training, experience,

the supervising physician's specialty or usual and customary practice, as well as applicable standards of care.

Please consult the full text of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

3502.1. Prescription Transmittal Authority

(a) In addition to the services authorized in the regulations adopted by the Medical Board of California, and except as prohibited by Section 3502, while under the supervision of a licensed physician and surgeon or physicians and surgeons authorized by law to supervise a physician assistant, 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, or 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. Protocols for Schedule II controlled substances shall address the diagnosis of illness, injury, or condition for which the Schedule II controlled substance is being administered, provided, or issued. The drugs listed in the protocols 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 that 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 surgeons, 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 and surgeon 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 physician 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 to a patient for Schedule II through Schedule V controlled substances without advance approval by a supervising physician and surgeon for that particular patient unless the physician assistant has completed an education course that covers controlled substances and that meets standards, including pharmacological content, approved by the board. The education course shall be provided either by an accredited continuing education provider or by an approved physician assistant training program. If the physician assistant will administer, provide, or issue a drug order for Schedule II controlled substances, the course shall contain a minimum of three hours exclusively on Schedule II controlled substances. Completion of the requirements set forth in this paragraph shall be verified and documented in the manner established by the board prior to the physician assistant's use of a registration number issued by the United States Drug Enforcement Administration to the physician assistant to administer, provide, or issue a drug order to a patient for a controlled substance without advance approval by a supervising physician and surgeon for that 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 telephone 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 and shall otherwise comply with the of Section 11162.1 of the Health and Safety Code. Except as otherwise required for written drug orders for controlled substances under Section 11162.1 of the Health and Safety Code, 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 registration 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 supervising physician and surgeon shall use either of the following mechanisms to ensure adequate supervision of the administration, provision, or issuance by a physician assistant of a drug order to a patient for Schedule II controlled substances:

(1) The medical record of any patient cared for by a physician assistant for whom the physician assistant's Schedule II drug order has been issued or carried out shall be reviewed, countersigned, and dated by a supervising physician and surgeon within seven days.

(2) If the physician assistant has documentation evidencing the successful completion of an education course that covers controlled substances, and that controlled substance education course (A) meets the standards, including pharmacological content, established in Sections 1399.610 and 1399.612 of Title 16 of the California Code of Regulations, and (B) is provided either by an accredited continuing education provider or by an approved physician assistant training program, the supervising physician and surgeon shall review, countersign, and date, within seven days, a sample consisting of the medical records of at least 20 percent of the patients cared for by the physician assistant for whom the physician assistant's Schedule II drug order has been issued or carried out. Completion of the requirements set forth in this paragraph shall be verified and documented in the manner established in Section 1399.612 of Title 16 of the California Code of Regulations. Physician assistants who have a certificate of completion of the course described in paragraph (2) of subdivision (c) shall be deemed to have met the education course requirement of this subdivision.

(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).

(g) The board shall consult with the Medical Board of California and report during its sunset review required by Article 7.5 (commencing with Section 9147.7) of Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code the impacts of exempting Schedule III and Schedule IV drug orders from the requirement for a physician and surgeon to review and countersign the affected medical record of a patient.

Applicant Denial Information

Dear @:

Thank you for your email in which you ask questions regarding physician assistant licensure.

The Physician Assistant Board reviews all convictions during the application process. Because each application is evaluated on a case-by-case basis we are unable to provide you with a specific answer to your question.

The Board considers whether the conviction is substantially related to the qualifications, functions, or duties of a physician assistant, the nature and severity of the acts, evidence of rehabilitation, and the time elapsed since the commission of the acts.

The attached applicant denial information should provide you with general guidance to your inquiry.

If you have additional questions please contact me.

Thank you.

Application Denial Information

The Physician Assistant Board's highest priority is to protect consumers by investigating complaints and taking disciplinary action against licensees and applicants for licensure who may endanger the health and safety of consumers.
Section 480 of the Business and Professions Code authorizes the board to deny an application for licensure as a physician assistant based on conviction or the commission of an act substantially related to the practice of a physician assistant.

Grounds for denial of an application for licensure are based on statutes and regulations. The following statutes and regulations may apply to denial of an application for licensure as a physician assistant.

GENERAL INFORMATION REGARDING DENIAL OF APPLICATIONS

Before the board issues a physician assistant license, clearance must be received from the California Department of Justice and Federal Bureau of Investigation. Applicants are required to report all criminal convictions on their applications. All convictions, whether they occurred in California or in another state or territory, that have been set aside and dismissed or expunged, or where a stay of execution has been issued MUST be reported. Additionally, applicants must also report all prior or current disciplinary actions against health-care related licenses.

Failure to report a conviction on a disciplinary action constitutes grounds for denial of an application for licensure as a physician assistant.

The Physician Assistant Board reviews all convictions. Each application is evaluated on a case-by-case basis. The board considers whether the conviction is substantially related to the

qualifications, functions, or duties of a physician assistant, the nature and severity of the acts, evidence of rehabilitation, and the time elapsed since the commission of the acts.

The normal processing time to review all documentation submitted is four to six weeks. The Board does not issue temporary licenses during the evaluation process.

Applicants will be notified in writing of the Board's decision to deny an application for licensure as a physician assistant.

If an application for licensure is denied the applicant has a right to a hearing under Chapter 5 (commencing with Section 1500) of part 1 of Division 3 of Title 2 of the Government Code if written request for the hearing is made within 60-days after service of the denial letter. Unless written request for a hearing is made within the 60-day period the right to a hearing is deemed waived.

If, after denial of the license, the applicant decides not to pursue the application for licensure the applicant may reapply one year from the date of the denial letter.
To avoid delays in the evaluation process please submit all documents requested in questions 23a -23d and 24 of the physician assistant application.

BUSINESS AND PROFESSIONS CODES

480. Grounds for Denial

(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 that 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, 1203.4a, or 1203.41 of the Penal Code.
(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.
(B) 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, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she 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) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

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

3527. Causes for Denial, Suspension or Revocation

(a) The board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license after a hearing as required in Section 3528 for unprofessional conduct that includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California.
(b) The board may order the denial of an application for, or the suspension or revocation of, or the imposition of probationary conditions upon, an approved program after a hearing as required in Section 3528 for a violation of this chapter or the regulations adopted pursuant thereto.
(c) The Medical Board of California may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon, an approval to supervise a physician assistant, after a hearing as required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California.
(d) Notwithstanding subdivision (c), the Division of Medical Quality of the Medical Board of California, in conjunction with an action it has commenced against a physician and surgeon, may, in its own discretion and without the concurrence of the Medical Board of California, order the suspension or revocation of, or the imposition of probationary conditions upon, an approval to supervise a physician assistant, after a hearing as required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California.
(e) The board may order the denial of an application for, or the suspension or revocation of, or the imposition of probationary conditions upon, a physician assistant license, after a hearing as required in Section 3528 for unprofessional conduct that includes, except for good cause, the knowing failure of a licensee to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of bloodborne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other bloodborne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the Board of Podiatric Medicine, the Board of Dental Examiners, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.
(f) The board may order the licensee to pay the costs of monitoring the probationary conditions imposed on the license.

(g) The expiration, cancellation, forfeiture, or suspension of a physician assistant license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

3528. Proceedings
Any proceedings involving the denial, suspension, or revocation of the application for licensure or the license of a physician assistant, the application for approval or the approval of a supervising physician, or the application for approval or the approval of an approved program under this chapter 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.

3529. Jurisdiction Over Disciplinary Matters
The board may hear any matters filed pursuant to subdivisions (a) and (b) of Section 3527, or may assign the matter to a hearing officer. The Medical Board of California may hear any matters filed pursuant to subdivision (c) of Section 3527, or may assign the matter to a hearing officer. If a matter is heard by the board or the Medical Board of California, the hearing officer who presided at the hearing shall be present during the board's or Medical Board of California's consideration of the case, and, if requested assist and advise the board or the Medical Board of California.

3531. Conviction of Crime
A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which is substantially related to the qualifications, functions, or duties of the business or profession to which the license was issued is deemed to be a conviction within the meaning of this chapter. The board may order the license suspended or revoked, or shall decline to issue a 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 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, information, or indictment.

TITLE 16. CALIFORNIA CODE OF REGULATIONS

1399.521. Denial, Suspension or Revocation of a Physician Assistant License
In addition to the grounds set forth in section 3527, subd. (a), of the code the board may deny, issue subject to terms and conditions, suspend, revoke or place on probation a physician assistant for the following causes:
(a) Any violation of the State Medical Practice Act which would constitute unprofessional conduct for a physician and surgeon.
(b) Using fraud or deception in passing an examination administered or approved by the board.
(c) Practicing as a physician assistant under a physician who has been prohibited by the Medical Board of California or the Osteopathic Medical Board of California from supervising physician assistants

(d) Performing medical tasks which exceed the scope of practice of a physician assistant as prescribed in these regulations.

1399.525. Substantial Relationship Criteria

For the purposes of the denial, suspension or revocation of a license pursuant to division 1.5 (commencing with section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license under the Physician Assistant Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding such a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include, but are not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Medical Practice Act.

(b) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Physician Assistant Practice Act.

(c) A conviction of child abuse.

(d) Conviction as a sex offender.

(e) Any crime or act involving the sale, gift, administration, or furnishing of narcotics or dangerous drugs or dangerous devices, as defined in Section 4022 of the code.

(f) Conviction for assault and/or battery.

(g) Conviction of a crime involving lewd conduct.

(h) Conviction of a crime involving fiscal dishonesty.

(i) Conviction for driving under the influence of drugs or alcohol.

1399.526. Rehabilitation Criteria for Denials and Reinstatements

(a) When considering the denial of a license under section 480 of the code, the board in evaluating the rehabilitation of the applicant and his or her present eligibility for a license shall consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under section 480 of the code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsection (a) or (b).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

(b) When considering a petition for reinstatement of a license under the provisions of section 11522 of the Government Code, the board shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in this section.

Other Licenses to Assist Physicians

Dear @:

Thank you for your email in which you ask questions regarding health care licensees who assist physicians.

The Department of Consumer Affairs includes within the Department various boards that regulate health care-related licensees. Some licensees are permitted by their practice act to assist physicians by performing various types of medical services. The licensee scope of practice would determine what types of services are permitted.

To our knowledge, health care related licenses regulated by boards within the Department of Consumer Affairs include:

- Medical Assistant (regulated by the Medical Board of California)
- Licensed Vocational Nurse (regulated by the Board of Vocational Nursing and Psychiatric Technicians)
- Registered Nurse (regulated by the Board of Registered Nursing)
- Nurse Practitioner (regulated by the Board of Registered Nursing)
- Physician Assistant (regulated by the Physician Assistant Board)

For information regarding the above-listed health care professions please contact these boards directly. The Department of Consumer Affairs' website is: www.dca.ca.gov. At the Department's website you will be directed to the various boards listed above.

For information regarding physician assistants please visit the board's website at: www.pac.ca.gov.

@We know of no specific statutes in the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code which would prohibit a physician assistant from taking a patient's blood pressure or temperature.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Change of Name

Dear @:

Thank you for your email in which you ask questions regarding physician assistant licensure.

More specifically, you ask if you are required to change your name because you were recently married.

You are not required to change your name due to marriage. You may keep your professional name as your birth name. We do suggest that you ensure that all names related to your professional name be the same.

If you would like to change your name you may find a name change form on our website.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

CME General Information

Dear @

Thank you for your email in which you ask questions regarding physician assistant continuing medical education requirements

The Physician Assistant Board regulations (Title 16 of the California Code of Regulations Section 1399.615 et seq.) mandated by Business and Professions Code Section 3524.5 require a physician assistant to complete continuing medical education as a condition of license renewal.

The requirement may be met by completing 50 hours of category 1 medical education every two years immediately preceding expiration of the license or by obtaining certification by the National Commission on Certification of Physician Assistants (NCCPA).

Each physician assistant is required to certify on the renewal notice his or her compliance with the continuing medical education requirements.

A physician assistant must retain, for a period of four years after the acquisition of the necessary continuing medical education, records issued by an approved continuing medical education provider that indicate the title of the course or program attended, the dates of attendance, and the hours assigned to the course or program.

If a physician assistant is certified by the NCCPA at the time of license renewal, evidence of certification must be retained for four (4) years after such certification is issued.

You may find a copy of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

CME Course Approval

Dear @:

Thank you for your email in which you ask questions regarding physician assistant continuing medical education requirements.

More specifically, you ask if the@ (schedule II class for FNPs will satisfy the PA regulations regarding the approved controlled substance education courses) will satisfy the committee's continuing medical education requirements.

All continuing medical education courses must comply with Title 16, California Code of Regulations section 1399.616:

1399.616. Approved Continuing Medical Education Programs.

(a) Programs are approved by the board for continuing medical education if they are designated as Category I (Preapproved) by one of the following sponsors:
(1) American Academy of Physician Assistants (AAPA).
(2) American Medical Association (AMA).
(3) American Osteopathic Association Council on Continuing Medical Education (AOACCME).
(4) American Academy of Family Physicians (AAFP).
(5) Accreditation Council for Continuing Medical Education (ACCME).
(6) A state medical society recognized by the ACCME.
(b) Continuing medical education obtained from a program other than those specified in subdivision (a) shall not satisfy the continuing education requirement in subdivision (a) of section 1399.615.

You may wish to contact the course provider to ensure that the CME course you are interested in attending meets the requirements of Section 1399.616

Please consult the full text of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Compounding Drugs

Dear @,

This is in response to your email in which you ask questions regarding prescription transmittal authority for physician assistants. Your email was referred to me for a reply.

Specifically, you ask if physician assistants, operating under appropriate physician supervision, may compound drugs in the physician's office.

Business and Professions Code section 3502.1 addresses your question. I have highlighted the specific sections that would address your inquiry.

3502.1. Prescription Transmittal Authority

(a) In addition to the services authorized in the regulations adopted by the Medical Board of California, and except as prohibited by Section 3502, while under the supervision of a licensed physician and surgeon or physicians and surgeons authorized by law to supervise a physician assistant, 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, or 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. Protocols for Schedule II controlled substances shall address the diagnosis of illness, injury, or condition for which the Schedule II controlled substance is being administered, provided, or issued. The drugs listed in the protocols 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 that 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 surgeons, 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 and surgeon 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 physician 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 to a patient for Schedule II through Schedule V controlled substances without advance approval by a supervising physician and surgeon for that particular patient unless the physician assistant has completed an education course that covers controlled substances and that meets standards, including pharmacological content, approved by the board. The education course shall be provided either by an accredited continuing education provider or by an approved physician assistant training program. If the physician assistant will administer, provide, or issue a drug order for Schedule II controlled substances, the course shall contain a minimum of three hours exclusively on Schedule II controlled substances. Completion of the requirements set forth in this paragraph shall be verified and documented in the manner established by the board prior to the physician assistant's use of a registration number issued by the United States Drug Enforcement Administration to the physician assistant to administer, provide, or issue a drug order to a patient for a controlled substance without advance approval by a supervising physician and surgeon for that 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 telephone 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 and shall otherwise comply with the of Section 11162.1 of the Health and Safety Code. Except as otherwise required for written drug orders for controlled substances under Section 11162.1 of the Health and Safety Code, 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 registration 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 supervising physician and surgeon shall use either of the following mechanisms to ensure adequate supervision of the administration, provision, or issuance by a physician assistant of a drug order to a patient for Schedule II controlled substances:
(1) The medical record of any patient cared for by a physician assistant for whom the physician assistant's Schedule II drug order has been issued or carried out shall be reviewed, countersigned, and dated by a supervising physician and surgeon within seven days.
(2) If the physician assistant has documentation evidencing the successful completion of an education course that covers controlled substances, and that controlled substance education course (A) meets the standards, including pharmacological content, established in Sections 1399.610 and 1399.612 of Title 16 of the California Code of Regulations, and (B) is provided either by an accredited continuing education provider or by an approved physician assistant training program, the supervising physician and surgeon shall review, countersign, and date, within seven days, a sample consisting of the medical records of at least 20 percent of the patients cared for by the physician

assistant for whom the physician assistant's Schedule II drug order has been issued or carried out. Completion of the requirements set forth in this paragraph shall be verified and documented in the manner established in Section 1399.612 of Title 16 of the California Code of Regulations. Physician assistants who have a certificate of completion of the course described in paragraph (2) of subdivision (c) shall be deemed to have met the education course requirement of this subdivision.
(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).
(g) The board shall consult with the Medical Board of California and report during its sunset review required by Article 7.5 (commencing with Section 9147.7) of Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code the impacts of exempting Schedule III and Schedule IV drug orders from the requirement for a physician and surgeon to review and countersign the affected medical record of a patient.

Therefore, physician assistants do not have authority under the physician assistant laws and regulations to compound drugs. I would suggest you contact the California Pharmacy Board for specific information with regard to compounding of drugs.

You may find a copy of the Physician Assistant Laws and Regulations on our website at: www.pac.ca.gov.

If you have additional questions please contact me.

Thank you.

Controlled Substance Course

Dear @:

Thank you for your email in which you ask questions regarding controlled substance education courses approved by the Physician Assistant Board.

More specifically, you would like to know why the courses are not widely available to practicing physician assistants and why it is administered (controlled) by CAPA.

Courses are deemed approved by the Physician Assistant Board if they meet the requirements of California Code of Regulations section 1399.610. The board does not administer the courses. Therefore, we have no legal authority over course providers regarding course fees or when the courses are offered. Additionally, the course providers on our website have requested that we include them. Other courses may exist and we may not be aware of them.

Because of the important nature of the course content, the regulations require that participants attend the course.

Business and Professions Code section 3502.1 in pertinent part provides:

(2) If the physician assistant has documentation evidencing the successful completion of an education course that covers controlled substances, and that controlled substance education course (A) meets the standards, including pharmacological content, established in Sections 1399.610 and 1399.612 of Title 16 of the California Code of Regulations, and (B) is provided either by an accredited continuing education provider or by an approved physician assistant training program, the supervising physician and surgeon shall review, countersign, and date, within seven days, a sample consisting of the medical records of at least 20 percent of the patients cared for by the physician assistant for whom the physician assistant's Schedule II drug order has been issued or carried out. Completion of the requirements set forth in this paragraph shall be verified and documented in the manner established in Section 1399.612 of Title 16 of the California Code of Regulations. Physician assistants who have a certificate of completion of the course described in paragraph (2) of subdivision (c) shall be deemed to have met the education course requirement of this subdivision.

(2) A physician assistant may not administer, provide, or issue a drug order to a patient for Schedule II through Schedule V controlled substances without advance approval by a supervising physician and surgeon for that particular patient unless the physician assistant has completed an education course that covers controlled substances and that meets standards, including pharmacological content, approved by the board. The education course shall be provided either by an accredited continuing education provider or by an approved physician assistant training program. If the physician assistant will administer, provide, or issue a drug order for Schedule II controlled substances, the course shall contain a minimum of three hours exclusively on Schedule II controlled substances. Completion of the requirements set forth in this paragraph shall be verified and documented in the manner established by the board prior to the physician assistant's use of a registration number issued by the United States Drug Enforcement Administration to the physician assistant to administer, provide, or issue a drug order to a patient for a controlled substance without advance approval by a supervising physician and surgeon for that particular patient.
Please consult the full text of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Delegation of Services Agreement

Dear @:

Thank you for your email in which you ask questions regarding Delegation of Services Agreement.

More specifically, you ask @.

The Delegation of Services Agreement (DSA) is a document used by supervising physicians and physician assistants to meet requirements set forth in the Physician Assistant Practice Act and Title 16, Division 13.8 of the California Code of Regulations.

The DSA is the foundation of the relationship between a supervising physician and the physician assistant, and specifies the names of the supervising physicians and what types of medical services the physician assistant is allowed to perform, how they are performed, how the patient charts will be reviewed and countersigned, and what type of medications the physician assistant will transmit on behalf of the supervising physician.

Business and Professions Code Section 3502 in pertinent part indicates:
(c) (1) A physician assistant and his or her supervising physician and surgeon shall establish written guidelines for the adequate supervision of the physician assistant. This requirement may be satisfied by the supervising physician and surgeon adopting protocols for some or all of the tasks performed by the physician assistant. The protocols adopted pursuant to this subdivision shall comply with the following requirements:
(A) A protocol governing diagnosis and management shall, at a minimum, include the presence or absence of symptoms, signs, and other data necessary to establish a diagnosis or assessment, any appropriate tests or studies to order, drugs to recommend to the patient, and education to be provided to the patient.
(B) A protocol governing procedures shall set forth the information to be provided to the patient, the nature of the consent to be obtained from the patient, the preparation and technique of the procedure, and the follow-up care.
(C) Protocols shall be developed by the supervising physician and surgeon or adopted from, or referenced to, texts or other sources.
(D) Protocols shall be signed and dated by the supervising physician and surgeon and the physician assistant.

Business and Professions Code Section 3502.3 indicates:
(a) Notwithstanding any other provision of law, in addition to any other practices that meet the general criteria set forth in this chapter or the Medical Board of California's regulations for inclusion in a delegation of services agreement, a

delegation of services agreement may authorize a physician assistant to do any of the following:
(1) Order durable medical equipment, subject to any limitations set forth in Section 3502 or the delegation of services agreement. Notwithstanding that authority, nothing in this paragraph shall operate to limit the ability of a third-party payer to require prior approval.
(2) For individuals receiving home health services or personal care services, after consultation with the supervising physician, approve, sign, modify, or add to a plan of treatment or plan of care.
(3) After performance of a physical examination by the physician assistant under the supervision of a physician and surgeon consistent with this chapter, certify disability pursuant to Section 2708 of the Unemployment Insurance Code. The Employment Development Department shall implement this paragraph on or before January 1, 2017.
(b) Nothing in this section shall be construed to affect the validity of any delegation of services agreement in effect prior to the enactment of this section or those adopted subsequent to enactment.

Title 16, California Code of Regulations Section 1399.540 in pertinent part indicates:

(a) A physician assistant may only provide those medical services which he or she is competent to perform and which are consistent with the physician assistant's education, training, and experience, and which are delegated in writing by a supervising physician who is responsible for the patients cared for by that physician assistant.
(b) The writing which delegates the medical services shall be known as a delegation of services agreement. A delegation of services agreement shall be signed and dated by the physician assistant and each supervising physician. A delegation of services agreement may be signed by more than one supervising physician only if the same medical services have been delegated by each supervising physician. A physician assistant may provide medical services pursuant to more than one delegation of services agreement.

Please reference this link http://www.pac.ca.gov/forms_pubs/delegation.pdf for additional information.

You may find a copy of the Physician Assistant Laws and Regulations and samples of the Delegation of Services Agreement on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Deceased Status

Dear @:

This is in response to your email of @ in which you inform us that physician assistant licensee @ passed away on @. We are sorry for your loss.

Based on this information, we have placed a “deceased” status code on @’s licensing record.

If you have any questions please contact me.

Thank you.

Disaster Health Care Volunteer Program

Dear @:

Thank you for your email in which you ask if you may register as a volunteer with the California Emergency Medical Services Authority's (EMSA) Disaster Healthcare Volunteers Program.

We know of no specific statutes in the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code which would prohibit a physician assistant from volunteering as a disaster healthcare volunteer.

The following law set forth below may govern the scenario described in your email.

Business and Professions Code Section 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 physician 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.

Please consult the full text of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

You should also review of terms of service with the California Emergency Medical Services Authority's (EMSA) Disaster Healthcare Volunteers program to determine if you qualify, and if so, are in compliance with their requirements.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Drug Samples

Dear @:

Thank you for your email in which you ask questions regarding physician assistants accepting drug samples.

We know of no specific physician assistant laws or regulations which would prohibit a physician assistant from accepting drug samples. However, as best as we can determine, the following California Board of Pharmacy laws set forth below govern the scenario described in your email.

These laws would only apply to physician assistants licensed and practicing in California.

4022. Dangerous Drug – Dangerous Device Defined
"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:
(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.
(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a ____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.
(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

4023. Device
"Device" means any instrument, apparatus, machine, implant, in vitro reagent, or contrivance, including its components, parts, products, or the byproducts of a device, and accessories that are used or intended for either of the following:
(a) Use in the diagnosis, cure, mitigation, treatment, or prevention of disease in a human or any other animal.
(b) To affect the structure or any function of the body of a human or any other animal.
For purposes of this chapter, "device" does not include contact lenses, or any prosthetic or orthopedic device that does not require a prescription.

4060. Controlled Substance – Prescription Required; Exceptions

A person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the possession of any controlled substance by a manufacturer, wholesaler, third-party logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock in containers correctly labeled with the name and address of the supplier or producer.

This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

4061. Distribution of a Drug as Sample; Written Request Required

(a) No manufacturer's sales representative shall distribute any dangerous drug or dangerous device as a complimentary sample without the written request of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. However, a certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, a physician assistant who functions pursuant to a protocol described in Section 3502.1, or a naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, may sign for the request and receipt of complimentary samples of a dangerous drug or dangerous device that has been identified in the standardized procedure, protocol, or practice agreement. Standardized procedures, protocols, and practice agreements shall include specific approval by a physician. A review process, consistent with the requirements of Section 2725, 3502.1, or 3640.5, of the complimentary samples requested and received by a nurse practitioner, certified nurse-midwife, physician assistant, or naturopathic doctor, shall be defined within the standardized procedure, protocol, or practice agreement.

(b) Each written request shall contain the names and addresses of the supplier and the requester, the name and quantity of the specific dangerous drug desired, the name of the certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor, if applicable, receiving the samples pursuant to this section, the date of receipt, and the name and quantity of the dangerous drugs or dangerous devices provided. These records shall be preserved by the supplier with the records required by Section 4059.

(c) Nothing in this section is intended to expand the scope of practice of a certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor.

I hope that we have been of assistance to you. Should you have further questions regarding physician assistants accepting drug samples please contact the Board of Pharmacy at 916.574.7900 or visit their website at: www.pharmacy.ca.gov.

If you have any questions regarding physician assistant scope of practice please contact me.

Thank you.

Dual Licenses

Dear @:

Thank you for your email in which you ask questions regarding physician assistant scope of practice.

Your email was referred to me for a response.

More specifically, you state that you have a candidate who has both a nurse practitioner and physician assistant license. You add that this individual would function as a nurse practitioner, but would like to keep her physician assistant license active.

This response does not address any laws that may exist outside of the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code of Regulations (Physician Assistant Regulations) that may apply to this issue.

We know of no specific statutes in the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code which would prohibit a physician assistant licensee from maintaining their license, while at the same time possessing a nurse practitioner license. However, the licensee may only perform duties within the specific practice act of either the Physician Assistant Board or the Board of Registered Nursing.

For example, while functioning as a nurse practitioner, the licensee would be permitted to perform services as defined in that Nursing Practice Act and not be permitted to perform medical services defined by the Physician Assistant Practice Act. Dual licensure does not allow the practitioner to globally perform medical services using both practice acts at the same time.

Therefore, if this individual is practicing as a nurse practitioner she must comply with the requirements defined in the Nursing Practice Act. Likewise, if she is practicing as a physician assistant, she would be performing medical services defined by the Physician Assistant Practice Act and a Delegation of Services Agreement would be required.

Please consult the full text of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Employment Classification

Dear @:

This is in response to your email in which you ask about California employment classifications (exempt, non exempt) and compensation requirements for physician assistants.

The physician assistant laws and regulations do not address the subject of how physician assistants may be classified for employment purposes or how they are compensated for their services.

Therefore, we know of no specific physician assistant laws or regulations which would prohibit a physician assistant from being classified as exempt or non exempt for employment purposes.

You may wish to speak to your legal counsel or accountant to determine which classification would be appropriate for you. Additionally, if you are a member of the California Academy of Physician Assistants you might contact them for information on this topic.

I hope that this information is of assistance to you. If you have additional questions please contact me.

Thank you

SSN Collection Information

Dear @,

Thank you for your email in which you ask questions regarding your physician assistant license and your recent tax inquiry from the State of California.

Your email was referred to me for a response.

More specifically, you ask how the State of California was given notification of your licensure to another state agency.

Section 30 of the Business and Professions Code and Public Law 94-455 (42 USCA 405 (c) (2)(C) authorize collection of your social security number by the Physician Assistant Board. The following statement appears on our application for licensure as a physician assistant:

MANDATORY DISCLOSURE OF SOCIAL SECURITY NUMBERS:
Disclosure of your Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN) is mandatory. Sections 30 and 31 of the Business and Professions Code authorize collection of your SSN or ITIN. Your SSN or ITIN will be used exclusively for tax enforcement purposes, for investigation of tax evasion and violations of cash-pay reporting laws as set forth in Section 329 of the Unemployment Insurance Code, for purposes of compliance with any judgment or order for family support in accordance with Section 17520 of the Family Code, or for verification of license or examination status by a licensing entity which utilizes a national examination and where licensure is reciprocal with the requesting state. If you fail to disclose your SSN or ITIN, your application for initial licensure will not be processed AND you may be reported to the Franchise Tax Board, which may assess a $100 penalty against you.

STATE TAX OBLIGATION NOTICE:
Effective July 1, 2012, the State Board of Equalization and the Franchise Tax Board may share taxpayer information with the Board. You are obligated to pay your state tax obligation and your license may be suspended or denied if the state tax obligation is not paid.

When you applied for licensure as a physician assistant your social security number was collected and reported by the Physician Assistant Board per these requirements. Our understanding this that the Franchise Tax Board obtains this information and verifies the payment of taxes in relation to a professional license possessed by that tax payer.

You are advised to contact the Franchise Tax Board if you have specific concerns or questions regarding this reporting requirement. Correspondence you received from the Franchise Tax Board regarding this matter should instruct you on how to respond to and comply with their inquiry.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

General Inquiry

Dear @:

Thank you for your email in which you ask questions regarding @ physician assistant scope of practice.

More specifically, you ask @. @ you seek clarification

This response does not address any laws that may exist outside of the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code of Regulations (Physician Assistant Regulations) that may apply to this issue.

We know of no specific statutes in the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code which would prohibit a physician assistant from performing the above-mentioned procedure(s). The following regulations set forth below may govern the procedures described in your email.

Please consult the full text of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

General Licensing Requirement

Dear @:

This is in response to your email in which you ask about the California licensing requirements for physician assistants. Your email was referred to me for a response.

Business and Profession Code Section 3519 indicates:
The board shall issue under the name of the Medical Board of California a license to all physician assistant applicants who meet all of the following requirements:
(a) Provide evidence of successful completion of an approved program.
(b) Pass any examination required under Section 3517.
(c) Not be subject to denial of licensure under Division 1.5 (commencing with Section 475) or Section 3527.
(d) Pay all fees required under Section 3521.1.

You may find a list of physician assistant training programs on our website: http://www.pac.ca.gov/applicants/index.shtml.

Only graduates of approved physician assistant programs are allowed to sit for the PANCE. For further information regarding the PANCE, please contact the National Commission on Certification of Physician Assistants at (678) 417-8100 or visit their website at www.nccpa.net .

I hope that this information is of assistance to you. If you have additional questions please contact me.

Thank you.

International Medical School Graduate Licensing Information

Dear @:

This is in response to your email in which you ask about the licensing requirements for international medical graduates as physician assistants. Your email was referred to me for a response.

Business and Professions Code (B&P) Code Section 3519 states the Physician Assistant Board shall issue a license to all physician assistant applicants who meet all of the following requirements:

(a) Provide evidence of successful completion of an approved program.

(b) Pass any examination required under Section 3517.

(c) Not be subject to denial of licensure under Division 1.5 (commencing with Section 475) or Section 3527.

(d) Pay all fees required under Section 3521.1.

Title 16 California Code of Regulations Section 1399.507 states that the written examination for licensure as a physician assistant is that administered by the National Commission on Certification of Physician Assistants (NCCPA). The examination is called the Physician Assistant National Certifying Examination.

According to NCCPA requirements, only graduates of approved physician assistant programs are allowed to sit for the PANCE. Even if an individual has earned a medical degree from another country, one must still graduate from an accredited physician assistant program to take PANCE.

For further information regarding the PANCE, please contact the National Commission on Certification of Physician Assistants at (678) 417-8100. Website: nccpa.net

International medical graduates may wish to consider employment in some other health care provider category that does not require licensure, such as a medical assistant, while pursuing physician assistant licensure. Information concerning requirements to work as a medical assistant may be obtained by contacting the Medical Board of California at (800) 633-2322.

You may also wish to consider contacting the Welcome Back Program. This program works with international medical graduates to facilitate their re-entry into the health care delivery system, in some capacity. Welcome Back works with program participants to assess their education, skills, and to identify alternative health professions that they may be suited for. You may contact the Welcome Back Program at: (619) 409-6417 website: welcomebackcenter.org.

I hope that this information is of assistance to you. If you have additional questions please contact me.

Thank you.

Independent Practice

Dear @:

Thank you for your email in which you ask questions regarding physician assistant supervision.

Your email was referred to me for a response.

More specifically, you ask if a physician assistant must have a supervising physician to practice.

The laws set forth below govern the question described in your email.

Business and Professions Code section 3501(e) and (f) states:

> (e) "Supervising physician" means a physician and surgeon licensed by the board or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.
>
> (f) "Supervision" means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.

Business and Professions Code Section 3502 (a) and (b) state:

> 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 who is not subject to a disciplinary condition imposed by the board prohibiting that supervision or prohibiting the employment of a physician assistant.
>
> 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 and surgeon. 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.

Therefore, PAs cannot practice independently. Every PA must be supervised by a licensed physician (either M.D. or D.O.). The supervising physician is responsible for all medical services provided by a PA under his/her supervision and for following each patient's progress.

You may find a copy of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Licensing Renewal Requirements

Dear @:

The purpose of my writing to you today is to provide you with the initial licensing and renewal requirements for California physician assistants licensed by the Physician Assistant Board.

By law, all individuals who seek to be licensed and practice in California as a physician assistant must:

- Successfully complete an approved PA training program (a list of these programs can be found at this link http://www.arc-pa.org/acc_programs/)

  AND

- Pass the Physician Assistant National Certifying Examination (PANCE).

Maintaining national certification or taking and passing the Physician Assistant National Recertification Examination (PANRE) are not requirements for licensure or renewal of a physician assistant license in California.

However, continuing medical education requirements of 50 hours of continuing medical education for each renewal cycle allows licensees who maintain certification from the National Commission on Certification of Physician Assistants during the renewal cycle to use that certification to satisfy this requirement. Thus, national certification may be used as a method of continuing medical education compliance.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Licensing Requirements

Dear @

This is in response to your email in which you ask about the California licensing requirements for physician assistants. Your email was referred to me for a response.

By law, all individuals who seek to be licensed and practice in California as a physician assistant must:

- successfully complete a PAB approved physician assistant training program; and

- pass the Physician Assistant National Certifying Examination (PANCE). (Reference: Business and Professions Code, Section 3519).

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you

Medical Assistant Supervision

Dear @

Thank you for your email in which you ask questions regarding physician assistant scope of practice.

More specifically, you ask if a medical assistant may be supervised by a physician assistant in the absence of a physician and surgeon.

SUPERVISION OF MEDICAL ASSISTANTS BY PHYSICIAN ASSISTANTS

Under the provisions of Business and Professions Code section 2069(a)(1), a medical assistant may administer medication only by intradermal, subcutaneous, or intramuscular injections and perform skin tests and additional technical supportive services upon the specific authorization and supervision of a licensed physician and surgeon or a licensed podiatrist. A medical assistant may also perform all these tasks and services upon the specific authorization of a physician assistant, a nurse practitioner, or a certified nurse-midwife.

However, supervision of a medical assistant for the above-mentioned tasks and supportive services may be delegated to the physician assistant under provisions of Section 2069(a)(2) of the Business and Professions Code, which states:

The supervising physician and surgeon may, at his or her discretion, in consultation with the nurse practitioner, certified nurse-midwife, or physician assistant, provide written instructions to be followed by a medical assistant in the performance of tasks or supportive services. These written instructions may provide that the supervisory function for the medical assistant for these tasks or supportive services may be delegated to the nurse practitioner, certified nurse-midwife, or physician assistant within the standardized procedures or protocol, and that tasks may be performed when the supervising physician and surgeon is not onsite, if either of the following apply:

- The nurse practitioner or certified nurse-midwife is functioning pursuant to standardized procedures, as defined by Section 2725, or protocol. The standardized procedures or protocol, including instructions for specific authorizations, shall be developed and approved by the supervising physician and surgeon and the nurse practitioner or certified nurse-midwife.

- The physician assistant is functioning pursuant to regulated services defined in Section 3502, including instructions for specific authorizations, and is approved to do so by the supervising physician and surgeon.

Additionally, Business and Professions Code Section 2069(b)(3) states that, "Supervision" means the supervision of procedures authorized by this section by the following practitioners, within the scope of their respective practices, who shall be physically present in the treatment facility during the performance of those procedures:

- A licensed physician and surgeon
- A licensed podiatrist
- A physician assistant, nurse practitioner, or certified nurse-midwife

Business and Professions Code Section 2069(b)(2) states, “Specific authorization” means a specific written order prepared by the supervising physician and surgeon or the supervising podiatrist, or the physician assistant, the nurse practitioner, or the certified nurse-midwife as provided in subdivision (a), 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, or the physician assistant, the nurse practitioner, or the certified nurse-midwife as provided in subdivision (a), 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.

For further information concerning medical assistants, visit the Medical Board of California's website at:

http://www.mbc.ca.gov/Licensees/Physicians_and_Surgeons/Medical_Assistants

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Medical Marijuana Information

Dear @:

Thank you for your email in which you ask questions regarding physician assistant scope of practice.

More specifically, you ask if a physician assistant may evaluate a patient for the medical use of marijuana.

INFORMATION BULLETIN
GUIDELINES – MEDICAL MARIJUANA

California voters passed Proposition 215 on November 5, 1996. Through this Initiative Measure, Section 11362.5 was added to the Health & Safety Code, and is also known as the Compassionate Use Act of 1996. The purposes of the Act include, in part:
"(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where the medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief; and
(B) To ensure those patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction."

PHYSICIAN ASSISTANTS

A physician assistant has limited responsibilities with regard to the recommendation for medical marijuana. A physician assistant may evaluate a patient consistent with the physician assistant's Delegation o9f Services Agreement and protocol, if applicable. However, only an attending physician is authorized to recommend medical use of marijuana pursuant to Health and Safety Code section 11362.5.

The following information is provided as a general guideline for your supervising physician. Your supervising physician should refer to and contact the Medical Board of California for complete and specific information regarding this topic.

According to Health and Safety Code section 11362.7(a), some of the supervising physician's responsibilities include the following:

- Possess a license to practice medicine or osteopathy in California issued by the Medical Board of California or the Osteopathic Medical Board of California. This license must be in good standing,
- Take responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of the applicant (patient).
- Complete a medical examination of the patient. This medical examination cannot be delegated.
- As a result of the medical examination, document in the patient's medical record that the patient has a serious medical condition and that the medical use of marijuana is appropriate. The attending physician must come to these conclusions himself or herself.

IMPORTANT POINTS TO CONSIDER:

1. We urge you and your supervising physician, if your practice is contemplating recommending the use of medical marijuana, to become familiar with all applicable laws and regulations pertaining to this treatment modality. You may wish to visit the Medical Board's website at www.mbc.ca.gov and contact the Department of Public Health Medical Marijuana Program Unit at mmpinfo@chph.ca.gov
2. It is important that you and your supervising physician understand and comply with all laws concerning their recommendation of medical marijuana. You may also wish to speak with your legal counsel concerning your compliance with the laws governing this practice.
3. Remember a physician assistant may only evaluate a patient for the use of medical marijuana. The attending physician himself or herself MUST perform an examination of the patient prior to the physician making a recommendation. This medical examination may not be delegated to a physician assistant.

Although the Compassionate Use Act allows the use of medical marijuana by a patient upon the recommendation or approval of a physician, California physicians should bear in mind that marijuana is listed in Schedule I of the federal Controlled Substances Act, which means that it has no accepted medical use under federal law. However, in *Conant v. Walters* (9th Cir.202) 309 F.3d 629 the United States Court of Appeals recognized that physicians have a constitutionally-protected right to discuss medical marijuana as a treatment option with their patients. However, the court cautioned that physicians could exceed the scope of this constitutional protection if they conspire with, or aid and abet their patients in obtaining medical marijuana (if in making the recommendation, the physician intends for the patient to use it as the means for obtaining marijuana, as a prescription is used as a means for the patient to obtain a controlled substance.) In other words, while Proposition 215 may serve as a defense to criminal prosecution under California law, medical marijuana is still illegal under federal law.

HEALTH AND SAFETY CODE
Section 11362.5

(a) This section shall be known and may be cited as the Compassionate Use Act of 1996.
(b) (1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:
(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.
(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.
(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.
(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.
(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358,relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.
(e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Medical Service Performable

Dear @:

Thank you for your email in which you ask questions regarding physician assistant scope of practice.

More specifically, you ask about @.

Because physician assistant practice is directed by a supervising physician, and a physician assistant acts as an agent for that physician, the orders given and tasks performed by a physician assistant shall be considered the same as if they had been given and performed by the supervising physician. Unless otherwise specified in the regulations or in the delegation or protocols, these orders may be initiated without the prior patient specific order of the supervising physician.

A physician assistant may only provide those medical services which:
(1) he or she is competent to perform, as determined by the supervising physician,
(2) are consistent with his/her education, training, and experience, and
(3) are delegated in writing by the supervising physician responsible for the patients cared for by the PA.

In accordance with these criteria and other provisions set forth in the PA law and regulations, and *not withstanding any other provision of law*, a PA may work in any setting, and may provide any medical service with the exception of certain ophthalmological and dental procedures listed in law [Business and Professions Code, Section 3502(c)]. Please note that Section 3502.1 of the Business and Professions Code allows a PA to issue a written drug order based on the supervising physician's prescription order.

Specific examples of some of the medical services performable by a PA are listed in regulation (Title 16 California Code of Regulations Section 1399.541).

Please consult the full text of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Military Spouse Application

Dear @

Thank you for your email regarding physician assistant licensure. Specifically, you asked about expedited review of applications for physician assistant applicants that are spouses or partners of active duty military personnel.

Please submit the physician assistant application and ensure that you mark the "military spouse" box on the first page of the application. The following information should assist you in submitting your application.

Spouses or Partners Receive Expedited Review:
The Board is required to expedite the licensure process for an applicant whose spouse or partner is an active duty member of the U.S. Armed Forces and meets other criteria. (Business and Professions Code section 115.5.) If you would like to be considered for this expedited review and process, please answer or provide the following documentation:

1. Are you married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders?

If "yes," please provide evidence of your legal union and your spouse or partner's military duty. For example, attach a copy of the marriage certificate or certified declaration/registration of domestic partnership filed with the Secretary of State AND military orders establishing duty station in California. For other forms of "legal union" not recognized by California, you may submit other documentary evidence of legal union issued by the State that recognizes your legal union for consideration by the Board in meeting this requirement.

Our process generally takes approximately four weeks. Our licensing technician will be assisting you in expediting your application for licensure.

Hope we have been of assistance to you. Please contact me if you have any questions. We look forward to receiving your application.

Thank you.

Name Tag

Dear @:

Thank you for your email in which you ask questions regarding physician assistants.

More specifically, you ask if physician assistants are required to post their name and physician assistant credentials in an area of the medical office. You also ask if physician assistants are required to wear name tags with their photo, indicating their physician assistant title.

Business and Professions Code Section 680 requires that health care practitioners disclose, while working, their name and license status, as granted by the state on a name tag of at least 18-point type. A health care practitioner in a practice or an office whose license is prominently displayed, may opt to not wear a name tag. This section of law remains silent on a requirement for a photograph.

Additionally, California Code of Regulations Section 1399.547 requires that licensees notify consumers that they are licensed by the Physician Assistant Board. Licensees may determine which of three (3) notification methods would be the most appropriate for their practice setting. The three (3) methods include: posting a sign where their patients may see it; include a written statement signed and dated by the patient and placed in their medical record; or include the notification language on another document just above the patient signature line.

Please consult the full text of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Non-Medical Supervision by a PA

Dear@:

Thank you for your email in which you ask questions regarding physician assistant scope of practice.

More specifically, you ask if a physician assistant may provide clinical supervision to medical assistants (MA), licensed vocational nurses (LVN), or registered nurses (RN). You also stated in your email that the specific oversight would include non-medical functions such as education, training standards, credentialing, and scope of practice for the above-listed personnel.

This response does not address any laws that may exist outside of the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code of Regulations (Physician Assistant Regulations) that may apply to this issue.

We know of no specific statutes in the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code which prohibit a physician assistant from providing non-medical oversight functions to medical assistants, licensed vocational nurses, or registered nurses.

We suggest that you contact the Medical Board of California (for medical assistants), the Board of Vocational Nursing and Psychiatric Technicians, and the Board of Registered Nursing to determine if additional laws or regulations apply to your inquiry.

Thank you.

Notification to Consumers

Dear @:

Thank you for your email in which you ask questions regarding California Code of Regulations Section 1399.547 – Notification to Consumers.

Your email was referred to me for a response.

More specifically, you ask if the notification is the responsibility of the physician assistant or does the responsibility pass to the hospital.

1399.547. Notification to Consumers.
(a) A licensee engaged in providing medical services shall provide notification to each patient of the fact that the licensee is licensed and regulated by the board. The notification shall include the following statement and information:

NOTIFICATION TO CONSUMERS
Physician assistants are licensed and regulated
by the Physician Assistant Board
(916) 561-8780
www.pac.ca.gov

(b) The notification required by this section shall be provided by one of the following methods:
(1) Prominently posting the notification in an area visible to patients on the premises where the licensee provides the licensed services, in which case the notice shall be in at least 48-point type in Arial font.
(2) Including the notification in a written statement, signed and dated by the patient or the patient's representative and retained in that patient's medical records, stating the patient understands the physician assistant is licensed and regulated by the board.
(3) Including the notification in a statement on letterhead, discharge instructions, or other document given to a patient or the patient's representative, where the notice is placed immediately above the signature line for the patient in at least 14-point type.

Therefore, it is the responsibility of the licensee to comply with this requirement. However, we have been informed that many hospitals will assist the licensee in complying with this requirement. For example, a hospital may produce and post a sign which includes a notification of the physician assistant's regulatory board in addition to other health care providers who must comply with similar regulations. To these facilities, this is a more efficient method of complying with the regulation.

There is nothing in the regulation that would prohibit a hospital from assisting the licensee in compliance with the regulation, but, ultimately, it is the responsibility of the licensee to comply.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Orthopedic Physician Assistants

Dear@

Thank you for your email in which you ask questions regarding physician assistant licensure.

More specifically, you ask about licensing requirements for Orthopedic Physician Assistants.

Current requirements for physician assistant licensure are that one must:

- Be a graduate of a physician assistant training program approved the Physician Assistant Board or accredited by the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA).
- Pass the required licensing examination which is currently the Physician Assistant National Certifying Examination (PANCE) administered by the National Commission on the Certification of Physician Assistants (NCCPA).

All individuals must meet the above-mentioned requirements to be eligible for licensure as physician assistants.

We do not recognize certification granted by the National Board of Certification of Orthopaedic Physician's Assistants (NBCOPA) as a path to licensure as a physician assistant. Additionally, we do not recognize the title, OPA-C, granted by the NBCOPA.

It is our understanding that "orthopedic physician assistants" in California generally function as surgical technicians.

You may find a copy of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Out-of-State PA Training Course

Dear @:

Thank you for your email in which you ask questions regarding physician assistant scope of practice.

More specifically, you ask if you may, as an out-of-state physician assistant licensee, take part in a "hands on" training class held in California in which you would practice on volunteer "patients."

This response does not address any laws that may exist outside of the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code of Regulations (Physician Assistant Regulations) that may apply to this issue.

There are no provisions in the California Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code of Regulations which allows unlicensed individuals to practice under supervision. There is also no a short-term exemption to the laws and regulations for out-of-state practitioners.

The Board's priority is to protect consumers. To do that here, the Board must require a license. If a person performs medical services, even in a "class room," that person could very well be engaging in unlicensed activity.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

PA Abortion Training

Dear @:

Thank you for your email regarding the number of physician assistants who have taken Advancing New Standards in Reproductive Health Program's Early Abortion Training. I believe that you are referring to AB 154 which amended the PA Practice Act (B&P Code Section 3502.4) to permit PAs to perform, under certain conditions, abortions by aspiration techniques.

Business and Professions Code Section 3502.4 does not require that PAs report to the Board if they have completed the training. Therefore, we have not data concerning your request.

You might wish to contact the Office of Statewide Planning and Development as they might have your requested data. Additionally, you might wish to contact Dianna Taylor, RNP, PhD, FAAN, who is associated with UCSF and was involved in this legislation. She might have some data for you. Her email address is: diana.taylor@nursing.ucsf.edu. Website: http://www.ansirh.org.

If you have additional questions please contact me.

Thank you.

Laws Applying in Hospital Settings

Dear @:

Thank you for your email (to the Department of Consumer Affairs) in which you ask questions regarding physician assistant scope of practice.

More specifically, you ask if the physician assistant laws and regulations apply to physician assistants practicing in hospital settings.

California Code of Regulations Section 1399.541, in part, states that a physician assistant may perform medical services in any setting, including, for example, any licensed facility, out-patient settings, patients' residences, residential facilities, and hospices.

Therefore, the physician assistant laws and regulations are not site specific and would apply to physician assistants working in hospital settings.

Please consult the full text of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Student Health Fare

Dear @:

Thank you for your email in which you ask questions regarding students enrolled in physician assistant training programs.

More specifically, you ask if physician assistant training program students may organize and staff a community health fair.

Medical services physician assistant students perform at the health fair must take place in and be part of their physician assistant training. Physician assistant students may not perform medical services outside of the training program as they would be engaging in unlicensed activity.

Please consult the full text of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Supervision of a PA Student

Dear @:

Thank you for your email in which you ask questions regarding supervision of student physician assistants.

Your email was referred to me for a response.

More specifically, you ask if a licensed physician assistant may supervise a student physician assistant.

We have no jurisdiction over physician assistant students since they are not yet licensed. We suggest that you contact the student's physician assistant training program to determine who may supervise their students.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Patient Specific Authority

Thank you for your email regarding the controlled substance education course.

Business and Professions Code Section 3502.1 in pertinent part indicates:

(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 and surgeon 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 physician 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 to a patient for Schedule II through Schedule V controlled substances without advance approval by a supervising physician and surgeon for that particular patient unless the physician assistant has completed an education course that covers controlled substances and that meets standards, including pharmacological content, approved by the board. The education course shall be provided either by an accredited continuing education provider or by an approved physician assistant training program. If the physician assistant will administer, provide, or issue a drug order for Schedule II controlled substances, the course shall contain a minimum of three hours exclusively on Schedule II controlled substances. Completion of the requirements set forth in this paragraph shall be verified and documented in the manner established by the board prior to the physician assistant's use of a registration number issued by the United States Drug Enforcement Administration to the physician assistant to administer, provide, or issue a drug order to a patient for a controlled substance without advance approval by a supervising physician and surgeon for that particular patient.

Patient specific authority is not the same a supervising physician's co-signature on the patient chart. "Patient specific authority" requires that each and every time, prior to providing medical services to a patient, a PA must first orally ask and then receive verbal instructions from the supervising physician prior to carrying out medical services for that specific patient.
Patient specific authority cannot be delegated to the PA in the Delegation of Services Agreement.

Secondly, the patient specific authority requirement could be eliminated after the PA takes the course, and if then delegated by the supervising physician. This change should also be noted in the Delegation of Services Agreement. There is no deadline to complete the course, as it is an optional requirement.

I hope that this information is helpful to you.

If you have further questions, please contact me.

Physical Therapy Services

Dear @:

Thank you for your email in which you ask questions regarding physician assistant scope of practice.

More specifically, you ask if a physician assistant may perform physical therapy.

This response does not address any laws that may exist outside of the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code of Regulations (Physician Assistant Regulations) that may apply to this issue.

We know of no specific statutes in the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code which would prohibit a physician assistant from performing the above-mentioned procedure. We suggest that you contact the Physical Therapy Board of California to ensure that they have no prohibitions against PAs performing physical therapy. You may reach them at (916) 561-8200 or www.ptbc.ca.gov. The following regulations set forth below may govern the procedures described in your email.

Title 16 of the California Code of Regulations section 1399.540 provides in pertinent part:

(a) A physician assistant may only provide those medical services which he or she is competent to perform and which are consistent with the physician assistant's education, training, and experience, and which are delegated in writing by a supervising physician who is responsible for the patients cared for by that physician assistant.

(d) A physician assistant shall consult with a physician regarding any task, procedure or diagnostic problem which the physician assistant determines exceeds his or her level of competence or shall refer such cases to a physician.

Title 16 of the California Code of Regulations section 1399.543 provides:

> A physician assistant may be trained to perform medical services which augment his or her current areas of competency in the following settings:
> (a) In the physical presence of a supervising physician who is directly in attendance and assisting the physician assistant in the performance of the procedure;
> (b) In an approved program;
> (c) In a medical school approved by the Medical Board of California under Section 1314;
> (d) In a residency or fellowship program approved by the Medical Board of California under Section 1321;
> (e) In a facility or clinic operated by the Federal government;
> (f) In a training program which leads to licensure in a healing arts profession or is approved as Category I continuing medical education or continuing nursing education by the Board of Registered Nursing.

Title 16 of the California Code or Regulations section 1399.545(b) provides:

> A supervising physician shall delegate to a physician assistant only those tasks and procedures consistent with the supervising physician's specialty or usual and customary practice and with the patient's health and condition.

Title 16 of the California Code of Regulations section 1399.545(c) provides in pertinent part:

> A supervising physician shall observe or review evidence of the physician assistant's performance of all tasks and procedures to be delegated to the physician assistant until assured of competency.

Please consult the full text of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Practice Ownership

Dear @:

Thank you for your email regarding PA ownership of a practice. Your email was referred to me for a reply.

Please refer to Business and Professions Code, Article 8, sections 3540-3546. These sections address physician assistant corporations. You may find a copy of the PA laws and regulations on our website.

We also strongly encourage you to seek the advice of legal counsel regarding PA ownership practice issues as there are other laws and regulations that may impact a practice which are not addressed in the PA laws and regulations.

If you are a member of the California Academy of Physician Assistants you might contact them as well.

Thank you.

Preceptor Supervision

Dear @:

Thank you for your email in which you ask questions regarding physician assistant training programs.

More specifically, you ask if it is acceptable for a physician assistant student to be supervised in a training environment by a nurse practitioner.

The following regulations set forth below may govern the procedures described in your email.

Title 16 of the California Code of Regulations section 1399.536 provides:

1399.536. Requirements for Preceptors.

(a) "Preceptorship" is the supervised clinical practice phase of a physician assistant student's training. Each preceptorship shall include, at a minimum, supervision of the preceptee by a licensed physician preceptor. Other licensed health care providers approved by a program may serve as preceptors to supplement physician-supervised clinical practice experiences. Each preceptors participating in the preceptorship of an approved program shall:
(1) Be a licensed health care provider who is engaged in the practice of the profession for which he or she is validly licensed and whose practice is sufficient to adequately expose preceptees to a full range of experience. The practice need not be restricted to an office setting but may take place in licensed facilities, such as hospitals, clinics, etc.
(2) Not have had his or her professional license terminated, suspended, or otherwise restricted as a result of a final disciplinary action (excluding judicial review of that action) by any state healing arts licensing board or any agency of the federal government, including the military, within 5 years immediately preceding his or her participation in a preceptorship.
(3) By reason of his or her professional education, specialty and nature of practice be sufficiently qualified to teach and supervise preceptees within the scope of his or her license.
(4) Teach and supervise the preceptee in accordance with the provisions and limitations of sections 1399.540 and 1399.541.
(5) Obtain the necessary patient consent as required in section 1399.538.
(b) It shall be the responsibility of the approved program to ensure that preceptors comply with the foregoing requirements.
(c) For the purposes of this section, "licensed health care provider" includes, but is not limited to, a physician and surgeon, a physician assistant, a registered nurse certified in advanced practices, a certified nurse midwife, a licensed clinical

social worker, a marriage and family therapist, a licensed educational psychologist, and a licensed psychologist.

Note: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 3509 and 3513, Business and Professions Code.

Please consult the full text of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Primary Care Provider

Dear@

Thank you for your email in which you ask questions regarding physician assistant scope of practice.

More specifically, you ask if a physician assistant may act as a primary care provider.

We know of no specific physician assistant law or regulation which would prohibit a physician assistant from acting as a primary care provider. However, the following regulations set forth below may govern the procedures described in your email.

Title 16 of the California Code of Regulations section 1399.540 provides in pertinent part:

a) A physician assistant may only provide those medical services which he or she is competent to perform and which are consistent with the physician assistant's education, training, and experience, and which are delegated in writing by a supervising physician who is responsible for the patients cared for by that physician assistant.

d) A physician assistant shall consult with a physician regarding any task, procedure or diagnostic problem which the physician assistant determines exceeds his or her level of competence or shall refer such cases to a physician.

Title 16 of the California Code of Regulations section 1399.543 provides:

A physician assistant may be trained to perform medical services which augment his or her current areas of competency in the following settings:
(a) In the physical presence of a supervising physician who is directly in attendance and assisting the physician assistant in the performance of the procedure;
(b) In an approved program;
(c) In a medical school approved by the Medical Board of California under Section 1314;
(d) In a residency or fellowship program approved by the Medical Board of California under Section 1321;
(e) In a facility or clinic operated by the Federal government;
(f) In a training program which leads to licensure in a healing arts profession or is approved as Category I continuing medical education or continuing nursing education by the Board of Registered Nursing.

Title 16 of the California Code or Regulations section 1399.545(b) provides:

A supervising physician shall delegate to a physician assistant only those tasks and procedures consistent with the supervising physician's specialty or usual and customary practice and with the patient's health and condition.

Therefore, a physician assistant may, in accordance with the physician assistant laws and regulations, only provide those tasks and procedures consistent with the supervising physician's specialty or usual and customary practice, which are delegated in writing by a supervising physician.

You may find a copy of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Primary Source Verification

Dear @:

This is in response to your request for information regarding requirements and procedures utilized by the Physician Assistant Board to verify an applicant's credentials for licensure as a physician assistant.

Documents required in our application process include:

1. Certification of completion of a physician assistant training program. Certifications must be submitted directly from the training program to the committee.

2. Certification of passing score of the Physician Assistant National Certification Examination. Certifications must be submitted directly from the National Commission on Certification of Physician Assistants to the committee.

3. Verification of licensure or registration as a physician assistant and/or other health care provider from other states. Verifications must be submitted directly from the respective licensing agencies to the committee.

4. Applicants must be fingerprinted. Fingerprints are used to obtain the criminal history records from the Federal Bureau of Investigation and the California Department of Justice for convictions of crimes substantially related to the practice as a physician assistant.

Please use the following link to obtain a copy of our primary source verifications letter:

http://www.pac.ca.gov/forms_pubs/statement.pdf

I hope that this information is of assistance to you. Should you have further questions please contact me.

Thank you.

Probationary License

Dear @:

Thank you for your email in which you ask questions regarding physician assistant licensure.

More specifically, you ask for clarification the Board's position on the issuance of probationary licenses.

Pursuant to the provisions of Section 3519.5 and 3527 of the Business and Professions Code, the Board may issue an applicant a probationary license with attendant terms and conditions but without the filing of a statement of issues. A probationary license is offered to the applicant by means of a stipulation, and if the applicant accepts, the stipulation is then transmitted to the Board members for deliberation.

Accordingly, prior to the issuance of a probationary license, the applicant did not hold a license from the Board that could have been subject to discipline, and, thus an accusation would not have been filed. Therefore, it is the position of the Board that the issuance of a probationary license in the matter described above does not constitute disciplinary action.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

PA Program on Probation

Dear @:

Thank you for your email in which you ask questions regarding physician assistant training programs.

More specifically, you ask what happens to students who attend a physician assistant training program that has been placed on probation and eventually lose their accreditation.

All California approved training programs must meet the provisions of Division 13.8 of Title 16 of the California Code of Regulations Sections 1399.528 to 1399.539.

Additionally, training programs accredited by the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA) shall be deemed approved by the board. ARC-PA is the national organization responsible for accreditation of physician assistant training programs.

Our understanding of this process is that physician assistant training programs accredited by ARC-PA may be placed on probation because they have not met the accreditation standards established by ARC-PA. Generally, the probation period of time allows the program to take corrective action in order to have the probation status withdrawn. If, for some reason, the program fails to take the agreed upon corrective action, ARC-PA may then withdraw accreditation at which point the program may no longer train physician assistant students. We believe that if accreditation is withdrawn, the program may not enroll new students and is permitted to graduate the currently enrolled students.

Since ARC-PA is the national organization responsible for accrediting physician assistant training programs we suggest that you contact them to confirm our understanding of this process. You may contact them at:

John McCarty, Executive Director
ARC-PA
12000 Findley Road, Suite 150
Johns Creek, GA, 30097

Website: www.arc-pa.org

Phone: 770-476-1224
Fax: 770-476-1738
Email: John McCarty to arc-pa@arc-pa.org

You may find a copy of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Pronouncing Death

Dear@

Thank you for your email in which you ask questions regarding physician assistant scope of practice.

More specifically, you ask if a physician assistant may pronounce death in California.

This response does not address any laws that may exist outside of the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code of Regulations (Physician Assistant Regulations) that may apply to this issue.

We know of no specific statutes in the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code which would prohibit a physician assistant from performing the above-mentioned procedure. The following regulations set forth below may govern the procedures described in your email.

Title 16 of the California Code of Regulations section 1399.540 provides in pertinent part:

> "A physician assistant may only provide those medical services which he or she is competent to perform and which are consistent with the physician assistant's education, training, and experience, and which are delegated in writing by a supervising physician who is responsible for the patients cared for by that physician assistant...A physician assistant shall consult with a physician regarding any task, procedure or diagnostic problem which the physician assistant determines exceeds his or her level of competence or shall refer such cases to a physician."

Title 16 of the California Code of Regulations section 1399.543 provides:

> "A physician assistant may be trained to perform medical services which augment his or her current areas of competency in the following settings:
> (a) In the physical presence of a supervising physician who is directly in attendance and assisting the physician assistant in the performance of the procedure;
> (b) In an approved program;
> (c) In a medical school approved by the Division of Licensing under Section 1314;
> (d) In a residency or fellowship program approved by the Division of Licensing under Section 1321;
> (e) In a facility or clinic operated by the Federal government;
> (f) In a training program which leads to licensure in a healing arts profession or is approved as Category I continuing medical education or continuing nursing education by the Board of Registered Nursing."

Title 16 of the California Code or Regulations section 1399.545(b) provides:

> "A supervising physician shall delegate to a physician assistant only those tasks and procedures consistent with the supervising physician's specialty or usual and customary practice and with the patient's health and condition."

Title 16 of the California Code of Regulations section 1399.545(c) provides in pertinent part:

> "A supervising physician shall observe or review evidence of the physician assistant's performance of all tasks and procedures to be delegated to the physician assistant until assured of competency."

You may also wish to review Health and Safety Code Section 102795 (Duty of Registering Death: Death Certificate) for additional clarification of this issue.

Please consult the full text of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Protocols/Delegation of Services Agreement

Dear @:

Thank you for your email in which you ask questions regarding physician assistant scope of practice.

More specifically, you seek clarification about the Delegation of Services Agreement and protocols.

The Delegation of Services Agreement (DSA) is a document used by supervising physicians and physician assistants to meet requirements of Section 1399.540. The DSA is the foundation of the relationship between a supervising physician and the physician assistant, and specifies the names of the supervising physicians and what types of medical services the physician assistant is allowed to perform, how they are performed, how the patient charts will be reviewed and countersigned, and what type of medications the physician assistant will transmit on behalf of the supervising physician.

Protocols govern the performance of tasks performed by the physician assistant. Protocols, if adopted by the supervising physician, must fully comply with the requirements authorized in Section 3502 (c) (1) of the Business and Professions Code.

Please be aware that the Delegation of Services Agreement does not meet the regulation requirement to serve as a protocol.

Please consult the full text of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Business and Professions Code section 3502:

(a) Notwithstanding any other provision of law, a physician assistant may perform those medical services as set forth by the regulations adopted under this chapter when the services are rendered under the supervision of a licensed physician and surgeon who is not subject to a disciplinary condition imposed by the Medical Board of California prohibiting that supervision or prohibiting the employment of a physician assistant. The medical record, for each episode of care for a patient, shall identify the physician and surgeon who is responsible for the supervision of the physician assistant
(b) (1) Notwithstanding any other 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 and surgeon. 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.
(2) 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.

doctor of podiatric medicine shall be limited to performing those duties included within the scope of practice of a doctor of podiatric medicine.
(c) (1) A physician assistant and his or her supervising physician and surgeon shall establish written guidelines for the adequate supervision of the physician assistant. This requirement may be satisfied by the supervising physician and surgeon adopting protocols for some or all of the tasks performed by the physician assistant. The protocols adopted pursuant to this subdivision shall comply with the following requirements:
(A) A protocol governing diagnosis and management shall, at a minimum, include the presence or absence of symptoms, signs, and other data necessary to establish a diagnosis or assessment, any appropriate tests or studies to order, drugs to recommend to the patient, and education to be provided to the patient.
(B) A protocol governing procedures shall set forth the information to be provided to the patient, the nature of the consent to be obtained from the patient, the preparation and technique of the procedure, and the follow-up care.
(C) Protocols shall be developed by the supervising physician and surgeon or adopted from, or referenced to, texts or other sources.
(D) Protocols shall be signed and dated by the supervising physician and surgeon and the physician assistant.
(2) (A) The supervising physician and surgeon shall use one or more of the following mechanisms to ensure adequate supervision of the physician assistant functioning under the protocols:
(i) The supervising physician and surgeon shall review, countersign, and date a sample consisting of, at a minimum, 5 percent of the medical records of patients treated by the physician assistant functioning under the protocols within 30 days of the date of treatment by the physician assistant.
(ii) The supervising physician and surgeon and physician assistant shall conduct a medical records review meeting at least once a month during at least 10 months of the year. During any month in which a medical records review meeting occurs, the supervising physician and surgeon and physician assistant shall review an aggregate of at least 10 medical records of patients treated by the physician assistant functioning under protocols. Documentation of medical records reviewed during the month shall be jointly signed and dated by the supervising physician and surgeon and the physician assistant.
(iii) The supervising physician and surgeon shall review a sample of at least 10 medical records per month, at least 10 months during the year, using a combination of the countersignature mechanism described in clause (i) and the medical records review meeting mechanism described in clause (ii). During each month for which a sample is reviewed, at least one of the medical records in the sample shall be reviewed using the mechanism described in clause (i) and at least one of the medical records in the sample shall be reviewed using the mechanism described in clause (ii).
(B) In complying with subparagraph (A), the supervising physician and surgeon shall select for review those cases that by diagnosis, problem, treatment, or procedure represent, in his or her judgment, the most significant risk to the patient.
(3) Notwithstanding any other law, the Medical Board of California or the board may establish other alternative mechanisms for the adequate supervision of the physician assistant.
(d) 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).
(e) This section shall not be construed in a manner that shall preclude the performance of routine visual screening as defined in Section 3501.
(f) Compliance by a physician assistant and supervising physician and surgeon with this section shall be deemed compliance with Section 1399.546 of Title 16 of the California Code of Regulations.

Title 16, California Code of Regulations section 1399.540:

a) A physician assistant may only provide those medical services which he or she is competent to perform and which are consistent with the physician assistant's education, training, and experience, and which are delegated in writing by a supervising physician who is responsible for the patients cared for by that physician assistant.
(b) The writing which delegates the medical services shall be known as a delegation of services agreement. A delegation of services agreement shall be signed and dated by the physician assistant and each supervising physician. A delegation of services agreement may be signed by more than one supervising physician only if the same medical services have been delegated by each supervising physician. A physician assistant may provide medical services pursuant to more than one delegation of services agreement.
(c) The board or Medical Board of California or their representative may require proof or demonstration of competence from any physician assistant for any tasks, procedures or management he or she is performing.
(d) A physician assistant shall consult with a physician regarding any task, procedure or diagnostic problem which the physician assistant determines exceeds his or her level of competence or shall refer such cases to a physician.

Public Sales List

Dear @:

Thank you for your email in which you ask about obtaining a list of physician assistants licensed by the Physician Assistant Board.

The Department of Consumer Affairs (DCA) provides information to the public regarding over 150 professional license types, including physician assistants, issued through the DCA Boards/Bureaus/Committees/Programs (hereafter referred to as "Agencies") in accordance with the Information Practices Act, Civil Code § 1798.61, and Business and Professions Code § 161.

The DCA Public Information Unit produces DCA license files for a fee. The DCA Public Information Unit will provide you with information, rates, and detailed information about the available license file types. They will also provide you with descriptions of the various content, format and shipping options.

Standard Files, Custom Files and the Masterfile include, at minimum, the following information related to current renewable licenses: license type, original issue date, expiration date, licensee name, licensee address, and Agency code.

Standard Files and Custom Files provide license information on single Agencies, while the Masterfile provides license information on multiple Agencies.

License data is updated by the Agencies daily and cannot be altered by the Public Information Unit.

For license counts and other inquiries, contact the Public Information Unit via email at public_sales@dca.ca.gov. You may also contact them at (916) 574-8150.

You may also visit the Department of Consumer Affairs Public Information-Licensee Lists section at:

http://www.dca.ca.gov/consumer/public_info/index.shtml

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Reimbursement

Dear @:

This is in response to your email in which you ask about the California reimbursement requirements for physician assistants.

The physician assistant laws and regulations do not address the subject of reimbursement for medical services performed by physician assistants.

While physician assistants are unable to perform medical services without physician supervision, we know of no specific physician assistant laws or regulations which would prohibit a physician assistant from billing health insurers for their services as an independent contractor/provider.

I hope that this information is of assistance to you. If you have additional questions please contact me.

Thank you.

Request for Clinical Evaluation

Dear @:

The Physician Assistant Board (PAB) is in receipt of your email of @ in which you request a copy of @'s diversion clinical evaluation report. PAB has considered your request, but is unable to release the report to you.

The Information Practices Act (IPA), found in California Civil Code section 1798 et seq., limits the maintenance and dissemination of personal information by governmental entities in order to protect the privacy of individuals.

The basic premise of the IPA is that no agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains. (Civil Code section 1798.24). An exception to this general rule is that personal information may be disclosed to the individual to whom the information pertains. (Civil Code section 1798.24(a)).

There is, however, an exception to this exception. [1] Section 1798.40 of the Civil Code states, in pertinent part:

> "This chapter shall not be construed to require an agency to disclose personal information to the individual to whom the information pertains, if the information meets any of the following criteria:
>
> (d) *Is maintained for the purpose of an investigation of an individual's fitness for licensure* or public employment, or of a grievance or complaint, or a suspected civil offense, *so long as the information is withheld only so as not to compromise the investigation, or a related investigation.* The identities of individuals who provided information for the investigation may be withheld pursuant to Section 1798.38 (emphasis added).

The very nature of a clinical evaluation, and the entire probationary period itself, is to investigate an individual's fitness for licensure. A probationer's license will only be fully restored upon successful completion of probation.

Here, confidentiality is important in maintaining the integrity of the clinical evaluation process. The effectiveness of a clinical evaluation is compromised when subjects already know the details of what will be evaluated and observed in the clinical evaluation. To this end, the PAB must not only protect the confidentiality of @'s personal information, but has an interest in protecting the confidentiality of the internal processes of clinical evaluation for all diversion program participants. As a result, PAB will not be releasing the clinical evaluation report to you. I hope you find the above information helpful.

If you have any additional questions, you may contact me.
Thank you.

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[1] Civil Code section 1798.24(d) also allows disclosure of personal information pursuant to a Public Records Act request. But the Public Records Act (Government Code section 6250 et seq.) contains a similar exception regarding non-disclosure of documents of investigations conducted by a state agency (Government Code section 6254(f)).

RN's Taking Orders from a PA

Thank you for your email in which you ask questions regarding physician assistant scope of practice.

More specifically you ask if a nurse can take orders from physician assistants.

Title 16, Section 1399.541 of the California Code of Regulations provides in pertinent part:

Because physician assistant practice is directed by a supervising physician, and a physician assistant acts as an agent for that physician, the orders given and tasks performed by a physician assistant shall be considered the same as if they had been given and performed by the supervising physician. Unless otherwise specified in these regulations or in the delegation or protocols, these orders may be initiated without the prior patient specific order of the supervising physician.

In any setting, including for example, any licensed health facility, out-patient settings, patients' residences, residential facilities, and hospices, as applicable, a physician assistant may, pursuant to a delegation and protocols where present:

(a) Take a patient history; perform a physical examination and make an assessment and diagnosis therefrom; initiate, review and revise treatment and therapy plans including plans for those services described in Section 1399.541(b) through Section 1399.541(i) inclusive; and record and present pertinent data in a manner meaningful to the physician.
(b) Order or transmit an order for x-ray, other studies, therapeutic diets, physical therapy, occupational therapy, respiratory therapy, and nursing services.
(c) Order, transmit an order for, perform, or assist in the performance of laboratory procedures, screening procedures and therapeutic procedures.
(d) Recognize and evaluate situations which call for immediate attention of a physician and institute, when necessary, treatment procedures essential for the life of the patient.
(e) Instruct and counsel patients regarding matters pertaining to their physical and mental health. Counseling may include topics such as medications, diets, social habits, family planning, normal growth and development, aging, and understanding of and long-term management of their diseases.
(f) Initiate arrangements for admissions, complete forms and charts pertinent to the patient's medical record, and provide services to patients requiring continuing care, including patients at home.
(g) Initiate and facilitate the referral of patients to the appropriate health facilities, agencies, and resources of the community.
(h) Administer or provide medication to a patient, or issue or transmit drug orders orally or in writing in accordance with the provisions of subdivisions (a)-(f), inclusive, of Section 3502.1 of the Code.
(i) (1) Perform surgical procedures without the personal presence of the supervising physician which are customarily performed under local anesthesia. Prior to delegating any such surgical procedures, the supervising physician shall review documentation which indicates that the physician assistant is trained to perform the surgical procedures. All other surgical procedures requiring other forms of anesthesia may be performed by a physician assistant only in the personal presence of an supervising physician.
(2) A physician assistant may also act as first or second assistant in surgery under the supervision of a supervising physician. The physician assistant may so act without the personal presence of the supervising physician if the supervising physician is immediately available to the physician assistant. "Immediately available" means the physician is physically

accessible and able to return to the patient, without any delay, upon the request of the physician assistant to address any situation requiring the supervising physician's services.

Therefore, the orders given to a nurse are considered the same as if they had been given and performed by the supervising physician.

You may find a copy of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Elimination of Supervising Physician Licensure

Dear @:

Thank you for your email in which you ask questions regarding supervising physician requirements.

More specifically, you ask about renewal of your approval to supervising physician assistants.

Senate Bill 1981 (Stats. 1998, Chapter 736) repealed Business and Professions Code section 3514, which eliminated this section from the Physician Assistant Practice Act requiring the Medical Board of California to approve applications for physicians who wish to supervise physician assistants. This change became effective 1 July 2002.

Previously, physicians who wanted to utilize physician assistants were required to submit an application and receive approval from the Medical Board of California. The approvals were renewed every two years. Staff of the Physician Assistant Board (then Committee) performed application review, licensing, and renewal functions on behalf of the Medical Board of California.

The effect of the legislative change allows any California-licensed physician, except those who are expressly prohibited by the Medical Board of California or the Osteopathic Medical Board of California from supervising physician assistants, to supervise physician assistants.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Scope of Practice

Thank you for your email in which you ask questions regarding physician assistant scope of practice.

More specifically, you ask @.

This response does not address any laws that may exist outside of the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code of Regulations (Physician Assistant Regulations) that may apply to this issue.

We know of no specific statutes in the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code which would prohibit a physician assistant from performing the above-mentioned procedure(s). The following regulations set forth below may govern the procedures described in your email.

Title 16 of the California Code of Regulations section 1399.540 provides:

(a) A physician assistant may only provide those medical services which he or she is competent to perform and which are consistent with the physician assistant's education, training, and experience, and which are delegated in writing by a supervising physician who is responsible for the patients cared for by that physician assistant.
(b) The writing which delegates the medical services shall be known as a delegation of services agreement. A delegation of services agreement shall be signed and dated by the physician assistant and each supervising physician. A delegation of services agreement may be signed by more than one supervising physician only if the same medical services have been delegated by each supervising physician. A physician assistant may provide medical services pursuant to more than one delegation of services agreement.
(c) The board or Medical Board of California or their representative may require proof or demonstration of competence from any physician assistant for any tasks, procedures or management he or she is performing.
(d) A physician assistant shall consult with a physician regarding any task, procedure or diagnostic problem which the physician assistant determines exceeds his or her level of competence or shall refer such cases to a physician.

Title 16 of the California Code of Regulations section 1399.541provides:

Because physician assistant practice is directed by a supervising physician, and a physician assistant acts as an agent for that physician, the orders given and tasks performed by a physician assistant shall be considered the same as if they had been given and performed by the supervising physician. Unless otherwise specified in these regulations or in the delegation or protocols, these orders may be initiated without the prior patient specific order of the supervising physician.
In any setting, including for example, any licensed health facility, out-patient settings, patients' residences, residential facilities, and hospices, as applicable, a physician assistant may, pursuant to a delegation and protocols where present:
(a) Take a patient history; perform a physical examination and make an assessment and diagnosis therefrom; initiate, review and revise treatment and therapy plans including plans for those services described in Section 1399.541(b) through Section 1399.541(i) inclusive; and record and present pertinent data in a manner meaningful to the physician.
(b) Order or transmit an order for x-ray, other studies, therapeutic diets, physical therapy, occupational therapy, respiratory therapy, and nursing services.

(c) Order, transmit an order for, perform, or assist in the performance of laboratory procedures, screening procedures and therapeutic procedures.
(d) Recognize and evaluate situations which call for immediate attention of a physician and institute, when necessary, treatment procedures essential for the life of the patient.
(e) Instruct and counsel patients regarding matters pertaining to their physical and mental health. Counseling may include topics such as medications, diets, social habits, family planning, normal growth and development, aging, and understanding of and long-term management of their diseases.
(f) Initiate arrangements for admissions, complete forms and charts pertinent to the patient's medical record, and provide services to patients requiring continuing care, including patients at home.
(g) Initiate and facilitate the referral of patients to the appropriate health facilities, agencies, and resources of the community.
(h) Administer or provide medication to a patient, or issue or transmit drug orders orally or in writing in accordance with the provisions of subdivisions (a)-(f), inclusive, of Section 3502.1 of the Code.
(i) (1) Perform surgical procedures without the personal presence of the supervising physician which are customarily performed under local anesthesia. Prior to delegating any such surgical procedures, the supervising physician shall review documentation which indicates that the physician assistant is trained to perform the surgical procedures. All other surgical procedures requiring other forms of anesthesia may be performed by a physician assistant only in the personal presence of an supervising physician.
(2) A physician assistant may also act as first or second assistant in surgery under the supervision of a supervising physician. The physician assistant may so act without the personal presence of the supervising physician if the supervising physician is immediately available to the physician assistant. "Immediately available" means the physician is physically accessible and able to return to the patient, without any delay, upon the request of the physician assistant to address any situation requiring the supervising physician's services.

Title 16 of the California Code of Regulations section 1399.543 provides:

A physician assistant may be trained to perform medical services which augment his or her current areas of competency in the following settings:
(a) In the physical presence of a supervising physician who is directly in attendance and assisting the physician assistant in the performance of the procedure;
(b) In an approved program;
(c) In a medical school approved by the Medical Board of California under Section 1314;
(d) In a residency or fellowship program approved by the Medical Board of California under Section 1321;
(e) In a facility or clinic operated by the Federal government;
(f) In a training program which leads to licensure in a healing arts profession or is approved as Category I continuing medical education or continuing nursing education by the Board of Registered Nursing.

Title 16 of the California Code or Regulations section 1399.545 in pertinent part provides:

(b) A supervising physician shall delegate to a physician assistant only those tasks and procedures consistent with the supervising physician's specialty or usual and customary practice and with the patient's health and condition.
(c) A supervising physician shall observe or review evidence of the physician assistant's performance of all tasks and procedures to be delegated to the physician assistant until assured of competency.

Please consult the full text of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Shadowing a Physician

Dear @:

Thank you for your email in which you ask questions regarding the physician assistant profession.

More specifically, you state that you are interested in pursuing a career as a physician assistant and would like to have an opportunity to shadow a practicing physician assistant.

We would suggest that you contact the California Academy of PAs at 714.427.0321 or www.capanet.org. The American Academy of Physician Assistants may also be of assistance. You may reach them at 703.836.2272 or www.aapa.org.

Additionally, physician assistant training programs may also be able to assist you with your request. You may find a link to programs throughout the U.S. on our website at www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Starting a PA Training Program

Dear @:

Thank you for your email in which you ask questions regarding physician assistant training programs.

More specifically, you ask for the requirements necessary to develop a physician assistant program.

All California approved training programs must meet the provisions of Division 13.8 of Title 16 of the California Code of Regulations Sections 1399.528 to 1399.539.

Additionally, training programs must be accredited by the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA). ARC-PA is the national organization responsible for accreditation of physician assistant training programs. We suggest that you first contact ARC-PA to determine what steps must be taken to develop a physician assistant training program and obtain national accreditation. You may reach ARC-PA at www.arc-pa.org. Telephone: 770-476-1224.

You may find a copy of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Student Performing Medical Services

Dear @:

Thank you for your email in which you ask questions regarding physician assistant scope of practice.

More specifically, you ask if a PA student can @(perform a skin biopsy without supervision from a physician.)

We know of no specific statutes in the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code which would prohibit a *licensed* physician assistant from performing the above-mentioned procedure.

However, because this individual is a student currently attending the @Physician Assistant Physician Assistant Training Program, you should contact them to determine if their students are permitted to perform @.

You may contact the @ PA Program at @. Their email address is @

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

SUPERVISION of PHYSICIAN ASSISTANTS

Changes to the law have made it easier for a physician to work with a physician assistant (PA). Medical Board approval to supervise a PA is no longer necessary and some of the duties and responsibilities of supervising a PA have changed.

Supervisory Requirements

Listed below are some of the PA supervisory requirements:

According to California law, all care provided to a patient by a physician assistant is the ultimate responsibility of the supervising physician.

Current law allows a physician to supervise no more than four physician assistants (PAs) at any moment in time.

According to regulations, the physician must be in the same facility with the PA or be immediately available by electronic communications.

Before authorizing a PA to perform any medical procedure, the physician is responsible for evaluating the PA's education, experience, knowledge, and ability to perform the procedure safely and competently. In addition, the physician should verify that a PA has a current California license issued by the Physician Assistant Board (PAB) (PAB website: www.pac.ca.gov)

PAs may not own a medical practice. (Please see Section 13400 and following of the Corporations Code.)

PAs may not hire their supervisors. PAs are dependent practitioners who act as agents on behalf of a supervising physician.

Physicians who plan to supervise PAs should carefully review Business and Professions Code section 3502 and 3502.1 and Section 1399.545 of Title 16 of the California Code of Regulations for a complete listing of supervision requirements available on the PAB website www.pac.ca.gov.

There are four methods for providing supervision of a physician assistant.

1. The physician sees the patients the same day that they are treated by the PA.

2. The physician reviews, signs and dates the medical record of every patient treated by the physician assistant within thirty days of the treatment.

3. The physician adopts written protocols, which specifically guide the actions of the PA. The physician must select, review, countersign and date a sample, consisting of, at a minimum, 5 percent of the medical records of patients treated by the physician assistant functioning under the protocols within 30 days of the date of treatment by the physician assistant.

4. Or, in special circumstances, the physician provides supervision through additional methods approved in advance by the PAB.

To fulfill the required supervisor obligation, the physician must utilize one or a combination of the four authorized supervision methods.

Delegation of Services Agreement

For the mutual benefit and protection of patients, physicians and their PAs, the PA regulations require the physician to delegate in writing, for each supervised physician assistant, those medical services which the PA may provide. That document is often referred to as a Delegation of Services Agreement. A sample is available on the PAC website www.pac.ca.gov. Medical tasks, which are delegated by a supervising physician, may only be those that are usual and customary to the physician's practice.

Drug Orders

Pharmacy Law (Business and Professions Code Section 4000 et seq.) authorizes licensed pharmacists to dispense drugs or devices based on a PA's "drug order". Current law also allows PAs to obtain their own DEA numbers for use when writing prescription drug orders for controlled substances.

Current law permits physician assistants to write and sign prescription drug orders when authorized to do so by their supervising physicians for Schedule II-V medication.

A PA may only administer, provide, or transmit a drug order for Schedule II through Schedule V controlled substances with the advance approval by a supervising physician for a specific patient unless a physician assistant completes an approved education course in controlled substances, and if delegated by the supervising physician. If a physician assistant chooses not to take the educational course, the requirements for patient-specific authority remain unchanged. The Committee has proposed regulations to implement this provision. The proposed regulations can be found at www.pac.ca.gov. Please check our website for updates to this information.

In order to ensure that a PA's actions involving the prescribing, administration or dispensing of drugs is in strict accordance with the directions of the physician, every time a PA administers or dispenses a drug or transmits a Schedule II drug order, the physician supervisor must sign and date the patient's medical record or drug chart within seven days.

All physician assistants and supervising physicians should familiarize themselves with all physician assistant laws and regulations to ensure they are in compliance with the physician assistant laws and regulations.
For physicians who are interested in utilizing physician assistants and would like to know more about the benefits and requirements of using physician assistants, several publications are available from the PAC, including:

Physician Assistant Laws and Regulations
Sample Delegation of Services Agreement
Drug Orders by Physician Assistants (information bulletin)
What is a PA? (Patient information brochure -English & Spanish)

To request publications or to verify physician assistant licensing information, contact:
Physician Assistant Board
2005 Evergreen Street, Suite 1100
Sacramento, CA 95815

Telephone: (916) 561-8780 FAX: (916) 263-2671
Website: www.pac.ca.gov Email: pacommittee@mbc.ca.gov

This article has highlighted many of the key responsibilities a physician assumes when approved to utilize physician assistants. It does not cover all the requirements of law. This is not a declaratory opinion of the Physician Assistant Committee or the Medical Board of California

G/PAC/FinalForms/SupervisionofPAs 04/18/08

Training Program Approval

Dear @:

Thank you for your email in which you ask questions regarding physician assistant training programs.

More specifically, you ask for the requirements necessary to approve a physician assistant program.

All California approved training programs must meet the provisions of Division 13.8 of Title 16 of the California Code of Regulations Sections 1399.528 to 1399.539.

Additionally, training programs accredited by the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA) shall be deemed approved by the board. ARC-PA is the national organization responsible for accreditation of physician assistant training programs.

You may find a copy of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Treating Family Members

Dear @:

Thank you for your email in which you ask questions regarding a physician assistant treating their own children and prescribing medication to them.

Your email was referred to me for a response.

This response does not address any laws that may exist outside of the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code of Regulations (Physician Assistant Regulations) that may apply to this issue.

We know of no specific statutes in the Physician Assistant Practice Act or Division 13.8 of Title 16 of the California Code which would prohibit a physician assistant from performing the above-mentioned procedures. However, it may present ethical issues.

The issue is that a physician assistant's practice is directed by the supervising physician and the physician assistant acts as an agent of the supervising physician (California Code of Regulations section 1399.541). Ultimately, the supervising physician is responsible for the care provided by the physician assistant (CCR section 1399.542). Therefore, the supervising physician should be aware of the practice and ultimately decide if it should continue.

Please consult the full text of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

US Medical School Licensing Requirements

Dear @:

This is in response to you email in which you ask about the California licensing requirements for physician assistants. Your email was referred to me for a response.

One requirement of physician assistant licensure in California is to pass the Physician Assistant National Certifying Examination (PANCE).

Only graduates of approved physician assistant programs are allowed to sit for the PANCE. For further information regarding the PANCE, please contact the National Commission on Certification of Physician Assistants at (678) 417-8100 or visit their website at www.nccpa.net.

You may find a list of physician assistant training programs on our website: www.pac.ca.gov. It is our understanding that some of these programs may allow portions of their curriculum to be challenged by applicants who have prior medical education and experience.

I hope that this information is of assistance to you. If you have additional questions please contact me.

Thank you.

Volunteer

Dear@

Thank you for your email in which you ask questions regarding physician assistant providing medical services as a volunteer.

We are not aware of any specific physician assistant law or regulation which would prohibit a physician assistant from providing medical services as a volunteer.

However, please be aware that a physician assistant may not practice autonomously. Supervision of physician assistants by a supervising physician is required whenever a physician assistant is providing any medical services. A supervising physician has continued responsibility for the welfare of the patients treated by the physician assistant.

A physician assistant may only provide those medical services which:

- He or she is competent to perform, as determined by the supervising physician,
- Are consistent with his/her education, training, and experience, and
- Are delegated in writing by the supervising physician responsible for the patients cared for by the physician assistant.

(Title 16 California Code of Regulations section 1399.540)

Additionally, Title 16 California Code of Regulations section 1399.545(b) provides that a supervising physician shall delegate to a physician assistant only those tasks and procedures consistent with the supervising physician's specialty or usual and customary practice and with the patient's health and condition.

Title 16 of the California Code of Regulations section 1399.545(f) states that the supervising physician has continuing responsibility to follow the progress of the patient and make sure that the physician assistant does not function autonomously. The supervising physician shall be responsible for all medical services provided by a physician assistant under his or her supervision.

You may find a copy of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Who May Supervise a PA

Dear @:

Thank you for your email in which you ask questions regarding physician assistant supervision.

More specifically, you ask who may supervise physician assistants.

The laws set forth below govern the question/scenario(s) described in your email.

Business and Professions Code section 3501(a)(5) and (a)(6) states:

(a)(5) "Supervising physician" or "supervising physician and surgeon" means a physician and surgeon licensed by the Medical Board of California or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.

(a)(6) "Supervision" means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.

Business and Professions Code Section 3502 (a) and (b) state:

(a) Notwithstanding any other provision of law, a physician assistant may perform those medical services as set forth by the regulations adopted under this chapter when the services are rendered under the supervision of a licensed physician and surgeon who is not subject to a disciplinary condition imposed by the Medical Board of California prohibiting that supervision or prohibiting the employment of a physician assistant. The medical record, for each episode of care for a patient, shall identify the physician and surgeon who is responsible for the supervision of the physician assistant

(b) (1) Notwithstanding any other 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 and surgeon. 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.
(2) 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.

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.

Therefore, only physicians licensed by the Medical Board of California or the Osteopathic Medical Board of California who possess current valid licenses to practice medicine and who

are not currently on disciplinary action for improper use of physician assistants may supervise physician assistants.

You may find a copy of the Physician Assistant Laws and Regulations on our website: www.pac.ca.gov.

I hope that we have been of assistance to you. If you have additional questions please contact me.

Thank you.

Written Prescription Authority

Dear @;

This is in response to your email in which you ask questions regarding prescription transmittal authority for physician assistants. Your email was referred to me for a reply.

Business and Professions Code section 3502.1 addresses your question.

You may find a copy of the Physician Assistant Laws and Regulations on our website at: www.pac.ca.gov.

If you have additional questions please contact me.

Thank you.

3502.1. Prescription Transmittal Authority
(a) In addition to the services authorized in the regulations adopted by the Medical Board of California, and except as prohibited by Section 3502, while under the supervision of a licensed physician and surgeon or physicians and surgeons authorized by law to supervise a physician assistant, 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, or 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. Protocols for Schedule II controlled substances shall address the diagnosis of illness, injury, or condition for which the Schedule II controlled substance is being administered, provided, or issued. The drugs listed in the protocols 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 that 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 surgeons, 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 and surgeon 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

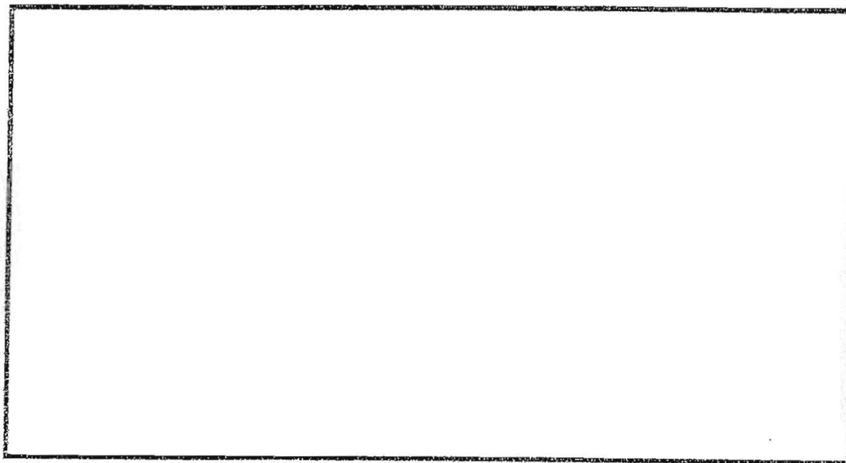
physician and surgeon for the particular patient. At the direction and under the supervision of a physician and surgeon, a physician assistant may hand to a patient of the supervising physician and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon, manufacturer as defined in the Pharmacy Law, or a pharmacist.
(2) A physician assistant may not administer, provide, or issue a drug order to a patient for Schedule II through Schedule V controlled substances without advance approval by a supervising physician and surgeon for that particular patient unless the physician assistant has completed an education course that covers controlled substances and that meets standards, including pharmacological content, approved by the board. The education course shall be provided either by an accredited continuing education provider or by an approved physician assistant training program. If the physician assistant will administer, provide, or issue a drug order for Schedule II controlled substances, the course shall contain a minimum of three hours exclusively on Schedule II controlled substances. Completion of the requirements set forth in this paragraph shall be verified and documented in the manner established by the board prior to the physician assistant's use of a registration number issued by the United States Drug Enforcement Administration to the physician assistant to administer, provide, or issue a drug order to a patient for a controlled substance without advance approval by a supervising physician and surgeon for that 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 telephone 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 and shall otherwise comply with the of Section 11162.1 of the Health and Safety Code. Except as otherwise required for written drug orders for controlled substances under Section 11162.1 of the Health and Safety Code, 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 registration 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 supervising physician and surgeon shall use either of the following mechanisms to ensure adequate supervision of the administration, provision, or issuance by a physician assistant of a drug order to a patient for Schedule II controlled substances:
(1) The medical record of any patient cared for by a physician assistant for whom the physician assistant's Schedule II drug order has been issued or carried out shall be reviewed, countersigned, and dated by a supervising physician and surgeon within seven days.
(2) If the physician assistant has documentation evidencing the successful completion of an education course that covers controlled substances, and that controlled substance education course (A) meets the standards, including pharmacological content, established in Sections 1399.610 and 1399.612 of Title 16 of the California Code of Regulations, and (B) is provided either by an accredited continuing education provider or by an approved physician assistant training program, the supervising physician and surgeon shall review, countersign, and date, within seven days, a sample consisting of the medical records of at least 20 percent of the patients cared for by the physician assistant for whom the physician assistant's Schedule II drug order has been issued or carried out. Completion of the requirements set forth in this paragraph shall be verified and documented in the manner established in Section 1399.612

of Title 16 of the California Code of Regulations. Physician assistants who have a certificate of completion of the course described in paragraph (2) of subdivision (c) shall be deemed to have met the education course requirement of this subdivision.
(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).
(g) The board shall consult with the Medical Board of California and report during its sunset review required by Article 7.5 (commencing with Section 9147.7) of Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code the impacts of exempting Schedule III and Schedule IV drug orders from the requirement for a physician and surgeon to review and countersign the affected medical record of a patient.

Agenda Item 18

License to Compete: Occupational Licensing and the State Action Doctrine

Subcommittee on Antitrust, Competition Policy and Consumer Rights
Date: Tuesday, February 2, 2016
Time: 02:00 PM
Location: Dirksen Senate Office Building 226
Presiding: Chairman Lee



Open in New Window

Witnesses

Panel I

The Honorable Jason Furman
Chairman
Council of Economic Advisors, Office of the President of the United States
Washington , DC
Download Testimony (/download/02-02-16-furman-testimony)

The Honorable Maureen K. Ohlhausen
Commissioner
Federal Trade Commission

Washington , DC
Download Testimony (/download/02-02-16-ohlhausen-testimony)

Panel II

Mr. Misha Tseytlin

Solicitor General
State of Wisconsin
Madison , WI
Download Testimony (/download/02-02-16-tseytlin-testimony)

Professor Morris M. Kleiner

Professor Of Public Affairs
Humphrey School of Public Affairs, University of Minnesota
Minneapolis , MN
Download Testimony (/download/02-02-16-kleiner-testimony)

Mr. Robert E. Johnson

Elfie Gallun Fellow For Freedom And The Constitution
Institute for Justice
Washington , DC
Download Testimony (/download/02-02-16-johnson-testimony)

Mr. William Main

Co-Owner
Segs in the City
Baltimore , MD
Download Testimony (/download/02-02-16-main-testimony)

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United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building, Washington, D.C. 20510-6050
Phone: 202-224-5225

Prepared Testimony before the
United States Senate Committee on the Judiciary
Subcommittee on Antitrust, Competition Policy and Consumer Rights

Hearing on "License to Compete: Occupational Licensing and the State Action Doctrine"

Jason Furman, Chairman, Council of Economic Advisers

February 2, 2016

Chairman Lee, Ranking Member Klobuchar, and Members of the Subcommittee: thank you for the opportunity to appear here today to testify about occupational licensing. This is an important economic issue, and one which only in recent years has begun to receive commensurate attention from policymakers and analysts. When carefully designed, licensing can offer important health and safety protections to the public and other benefits to workers. But there is a fine line to tread: the ways that licensing policies are designed and implemented can also affect workers' wages, employment opportunities, and ability to move across State lines, as well as consumers' access to essential goods and services. In fact, occupational licensing sometimes functions as an unfair barrier to competition, preventing the benefits of our economic growth from reaching the widest range of households and workers.

My testimony today will draw on a recent report prepared by the Council of Economic Advisers (CEA), the Department of the Treasury's Office of Economic Policy, and the Department of Labor, which reviews the evidence of the costs and benefits of licensing and recommends several best practices for improving our system of occupational regulation. I will also describe our Administration-wide efforts to reduce overly burdensome and unnecessary licensing.

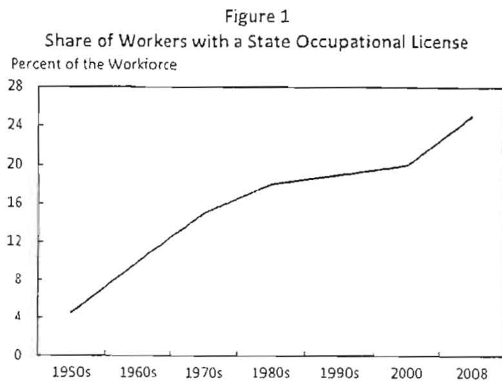
The Prevalence of Licensing: National Increase, State Differences

Occupational licensing has grown substantially over the past several decades. As documented by economists Morris Kleiner and Alan Krueger, the share of the U.S. workforce covered by State licensing laws grew from less than 5 percent in the early 1950s to 25 percent by 2008 (Figure 1). Although State licenses account for the bulk of licensing, the addition of local and Federal licensed occupations further increases the share of the workforce that is licensed to 29 percent.[1]

[1] Morris M. Kleiner and Alan B. Krueger. 2013. "Analyzing the Extent and Influence of Occupational Licensing on the Labor Market." *Journal of Labor Economics* vol. 31, no. 2: S173-S202.

Figure 1

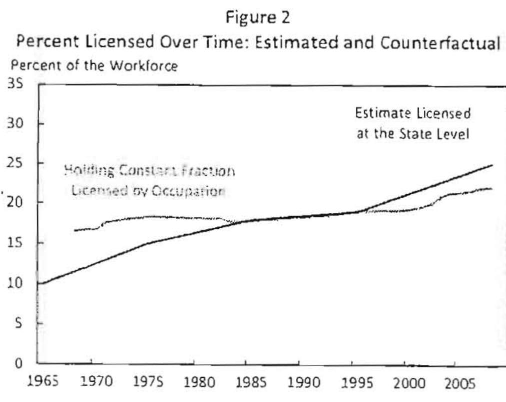
Share of Workers with a State Occupational License



CEA analysis shows that about two-thirds of this change stems from an increase in the number of professions that require a license, with the remaining growth coming from changing composition of the workforce (Figure 2).

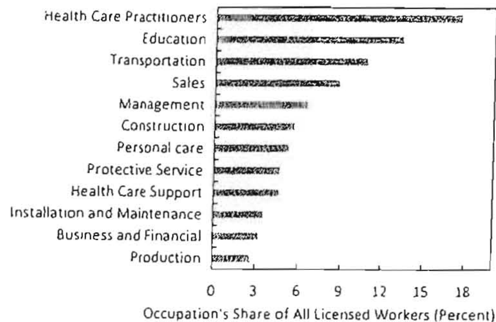
Figure 2

Percent Licensed Over Time: Estimated and Counterfactual



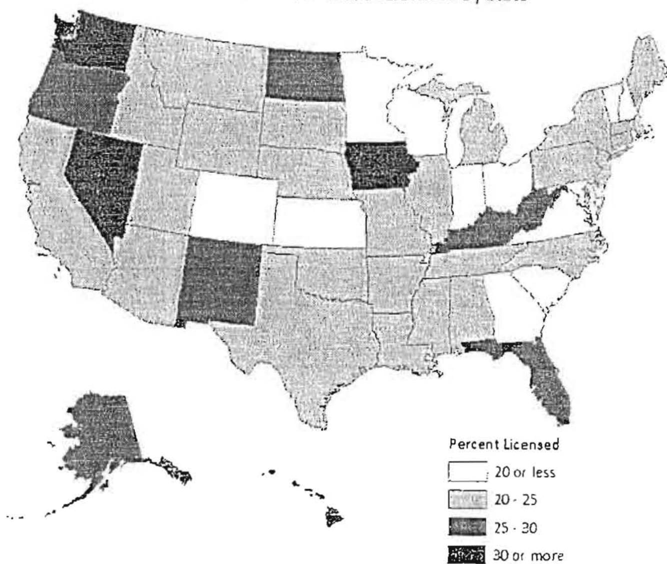
Licensing laws have expanded considerably to cover not only traditionally highly-licensed fields, such as health care and law, but also ones such as sales, management, and construction (Figure 3).

Figure 3
Share of All Licensed Workers in the 12 Occupations with the Most Licensed Workers



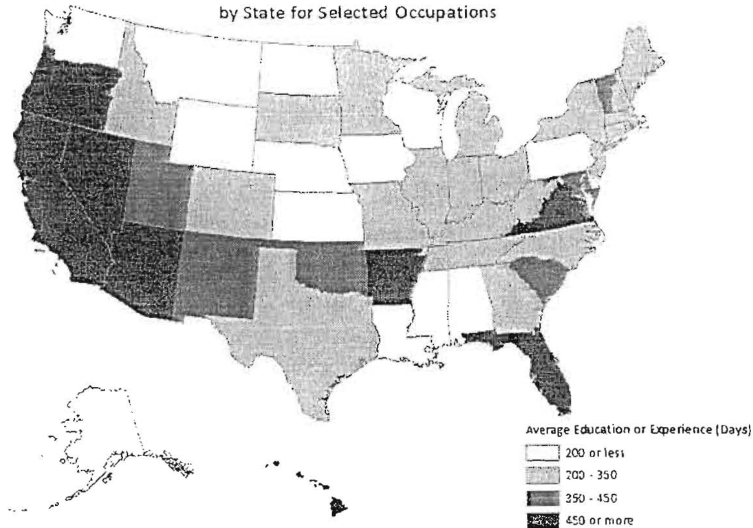
Licensing practices also differ among States. States vary in the licensed share of their workforce, ranging from a low of 12 percent in South Carolina to 33 percent in Iowa (Figure 4).

Figure 4
Percent of Workforce Licensed by State



This pattern appears to largely reflect differences across States in which occupations require a license.[2] According to estimates from the Council of State Governments, over 1,100 occupations were licensed, certified, or registered in at least one State but fewer than 60 were regulated in all 50 States.[3] States also vary dramatically in their requirements for obtaining a license (Figure 5). For example, Michigan requires three years of education and training to become a licensed security guard, while most other States require only 11 days or less. South Dakota, Iowa, and Nebraska require 16 months of education to become a licensed cosmetologist, while New York and Massachusetts require less than 8 months.[4]

Figure 5
Average Education or Experience Required for License
by State for Selected Occupations



[2] Morris M. Kleiner and Evgeny Vorotnikov. 2015. "The Economic Effects of Occupational Licensing Among the States." Working Paper. Harris data. To see this, we used data from the Survey of Income and Program Participation (SIPP) to test how State licensing rates would change if every State had the same occupation mix but kept their own licensing rates within occupations. This resulting picture was very similar to the actual distribution of shares licensed across States, indicating that differences in occupational mix are not the primary determinant of State licensing differences.

[3] Pamela L. Brinegar, and Kara L. Schmitt. 1992. "State Occupational and Professional Licensure." The Book of the States 567–80. Lexington, KY: Council of State Governments.

[4] Dick Carpenter, Angela C. Erickson, Lisa Knepper, and John K. Ross. 2012 "License to Work: A National Study of Burdens from Occupational Licensing." Institute for Justice. https://www.ij.org/licensetowork.

The Benefits and Costs of Licensing

Like many economic policies, occupational licensing has benefits and costs. Licensing is usually justified on the grounds that it improves quality and protects the public against incompetent or dangerous practitioners. This argument is strongest when low-quality practitioners can potentially inflict serious harm, or when it is difficult for consumers to evaluate provider quality beforehand. Few people, for example, would feel comfortable traveling in a commercial plane flown by an unlicensed pilot or having a medical procedure performed by an unlicensed physician. In such cases, the costs to consumers and the public of choosing an incompetent practitioner are large enough to justify an intervention in the labor market.

But when consumers choose a florist, a barber, or a decorator, there is considerably less potential harm to the public on the line and it may be easier for consumers to evaluate provider quality on their own. It is important to balance the potential quality-improving and safety-promoting benefits of licensing against its potential costs in the labor market. Moreover, while the academic literature has studied only a handful of specific licensing requirements, most empirical evidence does not find that stricter licensing requirements improve quality, public safety or health.[5]

Licensing can also have clear costs. Licensing requirements can create benefits for licensed practitioners at the expense of excluded workers and consumers—increasing inefficiency and inequality. While licensing requirements can lead to higher wages for those able to obtain a license, they can also reduce employment opportunities and depress wages for excluded workers.[6] This is especially problematic when obtaining a license requires paying large upfront costs, including tuition and lost wages from educational requirements, which many low-income workers cannot afford. Licensing laws also lead to higher prices for goods and services, in many cases for lower-income households, which are not always justified by improved quality or public safety.

The wide variation in licensing requirements at the State level also creates barriers that reduce mobility across State lines. Moving to a new State can entail—among other things— fulfilling new education, training, or testing requirements, as well as paying fees. CEA finds that workers in highly licensed occupations are much less likely than other workers to move across State lines, while these two groups differ only modestly in their likelihood of moving within a State (Figure 6). These barriers to mobility can prevent workers from matching with the jobs best suited to their skills, which in turn makes our labor market less efficient, reducing productivity and wages.

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[5] For a review of the literature on the effects of occupational licensing on the labor market and quality, health, and safety, see: The Department of the Treasury Office of Economic Policy, the Council of Economic Advisers, and the Department of Labor. 2015. "Occupational Licensing. A Framework for Policymakers" (https://www.whitehouse.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf).

[6] For example, see Maya N. Federman, David E. Harrington, and Kathy J. Krynski. 2006. "The Impact of State Licensing Regulations on Low-Skilled Immigrants: The Case of Vietnamese Manicurists." *American Economic Review* vol. 96, no. 2: 237-241.

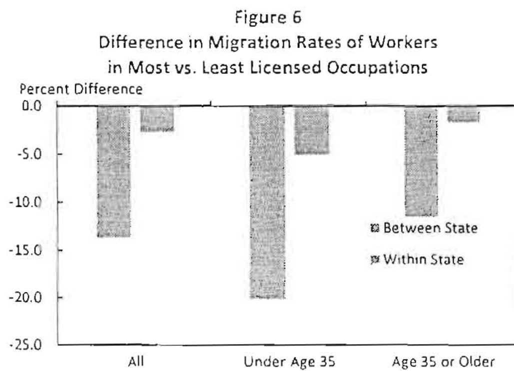

Figure 6
Difference in Migration Rates of Workers
in Most vs. Least Licensed Occupations

Our licensing system places special burdens on certain populations. For example, it creates high costs for military spouses, who frequently have to relocate across State lines.[7] Our licensure system can also prevent immigrants from applying their training and work experience from abroad to jobs in the United States.[8] In addition, licensing laws often contain blanket exclusions for those with criminal records, regardless of whether their records are relevant to the job for which they are applying.[9] As many as one in three Americans has some form of criminal record, so these exclusions render a great number of individuals ineligible for a large share of jobs, which in turn can perpetuate unstable economic situations.[10]

Best Practices for Occupational Regulation

The relative magnitude of these costs and benefits depends on the specific circumstances for each profession, so it is important for policymakers to weigh the costs and benefits of licensing proposals in each instance. To that end, drawing on promising State policies, the Administration has developed three sets of best practices that States can apply to ensure that their licensing

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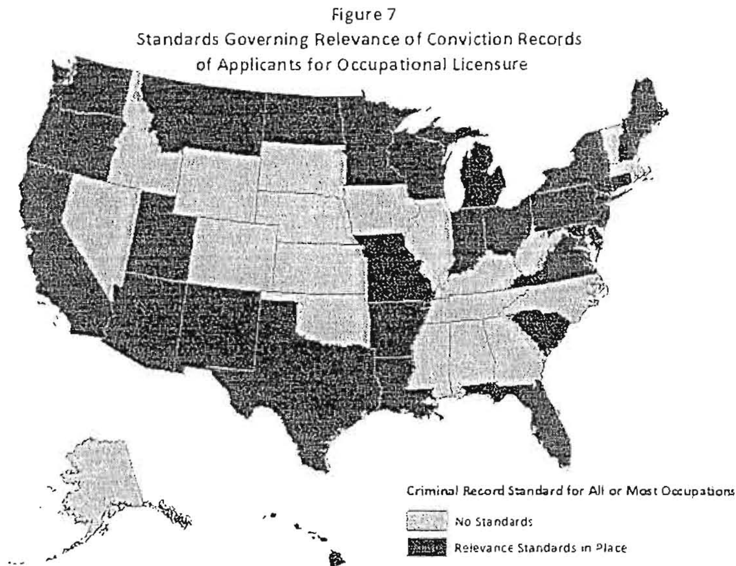
[7] U.S. Department of the Treasury and U.S. Department of Defense. 2012. Supporting our Military Families: Best Practices for Streamlining Occupational Licensing across State Lines (http://www.defense.gov/home/pdf/Occupational_Licensing_and_Military_Spouses_Report_vFINAL.PDF).
[8] Matthew Hall, Audrey Singer, Gordon F. De Jong, and Deborah Roempke Graefe. 2011. "The Geography of Immigrant Skills: Educational Profiles of Metropolitan Areas." State of Metropolitan America no. 33. The Brookings Institution (http://www.brookings.edu/~/media/research/files/papers/2011/6/immigrants-singer/06_immigrants_singer.pdf).
[9] The Legal Action Center. "After Prison: Roadblocks to Reentry: A Report on State Legal Barriers Facing People with Criminal Records" (http://www.lac.org/roadblocks-to-reentry/main.php?view=law&subaction=4).
[10] Rebecca Vallas and Sharon Dietrich. 2014. "One Strike and You're Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records." Center for American Progress (https://www.americanprogress.org/issues/poverty/report/2014/12/02/102308/one-strike-and-youre-out/).

policies safeguard the well-being of consumers, while maintaining flexibility in the labor market and opportunities for workers.[11]

First, licensing restrictions should be closely targeted to protecting public health and safety, and should not be overly broad or burdensome. For example, policymakers should refrain from categorically excluding individuals with criminal records, and instead should only exclude those individuals whose convictions are recent, relevant, and pose a threat to public safety. Drawing on work done by the National Association of Criminal Defense Lawyers and the Legal Action Center, we find that twenty-one States do not have standards in place governing the relevance of conviction records of people applying for occupational licenses for most or all occupations (Figure 7).

Figure 7
Standards Governing Relevance of Conviction Records of Applicants for Occupational Licensure

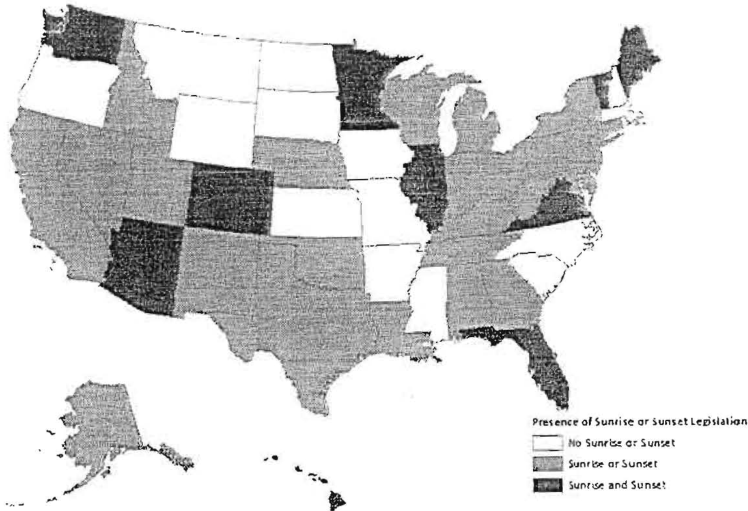


Second, States should create or strengthen "sunrise" review processes to facilitate a careful cost-benefit analysis each time a new licensing law is proposed. Data collected by the Council on Licensure, Enforcement, and Regulation indicate that 13 States have some sort of sunrise law, while 32 States maintain a sunset process for existing licensing laws, and only 10 States have

[11] See CEA et al. (2015) for a more detailed list of best practices.

both (Figure 8).[12] For example, since 1995, Maine's Department of Professional and Financial Regulation has conducted a sunrise review of any proposed legislation that would establish an occupational licensing board or expand a current practitioner's scope of practice. According to Maine's Department of Professional and Financial Regulation, only one occupation has acquired licensed status in Maine in the past 15 years.[13]

Figure 8
States with Sunrise and Sunset Legislation



Finally, States should expand reciprocity agreements and harmonize licensing requirements to increase workers' mobility across state lines. For example, various

[12] The Council on Licensure, Enforcement, and Regulation defines sunset and sunrise reviews as follows: "Sunset is the automatic termination of regulatory boards and agencies unless legislative action is taken to reinstate them... Sunrise is a process under which an occupation or profession wishing to receive State certification or licensure must propose the components of the legislation, along with cost and benefit estimates of the proposed regulation. The profession must then convince the legislators that consumers will be unduly harmed if the proposed legislation is not adopted." Council on Licensure Enforcement and Regulation. Sunrise, Sunset and State Agency Audits (http://www.clearhq.org/page-486181).

[13] Maine Revised Statutes Title 32 § 60-J (http://legislature.maine.gov/statutes/32/title32sec60-J.html); Maine Department of Professional and Financial Regulation. 2015. Private Correspondence.

professions, including nurses,[14] physicians,[15] and physical therapists,[16] either have constructed or are in the process of constructing their own interstate compacts. Ideally, however, States would establish a compact that applied to a range of different professions.

Federal Reform Efforts

While licensing reform takes place primarily at the State level, the Administration is committed to working with Congress and collaborating with States to make progress on this issue. Following the release of the White House report in July, we have presented the report's findings and policy recommendations to a wide range of State policymakers, officials from State licensing boards, members of professional organizations, and members of the think tank community.

The Administration has also worked with Congress, to reduce licensing burdens for veterans, service members, and military spouses. Under the President's direction, the Department of Defense established the Military Credentialing and Licensing Task Force in 2012, and with its help, thousands of service members have earned or are in the process of earning civilian occupational credentials and licenses through partnerships with national certifying bodies.[17] Thanks in part to the leadership of Senators Blumenthal and Klobuchar, the President signed into law the Veterans Skills to Jobs Act in 2012, which requires federal agencies to recognize relevant military training when certifying veterans for occupational licenses. In addition, building on First Lady Michelle Obama and Dr. Jill Biden's call to governors in 2012, the Administration has partnered with States to streamline State occupational licensing for service members, veterans, and their spouses.[18] As a result of this call for action, and through the Department of Defense's efforts working side by side with the Department of Labor, the Department of Veterans Affairs, and the States, over 54 laws have been enacted in nearly all 50 States that reduce licensing and credentialing barriers for military members and their families.[19]

Over the coming year, we will continue to conduct outreach to help spur action at the State level. The FY2016 Budget signed by the President included $7.5 million to support efforts by a consortium of States to expand reciprocity for a range of occupational licenses.

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[14] National Council of State Boards of Nursing. "Nurse Licensure Compact" (https://www.ncsbn.org/94.htm).
[15] Humayun J. Chaudhry, Lisa A. Robin, Eric M. Fish, Donald H. Polk, and J. Daniel Gifford. 2015. "Improving Access and Mobility – The Interstate Medical Licensure Compact." *The New England Journal of Medicine* vol. 372, no. 17: 1581:1583.
[16] American Physical Therapy Association. 2014. "Interstate Licensure Compact for Physical Therapy" (http://www.apta.org/StateIssues/InterstateLicensureCompact/).
[17] The White House. 2013. "Fact Sheet: Administration Partners with Industry to Get Service Members Credentialed for High-Demand Jobs" (https://www.whitehouse.gov/the-press-office/2013/04/29/fact-sheet-administration-partners-industry-get-service-members-credenti).
[18] National Economic Council and Council of Economic Advisers. 2013. The Fast Track to Civilian Employment: Streamlining Credentialing and Licensing for Service Members, Veterans, and their Spouses; Department of Defense and States, Partnering to Support Military Families "Removing Licensure Impediments for Transitioning Military Spouses" (http://www.usa4militaryfamilies.dod.mil/MOS/f?p=USA4:ISSUE:0::::P2_ISSUE:2).
[19] Department of Defense Briefing. 4 December 2015. "DoD Credentialing Update to Office of Senator Barbara Boxer."

Conclusion

The rise of occupational licensing fits into a broader context of what appears to be the growing importance of "economic rents."[20] Economists define rents as the return to a factor of production like capital, labor, or land that exceeds what is needed to keep that factor of production in the market. Rents often result from unproductive "rent-seeking" behavior that limits competition in the market. Sometimes the benefits of rents are worth that limited competition—such as in well-designed occupational licensing systems and well-designed intellectual property regimes. But in many cases, rents protect entrenched interests without providing broader societal benefit.

Removing overly burdensome licensing requirements is one example of a policy that can reduce harmful rents, but there are others, such as limiting zoning and other land-use restrictions and appropriately balancing intellectual property regimes. These types of policies can foster more competitive markets, increasing efficiency while also reducing inequality.

Licensing reform is only a small part of the effort to raise incomes, improve access to employment, and reduce inequality. But when the problem we are facing is so large, we cannot afford to leave any stone unturned in addressing it. And we certainly cannot afford not to take measures that would provide greater opportunities for Americans while making the economy more efficient.

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[20] Jason Furman and Peter Orszag. 2015. "A Firm-Level Perspective on the Role of Rents in the Rise in Inequality" (https://www.whitehouse.gov/sites/default/files/page/files/20151016_firm_level_perspective_on_role_of_rents_in_inequality.pdf); Jason Furman. 2015. "Occupational Licensing and Economic Rents" (https://www.whitehouse.gov/sites/default/files/page/files/20151102_occupational_licensing_and_economic_rents.pdf).

References

Figure 1
Source: The Council of State Governments (1952); Greene (1969); Kleiner (1990); Kleiner (2006); and Kleiner and Krueger (2013), Westat data; CEA Calculations.

Figure 2
Source: Kleiner and Krueger (2013), Westat data; Bureau of Labor Statistics; Current Population Survey.
Note: To make the adjustment, we use Kleiner and Krueger's estimates of the shares of State-licensed workers in each occupation in 2008, and adjust for changes in occupational mix back to 1968, taking advantage of a historically consistent occupational classification system contained in the Integrated Public Use Microdata Series version of the Current Population Survey. Meyer, Peter B. and Anastasiya M. Osborne. 2005. "Proposed category system for 1960-2000 Census Occupations." U.S. Bureau of Labor Statistics. Working Paper 383; Alexander, J. Trent, Sarah Flood, Katie Genadek, Miriam King, Steven Ruggles, Matthew B. Schroeder, and Brandon Trample. 2010. Integrated Public Use Microdata Series, Current Population Survey: Version 3.0. [Machine-readable database].

Figure 3
Source: Source: Kleiner and Krueger (2013) Westat data; Current Population Survey Outgoing Rotation Group; CEA calculations.

Figure 4
Source: 2013 Harris Poll Interactive survey, reported in Kleiner and Vorotnikov (2013) and Kleiner (2015).

Figure 5
Source: Source: Institute for Justice analysis, reported in Carpenter (2012).
Note: Sample of 102 lower- and middle-skill occupations. Hours averaged over all licensed occupations from the sample of 102, by state.

Figure 6
Source: Census Bureau, American Community Survey 2010-2013; CEA Calculations.
Note: Number is calculated from an OLS regression controlling for race, citizenship, sex, citizenship, number of children, marital status, education, income, year, and state. Ages 25 to 65 were included.

Figure 7
Source: National Association of Criminal Defense Lawyers; Legal Action Center; UST and CEA tabulations.

Figure 8
Source: Council on Licensure, Enforcement, and Regulation (2015).

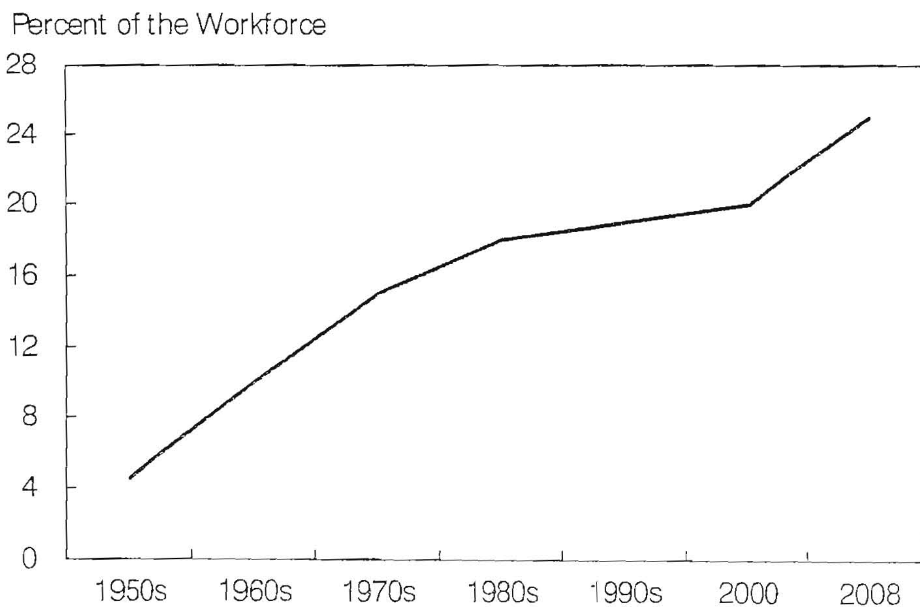
Testimony Before the Subcommittee on Antitrust, Competition Policy and Consumer Rights

Jason Furman
Chairman, Council of Economic Advisers

February 2, 2016

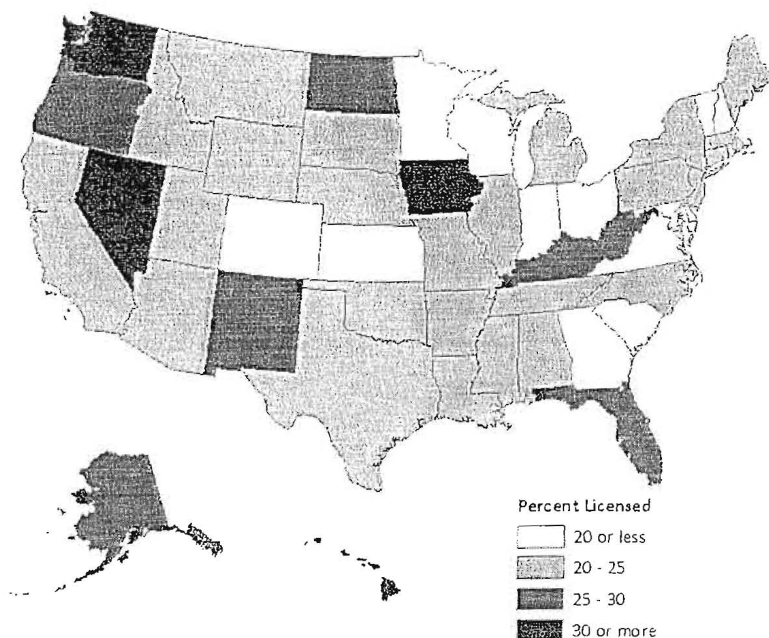
The Share of Workers Licensed at the State Level Has Risen Five-Fold Since the 1950s

Share of Workers with a State Occupational License



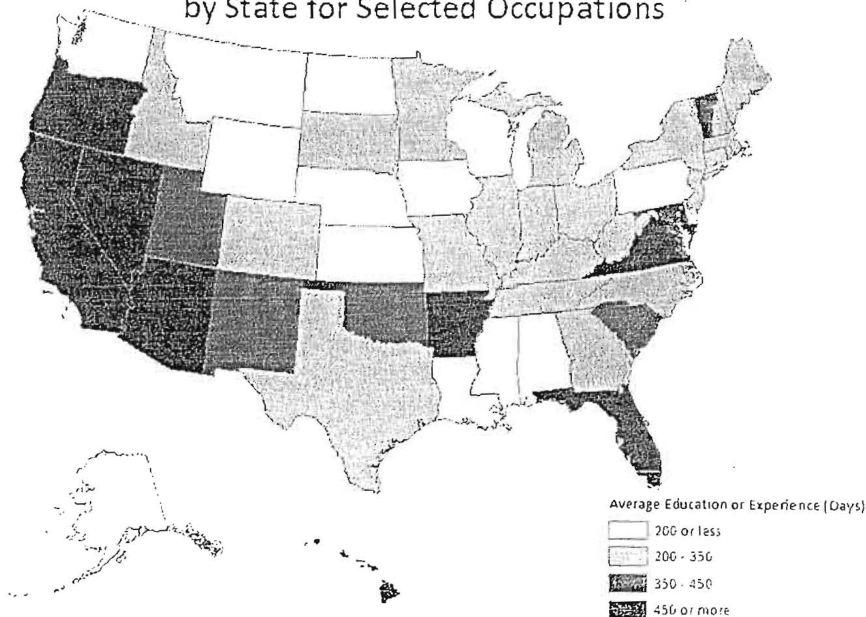
urce: The Council of State Governments (1952); Greene (1969); Kleiner (1990); Kleiner (2006); and Kleiner and Krueger (2013), Westat data; CEA Calculations.

Licensing Is Very Uneven Across States



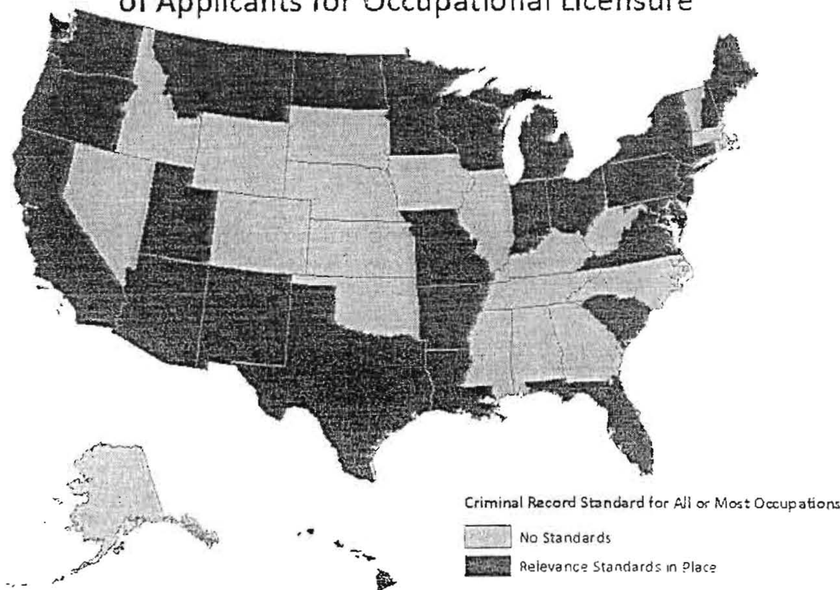
Source: 2013 Harris Poll Interactive survey, reported in Kleiner and Vorotnikov (2013) and Kleiner (2015)

States Also Differ in the Requirements for their Licenses



rce: Institute for Justice analysis, reported in Carpenter (2012).

Only Some States Have General Standards Governing the Relevance of Conviction Records



Source: National Association of Criminal Defense Lawyers; Legal Action Center; UST and CEA tabulations.

Testimony Before the Subcommittee on Antitrust, Competition Policy and Consumer Rights

Jason Furman
Chairman, Council of Economic Advisers

February 2, 2016

PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION

Before the
United States Senate Committee on the Judiciary
Subcommittee on Antitrust, Competition Policy and Consumer Rights
"License to Compete: Occupational Licensing and the State Action Doctrine"
February 2, 2016

Chairman Lee, Ranking Member Klobuchar, and Members of the Committee, thank you for the opportunity to appear before you today. I am Commissioner Maureen K. Ohlhausen, and I am pleased to join you to discuss competition perspectives on the licensing and regulation of occupations, trades, and professions.[1]

The Commission and its staff recognize that occupational licensing can offer many important benefits. It can protect consumers from health and safety risks and support other valuable public policy goals. However, not all licensure is warranted. More importantly, in our experience, not every restriction imposed on an occupation may yield benefits that sufficiently justify the harms it can do to competition. We have seen many examples of restrictions that likely impede competition and hamper entry into professional and other services markets, and yet offer few, if any, significant consumer benefits. In these situations, occupational regulation may do more harm than good, leaving consumers with higher-priced, lower-quality, and less convenient services. Over the long term, unnecessary occupational regulation can cause lasting damage to competition and the competitive process by rendering markets less responsive to consumer demand; by dampening incentives for innovation in products, services, and business models; and by creating barriers to entry or repositioning by providers seeking to offer their services to consumers.

The Commission has not studied and has not taken a position on whether, as a general matter, some occupations, trades, and professions are subject to unnecessary licensure.[2] That has not been the focus of its attention in this area. Instead, the Commission has focused on commenting on particular regulations that may unduly restrict competition in specific fields. Furthermore, the Commission has taken enforcement action when appropriate to stop regulatory boards from exceeding their authority to eliminate competition.

From a competition standpoint, occupational regulation can be especially worrisome when regulatory authority is delegated to a board composed of members of the occupation it regulates. The risk is that the board will make regulatory decisions that serve the private economic interests of its members and not the policies of the state. These private interests may lead to the adoption and application of occupational restrictions that discourage new entrants, deter competition among licensees and from providers in related fields, and suppress innovative products or services that could challenge the status quo.

The Commission and its staff address these concerns primarily in two ways. First, as part of our competition advocacy program, where appropriate and feasible, we respond to calls for public comment and invitations from legislators and regulators to identify and analyze specific occupational restrictions that may harm competition without offering countervailing consumer

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[1] This written statement presents the views of the Federal Trade Commission. Oral testimony and responses to questions reflect my views and do not necessarily reflect the views of the Commission or any other Commissioner.
[2] In the past, Commission staff have studied the general conditions under which licensure or some other form of occupational regulation may or may not be warranted. *See generally, e.g.*, CAROLYN COX & SUSAN FOSTER, BUREAU OF ECON., FED. TRADE COMM'N, THE COSTS AND BENEFITS OF OCCUPATIONAL REGULATION (1990), http://www.ramblemuse.com/articles/cox_foster.pdf.

benefits. Typically, we urge policy makers to integrate competition concerns into their decision-making process—specifically, that they consider whether the restrictions are: (1) targeted to address specific risks of harm to consumers; (2) likely to have a significant and adverse effect on competition; and (3) narrowly tailored to minimize harm to competition, meaning less restrictive alternatives are not available or feasible.[3]

Second, the Commission has employed its enforcement authority to challenge anticompetitive conduct by regulatory boards composed of private actors. These enforcement actions have included challenges to agreements among competitors that restrain truthful and non-deceptive advertising, price competition, and contracting or other commercial practices. The Commission has also challenged direct efforts to prohibit competition from new rivals where there is not a legitimate justification for doing so. The Commission can bring these actions when the challenged conduct falls outside of the scope of protected "state action."

Principles of federalism limit the application of the federal antitrust laws when restraints on competition are imposed by a state. A state acting as a sovereign may impose occupational licensing or other restrictions that displace competition in favor of other goals and values that are important to its citizens. The so-called state action doctrine was first articulated by the Supreme Court in 1943 and is rooted in the understanding that Congress, in passing the Sherman Act, did not intend to impinge upon the sovereign regulatory power of the states.[4] However, as explained below, that does not mean that all state regulators are exempt from antitrust scrutiny. The Court has cautioned that "[t]he national policy in favor of competition cannot be thwarted by casting . . . a gauzy cloak of state involvement over what is essentially . . . [private anticompetitive conduct]."[5]

As one of two federal agencies charged with enforcing U.S. antitrust laws, the Commission is committed to ensuring that the state action doctrine remains true to its doctrinal foundations. As discussed below, the Commission has played an active role in the development of this doctrine, including early litigation against a tobacco board of trade[6] and a trade association for common carriers,[7] and continuing with cases in the 1990s that included an important ruling from the Supreme Court in the area of collective rate-making.[8] Then in 2003, Commission staff issued a report that outlined concerns about certain over-broad judicial interpretations of the state action doctrine, especially in the area of governmental entities composed of market participants.[9] Through enforcement actions challenging the conduct of state licensing boards, the Commission has helped

[3] For an overview of the Commission's advocacy efforts in the area of occupational licensing and regulation, *see Barriers to Entrepreneurship: Examining the Anti-Trust Implications of Occupational Licensing: Hearing Before the H. Comm. on Small Bus.*, 113th Cong. 14 (2014) (statement of Fed. Trade Comm'n on Competition and the Potential Costs and Benefits of Professional Licensure), https://www.ftc.gov/public-statements/2014/07/prepared-statement-federal-trade-commission-competition-potential-costs.

[4] Parker v. Brown, 317 U.S. 341 (1943).

[5] Cal. Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., 445 U.S. 97, 106 (1980).

[6] Asheville Tobacco Bd. of Trade, Inc. v. FTC, 263 F.2d 502 (4th Cir. 1959).

[7] Mass. Furniture & Piano Movers Ass'n, Inc. v. FTC, 773 F.2d 391 (1st Cir. 1985).

[8] FTC v. Ticor Title Ins. Co., 504 U.S. 621 (1992).

[9] FTC Office of Policy Planning, *Report of the State Action Task Force* (2003), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/report-state-action-task-force/stateactionreport.pdf.

to define the contours of the state action doctrine for actions taken by state boards consisting of private actors, culminating in last year's decision by the Supreme Court in *North Carolina State Board of Dental Examiners v. FTC*.[10]

This testimony focuses on the Commission's competition enforcement work relating to regulatory boards and will highlight a few recent competition advocacy efforts related to state licensing requirements.

I. The State Action Doctrine

As noted above, the Supreme Court first articulated the state action doctrine in *Parker v. Brown*, concluding that the federal antitrust laws do not reach anticompetitive conduct engaged in by a state acting in its sovereign capacity.[11] For example, a state's legislature may "impose restrictions on occupations, confer exclusive or shared rights to dominate a market, or otherwise limit competition to achieve public objectives."[12] Actions of a state supreme court have been held to be sovereign state acts when the court wields the state's regulatory power over the practice of law.[13]

Under some circumstances, other actors besides the state itself may be able to use the state action doctrine as a shield for their anticompetitive conduct. In *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.*, the Supreme Court held that the conduct of a private actor is shielded by the state action doctrine only if it is (1) taken pursuant to a clearly articulated and affirmatively expressed state policy to displace competition, and (2) actively supervised by the state.[14]

As developed by the Supreme Court in a series of decisions, certain substate governmental entities, such as municipalities and other local political subdivisions, are protected from antitrust challenge if their conduct meets the first prong of the *Midcal* test. In other words, those substate entities can invoke the state action doctrine if they are acting pursuant to a "state policy to displace competition with regulation or monopoly public service."[15] Unlike private parties, these entities do not require active supervision by the state, the Court held, because they are publicly accountable and presumed to act in the public interest, and because clear articulation of the state's policy by its legislature is supposed to ensure that those entities do not put purely parochial public interests ahead of broader state goals.[16]

In *FTC v. Phoebe Putney Health System, Inc.*, the Supreme Court clarified that general grants of power to act from a state legislature are not sufficient under the first prong of *Midcal*. Rather, a substate governmental entity must show that it has been delegated authority "to act or to

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[10] N.C. State Bd. of Dental Exam'rs v. FTC, 135 S. Ct. 1101 (2015).
[11] *Parker*, 317 U.S. at 351–52.
[12] *N.C. Dental*, 135 S. Ct. at 1109.
[13] Hoover v. Ronwin, 466 U.S. 558 (1984); Bates v. State Bar of Ariz., 433 U.S. 350 (1977).
[14] *Midcal Aluminum*, 445 U.S. at 105.
[15] Lafayette v. La. Power & Light Co., 435 U.S. 389, 413 (1978) (plurality opinion).
[16] Town of Hallie v. City of Eau Claire, 471 U.S. 34, 46–47 (1985).

regulate anticompetitively."[17] A state policy meets the first prong when the displacement of competition is "the inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature," such that "the State must have foreseen and implicitly endorsed the anticompetitive effects as consistent with its state policy goals."[18] In *Phoebe Putney*, the Court ruled that although Georgia law authorized counties and municipalities to create hospital authorities with general corporate powers to acquire hospitals, the law did not clearly and affirmatively authorize acquisitions that would substantially lessen competition in violation of the Clayton Act.[19]

As recounted in *North Carolina Dental*, states may regulate a particular occupation or profession by setting standards for licensing individuals to practice that occupation or profession and creating a board to administer those licensing standards. States often require that licensing boards include practicing members of the occupation or profession being regulated, and neither the Supreme Court nor the FTC has sought to dictate how such boards must be constituted. The Court has, however, opined on the question how such boards must be accountable when they are controlled by market participants. In *North Carolina Dental*, the Supreme Court ruled that a licensing board on which a controlling number of decision makers are active market participants in the occupation the board regulates must satisfy both prongs of the *Midcal* test: their actions must be pursuant to a clearly articulated and affirmatively expressed state policy to displace competition, and their conduct must be actively supervised by the State.[20] The active supervision requirement ensures that any anticompetitive acts undertaken by private actors are in fact approved by the State as part of its regulatory policy. The mere possibility of supervision is not enough; state officials must have and exercise the power to review the anticompetitive acts of the private parties and to reject or modify those that conflict with state policy.[21]

II. FTC Enforcement Involving Conduct of Licensing Boards Composed of Market Participants

The FTC has brought a number of enforcement actions challenging anticompetitive conduct by state licensing boards acting outside the protection of the state action doctrine. Early cases focused on restrictions on advertising.[22] For example, the FTC issued an administrative complaint charging the Massachusetts Board of Registration in Optometry with unfair methods of competition for banning truthful advertising by optometrists, including ads that offered discounts or publicized the provider's affiliation with an optical store. The Massachusetts Board was (and is) a state agency that regulates the practice of optometry in Massachusetts; its enabling statute explicitly barred the Board from placing limits on truthful, nondeceptive advertising. In its ruling,

[17] FTC v. Phoebe Putney Health Sys., Inc., 568 U.S. —, 133 S. Ct. 1003, 1012 (2013).

[18] *Id.* at 1013.

[19] *Id.* at 1017.

[20] *N.C. Dental*, 135 S. Ct. at 1114.

[21] Patrick v. Burget, 486 U.S. 94, 100-01 (1988).

[22] *See, e.g.*, Decision and Order, Va. Bd. of Funeral Directors & Embalmers, 138 F.T.C. 645 (2004); R.I. Bd. of Accountancy, 107 F.T.C. 293 (1986). *See also* United States v. Tex. State Bd. of Public Accountancy, 464 F. Supp. 400, 402-03 (W.D. Tex. 1978) (a competitive bidding case). *aff'd as modified*, 592 F.2d 919 (5th Cir. 1979), *cert. denied*, 444 U.S. 925 (1979).

the Commission pointed to similar cases condemning unreasonable advertising restrictions promulgated by trade associations, and noted that the actions of licensing boards also have the force of law: optometrists who violate the Board's commands may lose their professional license, and thereby their livelihood.[23] The Commission held that the Board's advertising restraints were not shielded by the state action doctrine; indeed state law clearly articulated a policy favoring, not displacing, competition through truthful advertising. The Commission also ruled that the Board's restrictions on truthful advertising had no plausible procompetitive justification and thus were unreasonable restraints of trade.

The Commission has also challenged board rules that impose unreasonable restrictions on new models for delivering the services of licensed professionals operating in the state. For instance, in 2003, the Commission issued an administrative complaint against the South Carolina Board of Dentistry, charging that the Board had illegally restricted the ability of dental hygienists to provide basic preventive dental services in schools.[24] To address concerns that many schoolchildren, particularly those in low-income families, were not receiving any preventive dental care, the South Carolina legislature had eliminated a statutory requirement that a dentist examine each child before a hygienist could perform preventive care in schools. But according to the FTC's complaint, the Board—seven of whose nine members were dentists—re-imposed the dentist examination requirement, which was clearly inconsistent with the policy established by the legislature. The complaint alleged that the Board's action unreasonably restrained competition in the provision of preventive dental care services, deprived thousands of economically disadvantaged schoolchildren of needed dental care, and that its harmful effects on competition and consumers could not be justified.

The Board moved to dismiss the complaint on the grounds that its actions were exempt from the antitrust laws under the state action doctrine. The Commission denied the Board's motion. As a state agency, the Board was not automatically entitled to protections afforded to the State of South Carolina as a sovereign. Furthermore, its challenged conduct was not pursuant to any clearly articulated policy of the legislature to displace the type of competition at issue. Indeed, the conduct contravened the legislature's action to eliminate the examination requirement.[25] The Board ultimately entered into a consent agreement settling the charges.[26]

More recently, in 2010, the Commission charged that the North Carolina State Board of Dental Examiners violated the federal antitrust laws by preventing non-dentists from providing teeth whitening services in competition with the state's licensed dentists.[27] The Board is a state agency established under North Carolina law and charged with administering and enforcing a

[23] Decision and Order, Mass. Bd. of Registration in Optometry, 110 F.T.C. 529, 605 (1988).
[24] Complaint, S.C. State Bd. of Dentistry, Dkt. No. 9311 (F.T.C. Sept. 12, 2003), https://www.ftc.gov/sites/default/files/documents/cases/2003/09/socodentistcomp.pdf.
[25] Opinion of the Commission, S.C. State Bd. of Dentistry, Dkt. No. 9311, (F.T.C. July 30, 2004) (denying motion to dismiss on state action grounds), https://www.ftc.gov/sites/default/files/documents/cases/2004/07/040728commissionopinion.pdf.
[26] Decision and Order, S.C. State Bd. of Dentistry, Dkt. 9311 (F.T.C. Sept. 6, 2007), https://www.ftc.gov/sites/default/files/documents/cases/2007/09/070911decision_0.pdf.
[27] Complaint, N.C. State Bd. of Dental Exam'rs, Dkt. No. 9343 (F.T.C. June 17, 2010), https://www.ftc.gov/sites/default/files/documents/cases/2010/06/100617dentalexamcmpt.pdf.

licensing system for dentists. A majority of the members of the Board were themselves practicing dentists. As such, they had a private financial incentive to limit competition from non-dentist providers of teeth whitening services. When non-licensed teeth whitening practitioners began offering teeth whitening services at lower prices than dentists, the Board acted to protect the interests of dentists. After concluding that teeth whitening constitutes the practice of dentistry, the Board informed the non-licensed practitioners that they were practicing dentistry without a license and ordered them to cease and desist from providing those services. The Board also issued letters to various third parties, such as mall operators, warning them that the non-licensed practitioners' teeth whitening services constituted the unlawful practice of dentistry.

The Board argued that, because it is a state agency, the state action doctrine exempts it from liability under the federal antitrust laws. The Commission rejected the Board's argument, as did the Fourth Circuit, and the Supreme Court. In a February 2015 decision, the Supreme Court determined that "a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy [the] active supervision requirement in order to invoke state-action antitrust immunity."[28] As the Court explained,

> The two requirements set forth in *Midcal* provide a proper analytical framework to resolve the ultimate question whether an anticompetitive policy is indeed the policy of a State. The first requirement—clear articulation—rarely will achieve that goal by itself, for a policy may satisfy this test yet still be defined at so high a level of generality as to leave open critical questions about how and to what extent the market should be regulated. . . . Entities purporting to act under state authority might diverge from the State's considered definition of the public good. The resulting asymmetry between a state policy and its implementation can invite private self-dealing. The second *Midcal* requirement—active supervision—seeks to avoid this harm by requiring the State to review and approve interstitial policies made by the entity claiming immunity.[29]

After *North Carolina Dental*, licensing boards may continue to regulate professionals in their respective states and be exempt from antitrust laws, so long as they act pursuant to a clearly articulated state policy and, if they are controlled by market participants, under active supervision by the state. The Court did not specify exactly what would constitute "active state supervision," explaining that that inquiry was "flexible and context-dependent." Further, it need not "entail day-to-day involvement in any agency's operation or micromanagement of its every decision." Rather, the touchstone is "whether the State's review mechanisms provide 'realistic assurance' that a non-sovereign actor's anticompetitive conduct 'promotes state policy, rather than merely the party's individual interests.'"[30]

In the wake of the Supreme Court's decision, state officials requested advice from the FTC regarding antitrust compliance for state boards responsible for regulating occupations. In October

[28] *N.C. Dental*, 135 S. Ct. at 1114.
[29] *Id.* at 1112.
[30] *Id.* at 1116 (quoting *Patrick*, 486 U.S. at 100–01).

2015, FTC staff issued guidance on how states can satisfy the "active supervision" requirement of the state action doctrine with respect to regulatory boards controlled by market participants.[31] Although this guidance does not have the force of law, it may help state officials determine the appropriate level of oversight needed for a regulatory board controlled by market participants to benefit from state action immunity.

The staff guidance emphasizes that antitrust analysis – including the applicability of the state action defense – is fact-specific and context-dependent. A one-size-fits-all approach to active supervision is neither possible nor warranted. Moreover, deviation from this guidance does not necessarily mean that the state action defense is inapplicable, or that a violation of the antitrust laws has occurred.

III. Antitrust Analysis of Restraints Imposed by Regulatory Boards Not Protected by the State Action Doctrine

Where the state action defense is not available, conduct taken by regulatory boards that are controlled by competing market participants is subject to traditional antitrust principles. With respect to joint conduct among competitors, a violation of Section 1 of the Sherman Act requires proof of two elements: (1) a contract, combination, or conspiracy; (2) that imposes an unreasonable restraint of trade. Unless the restraint is per se illegal, the Commission applies the antitrust "rule of reason," assessing whether a restraint is unreasonable by examining both the procompetitive benefits and the anticompetitive effects of the agreement. In general, "reasonable" restraints on competition do not violate the antitrust laws, even where the economic interests of a competitor have been injured. For instance, a regulatory board may prohibit members of the occupation from engaging in fraudulent business practices or false or deceptive advertising without raising antitrust concerns.

However, where, for example, the regulatory board's conduct consists of concerted action denying actual or would-be competitors access to the market, the board's action may violate Section 1 of the Sherman Act, and thus constitute a violation of Section 5 of the FTC Act. Numerous cases bear out the commonsense proposition that professional and industry associations "often have economic interests to restrain competition" that threatens their members' interests.[32] State boards controlled by private market participants present the risk those participants will "foster anticompetitive practices for the benefit of [their] members."[33]

A brief review of the Commission's antitrust analysis of the N. C. Dental Board's actions to exclude non-dentist providers of teeth whitening services demonstrates how the antitrust laws apply to the actions of a regulatory board not shielded by the state action doctrine. First, the

[31] FTC Staff, *Guidance on Active Supervision of State Regulatory Boards Controlled by Market Participants* (October 2015), https://www.ftc.gov/system/files/attachments/competition-policy-guidance/active_supervision_of_state_boards.pdf.
[32] *See, e.g.*, Allied Tube & Conduit Corp. v. Indian Head, Inc., 486 U.S. 492, 500 (1988); FTC v. Ind. Fed'n of Dentists, 476 U.S. 447, 465–66 (1986); Arizona v. Maricopa Cnty. Med. Soc'y, 457 U.S. 332, 356–57 (1982); Am. Soc'y of Mech. Eng'rs, Inc. v. Hydrolevel Corp., 465 U.S. 556, 571–72 (1982); Nat'l Soc'y of Prof'l Eng'rs v. United States, 435 U.S. 679, 692–93 (1978); Fashion Originators' Guild of Am., Inc. v. FTC, 312 U.S. 457, 463–65 (1941).
[33] Goldfarb v. Virginia State Bar, 421 U.S. 773, 792 (1975).

Commission considered whether the dentist-members of the Board acted by agreement (or in concert) to exclude non-dentists from providing teeth whitening services in North Carolina. The Commission concluded that these dentist-members had acted in concert.[34] Indeed, the record showed that on several occasions, dentist-members of the Board discussed teeth whitening services provided by non-dentists and then voted to take action to restrict these services.

The Commission next evaluated the likely impact of the Board's actions upon consumers and competition. The record evidence showed that non-dentist providers of teeth whitening services charged significantly less than dentists but achieved comparable cosmetic results. The exclusion from the market of these low-cost providers would force consumers to switch to more expensive providers of teeth whitening or to forgo making a purchase altogether. Exclusion of non-dentist providers therefore likely resulted in higher prices and reduced supply.

Lastly, the Commission considered the justifications proffered by the Board. The Commission rejected the Board's claim that its actions promoted public health and safety. First, Supreme Court precedent imposes a strong presumption that colluding private competitors may not restrict consumer choice by imposing on the market their view of the type of service consumers should choose.[35] Moreover, there was no clinical or empirical evidence validating the Board's claim that non-dentist teeth whitening poses a significant risk to health or safety. To the contrary, there was a wealth of evidence that non-dentist teeth whitening is a safe cosmetic procedure.[36]

IV. Specific Advocacy Efforts Related to Professional Licensure

The FTC has also engaged in various advocacy efforts relating to licensing requirements for occupations and professions. Since the late 1970s, the Commission and its staff have submitted hundreds of comments and amicus curiae briefs to state and self-regulatory entities on competition policy and antitrust law issues relating to such professionals as real estate brokers, electricians, accountants, lawyers, dentists and dental hygienists, nurses, eye doctors and opticians, and veterinarians. These advocacy efforts have focused on various restrictions on price competition, commercial practices, entry by competitors or potential competitors, and truthful, nondeceptive advertising.

For example, a recent series of FTC staff competition advocacy comments have addressed various restrictions on advanced practice registered nurses, or APRNs.[37] FTC staff have not

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[34] Opinion of the Commission, N.C. State Bd. of Dental Exam'rs, Dkt. No. 9343 (F.T.C. Feb. 8, 2011), https://www.ftc.gov/sites/default/files/documents/cases/2011/02/110208commopinion.pdf.

[35] *Indiana Federation of Dentists*, 476 U.S. at 462 ("The Federation is not entitled to pre-empt the working of the market by deciding for itself that its customers do not need that which they demand.").

[36] Opinion of the Commission, N.C. State Bd. of Dental Exam'rs, Dkt. No. 9343 (F.T.C. Feb. 8, 2011), https://www.ftc.gov/sites/default/files/documents/cases/2011/02/110208commopinion.pdf. The Fourth Circuit upheld the Commission's decision, as to both the inapplicability of the state action defense and as to the Board's liability under the antitrust laws. N.C. State Bd. of Dental Exam'rs v. FTC, 717 F.3d 359 (4th Cir. 2013).

[37] Many of the individual advocacy comments regarding nursing restrictions, along with the research and analyses underlying those comments, are described in detail in FTC Staff, *Policy Perspectives: Competition and the Regulation of Advanced Practice Nurses* (2014), https://www.ftc.gov/reports/policy-perspectives-competition-regulation-advanced-practice-nurses. For a broader discussion of the advocacy program and competition perspectives on APRN, nurse

questioned state interests in establishing licensure requirements – including basic entry qualifications – for APRNs or other health professionals in the interest of patient safety. Rather, staff have questioned the competitive effects of certain additional restrictions on APRN licenses, such as mandatory supervision arrangements, which are sometimes cast as "collaborative practice agreement" requirements. Physician supervision requirements may raise competition concerns because they effectively give one group of health care professionals the ability to restrict access to the market by another, potentially competing group of health care professionals. Based on substantial evidence and experience, expert bodies such as the Institute of Medicine have concluded that APRNs are safe and effective as independent providers of many health care services within the scope of their training, licensure, certification, and current practice.[38] Therefore, staff have suggested that states carefully consider whether there is any health or safety justification for mandatory physician supervision of APRNs.

In some cases, the FTC has expressed the view that there is no plausible public benefit justifying licensure restrictions. For example, in 2011, the Commission filed an amicus brief in *St. Joseph Abbey v. Castille*,[39] clarifying the meaning and intent of the Commission's "Funeral Rule." The plaintiffs, monks at St. Joseph Abbey who built and sold simple wooden caskets consistent with their religious values, challenged Louisiana statutes that required persons engaged solely in the manufacture and sale of caskets within the State to fulfill all licensing requirements applicable to funeral directors and establishments. Those requirements included, for example, a layout parlor for 30 people, a display room for six caskets, an arrangement room, the employment of a full-time, state-licensed funeral director, and – even though the Abbey did not handle or intend to handle human remains – installation of "embalming facilities for the sanitation, disinfection, and preparation of a human body." Agreeing with the FTC, the U.S. Court of Appeals for the Fifth Circuit found that "no rational relationship exists between public health and safety and restricting intrastate casket sales to funeral directors. Rather, this purported rationale for the challenged law elides the realities of Louisiana's regulation of caskets and burials."[40]

As noted earlier, another area of concern is how regulated industries respond to new and disruptive forms of competition. In some cases, regulators have adopted regulations that facilitate the entry of new competition, especially when it appears to respond to consumer demand and offer new or different services or products. In other cases, however, some regulators have responded by acting to protect those currently subject to regulation. This has been happening in the taxi and local transportation businesses, where innovative smartphone applications have provided consumers with new ways to arrange for transportation and workers with new employment opportunities. Although some jurisdictions have responded by revising or applying regulations in a way that

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anesthetist, and retail clinic regulations, see Daniel J. Gilman & Julie Fairman, *Antitrust and the Future of Nursing: Federal Competition Policy and the Scope of Practice*, 24 HEALTH MATRIX 143 (2014).

[38] *See, e.g.*, INST. OF MED., NAT'L ACAD. OF SCIENCES, THE FUTURE OF NURSING: LEADING CHANGE, ADVANCING HEALTH 98-99 (2011). The Institute of Medicine—established in 1970 as the health arm of the National Academy of Sciences—provides expert advice to policy makers and the public.

[39] Brief for the Federal Trade Commission as Amicus Curiae Supporting Neither Party, St. Joseph Abbey v. Castille, 712 F.3d 215 (5th Cir.), *cert. denied*, 134 S. Ct. 423 (2013).

[40] *St. Joseph Abbey*, 712 F.3d at 226 (affirming the district court decision that the challenged regulations, and their enforcement by the state board, were unconstitutional).

supports the entry of these new sources of competition into the market, others have maintained existing regulations that disproportionately affect new entrants or sought to adopt new regulations that would impede the development of these new services seemingly without valid justification. The FTC has urged these jurisdictions to carefully consider the adverse consequences of limiting competition and examine the basis for any restrictions advocated by incumbent industry participants.[41]

V. Conclusion

State regulation of occupations and professions can serve important public policy goals and, when used appropriately, protect consumers from harm. But, as illustrated by the Commission's history of advocacy and enforcement, some regulations may make consumers worse off, impeding competition without offering meaningful protection from legitimate health and safety risks. State legislatures should consider the impact of proposed regulations on competition and their proffered justification, particularly when they are likely to harm consumers. States also should take steps to actively supervise the conduct of regulatory boards that are controlled by individuals practicing the very occupation or profession being regulated.

Thank you for the opportunity to share the Commission's views and to discuss our efforts to promote competition and protect consumers.

[41] *See, e.g.*, FTC Staff Comment to the Honorable Brendan Reilly Concerning Chicago Proposed Ordinance O2014-1367 Regarding Transportation Network Providers (Apr. 2014), https://www.ftc.gov/policy/policy-actions/advocacy-filings/2014/04/ftc-staff-comment-honorable-brendan-reilly-concerning.

Misha Tseytlin
Solicitor General of Wisconsin
Testimony before the Subcommittee on
Antitrust, Competition Policy and Consumer Rights
Senate Judiciary Committee
February 2, 2016

Chairman Lee, Ranking Member Klobuchar, and Members of the Subcommittee, I am grateful for the opportunity to appear before you today. I am Misha Tseytlin, Solicitor General of the State of Wisconsin. Before beginning in this position, I worked for the Attorney General of West Virginia. In that prior post, one of my tasks was helping to draft an amicus brief before the United States Supreme Court—on behalf of 23 sovereign States—in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101 (2015).[1] In that brief, the States explained that a ruling holding that the dental board was subject to federal antitrust liability would be contrary to the text and history of the Sherman Act. The States further warned that such a decision would have deeply disruptive impacts, unsettling broadly used state structures without benefiting consumers.

Unfortunately, on February 25, 2015, the United States Supreme Court ruled against the dental board. While the States were gratified that their concerns found voice in Justice Alito's powerful dissent, they now face a new reality. Although it is too early to draw any definitive conclusions, the negative impacts that the States warned about in their amicus brief are beginning to accumulate.

[1] *See* Brief of *Amici Curiae* State of West Virginia and 22 Other States in Support of Petitioner, 2014 WL 2536518 (May 24, 2014) (Attachment 1).

I submit this testimony to provide background on the *North Carolina State Board of Dental Examiners* ruling and to explain what has been going on in the States in the eleven months since the Supreme Court issued its decision. At the end of the testimony, I offer some thoughts on what the States and Congress can do to mitigate this decision's negative impacts on state sovereignty, while protecting consumers.

In preparing this testimony, I consulted with state officials working for States around the country, who have been grappling with the difficulties posed by the *North Carolina State Board of Dental Examiners* decision. I am grateful for the help those public servants have offered me. To the extent this testimony expresses any opinions regarding the Supreme Court's decision, or the desirability of the steps the States or Congress could take in response to that decision, those views are my own and not necessarily those of the State of Wisconsin, Attorney General of Wisconsin, or any of the state officials with whom I consulted.

I. Section 1 Of The Sherman Act And The State Action Doctrine

Section 1 of the Sherman Act—enacted in 1890—prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce *among the several States*, or with foreign nations." 15 U.S.C. § 1 (emphasis added). At the time that Congress adopted this provision, it had a narrow conception as to what constituted commerce "among" the States. Specifically, Congress believed that it "lacked any power to regulate activity occurring completely within a state." Matthew L. Spitzer, *Antitrust Federalism and Rational Choice Political Economy: A Critique of Capture Theory*, 61 S. Cal. L. Rev.

1293, 1295 (1988); *see, e.g.*, *Kidd v. Pearson*, 128 U.S. 1, 17–18, (1888). In short, when Congress enacted the Sherman Act, it did not believe it was subjecting state regulatory boards—which govern the practice of professions *within* a State—to federal antitrust liability. *See N.C. St. Bd. of Dental* Exam'rs, 135 S. Ct. at 1118-19 (Alito, J., dissenting).

A problem for state sovereignty arose after the Supreme Court in the 1930s expanded the meaning of commerce "among" the States for purposes of the Commerce Clause of the United States Constitution. As the Court later explained, "[w]hen Congress passed the Sherman Act in 1890, it took a very narrow view of its power under the Commerce Clause. Subsequent decisions by this Court have permitted the reach of the Sherman Act to expand along with expanding notions of congressional power." *Hosp. Bldg. Co. v. Tr. of Rex Hosp.*, 425 U.S. 738, 743 n.2 (1976) (citation omitted). If the courts were to apply this statutory expansion to state regulation of professions. then that would arguably render unlawful much such regulation, given that these state rules—often by definition—act as "restraint[s]" on the operation of markets. This would subject state actors to the harsh possibility of federal antitrust liability—including private antitrust lawsuits (15 U.S.C. § 15), enforcement actions brought by the Federal Trade Commission ("FTC") (15 U.S.C. § 45(a)(1)), and even federal criminal penalties (15 U.S.C. § 1)—for regulating their intrastate markets.

To resolve this intolerable possibility, the Supreme Court in *Parker v. Brown*, 317 U.S. 341 (1943), developed what has become known as the State Action

Doctrine. In *Parker*, the Supreme Court recognized that "nothing in the language of the Sherman Act or in its history suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature." *Id.* at 350–51. Since States are "sovereign[s]" within a "dual system of government," the Sherman Act should not be read to "nullify a state's control over its officers and agents" or undermine "the state . . . in [its] execution of a governmental policy." *Id.* at 351–52. "For the Congress that enacted the Sherman Act in 1890, it would have been a truly radical and almost certainly futile step to attempt to prevent the States from exercising their traditional regulatory authority, and the *Parker* Court refused to assume that the Act was meant to have such an effect." *See N.C. St. Bd. of Dental* Exam'rs, 135 S. Ct. at 1119 (Alito, J., dissenting).

Since *Parker*, the Supreme Court has developed three tiers for analysis of the State Action Doctrine. In the top tier, actions by the State's legislature, executive, and judiciary are absolutely immune from Sherman Act liability, without further scrutiny. *See Hoover v. Ronwin*, 466 U.S. 558, 574, 579–80 (1984). In the second tier, municipalities are immune so long as they act pursuant to "clearly articulated and affirmatively expressed state policy to displace competition." *FTC v. Phoebe Putney Health Sys., Inc.*, 133 S. Ct. 1003, 1007 (2013). In the third tier, private parties acting on behalf of the State must meet both "clear articulation" and active supervision requirements in order to be immune, as described below. *See infra* pg. 6.

II. The Supreme Court's Decision In North Carolina State Board of Dental Examiners

In *North Carolina State Board of Dental Examiners*, the Supreme Court adopted a far-reaching limitation on the State Action Doctrine. The North Carolina Dental Board—a garden-variety state-regulatory board—had sent out cease-and-desist letters to individuals conducting teeth whitening, alleging that those individuals were violating the state prohibition against practicing dentistry without a license. The FTC found that sending these cease-and-desist letters violated Section 1 of the Sherman Act, and that the board was not protected by the State Action Doctrine. *See In re N.C. St.* Bd. of Dental Exam'rs, 2011-2 Trade Cases P 77705, 152 F.T.C. 640, 2011 WL 11798463 (Dec. 2, 2011).

In an opinion for six Justices written by Justice Kennedy, the Court affirmed the FTC's conclusion that the state dental board would be treated like a private party acting on behalf of the State, for purposes of federal antitrust liability. The Court based its decision upon the fact that, because a majority of the board members are active dentists, a "controlling number of decisionmakers are active market participants in the occupation the board regulates." *N.C. St. Bd. of Dental* Exam'rs, 135 S. Ct. at 1114.

The Court held that whenever a state board is controlled by active market participants, the Board can only obtain State Action Doctrine immunity if (1) the board acts pursuant to a State's articulation of "a clear policy to allow the anticompetitive conduct"; *and* (2) "the State provides active supervision of [the] anticompetitive conduct." *Id.* at 1111 (quotation omitted). The fact that a

regulatory board is "designated by the States as [an] agency" does not change the analysis because "State agencies controlled by active market participants, who possess singularly strong private interests, pose the very risk of self-dealing [that the active] supervision requirement was created to address." *Id.* at 1113–14. This was an extremely consequential, far-reaching holding because, as the States had explained in their amicus brief, many regulatory boards throughout the country are composed of active professionals. *See* Brief of *Amici Curiae* State of West Virginia and 22 Other States, at 8–14.

The Court also provided some general parameters as to what it would take for a board to satisfy these elements. First, the "clear articulation" prong is satisfied "where the displacement of competition [is] the inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature." *N.C.* St. Bd. of Dental Exam'rs, 135 S. Ct. at 1112 (citing *Phoebe Putney*, 133 S. Ct. at 1010–13). Second, active supervision is satisfied where "state officials [that are themselves not active professionals] have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy." *N.C.* St. Bd. of Dental Exam'rs, 135 S. Ct. at 1112 (citation omitted). "Active supervision need not entail day-to-day involvement in an agency's operations or micromanagement of its every decision. Rather, the question is whether the State's review mechanisms provide realistic assurance that a nonsovereign actor's anticompetitive conduct promotes state policy, rather than merely the party's individual interests." *Id.* at 1116 (citation omitted). "The

supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy; and the mere potential for state supervision is not an adequate substitute for a decision by the State." *Id.* at 1117 (citation omitted).

In a powerful dissent, Justice Alito—writing for himself and two other Justices—argued that the history and text of the Sherman Act make plain that state regulatory boards fall outside of the Act's reach. *Id.* at 1118–19 (Alito, J., dissenting). The dissent further explained that the majority's decision would cause "practical problems and is likely to have far-reaching effects on the States' regulation of professions." *Id.* at 1122. "As a result of today's decision, States may find it necessary to change the composition of medical, dental, and other boards, *but it is not clear what sort of changes are needed to satisfy the test that the Court now adopts.*" *Id.* at 1122–23 (emphasis added). Justice Alito then laid out the numerous ambiguities the States will face in attempting to protect their state agencies and personnel from antitrust liability: "What is a 'controlling number'? . . . [D]oes the Court mean to leave open the possibility that something less than a majority might suffice in particular circumstances? . . . Who is an 'active market participant'? If Board members withdraw from practice during a short term of service but typically return to practice when their terms end, does that mean that they are not active market participants during their period of service?" *Id.* at 1123.

III. Lawsuits That Have Been Filed In Light Of North Carolina State Board of Dental Examiners

The *North Carolina State Board of Dental Examiners* decision makes it easier for antitrust plaintiffs to sue regulatory boards created by the sovereign States, and thus will encourage more such lawsuits. Below, I provide several examples of federal lawsuits that have already been brought under that decision. Given that the Supreme Court issued that decision just eleven months ago, there is a serious concern that these early-filed lawsuits are just the tip of the oncoming iceberg. Notably, even though some of the cases below have been unsuccessful to date, the cost of defending against such lawsuits can be substantial.

- *Teladoc, Inc. v. Texas Medical Board*, No. 15-cv-343 (W.D. Tx. April 29, 2015): Sherman Act lawsuit filed by providers of telephonic medical services against the Texas Medical Board. The district court granted a preliminary injunction against the Board, Dkt. 44 (May 29, 2015), and denied the Board's motion to dismiss, Dkt. 80 (Dec. 14, 2015). The case is on an interlocutory appeal before the Court of Appeals for the Fifth Circuit. *See* No. 16-50017 (5th Cir. 2016).
- *Strategic Pharmaceutical Solutions, Inc. v. Nevada State Board of Pharmacy*, No. 16-cv-171 (D. Nev. Jan. 26, 2016). Sherman Act lawsuit filed by pet-medication distributors against the Nevada State Board of Pharmacy. This case is pending in the district court.
- *Express Lien, Inc. v. Cleveland Metropolitan Bar Association*, No. 15-cv-2519 (E.D. La. July 19, 2015): Sherman Act lawsuit filed by a construction-lien

software company against the Cleveland Metropolitan Bar Association. The case is pending before the district court.

- *WSPTN Corp. v. Tennessee Department of Health*, No. 15-cv-840 (M.D. Tenn. July 30, 2015): Sherman Act lawsuit filed by hearing-aid retailers against the Tennessee Department of Health. The case has been stayed by request of all parties, pending settlement negotiations. Dkt. 67 (Oct. 30, 2015).
- *Axcess Med. Clinic, Inc. v. Mississippi Board of Medical Licensure*, No. 15-cv-307 (S.D. Miss. Apr. 24, 2015): Sherman Act lawsuit filed by owner of medical clinics against the Mississippi Board of Medical Licensure. This case was dismissed by stipulation without prejudice to refile. Dkt. 2 (Aug. 31, 2016).
- *Coestervms.com, Inc. v. Virginia Real Estate Appraisers Board*, No. 1:15-CV-980 (E.D. Va. Oct. 6, 2015): Sherman Act lawsuit filed by appraisal management company for unlawful orders against the Virginia Real Estate Appraisers. This case was voluntarily dismissed. Dkt. 15 (Oct. 6, 2015).
- *Rodgers v. Louisiana State Board of Nursing*, No. 15-cv-615 (M.D. La. Aug. 12, 2015): Sherman Act lawsuit filed by a student at Grambling State University against the Louisiana State Board of Nursing. The lawsuit was dismissed on sovereign immunity grounds, *see* dkt. 42 (Dec. 12, 2015), and is on appeal before the Court of Appeals for the Fifth Circuit, *see* No. 16-30023 (5th Cir. 2016).
- *Robb v. Connecticut Board of Veterinary Medicine*, No. 15-cv-906 (D. Conn. June 12, 2015): Sherman Act lawsuit filed by a veterinarian against the Connecticut

Board of Veterinary Medicine. The district court recently granted the Board's motion to dismiss, Dkt. 47 (Jan. 20, 2016), but further proceedings are probable.

- *Petrie v. Virginia Board of Medicine*, No. 13-cv-1486 (E.D. Va. Fed. 3, 2014): Sherman Act lawsuit filed by a chiropractor against the Virginia Board of Medicine. The district court granted summary judgment in the Board's favor. The case is on appeal before the Court of Appeals for the Fourth Circuit, and is scheduled for argument on March 22, 2016. *See* No. 15-1007 (4th Cir. 2015).[2]

IV. Steps The States And Congress Can Take In Response To North Carolina State Board of Dental Examiners

Most State responses to the *North Carolina State Board of Dental Examiners* decision are still in their nascent phase. The Supreme Court issued its decision just eleven months ago, when many State legislatures were already deep into their work for that year's session.[3] Accordingly, many States in 2015 did not have the opportunity to consider fully how to grapple with this decision. Indeed, given the complexities that this decision poses for the States—as Justice Alito's dissent articulates—it may take years for many States to decide what steps they will take. In the meantime, plaintiffs will likely bring more lawsuits. While States can take proactive steps to limit the exposure of their regulatory boards, only clear guidance and protection from the U.S. Congress can fully alleviate this problematic situation.

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[2] While this lawsuit was filed before the Supreme Court issued its decision in *North Carolina State Board of Dental Examiners* decision, the Fourth Circuit's decision in that same case had already been issued and had reached the same holding the Supreme Court ultimately adopted. *See N.C. St. Bd. of Dental Examr*'s *v. FTC*, 717 F.3d 359 (4th Cir. 2013)

[3] *See* National Conference of State Legislatures, *2015 Legislative Sessions Calendar*, http://www.ncsl.org/documents/ncsl/sessioncalendar2015.pdf (Dec. 21, 2015).

The most straightforward, short-term way that States can respond to the *North Carolina State Board of Dental Examiners* decision is by State attorneys general and other State attorneys providing sound legal guidance to State regulatory boards and legislatures. This advice-giving has already begun. For example, the States of California and Idaho have published detailed, formal Attorney General Opinions providing advice regarding how to respond to this decision to both regulatory boards and legislatures.[4] Many other States have offered less formal guidance. Advice has taken the form of internal memoranda, consultation, meetings and other intragovernmental communications. More such advice—in various forms—is likely to continue and increase in the coming years.

Many State legislatures and governors will also likely respond to the *North Carolina State Board of Dental Examiners* decision by making structural changes. The State of Oklahoma has been an early leader in this regard. On July 17, 2015, Oklahoma Governor Mary Fallin issued an executive order to "all state boards who have a majority of members who are participants of markets that are directly or indirectly controlled by the board" to submit "all non-rulemaking actions" to the Office of the Attorney General of Oklahoma.[5] Oklahoma's Attorney General, Scott Pruitt, has devoted substantial resources to carrying out these responsibilities. As of last week, Attorney General Pruitt had issued 248 opinions—responding to 372

[4] *See* Attorney General Kamala Harris, 98 Ops. Cal. Atty. Gen. 12, 2015 WL 5927487 (Sept. 10, 2015) (Attachment 2); Attorney General Lawrence G. Wasden, Op. Id. Att'y Gen., No. 16-01, 2016 WL 301598 (January 13, 2016) (Attachment 3).

[5] Okla. Gov. Mary Fallin, Exec. Order 2015-33 (July 17, 2015) (Attachment 4).

requests from 20 agencies—on proposed non-rulemaking actions pursuant to Governor Fallin's executive order.[6] In addition, Connecticut adopted legislation in response to the *North Carolina State Board of Dental Examiners* decision, requiring that its Department of Public Health review and approve all decisions made by regulatory boards under the Department's auspices.[7]

Similar actions by legislatures and governors will likely continue and increase in the coming years. These structural changes may consist of, among other things, changing the composition of state regulatory boards, eliminating certain boards, and altering state supervisor structures in the hopes of satisfying the active supervision test.[8] While some of these changes may or may not have salutary benefits for consumers, depending on how they are structured, it is important to note that such alterations in the way the States structure their internal operations are very far afield from the interests that the Sherman Act was designed to protect. *See* N.C. St. Bd. of Dental Exam'rs, 135 S. Ct. at 1118-19 (Alito, J., dissenting).

Ultimately, however, only action by the U.S. Congress can alleviate fully the problems that the *North Carolina State Board of Dental Examiners* decision has created for the sovereign States. While there are many positive steps that Congress

[6] Okla. Office of Att'y Gen., *Recent Opinions,* https://www.oag.ok.gov/oagweb.nsf/viewopinions.html (last visited Jan. 27, 2016); *see, e.g.*, E. Scott Pruitt, Op. Okla. Att'y Gen., No. 2015-12A (Sept. 23, 2015); E. Scott Pruitt, Op. Okla. Att'y Gen., No. 2015-180A (Dec. 9, 2015).

[7] *See* S.B. 1502, 2015 Conn. Leg., June Sp. Sess., Pub. Act 15-5 (eff. July 1, 2015).

[8] *See generally* 98 Ops. Cal. Atty. Gen. at 9–14; Op. Id. Att'y Gen., No. 16-01 at 10–12.

can take, one option should be considered: eliminating by statute the judicially created "active supervision" requirement from federal antitrust law. Given that the State Action Doctrine is intended to ensure that the anticompetitive policy is genuinely the policy of the State, and not of private parties, the mandate that the State itself "clearly articulated" the policy at issue fully achieves this aim. It undermines the States' sovereign dignity—including their right to "prescribe the qualifications of their own officers"—for them to be forced to structure their decision making processes to avoid federal antitrust liability, as the active supervision prong requires. *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (quotation omitted). And active supervision often fails to balance these serious harms to state sovereignty with any benefits to consumers; indeed, it may well be counterproductive in this regard. As widely respected federal judge Frank H. Easterbrook explained, the "active supervision" requirement encourages States to adopt duplicative regulatory structures, which in some cases may be "conducive to competition among cartelists for rents."[9] At a minimum, each State should have the sovereign right to choose for itself the type and level of supervision for its own State boards.

Given that the Supreme Court's decision in *North Carolina State Board of Dental Examiners* has so unsettled the States' expectations in this area, Congress should consider corrective action of the type described above or other measures to provide the States with more guidance. Federal legislation clearly delineating state

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[9] Frank H. Easterbrook, *Antitrust and the Economics of Federalism*, 26 J.L. & Econ. 23, 30 (1983).

liability—if any—under federal antitrust laws could better strike the balance between the twin paramount interests of federalism and consumer protection than does the uncertain, litigation-saturated status quo.[10]

V. Conclusion

Thank you for giving me the opportunity to testify before this Subcommittee today. I appreciate the interest you have taken in this extremely important area for the States. I look forward to answering any questions that you might have.

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[10] The FTC has published staff guidance on the *North Carolina State Board of Dental Examiners* decision, but such guidance does not provide the States with sufficient. Staff, FTC Bureau of Competition, *FTC Staff Guidance on Active Supervision of State Regulatory Boards Controlled by Market Participants,* https://www.ftc.gov/system/files/attachments/competition-policy-guidance/active_ supervision_of_state_boards.pdf. The guidance would not be binding in litigation and would most likely be subject only to minimum deference under *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). *See Christensen v. Harris County*, 529 U.S. 576, 587 (2000). In any event, the guidance takes a narrow view of State Action Doctrine immunity, in several respects, inconsistent with States' sovereign dignity.

Presented to the Senate Committee on the Judiciary

Subcommittee on Antitrust, Competition Policy and Consumer Rights

"License to Compete: Occupational Licensing and the State Action Doctrine"

Tuesday, February 2, 2016

Dirksen Senate Office Building, Room 226

Occupational Regulations

Testimony of:

Professor Morris Kleiner
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February 2, 2016

Chair and members of the Senate Committee on the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights

My name is Morris Kleiner. I testify before you today on my own behalf and not as a representative of the University of Minnesota or any other organization with which I am affiliated.

I have a Ph.D. in economics from the University of Illinois. I am a professor at the Humphrey School of Public Affairs at the University of Minnesota. I also teach at the University's Center for Human Resources and Labor Studies. I am a visiting scholar at the Federal Reserve Bank of Minneapolis, a Research Associate at the National Bureau of Economic Research headquartered in Cambridge, Massachusetts, and a Visiting Scholar at the Upjohn Institute for Employment Research in Kalamazoo, Michigan. I have worked in government and consulted for many public and private sector organizations. My research specialty includes the analysis of institutions, such as occupational licensing in the labor market. I have published in the top academic journals in labor economics and industrial relations, and I am the author, co-author, or coeditor of eight books. Three of these books focus on occupational regulation and were published in 2006, 2013, and 2015 by the Upjohn Press. These books are the leading volumes on occupational regulations based on sales and citations to the work in Google Scholar.

Let me start with my conclusions because it establishes a general preference for certification over licensure of occupations[1]. Certification usually is better than occupational licensing for three reasons.

1. First, certification has benefits over licensing for workers. Certification does not directly fence out workers by law or cause the type of problems in labor

[1] See Kleiner, Morris M. 2006. *Licensing Occupations: Enhancing Quality or Restricting Competition?* Kalamazoo, Mich.: Upjohn Institute for Employment Research and Kleiner, Morris M. 2013. *Stages of Occupational Regulation: Analysis of Case Studies.* Kalamazoo, Mich.: Upjohn Institute for Employment Research

markets that licensing does. Licensing may cause workers to lose the opportunity to move into the middle class because of the high barriers to entry[2]. A reduction in licensing requirements could reduce unemployment in the U.S[3]. Licensing further reduces the ability of workers to move across state lines, and engage in work that is the most beneficial to them and could contribute to economic growth[4]. Certification of practitioners does not have these negative features.

Estimates developed by me with Professor Alan Krueger of Princeton University, the former Head of President Obama's Council of Economic Advisers and former chief economist in both the Department of the Treasury, and the Department of Labor, and Professor Alexandre Mas, also at Princeton and former Chief Economist at the Department of Labor and Chief Economist at Office of Management and Budget under President Obama, showed the cost of licensing nationally in the form of lost jobs to be 0.5% - 1.0% in 2010.[5]

2. Second, certification is better for consumers than occupational licensing. Similar to licensing, certification sends a signal to consumers about who has met the government's requirements to work in an occupation. However, it does not reduce competition, and it does not cause wages to increase in the same way licensing does. It gives consumers more choices for the kinds of services they need. It gives consumers the right to choose the level of quality they think is appropriate for them rather than having members of an

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[2] See Kleiner, Morris. 2015. *Reforming Occupational Licensing Policies*. Washington, DC: Brookings Institution for a detailed explanation of these issues.
[3] See Kleiner, Morris M., Alan B. Krueger, and Alex Mas. 2011. "A Proposal to Encourage States to Rationalize Occupational Licensing Practices." Princeton, NJ: Princeton University.
[4] U.S. Executive Office of the President. 2015. "Occupational Licensing: A Framework for Policymakers." Washington, DC: The White House, p. 76.
[5] See Kleiner, Morris M., Alan B. Krueger, and Alex Mas. 2011. "A Proposal to Encourage States to Rationalize Occupational Licensing Practices." Princeton, NJ: Princeton University and Kleiner, Morris. 2015. *Reforming Occupational Licensing Policies*. Washington, DC: Brookings Institution to see how these estimates were derived.

occupation through a licensing board decide what level of skill is necessary for consumers. Also, all consumers do not demand the same level of quality. If licensure "improves quality" simply by restricting entry into the profession, then some consumers will be forced to pay for more "quality" than they want or need.

3. Third, certification is better for government than occupational licensing. It reduces the unnecessary and often excessive lobbying by trade associations to try to convince legislators to enact and governors to implement licensing regimes under the assumption of protecting the public. Often lobbyists claim that licensing is needed to screen out frauds and incompetents. There is little evidence to support this claim[6]. But licensing laws do offer lobbyists and their trade associations a way to deliver less competition and higher earnings for their members or clients[7].

An alternative perspective of occupational licensing by government argues that administrative procedures regulate the appropriate supply of labor in the market. Regulators screen entrants to the profession and bar those whose skills or character traits suggest a tendency toward low-quality outputs. The regulators further monitor incumbents and discipline those whose performance is below standards, with punishments that may include revocation of the license needed to practice. The process can thereby raise the overall quality of services to consumers. Unfortunately there is little evidence to support this view[8].

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[6] For example, in 2013 only 11 of the more than 23,700 attorneys in Minnesota, or approximately 0.05 percent, were disbarred (Minnesota State Bar Association 2013). See <http://mnbenchbar.com/2014/02/summary-of-public-discipline-2/>.

[7] For evidence of the influence of licensing on wages see Kleiner, Morris and Alan Krueger. 2013. "Analyzing the extent and influence of occupational licensing on the labor market". *Journal of Labor Economics* 31(Suppl. 1: S173–202.

[8] See Kleiner, Morris 2015. "Guild-Ridden Labor Markets: The Curious Case of Occupational Licensing," Kalamazoo, Mich.: Upjohn Institute for Employment Research for empirical evidence on this perspective.

There is an important difference between occupational licensing and certification. Licensing restricts the practice of an occupation. Certification restricts the use of the title such as "certified financial analyst." or "certified interior designer." Anyone can do financial analysis or interior design but only those who meet the government's requirements can call themselves a "certified financial analyst" or "certified interior designer." Unlike licensing, certification provides consumers more options by allowing individuals greater choice, with lesser influence of guild-like protectors of the occupation.[9]

First, occupational licensing reduces employment growth thereby contributing to reduced economic growth. These barriers fence out people who may be qualified but have not gained the credentials through the exact means identified in a licensing law such as a written test, internship, or undergraduate or graduate degree. These requirements reduce the ability of low income individuals or those with a criminal background to earn a living.

Second, occupational licensing causes consumers to pay higher prices. By shrinking the available supply of labor or increasing perceived demand, licensing increases prices by 7 percent or more[10]. Less competition means that consumers pay more and have less variety to choose for the services they need. A number of years ago, students at the Humphrey School analyzed the cost of licensing to consumers in Minnesota. They found that the extensive use of licensing caused consumers in Minnesota to pay an incremental $3 billion a years in higher prices that are redistributed to those with licenses with no clear benefits[11].

Third, occupational licensing alleges that it will increase consumer protection by screening out incompetents and frauds. Unfortunately, and although we may want this to

[9] For further evidence see Kleiner, Morris, 2015. *Our Guild-Ridden Economy: Issues and Possible Solutions*, Economic Policy Paper 15-9. Federal Reserve Bank of Minneapolis. December, pp. 1-5.
[10] See U.S. Executive Office of the President.2015. "Occupational Licensing: A Framework for Policymakers." Washington, DC: The White House, p. 76.
[11] See Kleiner, Morris M. 2006. *Licensing Occupations: Enhancing Quality or Restricting Competition?* Kalamazoo, Mich.: Upjohn Institute for Employment Research.

be true, there is little to no evidence for it. Additionally, some legislators tend to grandfather in everyone working when licensing is enacted thus eliminating screening altogether and when they ratchet up the requirements, current members are excluded from the new requirements[12]. Also, licensing boards are often captured by licensees and rarely revoke licenses. Most telling about their priorities, most boards depend on the licensees to fund their operating budgets through the payment of licensing fees.

Among the many professions that I have studied are mortgage bankers. What my research at the Federal Reserve Bank of Minneapolis with Vice-President Richard Todd showed is that those states that licensed mortgage bankers had similar default rates as those states that did not license brokers. A major difference is that in states with licensed brokers, the fees that consumers had to pay for loans were higher[13]. I have generally found those same findings in the other occupations that I have researched or seen in the research of others.

The reality is that occupational licensing is likely to reduce employment growth, contributes to unemployment, and increases costs to consumers. The main groups that win under licensing are those who are licensed through higher wages and greater job opportunities and benefits for those fortunate enough to become licensed. Certification has not shown to have any of the problems of licensing such as raising prices or restricting overall employment. It provides consumers more choice at a lower price than occupational licensing. I am, of course, delighted to answer questions about occupational regulation and its consequences.

[12] Han, Suyoun, and Morris M. Kleiner. 2015 "Analyzing the Duration of Occupational Licensing on the Labor Market." Paper presented at the Labor and Employment Relations Association Meetings, held in Pittsburgh, PA, May 30.
[13] See Kleiner, Morris M., and Richard M. Todd. 2009. "Mortgage Broker Regulations That Matter: Analyzing Earnings. Employment, and Outcomes for Consumers." In *Studies of Labor Market Intermediation*, David Autor, ed. Chicago: University of Chicago Press, pp. 183–231 for a fuller explanation of the approach and analysis of the issue.

Addendum

Hierarchy of occupational regulations from least to most restrictive:

"Registration" means a requirement established by a legislative body in which an individual gives notice to the government that may include the individual's name and address, the individual's agent for service of process, the location of the activity to be performed, and a description of the service the individual provides. "Registration" does not include personal qualifications but may require a bond or insurance. Upon approval, the individual may use "registered" as a designated title. A non-registered individual may not perform the occupation for compensation or use "registered" as a designated title. "Registration" is not transferable and is not synonymous with an "occupational license."

"Certification" is a voluntary program in which the government grants nontransferable recognition to an individual who meets personal qualifications established by a legislative body or private certification organization. Upon approval, the individual may use "certified" as a designated title. A non-certified individual may also perform the lawful occupation for compensation but may not use the title "certified." "Certification" is not synonymous with an "occupational license."

"Occupational license" is a nontransferable authorization in law for an individual to perform a lawful occupation for compensation based on meeting personal qualifications established by a legislative body. It is illegal for an individual who does not possess an occupational license to perform the occupation for compensation. Occupational licensing is the most restrictive form of occupational regulation.

SENATE JUDICIARY COMMITTEE

SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY,
AND CONSUMER RIGHTS

License to Compete:
Occupational Licensing and the State Action Doctrine

Tuesday, February 2, 2016

Dirksen Senate Office Building 226

Testimony of Robert Everett Johnson

Good afternoon Chairman Lee, Ranking Member Klobuchar, and Members of the Committee. I am pleased to have this opportunity to speak with you about the rise of occupational licensing and its impact on American workers, consumers, and entrepreneurs.

I am an attorney at the Institute for Justice, a public-interest law firm that combats occupational licensing across the country through litigation, research, grassroots activism, and legislative advocacy.

For decades, the Institute for Justice has been at the forefront of the fight against occupational licensing. We have represented scores of entrepreneurs who have had their right to earn a living curtailed by arbitrary and unnecessary licensing restrictions—from Louisiana florists[1] to tour guides in Philadelphia[2] and teeth whiteners in Connecticut.[3] We have successfully challenged occupational licensing laws as violations of the First and Fourteenth Amendments,[4] as well as parallel protections afforded by State Constitutions.[5] Along the way, we have seen time and again the significant harms that are caused by occupational licensing.

Occupational licensing is, increasingly, one of the most prevalent regulatory barriers in the American workplace. Whereas less than 5 percent of the workforce was required to obtain a license from their state government in the 1950s, today

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[1] Institute for Justice, Louisiana Florists, http://bit.ly/1PzlTLM.

[2] Institute for Justice, Philadelphia Tour Guides, http://bit.ly/1lPojPZ.

[3] Institute for Justice, Connecticut Teeth Whitening, http://bit.ly/1K90mOY.

[4] See, e.g., Craigmiles v. Giles, 312 F.3d 220 (6th Cir. 2002); St. Joseph Abbey v. Castille, 712 F.3d 215 (5th Cir. 2013); Edwards v. District of Columbia, 755 F.3d 996 (D.C. Cir. 2014).

[5] See, e.g., Patel v. Tex. Dep't of Licensing and Regulation, 469 S.W. 3d 69 (Tex. 2015); see also id. at 92 (Willett, J., concurring).

that figure stands around 20 percent—and even higher if federal, city, and county licensing is included.[6] Occupational licensing affects greater numbers of workers than either union membership or minimum wage laws.[7]

Increasingly, occupational licensing has attracted criticism from a bipartisan mix of sources, both within and outside government. Earlier this year, the White House issued a report concluding that licensing laws "raise the price of goods and services, restrict employment opportunities, and make it more difficult for workers to take their skills across state lines."[8] The Federal Trade Commission also has identified "many examples of licensure restrictions that likely impede competition and hamper entry into professional and services markets, yet offer few, if any, significant consumer benefits."[9] Outside government, groups as diverse as the Brookings Institution,[10] Heritage Foundation,[11] and Reason Foundation[12] have issued publications critical of occupational licensing.

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[6] Morris M. Kleiner and Alan B. Krueger, The Prevalence and Effects of Occupational Licensing, British Journal of Industrial Relations (Dec. 2010), at 678. Kleiner and Krueger found that 29 percent of the population reported being required to obtain some manner of license to do their job. Id. at 677.

[7] Morris M. Kleiner, Occupational Licensing, Journal of Economic Perspectives (Fall 2000), at 190.

[8] Department of the Tresasury, Council of Economic Advisers, and Department of Labor, Occupational Licensing: A Framework for Policymakers (July 2015), at 3.

[9] Prepared Statement of the FTC on Competition and the Potential Costs and Benefits of Professional Licensure Before the Committee on Small Business, U.S. House (July 16, 2014).

[10] Morris M. Kleiner, The Hamilton Project, Reforming Occupational Licensing Boards (Mar. 2015), available at http://brook.gs/1ZARuJ2.

[11] James Sherk, The Heritage Foundation, Creating Opportunity in the Workplace (Dec. 2014), available at http://herit.ag/1ZASnRN.

[12] Adam B. Summers, Reason Foundation, Occupational Licensing: Ranking the States and Exploring Alternatives (Aug. 2007), available at http://bit.ly/1PufxyO.

Occupational licensing has spread because it serves the interests of economic insiders—excluding competition from the market and allowing industry incumbents to charge higher prices. But occupational licensing limits opportunities for workers, frustrates entrepreneurs seeking to introduce innovative new business models, and raises prices paid by consumers. Occupational licensing also infringes workers' constitutional rights, including the right to earn a living, the right to freedom of speech, and the right to travel. Advocates of licensing claim that it is necessary to protect health and safety, but these claims generally do not withstand examination. Numerous less restrictive alternatives are available to protect health and safety without limiting access to the marketplace. In short, as I detail below, licensing is all too often unnecessary, counterproductive, and unconstitutional.

Industry Insiders Seek Out Licensing

Industry insiders frequently lobby legislators and regulators to impose new licensing barriers.[13] Existing market participants like licensing because it makes it more difficult for new competition to enter the market. Shielded from normal market pressures, industry insiders can charge consumers higher prices without concern that they will be undercut by lower-cost competitors.[14]

This dynamic is accelerated, in many cases, by laws that confer licensing authority on professional boards composed of the very industry insiders who benefit

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[13] Paul J. Larkin Jr., Public Choice Theory and Occupational Licensing (Jan. 2015), available at http://bit.ly/1n0TDMm.

[14] Kleiner and Krueger, supra note 6, at 681 (finding that licensing is associated with an approximately 15 percent increase in hourly earnings).

from licensing laws.[15] Unsurprisingly, when industry insiders are given authority to interpret and enforce licensing laws, they generally apply those laws to exclude competition and benefit their own bottom lines.

Recent history is replete with instances of industry groups seeking to impose unnecessary licensing burdens to advance their own self-interest. To highlight a few examples:

- Interior Design: The American Society for Interior Design and other industry lobbying groups have conducted a decades-long, nationwide campaign to impose licensing on interior designers.[16] Five states have bent to this pressure and imposed licensing restrictions on interior designers, while numerous other states have imposed titling laws restricting which individuals can refer to themselves as "interior designers."[17] Advocates of imposing licensure on would-be interior designers maintain that licensing is necessary to protect consumer safety, but impartial studies by state regulators have repeatedly found no viable health and safety justification for these laws.[18] And, indeed, it is difficult to imagine any conceivable danger from a misplaced throw pillow or unsightly shade of paint.

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[15] Brief of Amici Curiae Scholars of Public Choice Economics in Support of Respondent, North Carolina State Board of Dental Examiners v. FTC, No. 13-534 (U.S. 2014).

[16] Dick M. Carpenter II, Ph.D., Institute for Justice, Designing Cartels: How Industry Insiders Cut Out Competition (Nov. 2007), at 9-10, available at http://bit.ly/1nof8aB.

[17] Id. at 7.

[18] Id. at 12. An analysis of complaint data for interior designers in 13 states, conducted by the Institute for Justice, likewise found that the vast majority of

□ Tax Preparers: With the support of large tax preparation firms, the IRS moved in 2011 to impose a new licensing scheme for tax preparers, which it estimated would sweep in 600,000 to 700,000 tax preparers who were previously unregulated at the federal level.[19] A Senior Vice President at H&R Block told reporters the company supported the regulation, as it would mean H&R Block "won't be competing against people who aren't regulated and don't have the same standards as we do."[20] In other words, by driving out competition, the rule would allow firms like H&R Block to raise their prices.[21] So, it is perhaps unsurprising that the IRS official who oversaw the drafting of these regulations was none other than a former CEO of H&R Block.[22] The IRS sought to impose these new licensing burdens despite the fact that tax preparers are already subject to civil and criminal statutes imposing stringent penalties for misconduct, and despite a very low prevalence of misconduct by tax preparers.[23] Fortunately, in a case brought by the

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complaints submitted to regulators concerned unlicensed practice—rather than a legitimate threat to health or safety. Id. at 14.

[19] Regulations Governing Practice Before the Internal Revenue Service, 76 Fed. Reg. 32,286 (June 3, 2011).

[20] Editorial, H&R Blockheads, Wall Street Journal, Jan. 7, 2010, available at http://on.wsj.com/1PwhESI.

[21] Joe Kristan, Tax Roundup, 12/24/2012: The Coming Preparer Crash, Tax Update Blog, Dec. 24, 2012, http://bit.ly/1JN855A (predicting that the "population of authorized return preparers will crash" and that prices will rise due to "increas[ed] demand for the big national tax preparation franchises").

[22] Timothy P. Carney, H&R Block, TurboTax and Obama's IRS Lose in Effort to Regulate Small Tax Preparers Out of Business, Washington Examiner, Feb. 11, 2013, available at http://washex.am/23yLi3N.

[23] Institute for Justice, IRS Tax Preparers, http://ij.org/case/irs-tax-preparers/. Although an estimated 900,000 to 1.2 million paid preparers prepare approximately

Institute for Justice, a federal court found the IRS lacked authority to impose licensing.[24] Now, however, some in Congress are seeking to impose licensing through legislation—again with the support of large tax preparers.[25]

- Teeth Whitening: As teeth whitening services have become increasingly popular and lucrative, dentists across the country have lobbied state legislators and regulators to exclude non-dentist teeth whiteners.[26] Teeth whitening is safe; indeed, consumers can purchase teeth whitening products to apply to their own teeth in their own homes. A recent study of complaint data pertaining to teeth whiteners found that only four health-and-safety complaints were filed across 17 states over a five-year period, and all of those complaints concerned common reversible side-effects.[27] Over the same period, dentists and dental associations filed numerous complaints about increased competition from unlicensed teeth whiteners.[28] In response to such pressure, numerous states have acted to limit the practice of teeth whitening to licensed dentists.[29] In many cases, these restrictions have been imposed by boards composed primarily of practicing dentists who stand to benefit

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87 million tax returns annually, the IRS only recommended prosecution in 162 cases in 2001 and 2002 combined. Id.

[24] Loving v. IRS, 742 F.3d 1013 (D.C. Cir. 2014).

[25] Melissa Quinn, Bill Regulating Tax Preparers Faces Criticism for Impacts to Small Businesses, Consumers, Daily Signal, Dec. 29, 2015, available at http://dailysign.al/1ZpWB9q.

[26] Angela C. Erickson, Institute for Justice, White Out: How Dental Industry Insiders Thwart Competition From Teeth-Whitening Entrepreneurs (Apr. 2013), available at http://bit.ly/1SmOjjF.

[27] Id. at 24.

[28] Id.

[29] Id. at 14-15, 18.

from the regulations—an arrangement that the U.S. Supreme Court recently concluded gave rise to potential liability under federal antitrust law.[30]

These are hardly isolated incidents. Other examples of nakedly protectionist licensing laws—drawn from cases litigated by the Institute for Justice—include attempts by veterinary boards to monopolize equine dentistry[31] and animal massage;[32] attempts by cosmetology boards to monopolize hair braiding,[33] eyebrow threading,[34] and makeup artistry;[35] and attempts by funeral director boards to monopolize the sale of caskets.[36]

Licensing Imposes Significant Costs

While licensing benefits industry insiders, it imposes costs on just about everyone else. Workers, consumers, and entrepreneurs all suffer significant harms as a result of occupational licensing laws.

- Workers: Most obviously, licensing erects barriers to entry for individuals seeking to enter the workforce. According to economist Morris Kleiner, licensing results in a loss to the economy of 2.85 million jobs.[37] These barriers are most harmful for individuals on the first rungs of the income ladder—including, disproportionately, members of racial and ethnic minorities—as those individuals

[30] North Carolina State Board of Dental Examiners v. FTC, 135 S. Ct. 1101 (2015).
[31] Institute for Justice, Texas Equine Dentistry, http://bit.ly/1SSwvMB.
[32] Institute for Justice, Arizona Animal Massage, http://bit.ly/205dqcb.
[33] Institute for Justice, Iowa Hair Braiding, http://bit.ly/1n6IA4T.
[34] Institute for Justice, Arizona Eyebrow Threading, http://bit.ly/1n6IACa.
[35] Institute for Justice, Nevada Makeup, http://bit.ly/1SmSrQC.
[36] Institute for Justice, Oklahoma Caskets, http://bit.ly/1n1bK4R.
[37] Kleiner, supra note 10, at 6.

can often least afford to pay the costs of time and money required to obtain a license.[38] Notably, these barriers vary considerably across state lines, suggesting that they are not truly necessary to protect the public. A study of 102 lower-income occupations found that only 15 were licensed in 40 states are more, while occupations that required months of training in one state might require only a few days of training in another.[39] In other words, individuals are being denied the right to earn an honest living not because they pose an actual danger to the public, but rather because they happen to live in the wrong state.

- Consumers: Licensing raises costs by eliminating competition, and the brunt of those higher costs are paid by consumers. Economist Morris Kleiner has estimated the cost of licensing to consumers, in the form of higher prices, at $203 billion per year.[40] Higher costs can also harm some consumers by causing them to forego necessary purchases altogether. For instance, one study found that areas with strict licensing requirements for electricians have higher electrocution rates, presumably because consumers are more likely to resort to dangerous "do it yourself" electrical work.[41] The Federal Trade Commission also has warned that "licensing of opticians and optical establishments may actually increase the

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[38] Stuart Dorsey, Occupational Licensing and Minorities, Law and Human Behavior (Sept. 1983).

[39] Dick M. Carpenter, et al., Institute for Justice, License to Work: A National Study of Burdens from Occupational Licensing (May 2012), at 4-5, available at http://bit.ly/235ekrB.

[40] Kleiner, supra note 10, at 6.

[41] Sidney L. Carroll and Robert J. Gaston, Occupational Licensing and the Quality of Service, Law and Human Behavior (1983).

incidence of health problems associated with contact lens use" because increased costs "may induce more individuals to over-wear their replacement lenses."[42]

- Entrepreneurs: Finally, licensing often frustrates the ability of entrepreneurs to bring innovative new business models to the market. For instance, in the medical field, licensing laws threaten to block attempts to provide medical advice via telephone and video chat—an innovation that could increase availability of medical care while simultaneously lowering prices.[43] In the legal field, meanwhile, licensing laws threaten to block services that help consumers create their own standard legal documents over the internet—an innovation that could likewise address a chronic shortage of legal services while also lowering prices.[44]

The foregoing are hardly the only costs associated with licensing. Licensing can also decrease the quality of goods and services, as market participants compete on quality as well as cost and may decrease quality in the absence of competition.[45] Licensing can give rise to entirely unregulated black markets, as high costs drive consumers from the legal market.[46] Licensing poses barriers to the reintegration of former prisoners into the workplace, as a criminal conviction may make it difficult or impossible to obtain an occupational license.[47] And licensing decreases mobility,

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[42] Federal Trade Commission, Possible Anticompetitive Barriers to E-Commerce: Contact Lenses (Mar. 2004), at 21-22, available at http://1.usa.gov/1Tx9YVV.

[43] Teladoc, Inc. v. Texas Medical Board, 453 S.W.3d 606 (Tx. Ct. App. 2014).

[44] LegalZoom.com, Inc. v. McIlwain, 429 S.W.3d 261 (Ark. 2013).

[45] Summers, supra note 12, at 11.

[46] Id. at 13.

[47] American Bar Association, National Inventory of the Collateral Consequences of Conviction, http://bit.ly/1CuyVLL.

as licenses are not portable across state lines—an issue that has posed particular concerns for military spouses who have difficulty acquiring a new license every time they are required to move to a new state.[48]

Licensing Infringes On Fundamental Constitutional Rights

Licensing laws are not just bad policy; they also are often unconstitutional. Licensing laws run afoul of a variety of constitutional protections, including the right earn a living, the right to freedom of speech, and the right to travel.

- Right to Earn A Living: The right to earn a living by your chosen occupation has long been recognized as a fundamental liberty secured by the Constitution.[49] Yet licensing laws frequently place unnecessary and irrational restrictions on that fundamental freedom: So, for instance, the U.S. Court of Appeals for the Fifth Circuit found that Louisiana violated the Constitution when it prohibited a group of monks from selling caskets—even though a casket is literally nothing more than a box—because they were not licensed as funeral directors.[50] And three separate federal courts have found that states violated the Constitution by requiring African hair braiders to undergo thousands of hours of schooling (almost entirely unrelated to braiding) and obtain a cosmetology license to engage in the traditional practice of

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[48] Karen Jowers, Spouses Face Licensing Roadblocks in Variety of Fields, Military Times, May 4, 2015, available at http://bit.ly/1SnNwzw.

[49] See Corfield v. Coryell, 6 F. Cas. 546 (CCED Pa. 1825) (Washington, J.); see also Truax v. Raich, 239 U.S. 33, 41-42 (1915).

[50] St. Joseph Abbey v. Castille, 712 F.3d 215 (5th Cir. 2013); see also Craigmiles v. Giles, 312 F.3d 220 (6th Cir. 2002).

braiding hair.[51] These cases highlight the fact that, for many Americans, their chosen career is not only a vital source of income but also a central part of their identity. By constraining individuals' choice of occupation, licensing laws interfere with an important aspect of liberty protected by the Constitution.

- Freedom of Speech: As occupational licensing has grown to occupy larger fields of human endeavor, it also has come into conflict with the First Amendment. Many individuals use words to make a living, and the government runs afoul of the First Amendment when it uses licensing laws to dictate who can and cannot talk about a given subject. So, for instance, the United States Court of Appeals for the D.C. Circuit recently found that the D.C. government violated the First Amendment when it required a license to work as a tour guide.[52] And a federal court likewise found that the Kentucky psychologist-licensing board violated the First Amendment when it attempted to end the publication of a popular advice column on the ground that the column constituted "unlicensed practice of psychology."[53] Individuals do not lose their First Amendment rights when they engage in an occupation; yet, all too often, licensing authorities act as if they were immune from any First Amendment constraint.

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[51] Brantley v. Kuntz, 98 F. Supp. 3d 884 (W.D. Tex. 2015); Clayton v. Steinagel, 885 F. Supp. 2d 1212 (D. Utah 2012); Cornwell v. Hamilton, 80 F. Supp. 2d 1101 (S.D. Cal. 1999).

[52] Edwards v. District of Columbia, 755 F.3d 996 (D.C. Cir. 2014).

[53] Rosemond v. Markham, __ F. Supp. 3d __, 2015 WL 5769091 (E.D. Ky. Sept. 30, 2015).

☐ Right to Travel: The Supreme Court has recognized that the "right to travel from one State to another is firmly embedded in our jurisprudence."[54] Licensing laws place significant burdens on this right to travel, as states frequently refuse to recognize licenses issued by other states. So, for instance, although the practice of medicine obviously does not differ from state to state, doctors are unable to carry their licenses across state lines.[55] Similar restrictions burden nearly all licensed professionals, and at the Institute for Justice we have challenged a number of licensing schemes designed to exclude competition from outside the state, including laws governing funeral directors[56] and interior designers.[57] Individuals should not have to choose between their professional livelihood and the exercise of their right to travel between the states.

Licensing Is Frequently Unnecessary

Advocates of occupational licensing frequently maintain that licensing is necessary to promote the public's health and safety. All too often, however, these claims are not borne out by empirical evidence. For instance, a 2001 report surveyed academic studies on the impact of occupational licensing on the quality of products and services for a variety of occupations and found that only two out of fifteen studies found any positive impact from licensing; five found a negative impact on

[54] Saenz v. Roe, 526 U.S. 489 (1999).

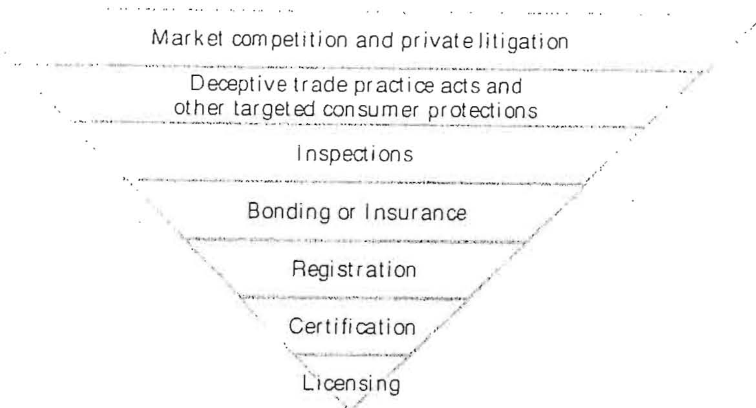
[55] Brittany La Couture, American Action Forum, The Traveling Doctor: Medical Licensure Across State Lines (June 2015), available at http://bit.ly/1Tb6l7k.

[56] Institute for Justice, Maryland Funeral Homes, http://bit.ly/1JYzjFX.

[57] Institute for Justice, Florida Interior Design, http://bit.ly/1RTILia.

health and safety, one found a mixed impact, and seven found no impact at all.[58] Moreover, to the extent that advocates of licensing point to real health-and-safety concerns, those concerns can often be addressed through less restrictive alternatives to licensing laws.

Available alternatives to licensing may be visualized as an inverted pyramid of regulatory options, where the forms of regulation at the top of the pyramid are the least restrictive and should be employed in the largest number of cases:



In many cases, market competition alone—paired with private tort litigation as a backstop—provides sufficient protection for health and safety. But where those protections prove inadequate, regulators may consider a variety of alternatives prior to licensure. Market participants may be subjected to targeted consumer-protection laws, inspections, and bonding or insurance requirements. And, where it

[58] Canada Office of Fair Traiding, Competition in Professions 22 (Mar. 2001), available at http://bit.ly/1mYLwzR.

is important for government to identify the individuals participating in a market, market participants may be required to register to do business.

Perhaps one of the most important, and often overlooked, alternatives to occupational licensing is voluntary certification. Under a voluntary certification regime, market participants can choose to undergo testing to obtain a certificate that they meet a certain level of quality; individuals who do not choose to undergo testing cannot refer to themselves as "certified" but may nonetheless continue to participate in the market. Certification responds to the concern—often expressed by advocates of licensing—that consumers may lack information necessary to identify individuals qualified to provide certain goods or services. Certification responds to this concern by conveying information about market participants' qualifications; indeed, certification may in some cases offer superior knowledge when compared to licensing, as a variety of certification providers may compete in the marketplace. Importantly, however, certification does not exclude anyone from the marketplace and leaves the ultimate choice of service provider with the consumer, rather than the government.

Conclusion

Occupational licensing serves the interests of industry insiders by excluding competition, but it harms nearly everyone else. Licensing results in higher prices for consumers, erects unnecessary barriers before people seeking a job, and frustrates innovation by entrepreneurs. Even where proponents of licensing identify legitimate health and safety concerns, those concerns frequently can be addressed through less restrictive alternatives to licensure—including voluntary certification

regimes. Licensing should be employed as a last resort, where no other form of regulation will suffice, but too often today licensing requirements are imposed without any real concern for whether they are necessary or justified.

Thank you for the opportunity to testify.

SENATE JUDICIARY COMMITTEE

SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY, AND CONSUMER RIGHTS

License to Compete:
Occupational Licensing and the State Action Doctrine

Tuesday, February 2, 2016

Dirksen Senate Office Building 226

Testimony of Bill Main

Good afternoon Chairman Lee, Ranking Member Klobuchar, and Members of the Committee. I am pleased to have this opportunity to speak with you about my experience with licensing requirements for tour guides.

I have given tours in four jurisdictions, two of which have required a license to work as a tour guide and two of which have not. In my observation, tour guide licensing has nothing to do with protecting consumers. Tour guide licensing exams tend to cover trivial historical details that would not be of any interest to a tourist, and the ability to pass a multiple-choice history exam does not ensure that a guide will actually give a good tour. Instead, tour guide licensing is all about keeping out competition. Licensed guides have been quick to wield licensing as a weapon against new tour businesses. In Washington, D.C., I was able to fight back and get the city's tour guide licensing scheme struck down as a violation of the First Amendment. But I continue to be hampered by licensing restrictions put in place by the federal government at the Gettysburg National Park.

Segs in the City

Together with Tonia Edwards, I founded Segs in the City in 2004. At the time, Tonia and I operated a bicycle rental shop in Annapolis, MD, and Segways were a relatively recent invention. At first we rented out Segways to customers, but we quickly realized that there was a market to offer guided Segway tours.

Our tours are hard to miss: The guide (either Tonia, me, or one of our guides) leads the tour wearing a bright pink shirt, and a series of tourists follow behind by Segway. During the tour, guides can talk to the group by radio earpiece. Our tours

feature a mix of instruction on riding the Segway, historical facts, jokes, stories, trivia, and light-hearted conversation.

Our tour company offers a source of seasonal and part time work. Working as a tour guide can be a good way for people to supplement their income, and working as a tour guide can also be a good source of employment for students on their summer holidays. Over the years, we have probably engaged over 100 people as tour guides.

Our guided tours proved so popular, we soon expanded our business from Annapolis to Baltimore, Gettysburg, and Washington, D.C. In Annapolis and Baltimore, we have been able to offer tours without having to be licensed. But in Gettysburg and D.C. we quickly found that the simple act of talking to tourists without a license could violate the law.

D.C.'s Tour Guide Licensing Law

When we started doing business in Washington, D.C., in 2005, we had no idea that we might need a license to do something as simple as leading a tour. But not long after we showed up in town, we were approached by other tour guides—members of D.C.'s so-called tour guide "guild"—who informed us that we had to have a license in order to give a tour. It was my strong impression that these guides were worried about the new competition we were bringing to the market.

When I first looked into becoming a licensed tour guide, it actually would have been impossible for me to become licensed. That is because the regulations required that tour guides be U.S. citizens and have resided in D.C. for over three

years. At that time I was neither a resident of D.C. nor a citizen, although I did have a green card allowing me to work legally in the country. I did not see why my right to talk for a living should be contingent on my citizenship or residence.

Although D.C. eliminated the residency and citizenship requirements in 2010, the city continued to impose other burdensome requirements on would-be tour guides. Guides were required to pay application fees totaling $200 and were required to pass a multiple-choice test on D.C.'s general history and geography. The test covered fourteen different topics drawn from nine different publications—a vast universe of material that in many cases had little or nothing to do with the topics that we wanted to discuss on our tours.

While the requirement to pay a fee and take a test was burdensome for me, it was even more burdensome for my guides. As I mentioned earlier, many of our guides are part time or seasonal workers. These guides cannot afford to pay a $200 licensing fee and devote significant time to studying for a test just to obtain part time or seasonal work.

D.C.'s licensing law was full of loopholes that made it all the more absurd. The license requirement would not apply if you stood in a single place (say, directly in front of the White House) and spoke about that location to tourists for a fee. And the license requirement also would not apply if you led tourists around from place-to-place and played a pre-recorded narration. The license requirement only applied if you wanted to talk to people while leading them from place-to-place. I was never able to see what government interest could possibly be served by such a scheme.

Our First Amendment Lawsuit

In September 2010, Tonia and I joined with the Institute for Justice to file a First Amendment lawsuit challenging D.C.'s tour guide licensing law. Our claim was simple: Tour guides talk for a living, and under the First Amendment the government cannot force you to get a license to talk. It would be outrageous if the government were to require a license to work as a stand-up comedian, journalist, or novelist. Requiring a license to work as a tour guide is no less unconstitutional.

To be clear, I do not object to reasonable health and safety regulation. We comply with the requirement in D.C. that all Segway riders be over 16 years of age, for instance, and we complied with a temporary moratorium on the use of Segways on the National Mall that was put in place to determine if Segways cause any harm to the turf. (The moratorium was lifted after it was determined that they do not.) I simply do not see how requiring tour guides to pass a multiple-choice history test could have anything at all to do with health and safety.

Throughout the course of our lawsuit, nobody ever identified any real danger posed by unlicensed tour guides. Tour guides are storytellers. Tourists do not go on tours because they have a vital need for accurate information; tourists go on tours because they want to be entertained. If a tour guide makes a mistake about a historic site—say, confusing the Lincoln and Jefferson Memorials—nobody will suffer dire consequences. Indeed, if a tourist thinks they are getting bad information from a guide, they can easily double-check the story online.

Tour guide licensing is particularly unnecessary in today's world, as tourists now have access to TripAdvisor, Yelp, and other online rating tools. Today, few things are more important to a tour business than those online ratings. If tour guides do a bad job, their online ratings will decline, and they will very quickly find it difficult to attract new business. Online rating systems are a far more effective safeguard of quality than a government licensing scheme.

In 2014, the United States Court of Appeals for the D.C. Circuit agreed. The Court struck down D.C.'s tour guide licensing law, ruling that the government had failed to justify the infringement of our First Amendment right to speak.[1]

Our Continued Exclusion From Gettysburg

Around the same time that we were running into these problems in D.C., we ran into a similar licensing scheme at the Gettysburg National Park. This time, however, the scheme was put in place by the National Park Service, rather than a local municipal government.

Tour guides must surmount a series of hurdles in order to become licensed to lead a tour of the Gettysburg battlefield.[2] First, guides must pass a written exam that covers a broad variety of topics—many of which are completely unrelated to the kinds of things that we talk about on our tours. Tour guides must then undergo a "panel interview," which is conducted by individuals who are already licensed as tour guides (accompanied by Park Rangers). The panel evaluates would-be guides

[1] Edwards v. District of Columbia, 755 F.3d 996 (D.C. Cir. 2014).
[2] Licensed Battlefield Examination Process and Information Packet, U.S. Dep't of the Interior (Aug. 2015), available at http://gettysburgtourguides.org/wp-content/uploads/2015/09/Becoming-LBG-Packet.pdf.

on a range of subjective factors, including "oral and interpersonal communications skills," "voice tone," "the ability to connect with the interviewers/visitors," "good posture," and "use of correct grammar." Finally, after completing an orientation program, guides must undergo an oral examination, which also is conducted by a licensed guide (along with a Park Ranger).

This licensing scheme is particularly outrageous because—as I was informed by the National Park Service—we would not be required to obtain the license in order to lead a tour so long as we played a pre-recorded tour message. The licensing requirement only came into play because we wanted to talk directly to the people on our tours. That plainly targets speech and violates the First Amendment.

The National Park Service admits that it operates this licensing scheme to limit competition. In a recent publication, the Park Ranger who oversees the licensing process explained that the park makes a decision "whether the entire testing process should be initiated and how many guides will be licensed" based on a review of "the number of requests for guided tours and the number of visitors not able to obtain a [tour] because no guide is available to serve them."[3]

It would be completely unrealistic and unnecessary for us to complete the government's licensing process to conduct our tours. The government's exam covers a wide variety of topics that we simply do not address on our tours. Moreover, as burdensome as it would be for Tonia and me to take the exam, it would be out of the question for us to impose such a requirement on our part time and seasonal guides.

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[3] Licensed Battlefield Examination Process, note 2.

Our tour guides do not purport to be experts on all aspects of Civil War history, and our customers do not expect our guides to have that expertise. We offer an entirely different type of tour experience, and the choice whether to take our tour or some other type of tour should rest with the customer—not with the government.

Today, customers no longer have that choice, as we have been forced to shut down our Gettysburg tour business. Almost as soon as we started giving tours in Gettysburg, we were approached by licensed tour guides who complained that we were working without a license. I felt these guides objected that we were taking away "their" customers. Finally, we were approached by a Park Police Officer who informed us that we were breaking the law. While the officer did not arrest us at that time, we clearly received the message that we would be subject to criminal sanctions if we continued offering our tours without a license.

Conclusion

Because tour guides talk for a living, I was able to successfully challenge licensing in Washington, D.C. under the First Amendment. But many licensing laws do not fall within the protection of the First Amendment—even though they place equally unnecessary and burdensome restrictions on the right to earn a living. And, what's more, even if a law is unconstitutional, it is a difficult and time-consuming process to challenge the law in court. I believe the licensing system in Gettysburg is unconstitutional, but until a court agrees I have no choice but to comply.

I welcome further attention to this issue from the nation's legislators, and I hope you will take action to promote the right to earn a living without a permission slip from the government.

Thank you for the opportunity to testify.

Agenda Item 20

Physician Assistant Board, Summary from Legislative Committee, April 2015

Prepared April 8, 2016; updated version will be available at PAB meeting

Bill number	Author	Status	What bill would do	Other notes	Considerations for PA Board
AB 1566	Wilk (R)	Committee hearing postponed	This bill would require a written report submitted by any state agency or department to the Legislature or any state executive body to include a signed statement by the head of the agency or department declaring that the factual contents of the written report are true, accurate, and complete to the best of his or her knowledge. This bill would also make any person who declares as true any material matter pursuant to these provisions that he or she knows to be false liable for a civil penalty not to exceed $20,000.	The legislature has not yet prepared an analysis of this bill.	Kristy Schieldge requested board discussion.

AGENDA ITEM 20

AB 1707	Linder (R) and Dababneh (D)	Passed Judiciary Committee unanimously; now in Assembly Local Government, hearing date: April 20	This bill would require a public agency denying a Public Records Act request to identify records that were withheld and the specific exemption that justifies withholding that type of record.	The bill is supported by the California Newspaper Publishers Association and civil liberties groups who seek better access to public records. They suggest that more specific denials would give the requester information about how to refine a future request or, alternatively, decide whether to seek a writ of mandate, compelling the agency to provide the responsive records. The bill is opposed by the League of California Cities which argues that compliance with the requirement would be burdensome for municipalities and could result in increased litigation.	Kristy Schieldge requested board discussion.
AB 2193	Salas (D)	Will be heard in Assembly Business and Profession on April 12	This bill would extend the operation of the Physician Assistant Board and the board's authority to employ personnel until January 1, 2021.	The PAB currently sunsets January 1, 2017. The legislature has not yet prepared an analysis of this bill.	

AB 2701	Jones (R)	In Assembly Business and Profression; no hearing date	This bill would add to existing training requirements for new members of Department of Consumer Affairs boards, including the Physician Assistant Board. Under this bill, the expanded training would include, but not be limited to, information regarding the requirements of the Bagley-Keene Open Meeting Act, the Administrative Procedure Act, the Office of Administrative Law, and the department's Conflict of Interest Code.	The Bagley-Keene Open Meeting Act (Bagley-Keene Act) generally requires, with specified exceptions for authorized closed sessions, that the meetings of state bodies be open and public and that all persons be permitted to attend. The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies, and for the review of those regulatory actions by the Office of Administrative Law. Existing law requires every agency to adopt and promulgate a Conflict of Interest Code that contains, among other requirements, the circumstances under which designated employees or categories of designated employees must disqualify themselves from making, participating in the making, or using their official position to influence the making of, any decision. The legislature has not yet prepared an analysis of this bill.	

SB 482	Lara (D)	Passed Senate in May 2015; awaiting assignment to Assembly Committee	This bill requires prescribers to consult the Controlled Substances Utilization Review and Evaluation System (CURES) prior to prescribing a Schedule II or III drug to a patient for the first time and at least annually when the prescription remains part of treatment. The bill prohibits prescription of additional controlled substances if a patient has existing prescriptions for Schedule II or III drugs unless practitioner determines there exists a legitimate need.	Supported by a long list of law enforcement agencies and others, the bill aims to reduce prescription drug abuse. The bill is opposed by several groups representing practitioners, including the California Medical Association, who argue that the bill would create an unnecessary regulatory burden to prescribing and increase the threat of litigation, both of which would have a detrimental impact on patient care while adding limited value to addressing prescription drug abuse. The bill has not been heard since the CURES database was certified for use. Last year, opponents suggested the bill would no longer be neccessary once CURES is operational as voluntary practitioner compliance would be high.	Would these requirements create an undue burden for PAs or limit their ability to treat patients?
SB 960	Hernandez (D) and Leno (D)	Senate Health, hearing date: April 20	This bill would authorize specified practitioners, including physician assistants, to provide reproductive health care to Medi-Cal patients using telehealth, as defined to mean the asynchronous transmission of medical information to be reviewed at a later time by a licensed practitioner at a distant site.	Existing law allows health care providers to provide telehealth services to Medi-Cal participants for "teleophthalmology, teledermatology and teledentistry." The legislature has not yet prepared an analysis of this bill.	

SB 1140	Moorlach (R)	Senate Governmental Operations, hearing date: April 12	This bill would require the automatic repeal of a statute that authorizes an executive agency to promulgate regulations two years after the statute goes into effect, unless the Legislature amends the statute to state its intent that the statute not be repealed, or unless the statute was passed in response to an emergency, as defined.	The legislature has not yet prepared an analysis of this bill.	Kristy Schieldge requested board discussion.
SB 1155	Morrell (R)	Senate Business and Professions, hearing date: April 12	This bill would require every board within the Department of Consumer Affairs, including the Physician Assistant Board, to grant a fee waiver for an initial license to an individual who is an honorably discharged veteran.	Supported by veterans organizations and modeled after similar legislation in 3 other states, this bill aims to address the high unemployment rate among veterans and capitalize on the professional skills many veterans honed during military service. The bill was amended on April 4, but the amendments are not yet in print. It's not clear if the amendments are substantial.	The PAB issues approximately 10 new licenses to veterans each year. This bill would result in approximately $2,500 in lost revenue if fees for those applications were waived. Staff considers these costs minor and absorbable. Kristy Schieldge requested board discussion.

SB 1195		Senate Business and Professions, hearing date: April 18	This bill aims to reduce the likelihood and reprucussions of state boards adopting anticompetitive practices in several ways, including by giving new oversight powers to the Director of the Department of Consumer Affairs, such as the authority to review and modify board decisions that could restrict trade or could have an anticompetitive effect.	This bill relates to the North Carolina Dental Board case. The legislature has not yet prepared an analysis of this bill.	
SB 1217	Stone (R)	Senate Business and Professions, hearing date: April 11	Currently Department of Consumer Affairs boards, including the Physician Assistant Board, must maintain historical records of any judgments or settlements against licensees in excess of $3,000. This bill would increase the minimum threshold that triggers boards' record-keeping requirements to $10,000. It would also increase from $3,000 to $10,000 the threshold over which insurers must report settlements to state boards.	This bill would align the PA Board's, nurses' and pharmacists' record-keeping requirements with those of other boards like licensed professional clinical counselors, licensed dentists, and licensed veterinarians, all of whom have a $10,000 threshold. The Medical Board's threshold is $30,000.	What percentage of judgments reported to the PAB are greater than $3,000 but less than $10,000? Do judgments of less than $10,000 typically reflect practices that should be considered in order to protect consumers? Would this bill reduce burden on staff? Kristy Schieldge requested board discussion.

SB 1334	Stone (R)	Passed Senate Public Safety and sent to Senate Appropriations	This bill would require a health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or other type of facility operated by a local or state public health department who provides medical services to a patient who discloses that he or she is seeking treatment due to being the victim of assaultive or abusive conduct to immediately make a report to a local law enforcement agency.	The author clarifies that the purpose of the bill is to eliminate a gap in current law which specifies that health practitioners must report a sexual assault only if the patient has a wound or injury. The author states that some assaults, such as forced oral copulation, may not result in a wound or injury. Additional requirements related to human trafficking were amended out of the bill.	

AB

1566

AMENDED IN ASSEMBLY MARCH 1, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL No. 1566

Introduced by Assembly ~~Member~~ *Members* Wilk *and Patterson*
(Principal coauthor: Senator Vidak)
(Coauthors: Assembly Members Baker, Brough, Beth Gaines, Gallagher, Hadley, Lackey, Mathis, and Steinorth)

January 4, 2016

An act to add Section 7550.7 to the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1566, as amended, Wilk. Reports.

Existing law generally sets out the requirements for the submission of written reports by public agencies to the Legislature, the Governor, the Controller, and state legislative and other executive entities.

This bill would require a written report, as defined, submitted by any state agency or department to the Legislature, a Member of the Legislature, or any state legislative or executive body to include a signed statement by the head of the agency or department declaring that the factual contents of the written report are true, accurate, and complete to the best of his or her knowledge.

This bill would also make any person who declares as true any material matter pursuant to these provisions that he or she knows to be false liable for a civil penalty not to exceed $20,000.

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

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

1 SECTION 1. Section 7550.7 is added to the Government Code,
2 to read:
3 7550.7. (a) (1) Notwithstanding any other law, a written report
4 submitted to the Legislature, a Member of the Legislature, or any
5 state legislative or executive body by any state agency or
6 department shall include a signed statement by the head of that
7 agency or department declaring that the factual contents of the
8 report are true, accurate, and complete to the best of his or her
9 knowledge.
10 (2) With respect to the Franchise Tax Board, the signed
11 statement described in paragraph (1) shall be made by the executive
12 officer of that board, and with respect to the State Board of
13 Equalization, the statement shall be made by the executive director
14 of that board.
15 (b) Paragraph (1) of subdivision (a) shall apply to the head of
16 every state agency or department, including, but not limited to,
17 elected officials of state government, and any state official whose
18 duties are prescribed by the California Constitution.
19 (c) For purposes of this section, a "written report" is either of
20 the following:
21 (1) A document required by statute to be prepared and submitted
22 to the Legislature, or any state legislative or executive body.
23 (2) A document, summary, or statement requested by a Member
24 of the Legislature.
25 (d) The declaration in the signed statement as to the truth,
26 accuracy, and completeness of the factual contents of the written
27 report shall not apply to any forecasts, predictions,
28 recommendations, or opinions contained in the written report.
29 (e) Any person who declares as true any material matter pursuant
30 to this section that he or she knows to be false shall be liable for
31 a civil penalty not to exceed twenty thousand dollars ($20,000).
32 The civil penalties provided for in this section shall be exclusively
33 assessed and recovered in a civil action brought *by the Attorney*
34 *General* in the name of the people of the State of California in any
35 court of competent ~~jurisdiction by the Attorney General.~~
36 *jurisdiction.*

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1707

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL No. 1707

Introduced by Assembly ~~Member~~ *Members* Linder *and Dababneh*
(Principal coauthor: Assembly Member Cristina Garcia)
(Coauthors: Assembly Members Travis Allen, Brough, Hadley, Lackey, and Olsen)

January 25, 2016

An act to amend Section 6255 of the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1707, as amended, Linder. Public records: response to request.

The California Public Records Act requires state and local agencies to make public records available for inspection, unless an exemption from disclosure applies. *Existing law requires an agency to justify withholding any record by demonstrating that the record is exempt under express provisions of the act or that the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure.* The act requires a response to a written request for public records that includes a denial of the request, in whole or in part, to be in writing.

This bill ~~instead~~ would require ~~that response to be in writing regardless of whether the request was in writing. The bill would require that written response additionally to include a list that contains the title or other identification of each record requested but withheld due to an exemption and the specific exemption that applies to that record.~~ *the written response demonstrating that the record in question is exempt under an express provision of the act also to identify the type or types of record*

withheld and the specific exemption that justifies withholding that type of record. Because local agencies would be required to comply with this new requirement, this bill would impose a state-mandated local program.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

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

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

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

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

1 SECTION 1. Section 6255 of the Government Code is amended
2 to read:
3 6255. (a) The agency shall justify withholding any record by
4 demonstrating that the record in question is exempt under express
5 provisions of this chapter or that on the facts of the particular case
6 the public interest served by not disclosing the record clearly
7 outweighs the public interest served by disclosure of the record.
8 (b) A response to ~~any~~ *a written* request for inspection or copies
9 of public records that includes a determination that the request is
10 denied, in whole or in part, shall be in writing. ~~That written~~
11 ~~response also shall include a list that contains both of the following:~~
12 *The written response demonstrating that the record in question is*
13 *exempt under an express provision of this chapter also shall*
14 *identify the type or types of record withheld and the specific*
15 *exemption that justifies withholding that type of record.*
16 ~~(1) The title or other identification of each record requested but~~
17 ~~withheld due to an exemption.~~
18 ~~(2) The specific exemption that applies to that record.~~

SEC. 2. The Legislature finds and declares that Section 1 of this act, which amends Section 6255 of the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

Because the people have the right of access to information concerning the conduct of the people's business, requiring local agencies ~~to provide a written response to any request for public records that is denied and to include in that response a list of each record being withheld due to an exemption from disclosure and the specific exemption that applies furthers the purposes of Section 3 of Article I.~~ *also to identify in the written response demonstrating that the record is exempt under an express provision of the California Public Records Act the type or types of record withheld, and the specific exemption that applies, furthers the purposes of Section 3 of Article I.*

SEC. 3. 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 under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

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Date of Hearing: March 29, 2016

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
AB 1707 (Linder) – As Amended March 28, 2016

SUBJECT: PUBLIC RECORDS: RESPONSE TO REQUEST

KEY ISSUE: SHOULD A GOVERNMENT AGENCY'S WRITTEN DENIAL OF A REQUEST FOR PUBLIC RECORDS IDENTIFY THE TYPES OF RECORDS WITHHELD, AND THE SPECIFIC EXEMPTIONS THAT JUSTIFY WITHHOLDING THEM?

SYNOPSIS

Under the California Public Records Act (PRA), all public records are open to public inspection unless a statutory exemption provides otherwise. When an agency withholds requested records from public inspection, existing law requires it to justify the withholding by "demonstrating" that the record withheld is exempt under an express provision of the PRA. According to the author, however, agencies often fail to adequately "demonstrate" why records are withheld. For example, according to a recent report in the Fresno Bee, *a school district denied a request by simply stating that the records requested were exempt under "one or more of the following exemptions," and then proceeded to list five code sections from the Government Code. The author believes that in order to truly "demonstrate" that a record is subject to an exemption, as existing law requires, the agency must do more than just list applicable code sections; it must make some linkage between the records or types of records withheld and the specific exemption that applies to those records. Without this linkage, persons or entities making a PRA request will not know which exemptions applied to which requested records, or why. This bill, therefore, would require the agency's written response to identify at least the type or types of records withheld, and the specific exemption that applies to each type. The bill is supported by the ACLU, the California Newspaper Publishers Association, and the Electronic Frontier Foundation, among others. The bill is opposed by several individual cities and counties, the associations that represent them, and other public agencies. Opponents claim that this measure will impose significant costs and burdens on local agencies. However, several of the letters of opposition respond to the bill as introduced or to earlier proposed amendments. It is unclear to what extent the recent amendments address all of the opposition concerns, but they would seem to go a long way in that direction. The bill will move to the Assembly Committee on Local Government should it advance out of this Committee.*

SUMMARY: Requires that a public agency's written denial of a request for public records to provide a more specific explanation when it withholds requested public records. Specifically, **this bill**:

1) Provides that when a public agency withholds a record requested pursuant to the Public Records Act, the written response demonstrating that the record in question is exempt under an express provision of the Public Records Act shall identify the type or types of record withheld and the specific exemption that justifies withholding that type of record.

2) Finds and declares that because people have the right of access to information concerning the conduct of the people's business, requiring local agencies to identify which statutory

exemption applies to the type or types of record withheld furthers the purpose the California Public Records Act.

EXISTING LAW:

1) Requires state and local agencies to make public records available for inspection, unless an exemption from disclosure applies. (Government Code Section 5250 *et seq.*)

2) Requires an agency to justify withholding any record that is responsive to a public records request by demonstrating that the record in question is exempt under express provisions of the Public Records Act or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. Specifies that a response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing. (Government Code Section 6255 (a)-(b).)

FISCAL EFFECT: Unknown

COMMENTS: This bill seeks to strike a reasonable balance between the public's right to inspect public records against the ability of public agencies to withhold exempt documents without imposing unreasonable and costly burdens on those public agencies. Under the California Public Records Act (PRA), all public records are open to public inspection unless an express statutory exemption provides otherwise. When a public agency withholds requested records from public inspection, existing law requires the agency to justify its decision by "demonstrating" that the record is exempt under an express provision of the PRA.

The author and supporters of this bill, however, suggest that the public agencies too often fail to adequately "demonstrate" why records were withheld. For example, according to a recent report in the *Fresno Bee*, a school district denied the newspaper's PRA request by asserting that the records requested were exempt under "one or more of the following exemptions," and then listed five Government code sections and subdivisions. (*Fresno Bee,* March 5, 2016.) Supporters of this bill – including the California Newspaper Publishers Association (CNPA), whose members must often make public record requests – contend that this kind of response is all too common. The author believes that in order to truly "demonstrate" that a record is subject to an exemption, as existing law requires, the agency must do more than merely list applicable code sections; it must make some linkage between the records or types of records withheld and the specific exemption that applies to those records. Otherwise, the persons or entities making PRA requests will not know which exemptions apply to which requested records, or why. This leaves the requester with little or no information about how to refine a future request or, alternatively, decide whether to seek a writ of mandate, compelling the agency to provide the responsive records.

This bill, therefore, would flesh out the existing requirement that an agency must "justify" a withholding by "demonstrating" that the record in question is subject to an express exemption. Under this bill, the agency would be required, in its written response, to identify the type or types of records withheld, and the specific exemption that applies to each type. Such an approach seems fully consistent with the implied intent of existing law, for it is difficult to imagine how an agency could "demonstrate" why a record was withheld if did not, at the very least, identify which exemptions applied to the types of records requested but withheld.

Bills as Amended Does Not Require a "Log" or "List" of Responsive Documents: The primary contention of the opponents of this bill is that it would require agencies to expend much more time, effort, and money responding to PRA requests and less time performing its essential public duties. To a certain extent, this criticism has been mitigated, at least in part and for some opponents, by recent amendments. As introduced, this bill would have required an agency to identify each record (and presumably each document) with a "title" and to list the corresponding exemption that applied next to that "title." This approach did indeed seem impractical in many ways. Not only would it have been needlessly time consuming – especially where an entire group or type of record was subject to the same exemption – the very "title" of the document could have revealed exempt information. To be sure, agency staff responding to a request could modify the "title" so as to redact or otherwise shield exempted information, but this would be very time consuming and of minimal public benefit. In addition, not all records or documents have obvious "titles," which would effectively require agency staff to create a title. Finally, and perhaps most significantly, the requirement that an agency list all document "titles" with corresponding exemptions would seem to require the agency to create the equivalent of the "privilege log" that is sometimes required in responses discovery requests. With one recently enacted exception, however, the provisions of the PRA do not require an agency to *create* records; the PRA only requires the agency to make *existing* records *in its possession* available for inspection and copying. In 2001, the California Supreme Court held that the existing language of the PRA does not require an agency to create any kind of "log" or "list" of responsive but exempt records. The Court suggested that the Legislature *could* amend the PRA to require such a list, but opined that as a policy matter such a requirement "would be burdensome and of scant public benefit." (*Haynie v. Superior Court* (2001) 26 Cal. 4th 1061, 1074-1075.)

In response to opposition concerns about the "title" and "list" requirement, concerns which mirrored the Court's dictum in *Haynie*, the author agreed to remove the "title" and "list" requirement. As recently amended, the bill simply requires that the agency, in its written response, to identify the records or *types* of records withheld and the specific exemption that applies to each type. That is, an agency could no longer list statutory exemptions and say that "one or more" of the listed exemptions applied to the records requested but withheld. Under this bill, an agency would need to state *which* exemptions applied to *which* records or types of records requested. This would not require an agency to create a "log" listing every record alongside a corresponding exemption. It would, however, require the agency to show which exemptions applied to which *types* of records withheld. For example: an agency could explain that certain types of contracts requested were subject to the trade secret exemption; or that the types of personnel records requested were subject to the medical information exemption; or that the correspondence requested was subject to the pending litigation exemption, and so on. This kind of written response seems fully consistent with the intent of existing law, which already requires an agency to "demonstrate" why records in question were withheld, not merely list code sections that apply to the request as a whole. That the PRA already implicitly requires more than a form letter (i.e. a response that identifies the responsive documents at least by type) is also suggested by the *requirement* in current that the agency make reasonable efforts to assist the requester in refining his or her request in order to identify responsive and disclosable records. (Government Code Section 6253.1.) Without identifying the records and the exemptions that apply to those records, the agency would not have all of the information it would need to help the requester formulate a successful request for records. Clearly, the intent of the PRA is not only to make records available for public inspection, but to assist persons in finding relevant records and avoiding denials. It is difficult to imagine how a person could refine a request (with the

assistance of the agency) if he or she did not know precisely why a prior request for specific documents was denied.

Recent Amendments Appear to Strike Reasonable Balance: As recently amended, this bill seeks an appropriate balance to a difficult practical problem. On the one hand, it seems unreasonably burdensome to require an agency to create a list identifying each responsive record that has been withheld with the specific exemption that applies placed next to the record. On the other hand, it seems equally unreasonable, and inconsistent with the purpose of the PRA, for an agency's written response to consist of a form letter that merely lists the statutory exemptions that may apply to the request as a whole, without making any effort to break down the request and explain which exemption applies to which types of responsive records.

Without question, the PRA imposes burdens on public agencies by requiring them to make all public records open to inspection, unless the record is subject to an express exemption. This not only requires agency staff to locate and retrieve responsive documents, it requires them to assess whether the records are subject to an exemption, which may not always be obvious. The PRA even requires the agency, within reason, to assist the requester in making a relevant and successful request. Moreover, in the provision amended by this bill, the PRA requires the agency to justify any withholding by "demonstrating" that the record withheld is subject to an express exemption. These duties impose burdens and costs, and the Legislature should be mindful of not adding to these burdens and costs unless doing so serves an important public benefit. Yet in enacting the PRA, the Legislature has already determined that access to public records is an essential feature of a democracy, even if it comes with some burdens and costs.

ARGUMENTS IN SUPPORT: According to the author, it is sometimes necessary and appropriate for a public agency to deny a public records request when the records in question contain information that is subject to a statutory exemption. However, the author also believes that, in the event of a denial, the agency should adequately explain why the request was denied. Yet too often, the author contends, "denial notifications only contain a list of exemptions that may apply to the documents requested. The list does not include information detailing the types of documents being withheld, or the exemptions that apply. Under the current system, an applicant is unable to examine for him or herself whether the document should indeed be exempt."

ACLU supports this bill because it supports government transparency. As an organization that is "concerned with fair and responsive government," the ACLU "frequently utilizes the PRA to gather important information about public entities." ACLU claims that government agencies "frequently respond to a PRA request with a form letter listing various exemptions from disclosure for all requested documents without stating whether responsive documents exist, what they are, or which exemption allegedly applies." ACLU believes that "AB 1707 would give a requester the information necessary to determine whether an agency has records responsive to the request, and appropriately advise the requester whether a legitimate exemption authorizes withholding the records." Finally, ACLU adds that the clarification afforded by AB 1707 "is consistent with the design and purpose of the PRA, would avoid unjustified obstructions, and would eliminate costly and would eliminate costly litigation in an already overburdened court system."

The California Newspaper Publishers Association (CNPA) similarly stresses that, even though current law requires agencies to identify specific exemptions that justify withholding a specific

record, the agencies often respond to a PRA request with a form letter that lists various exemptions that the agency "believes applies to the entire cache of requested records without identifying which exemption applies to which record." CNPA claims that such a response "subverts the purpose of the act – to give the people meaningful access to public records – and forces the requester to go to court to learn why certain records were denied and which exemption applies." In this respect, CNPA, like many of the other supporters, suggests that in the long run this bill may lessen the burden on agencies, requesters, and courts by allowing requesters to get necessary information without going to court to challenge a denial.

The Electronic Frontier Foundation (EFF) supports this bill for substantially the same reasons as those noted above; it additionally observes that AB 1707 will move the state closer to what is required under the federal Freedom of Information Act (FOIA), after which the CPRA is modeled. Under federal law, according to EFF, "it has become general practice to cite specific exemptions for each redaction made in a public record." EFF counters the arguments made by government agencies about the added costs and burdens by suggesting that "the bill may conserve recourses as well. If a member of the public chooses to challenge a CPRA request denial in court, this bill would allow the requester to narrow the challenge to specific documents, thus limiting the scope of litigation for both the government and the requester."

ARGUMENTS IN OPPOSITION: Several individual cities in California, as well as the League of California cities, oppose this bill because, they contend, it will pose "significant operational challenges, increased costs and a potential for increased litigation for cities already struggling to comply with the California Public Records Act (CPRA)." As noted above in the analysis, most of the letters received by the Committee appear to be in response to the bill as introduced or to a set of earlier proposed amendments that are significantly different than the most recent amendments. Nonetheless, whatever form additional requirements may take, the cities remind us that any additional requirements will impose burdens and costs on already limited resources. Many of the letters submitted by the cities point out that they "already struggle to comply with the 10-day response period associated with the CPRA." Moreover, cities contend that in recent years the volume of requests have increased, so much so that "many cities large and small have already had to hire additional staff dedicated solely to review documents in association with CPRA requests." Other objections by the cities that submitted letters of opposition address the provision, no longer in the bill, that would have required the agency to supply a "log" or "list" of responsive titles as part of the denial response. The bill is also opposed by counties, county associations, and miscellaneous local, regional, and state entities for substantially the same reasons as those put forth by the cities.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU
California Newspaper Publishers Association
Electronic Frontier Foundation
Firearms Policy Coalition
San Diegans for Open Government
Socrata
Sierra Club

Opposition

Association of California Water Agencies
California Association of Clerks and Election Officials
California Association of Counties
City Clerks Association of California
City of Burbank
City of Belvedere
City of Chico
City of Chino
City of Chino Hills
City of Coachella
City of Colton
City of Corona
City of Costa Mesa
City of Cypress
City of Danville
City of Desert Hot Springs
City of Downey
City of Dublin
City of Eastvale
City of Glendora
City of Indian Wells
City of Laguna Hills
City of Lakeport
City of Lakewood
City of La Quinta
City of Los Alamitos
City of Los Altos
City of Martinez
City of Menifee
City of Murrieta
City of Napa
City of Newark
City of Newport Beach
City of Norco
City of Norwalk
City of Ontario
City of Pinole
City of Poway
City of Rancho Cucamonga
City of Riverbank
City of Rocklin
City of Roseville
City of Salinas
City of San Dimas
City of San Marino
City of Santa Maria
City of Santa Monica

City of South Lake Tahoe
City of Temecula
City of Torrance
City of Union City
League of California Cities
Sacramento Municipal Utility District (SMUD)
San Joaquin Board of Supervisors
One Individual

Analysis Prepared by: Thomas Clark / JUD. / (916) 319-2334

AB

2193

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL No. 2193

Introduced by ~~Committee on Business and Professions (Assembly Members Bonilla (Chair), Jones (Vice Chair), Baker, Bloom, Campos, Chang, Dodd, Mullin, Ting, Wilk, and Wood)~~ *Assembly Member Salas*

(Principal coauthor: Senator Hill)

February 18, 2016

An act to amend ~~Section 2460~~ *Sections 2460, 3504, and 3512* of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2193, as amended, ~~Committee on Business and Professions~~ *Salas*. California Board of Podiatric ~~Medicine.~~ *Medicine: Physician Assistant Board: extension.*

Existing law provides for the certification and regulation of podiatrists by the California Board of Podiatric Medicine within the jurisdiction of the Medical Board of California. Under existing law, *provisions establishing* the California Board of Podiatric Medicine will be repealed on January 1, 2017.

This bill would extend the operation of the California Board of Podiatric Medicine until January 1, 2021.

Existing law, the Physician Assistant Practice Act, provides for the licensure and regulation of physician assistants by the Physician Assistant Board, which is within the jurisdiction of the Medical Board of California, and authorizes the Physician Assistant Board, except as specified, to employ personnel necessary to carry out the provisions of that act, including an executive officer. Existing law repeals provisions

establishing the Physician Assistant Board and the authorization for the board to employ personnel as of January 1, 2017.

This bill would extend the operation of the Physician Assistant Board and the board's authority to employ personnel until January 1, 2021.

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

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

1 SECTION 1. Section 2460 of the Business and Professions
2 Code is amended to read:
3 2460. (a) There is created within the jurisdiction of the Medical
4 Board of California the California Board of Podiatric Medicine.
5 (b) This section shall remain in effect only until January 1, 2021,
6 and as of that date is repealed. Notwithstanding any other law, the
7 repeal of this section renders the California Board of Podiatric
8 Medicine subject to review by the appropriate policy committees
9 of the Legislature.
10 *SEC. 2. Section 3504 of the Business and Professions Code is*
11 *amended to read:*
12 3504. There is established a Physician Assistant Board within
13 the jurisdiction of the Medical Board of California. The board
14 consists of nine members. This section shall remain in effect only
15 until January 1, ~~2017,~~ *2021,* and as of that date is ~~repealed, unless~~
16 ~~a later enacted statute, that is enacted before January 1, 2017,~~
17 ~~deletes or extends that date.~~ *repealed.* Notwithstanding any ~~other~~
18 ~~provision of~~ law, the repeal of this section renders the board subject
19 to review by the appropriate policy committees of the Legislature.
20 *SEC. 3. Section 3512 of the Business and Professions Code is*
21 *amended to read:*
22 3512. (a) Except as provided in Sections 159.5 and 2020, the
23 board shall employ within the limits of the Physician Assistant
24 Fund all personnel necessary to carry out ~~the provisions of~~ this
25 chapter including an executive officer who shall be exempt from
26 civil service. The Medical Board of California and board shall
27 make all necessary expenditures to carry out ~~the provisions of~~ this
28 chapter from the funds established by Section 3520. The board
29 may accept contributions to effect the purposes of this chapter.
30 (b) This section shall remain in effect only until January 1, ~~2017,~~
31 *2021,* and as of that date is ~~repealed, unless a later enacted statute,~~

1 ~~that is enacted before January 1, 2017, deletes or extends that date.~~
2 *repealed.*

O

AB

2701

ASSEMBLY BILL No. 2701

Introduced by Assembly Member Jones

February 19, 2016

An act to amend Section 453 of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2701, as introduced, Jones. Department of Consumer Affairs: boards: training requirements.

Existing law provides for the licensure and regulation of various professions and vocations by various boards, as defined, within the Department of Consumer Affairs, and provides for the membership of those various boards. Existing law requires newly appointed board members, within one year of assuming office, to complete a training and orientation offered by the department regarding, among other things, the obligations of the board member. Existing law requires the department to adopt regulations necessary to establish the training and orientation program and its contents.

The Bagley-Keene Open Meeting Act (Bagley-Keene Act) generally requires, with specified exceptions for authorized closed sessions, that the meetings of state bodies be open and public and that all persons be permitted to attend. The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies, and for the review of those regulatory actions by the Office of Administrative Law. Existing law requires every agency to adopt and promulgate a Conflict of Interest Code that contains, among other requirements, the circumstances under which designated employees or categories of designated employees must disqualify

themselves from making, participating in the making, or using their official position to influence the making of, any decision.

This bill would additionally require the training of new board members to include, but not be limited to, information regarding the requirements of the Bagley-Keene Act, the Administrative Procedure Act, the Office of Administrative Law, and the department's Conflict of Interest Code.

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

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

1 SECTION 1. Section 453 of the Business and Professions Code
2 is amended to read:
3 453. Every newly appointed board member shall, within one
4 year of assuming office, complete a training and orientation
5 program offered by the department regarding, among other things,
6 his or her functions, responsibilities, and obligations as a member
7 of a board. *This training shall include, but is not limited to,*
8 *information about the Bagley-Keene Open Meeting Act (Article 9*
9 *(commencing with Section 11120) of Chapter 1 of Part 1 of*
10 *Division 3 of Title 2 of the Government Code), the Administrative*
11 *Procedure Act (Chapter 3.5 (commencing with Section 11340) of*
12 *Part 1 of Division 3 of Title 2 of the Government Code), the Office*
13 *of Administrative Law, and the department's Conflict of Interest*
14 *Code, as required pursuant to Section 87300 of the Government*
15 *Code.* The department shall adopt regulations necessary to establish
16 this training and orientation program and its content.

O

SB

482

AMENDED IN SENATE APRIL 30, 2015

AMENDED IN SENATE APRIL 16, 2015

SENATE BILL No. 482

Introduced by Senator Lara

February 26, 2015

An act to add Section 11165.4 to the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 482, as amended, Lara. Controlled substances: CURES database.

Existing law classifies certain controlled substances into designated schedules. Existing law requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances. Existing law requires dispensing pharmacies and clinics to report specified information for each prescription of a Schedule II, Schedule III, or Schedule IV controlled substance to the department.

This bill would require all prescribers, as defined, prescribing a Schedule II or Schedule III controlled substance, ~~and all dispensers, as defined, dispensing a Schedule II or Schedule III controlled substance,~~ to consult a patient's electronic history in the CURES database before prescribing ~~or dispensing~~ the controlled substance to the patient for the first time. The bill would also require the prescriber to consult the CURES database at least annually when the prescribed controlled substance remains part of the patient's treatment. The bill would prohibit prescribing an additional Schedule II or Schedule III controlled

substance to a patient with an existing prescription until the prescriber determines that there is a legitimate need for the controlled substance.

The bill would make the failure to consult a patient's electronic history in the CURES database a cause for disciplinary action by the prescriber's ~~or dispenser's~~ licensing board and would require the ~~respective licensing boards~~ *licensing boards* to notify all ~~licensees~~ *prescribers* authorized to prescribe ~~or dispense~~ controlled substances of these requirements. The bill would provide that a prescriber ~~or dispenser~~ is not in violation of these requirements during any time that the CURES database is suspended or not accessible, or during any time that the Internet is not operational. The bill would make its provisions operative upon the Department of Justice's certification that the CURES database is ready for statewide use.

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

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

1 SECTION 1. Section 11165.4 is added to the Health and Safety
2 Code, to read:
3 11165.4. (a) A prescriber shall access and consult the CURES
4 database for the electronic history of controlled substances
5 dispensed to a patient under his or her care before prescribing a
6 Schedule II or Schedule III controlled substance for the first time
7 to that patient and at least annually when that prescribed controlled
8 substance remains part of his or her treatment. If the patient has
9 an existing prescription for a Schedule II or Schedule III controlled
10 substance, the prescriber shall not prescribe an additional controlled
11 substance until the prescriber determines that there is a legitimate
12 need for that controlled substance.
13 ~~(b) A dispenser shall access and consult the CURES database~~
14 ~~for the electronic history of controlled substances dispensed to a~~
15 ~~patient under his or her care before dispensing a Schedule II or~~
16 ~~Schedule III controlled substance for the first time to that patient.~~
17 ~~If the patient has an existing prescription for a Schedule II or~~
18 ~~Schedule III controlled substance, the dispenser shall not dispense~~
19 ~~an additional controlled substance until the dispenser checks the~~
20 ~~CURES database.~~
21 ~~(c)~~

(b) Failure to consult a patient's electronic history as required by subdivision (a)~~ or (b)~~ is cause for disciplinary action by the ~~respective licensing board of the prescriber or dispenser~~ *prescriber's licensing board.* The licensing boards of all prescribers ~~and dispensers~~ authorized to write or issue prescriptions for controlled substances shall notify these licensees of the requirements of this section.

~~(d)~~

(c) Notwithstanding any other law, a prescriber~~ or dispenser~~ is not in violation of this section during any period of time in which the CURES database is suspended or not accessible or any period of time in which the Internet is not operational.

~~(e)~~

(d) This section shall not become operative until the Department of Justice certifies that the CURES database is ready for statewide use.

~~(f)~~

(e) For purposes of this section,~~ the following terms shall have the following meanings:~~ *"prescriber" means a health care practitioner who is authorized to write or issue prescriptions under Section 11150, excluding veterinarians.*

~~(1) "Dispenser" means a person who is authorized to dispense a controlled substance under Section 11011.~~

~~(2) "Prescriber" means a health care practitioner who is authorized to write or issue prescriptions under Section 11150, excluding veterinarians.~~

~~(g)~~

(f) A violation of this section shall not be subject to the provisions of Section 11374.

O

SENATE RULES COMMITTEE SB 482
Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: SB 482
Author: Lara (D)
Amended: 4/30/15
Vote: 21

SENATE BUS, PROF. & ECON. DEV. COMMITTEE: 7-1, 4/27/15
AYES: Hill, Block, Galgiani, Hernandez, Jackson, Mendoza, Wieckowski
NOES: Bates
NO VOTE RECORDED: Berryhill

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/18/15
AYES: Lara, Beall, Hill, Leyva, Mendoza
NOES: Bates, Nielsen

SUBJECT: Controlled substances: CURES database

SOURCE: California Narcotic Officers' Association
Consumer Attorneys of California

DIGEST: This bill requires prescribers to consult the Controlled Substances Utilization Review and Evaluation System (CURES) prior to prescribing a Schedule II or III drug to a patient for the first time and delays implementation of this requirement until the Department of Justice (DOJ) certifies that the CURES database is ready for statewide use.

ANALYSIS:

Existing law:

1) Specifies certain requirements regarding the dispensing and furnishing of dangerous drugs and devices, and prohibits a person from furnishing any dangerous drug or device except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian or naturopathic doctor. (Business and Professions Code (BPC) § 4059)

2) Defines "opiate" as any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. (Health and Safety Code (HSC) § 11020)

3) Classifies controlled substances in five schedules according to their danger and potential for abuse. (HSC § 11054-11058)

4) Prohibits any person other than a physician dentist, podiatrist, veterinarian, naturopathic doctor (according to specific requirements outlined in their practice act), pharmacist (under certain circumstances), certified nurse-midwife (according to specific requirements outlined in their practice act), nurse practitioner (according to specific requirements outlined in their practice act), licensed optometrist, out-of-state prescriber acting in an emergency situation or certain health professionals (a pharmacist, registered nurse or physician assistant) acting within the scope of an experimental health workforce project authorized by the Office of Statewide Health Planning and Development (HSC § 128125 et seq) from writing or issuing a prescription for a controlled substance. (HSC § 11150)

5) Specifies that a prescription for a controlled substance shall only be issued for a legitimate medical purpose and establishes responsibility for proper prescribing on the prescribing practitioner. States that a violation shall result in imprisonment for up to one year or a fine of up to $20,000, or both. (HSC § 11153)

6) Establishes CURES for electronic monitoring of Schedule II, III and IV controlled substance prescriptions. CURES provides for the electronic transmission of Schedule II, III and IV controlled substance prescription information to DOJ at the time prescriptions are dispensed. (HSC § 11165)

7) Provides that pharmacies or clinics, in filling a prescription for a federally Scheduled II, III or IV drug, shall provide weekly information to DOJ including the patient's name, date of birth, the name, form, strength and quantity of the drug, and the pharmacy name, pharmacy number and the prescribing physician information. (HSC § 11165 (d))

8) Provides that a licensed health care practitioner eligible to prescribe Schedule II, III or IV controlled substances, or a pharmacist, shall apply to participate in

the CURES Prescription Drug Monitoring Program (PDMP) by January 1, 2016. Authorizes DOJ to deny an application or suspend a subscriber for certain violations and falsifying information. Provides that the history of controlled substances dispensed to a patient based on CURES data that is received by a practitioner or pharmacist shall be considered medical information, subject to provisions of the Confidentiality of Medical Information Act. (HSC § 11165.1)

This bill:

1) Requires prescribers (authorized to write prescriptions according to HSC Section 11150 outlined above, excluding veterinarians) to access and consult CURES prior to prescribing a Schedule II or Schedule III controlled substance for the first time to a patient and at least annually when that prescribed controlled substance remains part of the treatment. Provides that if the patient has an existing prescription for a Schedule II or Schedule III controlled substance, the health care practitioner shall not prescribe any additional controlled substances until the health care practitioner determines there is a legitimate need.

2) Provides that failure by a prescriber to consult CURES as specified above is cause for disciplinary action by the prescriber's appropriate licensing board. Requires the licensing boards of all prescribers authorized to write or issue prescriptions for controlled substances to notify all authorized prescribers of the requirement for consulting CURES.

3) Provides that notwithstanding any other provision, a prescriber shall not be in violation of the requirements in this bill during any time period in which the CURES system is suspended or not accessible or the Internet is not operational. Delays implementation of the above provisions until the DOJ certifies that the CURES database is ready for statewide use.

Background

For the past number of years, abuse of prescription drugs (taking a prescription medication that is not prescribed for you, or taking it for reasons or in dosages other than as prescribed) to get high has become increasingly prevalent. Federal data for 2014 shows that in the past year, abuse of prescription pain killers now ranks second, just behind marijuana, as the nation's most widespread illegal drug problem. Abuse can stem from the fact that prescription drugs are legal and

potentially more easily accessible, as they can be found at home in a medicine cabinet. Data shows that individuals who misuse prescription drugs, particularly teens, believe these substances are safer than illicit drugs because they are prescribed by a health care professional and thus are safe to take under any circumstances. A 2013 Centers for Disease Control and Prevention (CDC) analysis found that drug overdose deaths increased for the 11th consecutive year in 2010 and prescription drugs, particularly opioid analgesics, are the top drugs leading the list of those responsible for fatalities. According to CDC, 38,329 people died from a drug overdose in 2010, up from 37,004 deaths in 2009, and 16,849 deaths in 1999. CDC found that nearly 60% of the overdose deaths in 2010, involved pharmaceutical drugs, with opioids associated with approximately 75% of these deaths. Nearly three out of four prescription drug overdoses are caused by opioid pain relievers.

With rising levels of abuse, PDMPs are a critical tool in assisting law enforcement and regulatory bodies with their efforts to reduce drug diversion. There are 49 states that currently have monitoring programs (Missouri is the only state currently without a PDMP). California has the oldest prescription drug monitoring program in the nation, CURES which is an electronic tracking program that reports all pharmacy (and specified types of prescriber) dispensing of controlled drugs by drug name, quantity, prescriber, patient, and pharmacy. Data from CURES is managed by DOJ to assist state law enforcement and regulatory agencies in their efforts to reduce prescription drug diversion. CURES provides information that offers the ability to identify if a person is "doctor shopping" (when a prescription-drug addict visits multiple doctors to obtain multiple prescriptions for drugs, or uses multiple pharmacies to obtain prescription drugs). Information tracked in the system contains the patient name, prescriber name, pharmacy name, drug name, amount and dosage, and is available to law enforcement agencies, regulatory bodies and qualified researchers. The system can also report on the top drugs prescribed for a specific time period, drugs prescribed in a particular county, doctor prescribing data, pharmacy dispensing data, and is a critical tool for assessing whether multiple prescriptions for the same patient may exist. In addition to the Board of Pharmacy, CURES data can be obtained by the Medical Board of California, Dental Board of California, Board of Registered Nursing, Osteopathic Medical Board of California and Veterinary Medical Board. DOJ is currently in the process of modernizing CURES to more efficiently serve prescribers, pharmacists and entities that may utilize the data contained within the system and expects that the new CURES 2.0 system will be operational on July 1, 2015.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- No significant costs are anticipated by DOJ. DOJ has almost completed a substantial upgrade to CURES and anticipates that by July 2015 CURES will have the capability to meet the demand expected due to this bill.

- Minor costs to the relevant boards that license prescribers, such as the Medical Board of California, the Osteopathic Medical Board, and the Dental Board. Licensing boards will incur some additional cost to notify their licensees of the new requirement to check CURES. Those costs are expected to be minor for the impacted boards.

SUPPORT: (Verified 5/20/15)

California Narcotic Officers' Association (co-source)
Consumer Attorneys of California (co-source)
Association for Los Angeles Deputy Sheriffs
California Association of Code Enforcement Officers
California Chamber of Commerce
California College and University Police Chiefs Association
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Congress of Seniors
California Correctional Supervisors Organization
California Teamsters Public Affairs Council
Consumer Federation of California
Consumer Watchdog
Engineers and Scientists of California, IFPTE Local 20, AFL-CIO
International Faith Based Coalition
International Longshore and Warehouse Union
Los Angeles Police Protective League
Pacific Compensation Insurance Company
Professional and Technical Engineers, IFPTE Local 21, AFL-CIO
Riverside Sheriffs Organization
Union of American Physicians and Dentists
UNITE-HERE, AFL-CIO
Utility Workers Union of America

OPPOSITION: (Verified 5/20/15)

Association of Northern California Oncologists
California Chapter of American Emergency Room Physicians
California Dental Association
California Medical Association
The Doctor's Company

ARGUMENTS IN SUPPORT: Supporters believe that the CURES database is an effective reference point in assuring that a patient is not engaged in prescription drug abuse and that this bill will save lives.

ARGUMENTS IN OPPOSITION: Opponents believe that this bill will create an unnecessary regulatory burden to prescribing and increase the threat of litigation, both of which would have a detrimental impact on patient care while adding limited value to addressing prescription drug abuse. Opponents argue that the mandate in this bill will fall disproportionately on patients with a legitimate medical issue and that once a functional CURES system is in place, the mandates imposed by this bill will not be necessary, as physicians support the CURES database and want to have it as a tool in their clinical practice.

Prepared by: Sarah Mason / B., P. & E.D. / (916) 651-4104
5/21/15 9:16:48

****** END ******

SB

960

SENATE BILL **No. 960**

Introduced by Senators Hernandez and Leno
(Coauthor: Senator McGuire)

February 8, 2016

An act to amend Section 14132.725 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

SB 960, as introduced, Hernandez. Medi-Cal: telehealth: reproductive health care.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services, as specified. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing law provides that, to the extent that federal financial participation is available, face-to-face contact between a health care provider and a patient is not required under the Medi-Cal program for "teleophthalmology, teledermatology and teledentistry by store and forward," as defined to mean the asynchronous transmission of medical information to be reviewed at a later time by a licensed physician or optometrist, as specified, at a distant site.

This bill would enact similar provisions relating to the use of reproductive health care under the Medi-Cal program. The bill would provide that, to the extent that federal financial participation is available, face-to-face contact between a health care provider and a patient shall not be required under the Medi-Cal program for "reproductive health care provided by store and forward." The bill would define that term to mean an asynchronous transmission of medical information to be reviewed at a later time by a physician, nurse practitioner, certified

nurse midwife, licensed midwife, physician assistant, or registered nurse at a distant site, where the provider at the distant site reviews the dental information without the patient being present in real time, as defined and as specified.

This bill would also provide that, to the extent federal financial participation is available and any necessary federal approvals are obtained, telephonic and electronic patient management services, as defined, provided by a physician or nonphysician health care provider acting within his or her scope of licensure shall be a benefit under the Medi-Cal program in fee-for-service and managed care delivery systems, as specified. The bill would authorize the department to seek approval of any state plan amendments necessary to implement these provisions.

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

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

1 SECTION 1. Section 14132.725 of the Welfare and Institutions
2 Code is amended to read:
3 14132.725. (a) To the extent that federal financial participation
4 is available, face-to-face contact between a health care provider
5 and a patient is not required under the Medi-Cal program for
6 teleophthalmology, teledermatology, and ~~teledentistry~~ *teledentistry,*
7 *and reproductive health care provided* by store and forward.
8 Services appropriately provided through the store and forward
9 process are subject to billing and reimbursement policies developed
10 by the department. *A Medi-Cal managed care plan that contracts*
11 *with the department pursuant to this chapter and Chapter 8*
12 *(commencing with Section 14200) shall be required to cover the*
13 *services described in this section.*
14 (b) For purposes of this section, "teleophthalmology,
15 teledermatology, and ~~teledentistry~~ *teledentistry, and reproductive*
16 *health care provided* by store and forward" means an
17 asynchronous transmission of medical or dental information to be
18 reviewed at a later time by a physician at a distant site who is
19 trained in ophthalmology or dermatology or, for teleophthalmology,
20 by an optometrist who is licensed pursuant to Chapter 7
21 (commencing with Section 3000) of Division 2 of the Business
22 and Professions Code, or a dentist, *or, for reproductive health*
23 *care, by a physician, nurse practitioner, certified nurse midwife,*

licensed midwife, physician assistant, or registered nurse operating within his or her scope of practice, where the physician, optometrist, ~~or dentist~~ *dentist, nurse practitioner, certified nurse midwife, licensed midwife, physician assistant, or registered nurse* at the distant site reviews the medical or dental information without the patient being present in real time. A patient receiving teleophthalmology, teledermatology, ~~or teledentistry~~ *teledentistry, or reproductive health care* by store and forward shall be notified of the right to receive interactive communication with the distant specialist physician, optometrist, ~~or dentist~~ *dentist, nurse practitioner, certified nurse midwife, licensed midwife, physician assistant, or registered nurse* and shall receive an interactive communication with the distant specialist physician, optometrist, ~~or~~ dentist, *nurse practitioner, certified nurse midwife, licensed midwife, physician assistant, or registered nurse* upon request. If requested, communication with the distant specialist physician, optometrist, ~~or dentist~~ *dentist, nurse practitioner, certified nurse midwife, licensed midwife, physician assistant, or registered nurse* may occur either at the time of the consultation, or within 30 days of the patient's notification of the results of the consultation. If the reviewing optometrist identifies a disease or condition requiring consultation or referral pursuant to Section 3041 of the Business and Professions Code, that consultation or referral shall be with an ophthalmologist or other appropriate physician and surgeon, as required.

(c) (1) To the extent that federal financial participation is available and any necessary federal approvals have been obtained, telephonic and electronic patient management services provided by a physician, or a nonphysician health care provider acting within his or her scope of licensure is a benefit under the Medi-Cal program, both in fee-for-service and managed care delivery systems delivered by Medi-Cal managed care plans that contract with the department pursuant to this chapter and Chapter 8 (commencing with Section 14200). Reimbursement for telephonic and electronic patient management services shall be based on the complexity of and time expended in rendering those services.

(2) This subdivision shall not be construed to authorize a Medi-Cal managed care plan to require the use of telephonic and electronic patient management services when the physician or

1 *nonphysician health care provider has determined that those*
2 *services are not medically necessary.*
3 *(3) This subdivision shall not be construed to alter the scope of*
4 *practice of a health care provider or authorize the delivery of*
5 *health care services in a setting or in a manner than is not*
6 *otherwise authorized by law.*
7 *(4) All laws regarding the confidentiality of health information*
8 *and a patient's right of access to his or her medical information*
9 *shall apply to telephonic and electronic patient management*
10 *services.*
11 *(5) This subdivision shall not apply to a patient in the custody*
12 *of the Department of Corrections and Rehabilitation or any other*
13 *correctional facility.*
14 *(d) Notwithstanding paragraph (1) of subdivision (b), separate*
15 *reimbursement of a physician or a nonphysician health care*
16 *provider shall not be required for any of the following:*
17 *(1) A telephonic or electronic visit that is related to a service*
18 *or procedure provided to an established patient within a*
19 *reasonable period of time prior to the telephonic or electronic*
20 *visit, as recognized by the Current Procedural Terminology codes*
21 *published by the American Medical Association.*
22 *(2) A telephonic or electronic visit that leads to a related service*
23 *or procedure provided to an established patient within a*
24 *reasonable period of time, or within an applicable postoperative*
25 *period, as recognized by the Current Procedural Terminology*
26 *codes published by the American Medical Association.*
27 *(3) A telephonic or electronic visit provided as part of a bundle*
28 *of services for which reimbursement is provided for on a prepaid*
29 *basis, including capitation, or which reimbursement is provided*
30 *for using an episode-based payment methodology.*
31 *(4) A telephonic or electronic visit that is not initiated by an*
32 *established patient, by the parents or guardians of a minor who*
33 *is an established patient, or by a person legally authorized to make*
34 *health care decisions on behalf of an established patient.*
35 *(e) Nothing in this section shall be construed to prohibit a*
36 *Medi-Cal managed care plan from requiring documentation*
37 *reasonably relevant to a telephonic or electronic visit, as*
38 *recognized by the Current Procedural Terminology codes*
39 *published by the American Medical Association.*
40 *(f) For purposes of this section, the following definitions apply:*

1 *(1) "Established patient" means a patient who, within three*
2 *years immediately preceding the telephonic or electronic visit, has*
3 *received professional services from the provider or another*
4 *provider of the same specialty or subspecialty who belongs to the*
5 *same group practice.*
6 *(2) "Nonphysician health care provider" means a provider,*
7 *other than a physician, who is licensed pursuant to Division 2*
8 *(commencing with Section 500) of the Business and Professions*
9 *Code.*
10 *(3) "Reproductive health care" means the general reproductive*
11 *health care services described in paragraph (8) of subdivision*
12 *(aa) of Section 14132.*
13 *(4) "Telephonic and electronic patient management service"*
14 *means the use of electronic communication tools to enable treating*
15 *physicians and nonphysician health care providers to evaluate*
16 *and manage established patients in a manner that meets all of the*
17 *following criteria:*
18 *(A) The service does not require an in-person visit with the*
19 *physician or nonphysician health care provider.*
20 *(B) The service is initiated by the established patient, the parents*
21 *or guardians of a minor who is an established patient, or a person*
22 *legally authorized to make health care decisions on behalf of an*
23 *established patient. "Initiated by an established patient" does not*
24 *include a visit for which a provider or a person employed by a*
25 *provider contacts a patient to initiate a service.*
26 *(C) The service is recognized by the Current Procedural*
27 *Terminology codes published by the American Medical Association.*
28 *(g) The department may seek approval of any state plan*
29 *amendments necessary to implement this section.*
30 ~~(e)~~
31 *(h)* Notwithstanding Chapter 3.5 (commencing with Section
32 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
33 the department may implement, interpret, and make specific this
34 section by means of all-county letters, provider bulletins, and
35 similar instructions.

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SB

1140

SENATE BILL No. 1140

Introduced by Senator Moorlach

February 18, 2016

An act to add Section 9601 of the Government Code, relating to the Legislature.

LEGISLATIVE COUNSEL'S DIGEST

SB 1140, as introduced, Moorlach. Legislature: operation of statutes.

Existing law specifies the dates by which enacted statutes go into effect. Existing law also provides that a statute may be repealed at any time, except when vested rights would be impaired.

This bill would require the automatic repeal of a statute that expressly or implicitly authorizes an executive agency to promulgate regulations two years after the statute goes into effect, unless the Legislature amends the statute to state its intent that the statute not be repealed, or unless the statute was passed in response to an emergency, as defined.

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

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

1 SECTION 1. Section 9601 is added to the Government Code,
2 to read:
3 9601. (a) A statute that expressly authorizes an executive
4 agency to promulgate regulations, or that gives a new duty or
5 power to an executive agency, shall be repealed two years after it
6 goes into effect, unless the Legislature amends the statute before
7 its repeal to expressly state the Legislature's intent that the statute
8 not be repealed.
9 (b) This section shall not apply to either of the following:

1 (1) An agency that is constitutionally created.
2 (2) A statute that is passed in response to an emergency, as
3 defined by Section 8558 of the Government Code.

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SB

1155

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL No. 1155

Introduced by Senator Morrell

February 18, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

This bill would require ~~the Department of Consumer Affairs, in consultation with the Department of Veterans Affairs and the Military Department, to establish and maintain a program that grants~~ *every board within the Department of Consumer Affairs to grant* a fee waiver for the application for and the issuance of an initial license to an individual who is an honorably discharged veteran, as specified.

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

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

SECTION 1. Section 114.6 is added to the Business and Professions Code, to read:

114.6. ~~The Department of Consumer Affairs, in consultation with the Department of Veterans Affairs and the Military Department, shall establish and maintain a program that grants~~ *Notwithstanding any other provision of law, every board within the department shall grant* a fee waiver for the application for and issuance of a license to an individual who is an honorably discharged veteran who served as an active duty member of the California National Guard or the United States Armed Forces. Under this program, all of the following apply:

(a) ~~The Department of Consumer Affairs shall grant only one fee waiver to a veteran.~~ *A veteran shall be granted only one fee waiver.*

(b) The fee waiver shall apply only to an application of and a license issued to an individual veteran and not to an application of or a license issued to a business or other entity.

(c) A waiver shall not be issued for a renewal of a license or for the application for and issuance of a license other than one initial license.

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SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT

Senator Jerry Hill, Chair
2015 - 2016 Regular

Bill No:	SB 1155	**Hearing Date:**	April 4, 2016
Author:	Morrell		
Version:	March 28, 2016 Amended		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Bill Gage		

Subject: Professions and vocations: licenses: military service

SUMMARY: Would require every board under the Department of Consumer Affairs (Department) to grant a waiver for the application and initial licensing fee to an honorably discharged veteran.

Existing law:

1) Provides for the licensure, registration and regulation of various professions and vocations by the boards, bureaus, committees, programs and commission (board(s)) within the Department.

2) Specifies that it is the policy of this state that persons with the skills, knowledge, and experiences obtained in the armed services should be permitted to apply this learning and contribute to the employment needs of this state at the maximum level of responsibility and skill for which they are qualified, and that to this end, that the rules and regulations of boards shall provide a method of evaluating education, training and experience obtained in the armed services and determine how it may be used to meet the licensure requirements for the particular business, or occupation, or profession regulated. (Business and Professions Code (BPC) § 35)

3) Authorizes any licensee whose license expired while he or she was on active duty as a member of the California National Guard of the United States Armed Forces to reinstate his or her license without examination or penalty if certain specified requirements are met. (BPC § 114)

4) Provides that every board within the Department shall waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board, if they are applicable, for any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard if certain specified requirements are met. (BPC § 114.3)

5) Requires each board to inquire in every application if the individual applying for licensure is serving in, or has previously served in, the military. (BPC § 114.5)

6) Requires after July 1, 2016, that a board within the Department expedite, and may assist, the initial licensure process for an applicant who supplies satisfactory evidence to the board that the applicant has served as an active duty member of the Armed Forces of the United States and was honorably discharged and provides that

the board may adopt regulations necessary to implement this requirement. (BPC § 115.4)

7) Requires a board within the Department to expedite the licensure process for an applicant who is married to, or in a domestic partnership or other legal union with an active duty member of the Armed Forces or who is assigned to a duty station within this state under official active duty military orders and holds a current license from another state in the profession or vocation for which her or she seeks a license from the board. (BPC § 115.5)

8) Requires a board within the Department to issue, after appropriate investigation, temporary licenses for specified professions for an applicant who is married to, or is in a domestic partnership or other legal union with an active duty member of the Armed Forces or who is assigned to a duty station within this state under official active duty military orders, if specified requirements are met.

9) Authorizes the State Bar of California to waive the membership fees of any member who is good standing with the State Bar at the time the member enters into military service and for the period for which the service member is in military service. (Military and Veterans Code § 825)

This bill:

1) Requires every board within the Department to grant a fee waiver for the application for and issuance of a license to an individual who is an honorably discharged veteran who served as an active duty member of the California National Guard or the United State Armed Forces.

2) Requires under this program, that the following shall apply:

   a) The veteran shall be granted only one fee waiver.

   b) The fee waiver shall apply only to an application of a license issued to an individual veteran and not to an application of or a license issued to a business or other entity.

   c) A waiver shall not be issued for a renewal license or for the application for and issuance of a license other that one initial license.

FISCAL EFFECT: Unknown. This bill has been keyed "fiscal" by Legislative Counsel.

COMMENTS:

1. **Purpose.** This measure is sponsored by the Author. According to the Author, initial application and occupational license fees can act as a barrier for entry to the workforce for the 240,000 to 360,000 veterans who separate from the military each year. Many either already reside in or intend to make California their home, adding to the 1.9 million veterans residing in the state.

As stated by the Author, veterans often gain valuable job skills during military service which can be used upon entering the civilian workforce. Despite this fact, young male veterans, as of 2014, have an unemployment rate of 16.2 percent. California also has upwards of 11,000 veterans living on the streets, the most of any state.

The Author believes that eliminating these fees will bring more veterans into the workforce, growing the skilled labor market in California, and taking a step to alleviate the growing problem of veteran homelessness.

2. **Background.** The Department currently oversees 39 licensing programs that issue more than two million licenses, registrations and certifications in nearly 200 professional categories. These licensing boards are charged with regulating a particular profession through licensure and enforcement programs. Each of these entities is responsible for enforcing the minimum qualifications for licensure that are established by statute and regulation. Licensure requirements vary in their specificity and flexibility. In many cases, the stated qualifications are specific and provide the regulating entity with little or no discretion over what experience or education can be accepted. Professional and occupational licensure requirements range from completing a form and paying a licensing fee to satisfying significant experience, education and exam requirements.

3. **Consideration of Military Experience and Education.** In 2012, the Department provided a report to the Legislature regarding the licensing programs that have statutes or regulations that allow for the use of military experience and education to meet licensing requirements for the various boards under the Department. Titled, *Report to the California State Legislature: Acceptance of Military Experience & Education Towards Licensure*, it outlined administrative solutions that the Department's programs were instituting to assist military applicants with the licensure process. It provided a breakdown of all licensing programs under the Department that allowed for members of the military to apply experience, education, or training towards licensure and those that did not.

   In 2015, the Department provided an update to its 2012 report and focused on boards providing acceptance of military experience towards licensure pursuant to BPC § 35, which requires that rules and regulations of boards shall provide for methods of evaluating education, training and experience obtained in the armed services. It was found that none of the licensing programs have regulations based on BPC § 35, but that many of the Department's programs have either specific or broad authority to review and apply military education, experience, or training towards licensure. For example, the Bureau of Security and Investigative Services (BSIS) worked with over 5,000 military applicants to guide them through the application process in the last two years. The Contractors' State License Board (CSLB) has also created a formal program to assist former military members with properly applying their education and experience and completing the licensing process.

4. **Impact on Board Licensing Revenue Minimal.** A survey of several licensing boards found that the impact on their overall revenue received from licensing fees

would be minimal. The CSLB has expedited 45 applications for veterans for the last year out of about 18,000 applications received. For BSIS, they receive about 3,700 new applications from veterans on an annual basis out of about 71,000 applications received per year. The Bureau of Automotive Repair and the Board of Barbering and Cosmetology receives about 5 applications from veterans per year.

5. **Other States Granting Licensing Fee Waivers for Veterans.** Florida, Texas and Wisconsin have granted licensing fee waivers for the initial issuance of occupational licenses to honorably discharged veterans. Ohio is in the process of passing a similar law.

6. **Arguments in Support.** The Veterans of Foreign Wars of California (San Diego County and Southern Imperial County) and Goodwill Southern California are in support of this measure for the reasons as indicated by the Author.

   The California Association of Licensed Investigators, Inc. is also in support of this bill and believes that the provisions of this measure will remove an obstacle for veterans who desire to work in our state and will facilitate their entrance into the civilian workforce by waiving the application and initial license fees that are paid by applicants to obtain occupational license.

SUPPORT AND OPPOSITION:

Support:

California Association of Licensed Investigators, Inc.
Goodwill Southern California
Veterans of Foreign Wars of California (San Diego County, Southern Imperial County)

Opposition: None received as of March 29, 2016.

-- END --

SB

1195

AMENDED IN SENATE APRIL 6, 2016

SENATE BILL **No. 1195**

Introduced by Senator Hill

February 18, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

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

~~The~~

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

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

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

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

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

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

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

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

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

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

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

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

1 *SECTION 1. Section 109 of the Business and Professions Code*
2 *is amended to read:*
3 ~~109. (a) The decisions of any of the boards comprising the~~
4 ~~department with respect to setting standards, conducting~~
5 ~~examinations, passing candidates, and revoking licenses, are not~~
6 ~~subject to review by the director, but are final within the limits~~
7 ~~provided by this code which are applicable to the particular board,~~
8 ~~except as provided in this section.~~
9 ~~(b)~~
10 *109. (a)* The director may initiate an investigation of any
11 allegations of misconduct in the preparation, administration, or
12 scoring of an examination which is administered by a board, or in
13 the review of qualifications which are a part of the licensing process
14 of any board. A request for investigation shall be made by the
15 director to the Division of Investigation through the chief of the
16 division or to any law enforcement agency in the jurisdiction where
17 the alleged misconduct occurred.
18 ~~(c)~~
19 *(b) (1)* The director may intervene in any matter of any board
20 where an investigation by the Division of Investigation discloses
21 probable cause to believe that the conduct or activity of a board,
22 or its members or employees constitutes a violation of criminal
23 law.
24 ~~The~~

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

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

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

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

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

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

1 *(B) If the board action or decision was not previously subject*
2 *to a public comment period, the director shall release the subject*
3 *matter of his or her investigation for a 30-day public comment*
4 *period and shall consider all comments received.*
5 *(C) If the director determines that the action or decision furthers*
6 *the public protection mission of the board and the impact on*
7 *competition is justified, the director may approve the action or*
8 *decision.*
9 *(D) If the director determines that the action furthers the public*
10 *protection mission of the board and the impact on competition is*
11 *justified, the director may approve the action or decision. If the*
12 *director finds the action or decision does not further the public*
13 *protection mission of the board or finds that the action or decision*
14 *is not justified, the director shall either refuse to approve it or*
15 *shall modify the action or decision to ensure that any restraints*
16 *of trade are related to, and advance, clearly articulated state law*
17 *or public policy.*
18 *(4) The director shall issue, and post on the department's*
19 *Internet Web site, his or her final written decision approving,*
20 *modifying, or disapproving the action or decision with an*
21 *explanation of the reasons and rationale behind the director's*
22 *decision within 90 days from receipt of the request from a*
23 *consumer or licensee. Notwithstanding any other law, the decision*
24 *of the director shall be final, except if the state or federal*
25 *constitution requires an appeal of the director's decision.*
26 *(d) The review set forth in paragraph (3) of subdivision (c) shall*
27 *not apply when an individual seeks review of disciplinary or other*
28 *action pertaining solely to that individual.*
29 *(e) The director shall report to the Chairs of the Senate Business,*
30 *Professions, and Economic Development Committee and the*
31 *Assembly Business and Professions Committee annually,*
32 *commencing March 1, 2017, regarding his or her disapprovals,*
33 *modifications, or findings from any audit, review, or monitoring*
34 *and evaluation conducted pursuant to this section. That report*
35 *shall be submitted in compliance with Section 9795 of the*
36 *Government Code.*
37 *(f) If the director has already reviewed a board action or*
38 *decision pursuant to this section or Section 313.1, the director*
39 *shall not review that action or decision again.*

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Final rulemaking records.

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

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

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

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

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

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

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

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

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

1 *SEC. 6. Section 2708 of the Business and Professions Code is*
2 *amended to read:*
3 2708. (a) The board shall appoint an executive officer who
4 shall perform the duties delegated by the board and who shall be
5 responsible to it for the accomplishment of those duties.
6 (b) The executive officer shall *not* be a ~~nurse currently licensed~~
7 *licensee* under this chapter and shall possess other qualifications
8 as determined by the board.
9 (c) The executive officer shall not be a member of the board.
10 (d) This section shall remain in effect only until January 1, 2018,
11 and as of that date is repealed, unless a later enacted statute, that
12 is enacted before January 1, 2018, deletes or extends that date.
13 ~~SECTION 1.~~
14 *SEC. 7.* Section 4800 of the Business and Professions Code is
15 amended to read:
16 4800. (a) There is in the Department of Consumer Affairs a
17 Veterinary Medical Board in which the administration of this
18 chapter is vested. The board consists of the following members:
19 (1) Four licensed veterinarians.
20 (2) One registered veterinary technician.
21 (3) Three public members.
22 (b) This section shall remain in effect only until January 1, 2021,
23 and as of that date is repealed.
24 (c) Notwithstanding any other law, the repeal of this section
25 renders the board subject to review by the appropriate policy
26 committees of the Legislature. However, the review of the board
27 shall be limited to those issues identified by the appropriate policy
28 committees of the Legislature and shall not involve the preparation
29 or submission of a sunset review document or evaluative
30 questionnaire.
31 ~~SEC. 2.~~
32 *SEC. 8.* Section 4804.5 of the Business and Professions Code
33 is amended to read:
34 4804.5. (a) The board may appoint a person exempt from civil
35 service who shall be designated as an executive officer and who
36 shall exercise the powers and perform the duties delegated by the
37 board and vested in him or her by this chapter.
38 (b) This section shall remain in effect only until January 1, 2021,
39 and as of that date is repealed.

1 *SEC. 9. Section 4825.1 of the Business and Professions Code*
2 *is amended to read:*
3 4825.1. These definitions shall govern the construction of this
4 chapter as it applies to veterinary medicine.
5 (a) "Diagnosis" means the act or process of identifying or
6 determining the health status of an animal through examination
7 and the opinion derived from that examination.
8 (b) "Animal" means any member of the animal kingdom other
9 than humans, and includes fowl, fish, and reptiles, wild or
10 domestic, whether living or dead.
11 (c) "Food animal" means any animal that is raised for the
12 production of an edible product intended for consumption by
13 humans. The edible product includes, but is not limited to, milk,
14 meat, and eggs. Food animal includes, but is not limited to, cattle
15 (beef or dairy), swine, sheep, poultry, fish, and amphibian species.
16 (d) "Livestock" includes all animals, poultry, aquatic and
17 amphibian species that are raised, kept, or used for profit. It does
18 not include those species that are usually kept as pets such as dogs,
19 cats, and pet birds, or companion animals, including equines.
20 *(e) "Compounding," for the purposes of veterinary medicine,*
21 *shall have the same meaning given in Section 1735 of Title 16 of*
22 *the California Code of Regulations, except that every reference*
23 *therein to "pharmacy" and "pharmacist" shall be replaced with*
24 *"veterinary premises" and "veterinarian," and except that only*
25 *a licensed veterinarian or a licensed registered veterinarian*
26 *technician under direct supervision of a veterinarian may perform*
27 *compounding and shall not delegate to or supervise any part of*
28 *the performance of compounding by any other person.*
29 *SEC. 10. Section 4826.3 is added to the Business and*
30 *Professions Code, to read:*
31 *4826.3. (a) Notwithstanding Section 4051, a veterinarian or*
32 *registered veterinarian technician under the direct supervision of*
33 *a veterinarian with a current and active license may compound a*
34 *drug for anesthesia, the prevention, cure, or relief of a wound,*
35 *fracture, bodily injury, or disease of an animal in a premises*
36 *currently and actively registered with the board and only under*
37 *the following conditions:*
38 *(1) Where there is no FDA-approved animal or human drug*
39 *that can be used as labeled or in an appropriate extralabel manner*

1 *to properly treat the disease, symptom, or condition for which the*
2 *drug is being prescribed.*
3 *(2) Where the compounded drug is not available from a*
4 *compounding pharmacy, outsourcing facility, or other*
5 *compounding supplier in a dosage form and concentration to*
6 *appropriately treat the disease, symptom, or condition for which*
7 *the drug is being prescribed.*
8 *(3) Where the need and prescription for the compounded*
9 *medication has arisen within an established*
10 *veterinarian-client-patient relationship as a means to treat a*
11 *specific occurrence of a disease, symptom, or condition observed*
12 *and diagnosed by the veterinarian in a specific animal that*
13 *threatens the health of the animal or will cause suffering or death*
14 *if left untreated.*
15 *(4) Where the quantity compounded does not exceed a quantity*
16 *demonstrably needed to treat a patient with which the veterinarian*
17 *has a current veterinarian-client-patient relationship.*
18 *(5) Except as specified in subdivision (c), where the compound*
19 *is prepared only with commercially available FDA-approved*
20 *animal or human drugs as active ingredients.*
21 *(b) A compounded veterinary drug may be prepared from an*
22 *FDA-approved animal or human drug for extralabel use only when*
23 *there is no approved animal or human drug that, when used as*
24 *labeled or in an appropriate extralabel manner will, in the*
25 *available dosage form and concentration, treat the disease,*
26 *symptom, or condition. Compounding from an approved human*
27 *drug for use in food-producing animals is not permitted if an*
28 *approved animal drug can be used for compounding.*
29 *(c) A compounded veterinary drug may be prepared from bulk*
30 *drug substances only when:*
31 *(1) The drug is compounded and dispensed by the veterinarian*
32 *to treat an individually identified animal patient under his or her*
33 *care.*
34 *(2) The drug is not intended for use in food-producing animals.*
35 *(3) If the drug contains a bulk drug substance that is a*
36 *component of any marketed FDA-approved animal or human drug,*
37 *there is a change between the compounded drug and the*
38 *comparable marketed drug made for an individually identified*
39 *animal patient that produces a clinical difference for that*
40 *individually identified animal patient, as determined by the*

1 *veterinarian prescribing the compounded drug for his or her*
2 *patient.*
3 *(4) There are no FDA-approved animal or human drugs that*
4 *can be used as labeled or in an appropriate extralabel manner to*
5 *properly treat the disease, symptom, or condition for which the*
6 *drug is being prescribed.*
7 *(5) All bulk drug substances used in compounding are*
8 *manufactured by an establishment registered under Section 360*
9 *of Title 21 of the United States Code and are accompanied by a*
10 *valid certificate of analysis.*
11 *(6) The drug is not sold or transferred by the veterinarian*
12 *compounding the drug, except that the veterinarian shall be*
13 *permitted to administer the drug to a patient under his or her care*
14 *or dispense it to the owner or caretaker of an animal under his or*
15 *her care.*
16 *(7) Within 15 days of becoming aware of any product defect or*
17 *serious adverse event associated with any drug compounded by*
18 *the veterinarian from bulk drug substances, the veterinarian shall*
19 *report it to the federal Food and Drug Administration on Form*
20 *FDA 1932a.*
21 *(8) In addition to any other requirements, the label of any*
22 *veterinary drug compounded from bulk drug substances shall*
23 *indicate the species of the intended animal patient, the name of*
24 *the animal patient, and the name of the owner or caretaker of the*
25 *patient.*
26 *(d) Each compounded veterinary drug preparation shall meet*
27 *the labeling requirements of Section 4076 and Sections 1707.5*
28 *and 1735.4 of Title 16 of the California Code of Regulations, except*
29 *that every reference therein to "pharmacy" and "pharmacist"*
30 *shall be replaced by "veterinary premises" and "veterinarian,"*
31 *and any reference to "patient" shall be understood to refer to the*
32 *animal patient. In addition, each label on a compounded veterinary*
33 *drug preparation shall include withdrawal and holding times, if*
34 *needed, and the disease, symptom, or condition for which the drug*
35 *is being prescribed. Any compounded veterinary drug preparation*
36 *that is intended to be sterile, including for injection, administration*
37 *into the eye, or inhalation, shall in addition meet the labeling*
38 *requirements of Section 1751.2 of Title 16 of the California Code*
39 *of Regulations, except that every reference therein to "pharmacy"*
40 *and "pharmacist" shall be replaced by "veterinary premises" and*

1 *"veterinarian," and any reference to "patient" shall be understood*
2 *to refer to the animal patient.*
3 *(e) Any veterinarian, registered veterinarian technician who is*
4 *under the direct supervision of a veterinarian, and veterinary*
5 *premises engaged in compounding shall meet the compounding*
6 *requirements for pharmacies and pharmacists stated by the*
7 *provisions of Article 4.5 (commencing with Section 1735) of Title*
8 *16 of the California Code of Regulations, except that every*
9 *reference therein to "pharmacy" and "pharmacist" shall be*
10 *replaced by "veterinary premises" and "veterinarian," and any*
11 *reference to "patient" shall be understood to refer to the animal*
12 *patient:*
13 *(1) Section 1735.1 of Title 16 of the California Code of*
14 *Regulations.*
15 *(2) Subdivisions (d),(e), (f), (g), (h), (i), (j), (k), and (l) of Section*
16 *1735.2 of Title 16 of the California Code of Regulations.*
17 *(3) Section 1735.3 of Title 16 of the California Code of*
18 *Regulations, except that only a licensed veterinarian or registered*
19 *veterinarian technician may perform compounding and shall not*
20 *delegate to or supervise any part of the performance of*
21 *compounding by any other person.*
22 *(4) Section 1735.4 of Title 16 of the California Code of*
23 *Regulations.*
24 *(5) Section 1735.5 of Title 16 of the California Code of*
25 *Regulations.*
26 *(6) Section 1735.6 of Title 16 of the California Code of*
27 *Regulations.*
28 *(7) Section 1735.7 of Title 16 of the California Code of*
29 *Regulations.*
30 *(8) Section 1735.8 of Title 16 of the California Code of*
31 *Regulations.*
32 *(f) Any veterinarian, registered veterinarian technician under*
33 *the direct supervision of a veterinarian, and veterinary premises*
34 *engaged in sterile compounding shall meet the sterile compounding*
35 *requirements for pharmacies and pharmacists under Article 7*
36 *(commencing with Section 1751) of Title 16 of the California Code*
37 *of Regulations, except that every reference therein to "pharmacy"*
38 *and "pharmacist" shall be replaced by "veterinary premises" and*
39 *"veterinarian," and any reference to "patient" shall be understood*
40 *to refer to the animal patient.*

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

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

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

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

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

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

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

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

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

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

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

~~(5)~~

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

1 diagnosis and treatment as part of their educational experience,
2 including those in off-campus educational programs under the
3 direct supervision of a licensed veterinarian in good standing, as
4 defined in paragraph (1) of subdivision (b) of Section 4848,
5 appointed by the University of California, Davis, or the Western
6 University of Health Sciences.
7 ~~(6)~~
8 *(5)* A veterinarian who is employed by the Meat and Poultry
9 Inspection Branch of the California Department of Food and
10 Agriculture while actually engaged and employed in his or her
11 official capacity. A person exempt under this paragraph shall not
12 otherwise engage in the practice of veterinary medicine unless he
13 or she is issued a license by the board.
14 ~~(7)~~
15 *(6)* Unlicensed personnel employed by the Department of Food
16 and Agriculture or the United States Department of Agriculture
17 when in the course of their duties they are directed by a veterinarian
18 supervisor to conduct an examination, obtain biological specimens,
19 apply biological tests, or administer medications or biological
20 products as part of government disease or condition monitoring,
21 investigation, control, or eradication activities.
22 (b) (1) For purposes of paragraph (3) of subdivision (a), a
23 regularly licensed veterinarian in good standing who is called from
24 another state by a law enforcement agency or animal control
25 agency, as defined in Section 31606 of the Food and Agricultural
26 Code, to attend to cases that are a part of an investigation of an
27 alleged violation of federal or state animal fighting or animal
28 cruelty laws within a single geographic location shall be exempt
29 from the licensing requirements of this chapter if the law
30 enforcement agency or animal control agency determines that it
31 is necessary to call the veterinarian in order for the agency or
32 officer to conduct the investigation in a timely, efficient, and
33 effective manner. In determining whether it is necessary to call a
34 veterinarian from another state, consideration shall be given to the
35 availability of veterinarians in this state to attend to these cases.
36 An agency, department, or officer that calls a veterinarian pursuant
37 to this subdivision shall notify the board of the investigation.
38 (2) Notwithstanding any other provision of this chapter, a
39 regularly licensed veterinarian in good standing who is called from
40 another state to attend to cases that are a part of an investigation

1 described in paragraph (1) may provide veterinary medical care
2 for animals that are affected by the investigation with a temporary
3 shelter facility, and the temporary shelter facility shall be exempt
4 from the registration requirement of Section 4853 if all of the
5 following conditions are met:
6 (A) The temporary shelter facility is established only for the
7 purpose of the investigation.
8 (B) The temporary shelter facility provides veterinary medical
9 care, shelter, food, and water only to animals that are affected by
10 the investigation.
11 (C) The temporary shelter facility complies with Section 4854.
12 (D) The temporary shelter facility exists for not more than 60
13 days, unless the law enforcement agency or animal control agency
14 determines that a longer period of time is necessary to complete
15 the investigation.
16 (E) Within 30 calendar days upon completion of the provision
17 of veterinary health care services at a temporary shelter facility
18 established pursuant to this section, the veterinarian called from
19 another state by a law enforcement agency or animal control agency
20 to attend to a case shall file a report with the board. The report
21 shall contain the date, place, type, and general description of the
22 care provided, along with a listing of the veterinary health care
23 practitioners who participated in providing that care.
24 (c) For purposes of paragraph (3) of subdivision (a), the board
25 may inspect temporary facilities established pursuant to this
26 section.
27 *SEC. 14. Section 4846.5 of the Business and Professions Code*
28 *is amended to read:*
29 4846.5. (a) Except as provided in this section, the board shall
30 issue renewal licenses only to those applicants that have completed
31 a minimum of 36 hours of continuing education in the preceding
32 two years.
33 (b) (1) Notwithstanding any other law, continuing education
34 hours shall be earned by attending courses relevant to veterinary
35 medicine and sponsored or cosponsored by any of the following:
36 (A) American Veterinary Medical Association (AVMA)
37 accredited veterinary medical colleges.
38 (B) Accredited colleges or universities offering programs
39 relevant to veterinary medicine.
40 (C) The American Veterinary Medical Association.

1 (D) American Veterinary Medical Association recognized
2 specialty or affiliated allied groups.
3 (E) American Veterinary Medical Association's affiliated state
4 veterinary medical associations.
5 (F) Nonprofit annual conferences established in conjunction
6 with state veterinary medical associations.
7 (G) Educational organizations affiliated with the American
8 Veterinary Medical Association or its state affiliated veterinary
9 medical associations.
10 (H) Local veterinary medical associations affiliated with the
11 California Veterinary Medical Association.
12 (I) Federal, state, or local government agencies.
13 (J) Providers accredited by the Accreditation Council for
14 Continuing Medical Education (ACCME) or approved by the
15 American Medical Association (AMA), providers recognized by
16 the American Dental Association Continuing Education
17 Recognition Program (ADA CERP), and AMA or ADA affiliated
18 state, local, and specialty organizations.
19 (2) Continuing education credits shall be granted to those
20 veterinarians taking self-study courses, which may include, but
21 are not limited to, reading journals, viewing video recordings, or
22 listening to audio recordings. The taking of these courses shall be
23 limited to no more than six hours biennially.
24 (3) The board may approve other continuing veterinary medical
25 education providers not specified in paragraph (1).
26 (A) The board has the authority to recognize national continuing
27 education approval bodies for the purpose of approving continuing
28 education providers not specified in paragraph (1).
29 (B) Applicants seeking continuing education provider approval
30 shall have the option of applying to the board or to a
31 board-recognized national approval body.
32 (4) For good cause, the board may adopt an order specifying,
33 on a prospective basis, that a provider of continuing veterinary
34 medical education authorized pursuant to paragraph (1) or (3) is
35 no longer an acceptable provider.
36 (5) Continuing education hours earned by attending courses
37 sponsored or cosponsored by those entities listed in paragraph (1)
38 between January 1, 2000, and January 1, 2001, shall be credited
39 toward a veterinarian's continuing education requirement under
40 this section.

1 (c) Every person renewing his or her license issued pursuant to
2 Section 4846.4, or any person applying for relicensure or for
3 reinstatement of his or her license to active status, shall submit
4 proof of compliance with this section to the board certifying that
5 he or she is in compliance with this section. Any false statement
6 submitted pursuant to this section shall be a violation subject to
7 Section 4831.
8 (d) This section shall not apply to a veterinarian's first license
9 renewal. This section shall apply only to second and subsequent
10 license renewals granted on or after January 1, 2002.
11 (e) The board shall have the right to audit the records of all
12 applicants to verify the completion of the continuing education
13 requirement. Applicants shall maintain records of completion of
14 required continuing education coursework for a period of four
15 years and shall make these records available to the board for
16 auditing purposes upon request. If the board, during this audit,
17 questions whether any course reported by the veterinarian satisfies
18 the continuing education requirement, the veterinarian shall provide
19 information to the board concerning the content of the course; the
20 name of its sponsor and cosponsor, if any; and specify the specific
21 curricula that was of benefit to the veterinarian.
22 (f) A veterinarian desiring an inactive license or to restore an
23 inactive license under Section 701 shall submit an application on
24 a form provided by the board. In order to restore an inactive license
25 to active status, the veterinarian shall have completed a minimum
26 of 36 hours of continuing education within the last two years
27 preceding application. The inactive license status of a veterinarian
28 shall not deprive the board of its authority to institute or continue
29 a disciplinary action against a licensee.
30 (g) Knowing misrepresentation of compliance with this article
31 by a veterinarian constitutes unprofessional conduct and grounds
32 for disciplinary action or for the issuance of a citation and the
33 imposition of a civil penalty pursuant to Section 4883.
34 (h) The board, in its discretion, may exempt from the continuing
35 education requirement any veterinarian who for reasons of health,
36 military service, or undue hardship cannot meet those requirements.
37 Applications for waivers shall be submitted on a form provided
38 by the board.
39 (i) The administration of this section may be funded through
40 professional license and continuing education provider fees. The

1 fees related to the administration of this section shall not exceed
2 the costs of administering the corresponding provisions of this
3 section.
4 (j) For those continuing education providers not listed in
5 paragraph (1) of subdivision (b), the board or its recognized
6 national approval agent shall establish criteria by which a provider
7 of continuing education shall be approved. The board shall initially
8 review and approve these criteria and may review the criteria as
9 needed. The board or its recognized agent shall monitor, maintain,
10 and manage related records and data. The board may impose an
11 application fee, not to exceed two hundred dollars ($200)
12 biennially, for continuing education providers not listed in
13 paragraph (1) of subdivision (b).
14 (k) (1) ~~On or after~~ *Beginning* January 1, 2018, a licensed
15 veterinarian who renews his or her license shall complete a
16 minimum of one credit hour of continuing education on the
17 judicious use of medically important antimicrobial drugs every
18 four years as part of his or her continuing education requirements.
19 (2) For purposes of this subdivision, "medically important
20 antimicrobial drug" means an antimicrobial drug listed in Appendix
21 A of the federal Food and Drug Administration's Guidance for
22 Industry #152, including critically important, highly important,
23 and important antimicrobial drugs, as that appendix may be
24 amended.
25 *SEC. 15. Section 4848.1 is added to the Business and*
26 *Professions Code, to read:*
27 *4848.1. (a) A veterinarian engaged in the practice of veterinary*
28 *medicine, as defined in Section 4826, employed by the University*
29 *of California while engaged in the performance of duties in*
30 *connection with the School of Veterinary Medicine or employed*
31 *by the Western University of Health Sciences while engaged in the*
32 *performance of duties in connection with the College of Veterinary*
33 *Medicine shall be licensed in California or shall hold a university*
34 *license issued by the board.*
35 *(b) An applicant is eligible to hold a university license if all of*
36 *the following are satisfied:*
37 *(1) The applicant is currently employed by the University of*
38 *California or Western University of Health Sciences as defined in*
39 *subdivision (a).*

1 *(2) Passes an examination concerning the statutes and*
2 *regulations of the Veterinary Medicine Practice Act, administered*
3 *by the board, pursuant to subparagraph (C) of paragraph (2) of*
4 *subdivision (a) of Section 4848.*
5 *(3) Successfully completes the approved educational curriculum*
6 *described in paragraph (5) of subdivision (b) of Section 4848 on*
7 *regionally specific and important diseases and conditions.*
8 *(c) A university license:*
9 *(1) Shall be numbered as described in Section 4847.*
10 *(2) Shall cease to be valid upon termination of employment by*
11 *the University of California or by the Western University of Health*
12 *Sciences.*
13 *(3) Shall be subject to the license renewal provisions in Section*
14 *4846.4.*
15 *(4) Shall be subject to denial, revocation, or suspension pursuant*
16 *to Sections 4875 and 4883.*
17 *(d) An individual who holds a University License is exempt from*
18 *satisfying the license renewal requirements of Section 4846.5.*
19 *SEC. 16. Section 4853.7 is added to the Business and*
20 *Professions Code, to read:*
21 *4853.7. A premise registration that is not renewed within five*
22 *years after its expiration may not be renewed and shall not be*
23 *restored, reissued, or reinstated thereafter. However, an*
24 *application for a new premise registration may be submitted and*
25 *obtained if both of the following conditions are met:*
26 *(a) No fact, circumstance, or condition exists that, if the premise*
27 *registration was issued, would justify its revocation or suspension.*
28 *(b) All of the fees that would be required for the initial premise*
29 *registration are paid at the time of application.*
30 *SEC. 17. Section 825 of the Government Code is amended to*
31 *read:*
32 825. (a) Except as otherwise provided in this section, if an
33 employee or former employee of a public entity requests the public
34 entity to defend him or her against any claim or action against him
35 or her for an injury arising out of an act or omission occurring
36 within the scope of his or her employment as an employee of the
37 public entity and the request is made in writing not less than 10
38 days before the day of trial, and the employee or former employee
39 reasonably cooperates in good faith in the defense of the claim or
40 action, the public entity shall pay any judgment based thereon or

1 any compromise or settlement of the claim or action to which the
2 public entity has agreed.
3 If the public entity conducts the defense of an employee or
4 former employee against any claim or action with his or her
5 reasonable good-faith cooperation, the public entity shall pay any
6 judgment based thereon or any compromise or settlement of the
7 claim or action to which the public entity has agreed. However,
8 where the public entity conducted the defense pursuant to an
9 agreement with the employee or former employee reserving the
10 rights of the public entity not to pay the judgment, compromise,
11 or settlement until it is established that the injury arose out of an
12 act or omission occurring within the scope of his or her
13 employment as an employee of the public entity, the public entity
14 is required to pay the judgment, compromise, or settlement only
15 if it is established that the injury arose out of an act or omission
16 occurring in the scope of his or her employment as an employee
17 of the public entity.
18 Nothing in this section authorizes a public entity to pay that part
19 of a claim or judgment that is for punitive or exemplary damages.
20 (b) Notwithstanding subdivision (a) or any other provision of
21 law, a public entity is authorized to pay that part of a judgment
22 that is for punitive or exemplary damages if the governing body
23 of that public entity, acting in its sole discretion except in cases
24 involving an entity of the state government, finds all of the
25 following:
26 (1) The judgment is based on an act or omission of an employee
27 or former employee acting within the course and scope of his or
28 her employment as an employee of the public entity.
29 (2) At the time of the act giving rise to the liability, the employee
30 or former employee acted, or failed to act, in good faith, without
31 actual malice and in the apparent best interests of the public entity.
32 (3) Payment of the claim or judgment would be in the best
33 interests of the public entity.
34 As used in this subdivision with respect to an entity of state
35 government, "a decision of the governing body" means the
36 approval of the Legislature for payment of that part of a judgment
37 that is for punitive damages or exemplary damages, upon
38 recommendation of the appointing power of the employee or
39 former employee, based upon the finding by the Legislature and
40 the appointing authority of the existence of the three conditions

1 for payment of a punitive or exemplary damages claim. The
2 provisions of subdivision (a) of Section 965.6 shall apply to the
3 payment of any claim pursuant to this subdivision.
4 The discovery of the assets of a public entity and the introduction
5 of evidence of the assets of a public entity shall not be permitted
6 in an action in which it is alleged that a public employee is liable
7 for punitive or exemplary damages.
8 The possibility that a public entity may pay that part of a
9 judgment that is for punitive damages shall not be disclosed in any
10 trial in which it is alleged that a public employee is liable for
11 punitive or exemplary damages, and that disclosure shall be
12 grounds for a mistrial.
13 (c) Except as provided in subdivision (d), if the provisions of
14 this section are in conflict with the provisions of a memorandum
15 of understanding reached pursuant to Chapter 10 (commencing
16 with Section 3500) of Division 4 of Title 1, the memorandum of
17 understanding shall be controlling without further legislative action,
18 except that if those provisions of a memorandum of understanding
19 require the expenditure of funds, the provisions shall not become
20 effective unless approved by the Legislature in the annual Budget
21 Act.
22 (d) The subject of payment of punitive damages pursuant to this
23 section or any other provision of law shall not be a subject of meet
24 and confer under the provisions of Chapter 10 (commencing with
25 Section 3500) of Division 4 of Title 1, or pursuant to any other
26 law or authority.
27 (e) Nothing in this section shall affect the provisions of Section
28 818 prohibiting the award of punitive damages against a public
29 entity. This section shall not be construed as a waiver of a public
30 entity's immunity from liability for punitive damages under Section
31 1981, 1983, or 1985 of Title 42 of the United States Code.
32 (f) (1) Except as provided in paragraph (2), a public entity shall
33 not pay a judgment, compromise, or settlement arising from a
34 claim or action against an elected official, if the claim or action is
35 based on conduct by the elected official by way of tortiously
36 intervening or attempting to intervene in, or by way of tortiously
37 influencing or attempting to influence the outcome of, any judicial
38 action or proceeding for the benefit of a particular party by
39 contacting the trial judge or any commissioner, court-appointed
40 arbitrator, court-appointed mediator, or court-appointed special

1 referee assigned to the matter, or the court clerk, bailiff, or marshal
2 after an action has been filed, unless he or she was counsel of
3 record acting lawfully within the scope of his or her employment
4 on behalf of that party. Notwithstanding Section 825.6, if a public
5 entity conducted the defense of an elected official against such a
6 claim or action and the elected official is found liable by the trier
7 of fact, the court shall order the elected official to pay to the public
8 entity the cost of that defense.
9 (2) If an elected official is held liable for monetary damages in
10 the action, the plaintiff shall first seek recovery of the judgment
11 against the assets of the elected official. If the elected official's
12 assets are insufficient to satisfy the total judgment, as determined
13 by the court, the public entity may pay the deficiency if the public
14 entity is authorized by law to pay that judgment.
15 (3) To the extent the public entity pays any portion of the
16 judgment or is entitled to reimbursement of defense costs pursuant
17 to paragraph (1), the public entity shall pursue all available
18 creditor's remedies against the elected official, including
19 garnishment, until that party has fully reimbursed the public entity.
20 (4) This subdivision shall not apply to any criminal or civil
21 enforcement action brought in the name of the people of the State
22 of California by an elected district attorney, city attorney, or
23 attorney general.
24 *(g) Notwithstanding subdivision (a), a public entity shall pay*
25 *for a judgment or settlement for treble damage antitrust awards*
26 *against a member of a regulatory board for an act or omission*
27 *occurring within the scope of his or her employment as a member*
28 *of a regulatory board.*
29 *SEC. 18. Section 11346.5 of the Government Code is amended*
30 *to read:*
31 11346.5. (a) The notice of proposed adoption, amendment, or
32 repeal of a regulation shall include the following:
33 (1) A statement of the time, place, and nature of proceedings
34 for adoption, amendment, or repeal of the regulation.
35 (2) Reference to the authority under which the regulation is
36 proposed and a reference to the particular code sections or other
37 provisions of law that are being implemented, interpreted, or made
38 specific.

1 (3) An informative digest drafted in plain English in a format
2 similar to the Legislative Counsel's digest on legislative bills. The
3 informative digest shall include the following:
4 (A) A concise and clear summary of existing laws and
5 regulations, if any, related directly to the proposed action and of
6 the effect of the proposed action.
7 (B) If the proposed action differs substantially from an existing
8 comparable federal regulation or statute, a brief description of the
9 significant differences and the full citation of the federal regulations
10 or statutes.
11 (C) A policy statement overview explaining the broad objectives
12 of the regulation and the specific benefits anticipated by the
13 proposed adoption, amendment, or repeal of a regulation, including,
14 to the extent applicable, nonmonetary benefits such as the
15 protection of public health and safety, worker safety, or the
16 environment, the prevention of discrimination, the promotion of
17 fairness or social equity, and the increase in openness and
18 transparency in business and government, among other things.
19 (D) An evaluation of whether the proposed regulation is
20 inconsistent or incompatible with existing state regulations.
21 (4) Any other matters as are prescribed by statute applicable to
22 the specific state agency or to any specific regulation or class of
23 regulations.
24 (5) A determination as to whether the regulation imposes a
25 mandate on local agencies or school districts and, if so, whether
26 the mandate requires state reimbursement pursuant to Part 7
27 (commencing with Section 17500) of Division 4.
28 (6) An estimate, prepared in accordance with instructions
29 adopted by the Department of Finance, of the cost or savings to
30 any state agency, the cost to any local agency or school district
31 that is required to be reimbursed under Part 7 (commencing with
32 Section 17500) of Division 4, other nondiscretionary cost or
33 savings imposed on local agencies, and the cost or savings in
34 federal funding to the state.
35 For purposes of this paragraph, "cost or savings" means
36 additional costs or savings, both direct and indirect, that a public
37 agency necessarily incurs in reasonable compliance with
38 regulations.
39 (7) If a state agency, in proposing to adopt, amend, or repeal
40 any administrative regulation, makes an initial determination that

1 the action may have a significant, statewide adverse economic
2 impact directly affecting business, including the ability of
3 California businesses to compete with businesses in other states,
4 it shall include the following information in the notice of proposed
5 action:
6 (A) Identification of the types of businesses that would be
7 affected.
8 (B) A description of the projected reporting, recordkeeping, and
9 other compliance requirements that would result from the proposed
10 action.
11 (C) The following statement: "The (name of agency) has made
12 an initial determination that the (adoption/amendment/repeal) of
13 this regulation may have a significant, statewide adverse economic
14 impact directly affecting business, including the ability of
15 California businesses to compete with businesses in other states.
16 The (name of agency) (has/has not) considered proposed
17 alternatives that would lessen any adverse economic impact on
18 business and invites you to submit proposals. Submissions may
19 include the following considerations:
20 (i) The establishment of differing compliance or reporting
21 requirements or timetables that take into account the resources
22 available to businesses.
23 (ii) Consolidation or simplification of compliance and reporting
24 requirements for businesses.
25 (iii) The use of performance standards rather than prescriptive
26 standards.
27 (iv) Exemption or partial exemption from the regulatory
28 requirements for businesses."
29 (8) If a state agency, in adopting, amending, or repealing any
30 administrative regulation, makes an initial determination that the
31 action will not have a significant, statewide adverse economic
32 impact directly affecting business, including the ability of
33 California businesses to compete with businesses in other states,
34 it shall make a declaration to that effect in the notice of proposed
35 action. In making this declaration, the agency shall provide in the
36 record facts, evidence, documents, testimony, or other evidence
37 upon which the agency relies to support its initial determination.
38 An agency's initial determination and declaration that a proposed
39 adoption, amendment, or repeal of a regulation may have or will
40 not have a significant, adverse impact on businesses, including the

1 ability of California businesses to compete with businesses in other
2 states, shall not be grounds for the office to refuse to publish the
3 notice of proposed action.
4 (9) A description of all cost impacts, known to the agency at
5 the time the notice of proposed action is submitted to the office,
6 that a representative private person or business would necessarily
7 incur in reasonable compliance with the proposed action.
8 If no cost impacts are known to the agency, it shall state the
9 following:
10 "The agency is not aware of any cost impacts that a
11 representative private person or business would necessarily incur
12 in reasonable compliance with the proposed action."
13 (10) A statement of the results of the economic impact
14 assessment required by subdivision (b) of Section 11346.3 or the
15 standardized regulatory impact analysis if required by subdivision
16 (c) of Section 11346.3, a summary of any comments submitted to
17 the agency pursuant to subdivision (f) of Section 11346.3 and the
18 agency's response to those comments.
19 (11) The finding prescribed by subdivision (d) of Section
20 11346.3, if required.
21 (12) (A) A statement that the action would have a significant
22 effect on housing costs, if a state agency, in adopting, amending,
23 or repealing any administrative regulation, makes an initial
24 determination that the action would have that effect.
25 (B) The agency officer designated in paragraph ~~(14)~~ *(15)* shall
26 make available to the public, upon request, the agency's evaluation,
27 if any, of the effect of the proposed regulatory action on housing
28 costs.
29 (C) The statement described in subparagraph (A) shall also
30 include the estimated costs of compliance and potential benefits
31 of a building standard, if any, that were included in the initial
32 statement of reasons.
33 (D) For purposes of model codes adopted pursuant to Section
34 18928 of the Health and Safety Code, the agency shall comply
35 with the requirements of this paragraph only if an interested party
36 has made a request to the agency to examine a specific section for
37 purposes of estimating the costs of compliance and potential
38 benefits for that section, as described in Section 11346.2.
39 *(13) If the regulatory action is submitted by a state board on*
40 *which a controlling number of decisionmakers are active market*

participants in the market the board regulates, a statement that the adopting agency has evaluated the impact of the proposed regulation on competition, and that the proposed regulation furthers a clearly articulated and affirmatively expressed state law to restrain competition.

~~(13)~~

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

~~(14)~~

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

~~(15)~~

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

~~(16)~~

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

~~(17)~~

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

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

~~(18)~~

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

~~(19)~~

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

~~(20)~~

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

~~(21)~~

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

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

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

1 *SEC. 19. Section 11349 of the Government Code is amended*
2 *to read:*
3 11349. The following definitions govern the interpretation of
4 this chapter:
5 (a) "Necessity" means the record of the rulemaking proceeding
6 demonstrates by substantial evidence the need for a regulation to
7 effectuate the purpose of the statute, court decision, or other
8 provision of law that the regulation implements, interprets, or
9 makes specific, taking into account the totality of the record. For
10 purposes of this standard, evidence includes, but is not limited to,
11 facts, studies, and expert opinion.
12 (b) "Authority" means the provision of law which permits or
13 obligates the agency to adopt, amend, or repeal a regulation.
14 (c) "Clarity" means written or displayed so that the meaning of
15 regulations will be easily understood by those persons directly
16 affected by them.
17 (d) "Consistency" means being in harmony with, and not in
18 conflict with or contradictory to, existing statutes, court decisions,
19 or other provisions of law.
20 (e) "Reference" means the statute, court decision, or other
21 provision of law which the agency implements, interprets, or makes
22 specific by adopting, amending, or repealing a regulation.
23 (f) "Nonduplication" means that a regulation does not serve the
24 same purpose as a state or federal statute or another regulation.
25 This standard requires that an agency proposing to amend or adopt
26 a regulation must identify any state or federal statute or regulation
27 which is overlapped or duplicated by the proposed regulation and
28 justify any overlap or duplication. This standard is not intended
29 to prohibit state agencies from printing relevant portions of
30 enabling legislation in regulations when the duplication is necessary
31 to satisfy the clarity standard in paragraph (3) of subdivision (a)
32 of Section 11349.1. This standard is intended to prevent the
33 indiscriminate incorporation of statutory language in a regulation.
34 *(g) "Competitive impact" means that the record of the*
35 *rulemaking proceeding or other documentation demonstrates that*
36 *the regulation is authorized by a clearly articulated and*
37 *affirmatively expressed state law, that the regulation furthers the*
38 *public protection mission of the state agency, and that the impact*
39 *on competition is justified in light of the applicable regulatory*
40 *rationale for the regulation.*

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

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

(1) Necessity.

(2) Authority.

(3) Clarity.

(4) Consistency.

(5) Reference.

(6) Nonduplication.

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

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

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

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

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

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

1 included the data used and calculations made and the summary
2 report of the estimate in the file of the rulemaking.
3 (2) The agency has not complied with Section 11346.3.
4 "Noncompliance" means that the agency failed to complete the
5 economic impact assessment or standardized regulatory impact
6 analysis required by Section 11346.3 or failed to include the
7 assessment or analysis in the file of the rulemaking proceeding as
8 required by Section 11347.3.
9 (3) The adopting agency has prepared the estimate required by
10 paragraph (6) of subdivision (a) of Section 11346.5, the estimate
11 indicates that the regulation will result in a cost to local agencies
12 or school districts that is required to be reimbursed under Part 7
13 (commencing with Section 17500) of Division 4, and the adopting
14 agency fails to do any of the following:
15 (A) Cite an item in the Budget Act for the fiscal year in which
16 the regulation will go into effect as the source from which the
17 Controller may pay the claims of local agencies or school districts.
18 (B) Cite an accompanying bill appropriating funds as the source
19 from which the Controller may pay the claims of local agencies
20 or school districts.
21 (C) Attach a letter or other documentation from the Department
22 of Finance which states that the Department of Finance has
23 approved a request by the agency that funds be included in the
24 Budget Bill for the next following fiscal year to reimburse local
25 agencies or school districts for the costs mandated by the
26 regulation.
27 (D) Attach a letter or other documentation from the Department
28 of Finance which states that the Department of Finance has
29 authorized the augmentation of the amount available for
30 expenditure under the agency's appropriation in the Budget Act
31 which is for reimbursement pursuant to Part 7 (commencing with
32 Section 17500) of Division 4 to local agencies or school districts
33 from the unencumbered balances of other appropriations in the
34 Budget Act and that this augmentation is sufficient to reimburse
35 local agencies or school districts for their costs mandated by the
36 regulation.
37 (4) The proposed regulation conflicts with an existing state
38 regulation and the agency has not identified the manner in which
39 the conflict may be resolved.

1 (5) The agency did not make the alternatives determination as
2 required by paragraph (4) of subdivision (a) of Section 11346.9.
3 *(6) The office decides that the record of the rulemaking*
4 *proceeding or other documentation for the proposed regulation*
5 *does not demonstrate that the regulation is authorized by a clearly*
6 *articulated and affirmatively expressed state law, that the*
7 *regulation does not further the public protection mission of the*
8 *state agency, or that the impact on competition is not justified in*
9 *light of the applicable regulatory rationale for the regulation.*
10 (e) The office shall notify the Department of Finance of all
11 regulations returned pursuant to subdivision (d).
12 (f) The office shall return a rulemaking file to the submitting
13 agency if the file does not comply with subdivisions (a) and (b)
14 of Section 11347.3. Within three state working days of the receipt
15 of a rulemaking file, the office shall notify the submitting agency
16 of any deficiency identified. If no notice of deficiency is mailed
17 to the adopting agency within that time, a rulemaking file shall be
18 deemed submitted as of the date of its original receipt by the office.
19 A rulemaking file shall not be deemed submitted until each
20 deficiency identified under this subdivision has been corrected.
21 (g) Notwithstanding any other law, return of the regulation to
22 the adopting agency by the office pursuant to this section is the
23 exclusive remedy for a failure to comply with subdivision (c) of
24 Section 11346.3 or paragraph (10) of subdivision (a) of Section
25 11346.5.
26 *(h) The office may designate, employ, or contract for the services*
27 *of independent antitrust or applicable economic experts when*
28 *reviewing proposed regulations for competitive impact. When*
29 *reviewing a regulation for competitive impact, the office shall do*
30 *all of the following:*
31 *(1) If the Director of Consumer Affairs issued a written decision*
32 *pursuant to subdivision (c) of Section 109 of the Business and*
33 *Professions Code, the office shall review and consider the decision*
34 *and all supporting documentation in the rulemaking file.*
35 *(2) Consider whether the anticompetitive effects of the proposed*
36 *regulation are clearly outweighed by the public policy merits.*
37 *(3) Provide a written opinion setting forth the office's findings*
38 *and substantive conclusions under paragraph (2), including, but*
39 *not limited to, whether rejection or modification of the proposed*
40 *regulation is necessary to ensure that restraints of trade are related*

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

O

SB

1217

SENATE BILL **No. 1217**

Introduced by Senator Stone

February 18, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(d)~~

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

~~(e)~~

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

1 notice within 45 days after the settlement was reduced to writing
2 and signed by all of the parties, the arbitration award was served
3 on the parties, or the date of entry of the civil judgment, the
4 attorney shall make the report to the agency.
5 ~~(f)~~
6 *(d)* Notwithstanding any other provision of law, no insurer shall
7 enter into a settlement without the written consent of the insured,
8 except that this prohibition shall not void any settlement entered
9 into without that written consent. The requirement of written
10 consent shall only be waived by both the insured and the insurer.
11 This section shall only apply to a settlement on a policy of
12 insurance executed or renewed on or after January 1, 1971.
13 SEC. 3. Section 801.1 of the Business and Professions Code
14 is amended to read:
15 801.1. ~~(a)~~ Every state or local governmental agency that
16 self-insures a person who holds a license, certificate, or similar
17 authority from or under any agency specified in subdivision (a) of
18 Section 800 (except a person licensed pursuant to Chapter 3
19 (commencing with Section 1200) or Chapter 5 (commencing with
20 Section 2000) or the Osteopathic Initiative Act) shall send a
21 complete report to that agency as to any settlement or arbitration
22 award over ~~three thousand dollars ($3,000)~~ *ten thousand dollars*
23 *($10,000)* of a claim or action for damages for death or personal
24 injury caused by that person's negligence, error, or omission in
25 practice, or rendering of unauthorized professional services. The
26 report shall be sent within 30 days after the written settlement
27 agreement has been reduced to writing and signed by all parties
28 thereto or within 30 days after service of the arbitration award on
29 the parties.
30 ~~(b) Every state or local governmental agency that self-insures~~
31 ~~a person licensed pursuant to Chapter 13 (commencing with~~
32 ~~Section 4980), Chapter 14 (commencing with Section 4990), or~~
33 ~~Chapter 16 (commencing with Section 4999.10) shall send a~~
34 ~~complete report to the Board of Behavioral Science Examiners as~~
35 ~~to any settlement or arbitration award over ten thousand dollars~~
36 ~~($10,000) of a claim or action for damages for death or personal~~
37 ~~injury caused by that person's negligence, error, or omission in~~
38 ~~practice, or rendering of unauthorized professional services. The~~
39 ~~report shall be sent within 30 days after the written settlement~~
40 ~~agreement has been reduced to writing and signed by all parties~~

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

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

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

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

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

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SB

1334

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL **No. 1334**

Introduced by Senator Stone

February 19, 2016

An act to amend Section 11160 of the Penal Code, relating to crime reporting.

LEGISLATIVE COUNSEL'S DIGEST

SB 1334, as amended, Stone. Crime reporting: health practitioners: human trafficking.

Existing law requires a health practitioner, as specified, who, in his or her professional capacity or within the scope of his or her employment, provides medical services to a patient who he or she knows, or reasonably suspects, has suffered from a wound or other physical injury where the injury is by means of a firearm or is the result of assaultive or abusive conduct, to make a report to a law enforcement agency, as specified. Existing law defines "assaultive or abusive conduct" for these purposes as a violation of specified crimes. Under existing law, a violation of this provision is a crime.

This bill would *require a health care practitioner who provides medical services to a patient who discloses that he or she is seeking treatment due to being the victim of assaultive or abusive conduct, to additionally make a report to a law enforcement agency. The bill would also* add the crime of human trafficking to the list of crimes that constitute assaultive or abusive conduct for purposes of the above reporting ~~requirements.~~ *requirements and the reporting requirements added by this bill.* By increasing the scope of an existing crime, this bill would impose a state-mandated local program.

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

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

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

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

1 SECTION 1. Section 11160 of the Penal Code is amended to
2 read:
3 11160. (a) *(1)* A health practitioner employed in a health
4 facility, clinic, physician's office, local or state public health
5 department, or a clinic or other type of facility operated by a local
6 or state public health department who, in his or her professional
7 capacity or within the scope of his or her employment, provides
8 medical services for a physical condition to a patient who he or
9 she knows, or reasonably suspects, is a person described as follows,
10 shall immediately make a report in accordance with subdivision
11 (b):
12 ~~(1)~~
13 *(A)* A person suffering from a wound or other physical injury
14 inflicted by his or her own act or inflicted by another where the
15 injury is by means of a firearm.
16 ~~(2)~~
17 *(B)* A person suffering from a wound or other physical injury
18 inflicted upon the person where the injury is the result of assaultive
19 or abusive conduct.
20 *(2) A health practitioner employed in a health facility, clinic,*
21 *physician's office, local or state public health department, or a*
22 *clinic or other type of facility operated by a local or state public*
23 *health department who, in his or her professional capacity or*
24 *within the scope of his or her employment, provides medical*
25 *services to a patient who discloses that he or she is seeking*
26 *treatment due to being the victim of assaultive or abusive conduct,*
27 *shall immediately make a report in accordance with subdivision*
28 *(b).*
29 (b) A health practitioner employed in a health facility, clinic,
30 physician's office, local or state public health department, or a

clinic or other type of facility operated by a local or state public health department shall make a report regarding persons described in subdivision (a) to a local law enforcement agency as follows:

(1) A report by telephone shall be made immediately or as soon as practically possible.

(2) A written report shall be prepared on the standard form developed in compliance with paragraph (4) of this ~~subdivision, and Section 11160.2, and~~ *subdivision* adopted by the Office of Emergency Services, or on a form developed and adopted by another state agency that otherwise fulfills the requirements of the standard form. The completed form shall be sent to a local law enforcement agency within two working days of receiving the information regarding the person.

(3) A local law enforcement agency shall be notified and a written report shall be prepared and sent pursuant to paragraphs (1) and (2) even if the person who suffered the wound, other injury, or assaultive or abusive conduct has expired, regardless of whether or not the wound, other injury, or assaultive or abusive conduct was a factor contributing to the death, and even if the evidence of the conduct of the perpetrator of the wound, other injury, or assaultive or abusive conduct was discovered during an autopsy.

(4) The report shall include, but shall not be limited to, the following:

(A) The name of the ~~injured~~ *injured, assaulted, or abused* person, if known.

(B) The ~~injured~~ *injured, assaulted, or abused* person's whereabouts.

(C) The character and extent of the person's ~~injuries.~~ *injuries, if any.*

(D) The identity of a person the ~~injured~~ *injured, assaulted, or abused* person alleges inflicted the wound, other injury, or assaultive or abusive conduct upon the injured person.

(c) For the purposes of this section, "injury" shall not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restricted dangerous drug.

(d) For the purposes of this section, "assaultive or abusive conduct" ~~shall include~~ *includes* any of the following offenses:

(1) Murder, in violation of Section 187.

(2) Manslaughter, in violation of Section 192 or 192.5.

(3) Mayhem, in violation of Section 203.
(4) Aggravated mayhem, in violation of Section 205.
(5) Torture, in violation of Section 206.
(6) Assault with intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220.
(7) Administering controlled substances or anesthetic to aid in commission of a felony, in violation of Section 222.
(8) Human trafficking, in violation of Section 236.1.
(9) Battery, in violation of Section 242.
(10) Sexual battery, in violation of Section 243.4.
(11) Incest, in violation of Section 285.
(12) Throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or disfigure, in violation of Section 244.
(13) Assault with a stun gun or taser, in violation of Section 244.5.
(14) Assault with a deadly weapon, firearm, assault weapon, or machinegun, or by means likely to produce great bodily injury, in violation of Section 245.
(15) Rape, in violation of Section 261.
(16) Spousal rape, in violation of Section 262.
(17) Procuring a female to have sex with another man, in violation of Section 266, 266a, 266b, or 266c.
(18) Child abuse or endangerment, in violation of Section 273a or 273d.
(19) Abuse of spouse or cohabitant, in violation of Section 273.5.
(20) Sodomy, in violation of Section 286.
(21) Lewd and lascivious acts with a child, in violation of Section 288.
(22) Oral copulation, in violation of Section 288a.
(23) Sexual penetration, in violation of Section 289.
(24) Elder abuse, in violation of Section 368.
(25) An attempt to commit any crime specified in paragraphs (1) to (24), inclusive.
(e) If two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of violence that is required to be reported pursuant to this section, and if there is an agreement among these persons to report as a team, the team may select by mutual agreement a member of the team to make a report by telephone and a single written report, as

1 required by subdivision (b). The written report shall be signed by
2 the selected member of the reporting team. A member who has
3 knowledge that the member designated to report has failed to do
4 so shall thereafter make the report.
5 (f) The reporting duties under this section are individual, except
6 as provided in subdivision (e).
7 (g) A supervisor or administrator shall not impede or inhibit the
8 reporting duties required under this section and a person making
9 a report pursuant to this section shall not be subject to sanction for
10 making the report. However, internal procedures to facilitate
11 reporting and apprise supervisors and administrators of reports
12 may be established, except that these procedures shall not be
13 inconsistent with this article. The internal procedures shall not
14 require an employee required to make a report under this article
15 to disclose his or her identity to the employer.
16 (h) For the purposes of this section, it is the Legislature's intent
17 to avoid duplication of information.
18 SEC. 2. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.

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SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	SB 1334	**Hearing Date:**	April 5, 2016
Author:	Stone		
Version:	March 28, 2016		
Urgency:	No	**Fiscal:**	Yes
Consultant:	AA		

Subject: ***Crime Reporting: Health Practitioners***

HISTORY

Source: California Clinical Forensic Medical Training Center

Prior Legislation: AB 1652 (Speier) – Chapter 992, Stats. 1993

Support: California District Attorneys Association; California State Sheriffs' Association; County Health Executives Association of California

Opposition: None Known

PURPOSE

The purpose of this bill is to provide that the existing mandatory reporting law applicable to health practitioners includes patients who disclose they are seeking treatment due to being the victim of assaultive or abusive conduct, as specified.

Current law requires that any "health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, provides medical services for a physical condition to a patient whom he or she knows or reasonably suspects is a person described as follows, shall immediately make a report" to a local law enforcement agency, as specified:

(1) Any *person suffering from any wound or other physical injury* inflicted by his or her own act or inflicted by another where the injury is by means of a firearm.

(2) Any person *suffering from any wound or other physical injury* inflicted upon the person where the injury is the result of assaultive or abusive conduct. (Penal Code § 11160.) (emphasis added.)

Current law provides, for the purpose of this section, "assaultive or abusive conduct" includes specific crimes enumerated in this section.[1] (Penal Code § 11160 (d).) Current law additionally

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[1] Those sections are: (1) Murder, in violation of Section 187.(2) Manslaughter, in violation of Section 192 or 192.5. (3) Mayhem, in violation of Section 203. (4) Aggravated mayhem, in violation of Section 205. (5) Torture, in violation of Section 206. (6) Assault with intent to commit mayhem, rape, sodomy, or oral copulation, in violation of

provides that, for "the purposes of this section, "injury" shall not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restricted dangerous drug." (Penal Code § 11160(c).)

Current law additionally recommends that any medical records of a person about whom the physician or surgeon is required to report include the following:

(1) Any comments by the injured person regarding past domestic violence, as defined in Section 13700, or regarding the name of any person suspected of inflicting the wound, other physical injury, or assaultive or abusive conduct upon the person.

(2) A map of the injured person's body showing and identifying injuries and bruises at the time of the health care.

(3) A copy of the law enforcement reporting form. (Penal Code § 11161.)

Current law further states that it "is recommended that the physician or surgeon refer the person to local domestic violence services if the person is suffering or suspected of suffering from domestic violence," as specified. (*Id.*)

This bill would amend section 11160 to require a "health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, provides medical services to a patient who discloses that he or she is seeking treatment due to being the victim of assaultive or abusive conduct, shall immediately make a report " pursuant to these provisions.

This bill makes additional technical, conforming amendments.

This bill additionally adds human trafficking to the definition of "assaultive or abusive conduct" in the context of these provisions, but as noted in Comment 2 below, the author intends to amend the bill in Committee to delete this provision.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee

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Section 220. (7) Administering controlled substances or anesthetic to aid in commission of a felony, in violation of Section 222. (8) Battery, in violation of Section 242. (9) Sexual battery, in violation of Section 243.4. (10) Incest, in violation of Section 285. (11) Throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or disfigure, in violation of Section 244. (12) Assault with a stun gun or taser, in violation of Section 244.5.
(13) Assault with a deadly weapon, firearm, assault weapon, or machinegun, or by means likely to produce great bodily injury, in violation of Section 245. (14) Rape, in violation of Section 261. (15) Spousal rape, in violation of Section 262. (16) Procuring any female to have sex with another man, in violation of Section 266, 266a, 266b, or 266c. (17) Child abuse or endangerment, in violation of Section 273a or 273d. (18) Abuse of spouse or cohabitant, in violation of Section 273.5. (19) Sodomy, in violation of Section 286. (20) Lewd and lascivious acts with a child, in violation of Section 288. (21) Oral copulation, in violation of Section 288a. (22) Sexual penetration, in violation of Section 289. (23) Elder abuse, in violation of Section 368. (24) An attempt to commit any crime specified in paragraphs (1) to (23), inclusive.(*Id.*)

has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Stated Need for This Bill

The author states:

> Within current statute, there is a gap in the mandatory reporting law that impacts reporting of sexual assault by health care providers. The current statute only requires reporting of sexual assault if there is a wound or injury. There may not

be a wound or injury resulting from a sexual assault, and some offenses such as forced oral copulation would not cause a wound or injury. SB 1334 would clarify this statute by stating that the mandatory reporting law would be triggered if a health practitioner provides medical services to a victim who discloses that they are receiving treatment due to being a victim of assaultive or abusive conduct.

2. Author's Amendments

The author intends to amend the bill in Committee to delete the added reference to human trafficking in the definitions applicable to the section changed by the bill; its addition was not intended for this bill.

3. What This Bill Would Do

As explained by the author, this bill clarifies the mandatory reporting provisions in current law concerning injuries caused by certain assaultive or abusive conduct to include when a patient discloses he or she is seeking treatment due to being a victim of assaultive or abusive conduct. The bill does not expand the scope of the kind of injury that triggers a mandated report. As noted above, the current statute enumerates the specific criminal offenses constituting assault or abuse in this context, and as to be amended by the author in Committee, this bill will not change that scope.

-- END –