

ASSEMBLY BILL

No. 2643

Introduced by Assembly Member Cook

February 22, 2008

An act to amend Sections 13, 4025, 4053, and 4342 of the Business and Professions Code, to amend Sections 1367.21, 1370.4, 11014, 109920, 109985, 111225, 111235, 111656.4, and 150204 of the Health and Safety Code, to amend Sections 10123.195 and 10145.3 of the Insurance Code, to amend Section 383 of the Penal Code, to amend Section 47121 of the Public Resources Code, and to amend Sections 14105.43 and 14133.2 of the Welfare and Institutions Code, relating to drugs and devices.

LEGISLATIVE COUNSEL'S DIGEST

AB 2643, as introduced, Cook. Drugs and devices.

Existing law references the United States Pharmacopoeia in various health care provisions.

This bill would replace the references to the United States Pharmacopoeia in the above-described provisions with the DrugPoints.

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 13 of the Business and Professions Code
- 2 is amended to read:
- 3 13. The term "materia medica" as used in this code or in any
- 4 initiative act referred to in this code, means those substances listed
- 5 in the official United States Pharmacopoeia *DrugPoints*, the official

1 Homeopathic Pharmacopoeia of the United States, the official
2 United States Dispensatory, New and Nonofficial Remedies, or
3 the National Formulary, or any supplement thereof, except
4 substances covered by subdivision (a) of Section 4052 and Section
5 4057 of this code.

6 SEC. 2. Section 4025 of the Business and Professions Code is
7 amended to read:

8 4025. "Drug" means any of the following:

9 (a) Articles recognized in the ~~official United States~~
10 ~~Pharmacopoeia~~ *DrugPoints*, official National Formulary or official
11 Homeopathic Pharmacopoeia of the United States, or any
12 supplement of any of them.

13 (b) Articles intended for use in the diagnosis, cure, mitigation,
14 treatment, or prevention of disease in humans or other animals.

15 (c) Articles (other than food) intended to affect the structure or
16 any function of the body of humans or other animals.

17 (d) Articles intended for use as a component of any article
18 specified in subdivision (a), (b), or (c).

19 SEC. 3. Section 4053 of the Business and Professions Code is
20 amended to read:

21 4053. (a) Notwithstanding Section 4051, the board may issue
22 a license as a designated representative to provide sufficient and
23 qualified supervision in a wholesaler or veterinary food-animal
24 drug retailer. The designated representative shall protect the public
25 health and safety in the handling, storage, and shipment of
26 dangerous drugs and dangerous devices in the wholesaler or
27 veterinary food-animal drug retailer.

28 (b) An individual may apply for a designated representative
29 license. In order to obtain and maintain that license, the individual
30 shall meet all of the following requirements:

31 (1) He or she shall be a high school graduate or possess a general
32 education development equivalent.

33 (2) He or she shall have a minimum of one year of paid work
34 experience, in the past three years, related to the distribution or
35 dispensing of dangerous drugs or dangerous devices or meet all
36 of the prerequisites to take the examination required for licensure
37 as a pharmacist by the board.

38 (3) He or she shall complete a training program approved by
39 the board that, at a minimum, addresses each of the following
40 subjects:

1 (A) Knowledge and understanding of California law and federal
2 law relating to the distribution of dangerous drugs and dangerous
3 devices.

4 (B) Knowledge and understanding of California law and federal
5 law relating to the distribution of controlled substances.

6 (C) Knowledge and understanding of quality control systems.

7 (D) Knowledge and understanding of the ~~United States~~
8 ~~Pharmacopoeia~~ *DrugPoints* standards relating to the safe storage
9 and handling of drugs.

10 (E) Knowledge and understanding of prescription terminology,
11 abbreviations, dosages and format.

12 (4) The board may, by regulation, require training programs to
13 include additional material.

14 (5) The board may not issue a license as a designated
15 representative until the applicant provides proof of completion of
16 the required training to the board.

17 (c) The veterinary food-animal drug retailer or wholesaler shall
18 not operate without a pharmacist or a designated representative
19 on its premises.

20 (d) Only a pharmacist or a designated representative shall
21 prepare and affix the label to veterinary food-animal drugs.

22 (e) Section 4051 shall not apply to any laboratory licensed under
23 Section 351 of Title III of the Public Health Service Act (Public
24 Law 78-410).

25 SEC. 4. Section 4342 of the Business and Professions Code is
26 amended to read:

27 4342. (a) The board may institute any action or actions as may
28 be provided by law and that, in its discretion, are necessary, to
29 prevent the sale of pharmaceutical preparations and drugs that do
30 not conform to the standard and tests as to quality and strength,
31 provided in the latest edition of the ~~United States~~ ~~Pharmacopoeia~~
32 *DrugPoints* or the National Formulary, or that violate any provision
33 of the Sherman Food, Drug and Cosmetic Law (Part 5
34 (commencing with Section 109875) of Division 104 of the Health
35 and Safety Code).

36 (b) Any knowing or willful violation of any regulation adopted
37 pursuant to Section 4006 shall be subject to punishment in the
38 same manner as is provided in Sections 4336 and 4321.

39 SEC. 5. Section 1367.21 of the Health and Safety Code is
40 amended to read:

1 1367.21. (a) No health care service plan contract which covers
2 prescription drug benefits shall be issued, amended, delivered, or
3 renewed in this state if the plan limits or excludes coverage for a
4 drug on the basis that the drug is prescribed for a use that is
5 different from the use for which that drug has been approved for
6 marketing by the federal Food and Drug Administration (FDA),
7 provided that all of the following conditions have been met:

8 (1) The drug is approved by the FDA.

9 (2) (A) The drug is prescribed by a participating licensed health
10 care professional for the treatment of a life-threatening condition;
11 or

12 (B) The drug is prescribed by a participating licensed health
13 care professional for the treatment of a chronic and seriously
14 debilitating condition, the drug is medically necessary to treat that
15 condition, and the drug is on the plan formulary. If the drug is not
16 on the plan formulary, the participating subscriber's request shall
17 be considered pursuant to the process required by Section 1367.24.

18 (3) The drug has been recognized for treatment of that condition
19 by one of the following:

20 (A) The American Medical Association Drug Evaluations.

21 (B) The American Hospital Formulary Service Drug
22 Information.

23 (C) ~~The United States Pharmacopocia Dispensing Information;~~
24 ~~Volume 1, "Drug Information for the Health Care Professional."~~
25 ~~DrugPoints.~~

26 (D) Two articles from major peer reviewed medical journals
27 that present data supporting the proposed off-label use or uses as
28 generally safe and effective unless there is clear and convincing
29 contradictory evidence presented in a major peer reviewed medical
30 journal.

31 (b) It shall be the responsibility of the participating prescriber
32 to submit to the plan documentation supporting compliance with
33 the requirements of subdivision (a), if requested by the plan.

34 (c) Any coverage required by this section shall also include
35 medically necessary services associated with the administration
36 of a drug, subject to the conditions of the contract.

37 (d) For purposes of this section, "life-threatening" means either
38 or both of the following:

39 (1) Diseases or conditions where the likelihood of death is high
40 unless the course of the disease is interrupted.

1 (2) Diseases or conditions with potentially fatal outcomes, where
2 the end point of clinical intervention is survival.

3 (e) For purposes of this section, “chronic and seriously
4 debilitating” means diseases or conditions that require ongoing
5 treatment to maintain remission or prevent deterioration and cause
6 significant long-term morbidity.

7 (f) The provision of drugs and services when required by this
8 section shall not, in itself, give rise to liability on the part of the
9 plan.

10 (g) Nothing in this section shall be construed to prohibit the use
11 of a formulary, copayment, technology assessment panel, or similar
12 mechanism as a means for appropriately controlling the utilization
13 of a drug that is prescribed for a use that is different from the use
14 for which that drug has been approved for marketing by the FDA.

15 (h) If a plan denies coverage pursuant to this section on the basis
16 that its use is experimental or investigational, that decision is
17 subject to review under Section 1370.4.

18 (i) Health care service plan contracts for the delivery of
19 Medi-Cal services under the Waxman-Duffy Prepaid Health Plan
20 Act (Chapter 8 (commencing with Section 14200) of Part 3 of
21 Division 9 of the Welfare and Institutions Code) are exempt from
22 the requirements of this section.

23 SEC. 6. Section 1370.4 of the Health and Safety Code is
24 amended to read:

25 1370.4. (a) Every health care service plan shall provide an
26 external, independent review process to examine the plan’s
27 coverage decisions regarding experimental or investigational
28 therapies for individual enrollees who meet all of the following
29 criteria:

30 (1) (A) The enrollee has a life-threatening or seriously
31 debilitating condition.

32 (B) For purposes of this section, “life-threatening” means either
33 or both of the following:

34 (i) Diseases or conditions where the likelihood of death is high
35 unless the course of the disease is interrupted.

36 (ii) Diseases or conditions with potentially fatal outcomes, where
37 the end point of clinical intervention is survival.

38 (C) For purposes of this section, “seriously debilitating” means
39 diseases or conditions that cause major irreversible morbidity.

1 (2) The enrollee's physician certifies that the enrollee has a
2 condition, as defined in paragraph (1), for which standard therapies
3 have not been effective in improving the condition of the enrollee,
4 for which standard therapies would not be medically appropriate
5 for the enrollee, or for which there is no more beneficial standard
6 therapy covered by the plan than the therapy proposed pursuant
7 to paragraph (3).

8 (3) Either (A) the enrollee's physician, who is under contract
9 with or employed by the plan, has recommended a drug, device,
10 procedure or other therapy that the physician certifies in writing
11 is likely to be more beneficial to the enrollee than any available
12 standard therapies, or (B) the enrollee, or the enrollee's physician
13 who is a licensed, board-certified or board-eligible physician
14 qualified to practice in the area of practice appropriate to treat the
15 enrollee's condition, has requested a therapy that, based on two
16 documents from the medical and scientific evidence, as defined
17 in subdivision (d), is likely to be more beneficial for the enrollee
18 than any available standard therapy. The physician certification
19 pursuant to this subdivision shall include a statement of the
20 evidence relied upon by the physician in certifying his or her
21 recommendation. Nothing in this subdivision shall be construed
22 to require the plan to pay for the services of a nonparticipating
23 physician provided pursuant to this subdivision, that are not
24 otherwise covered pursuant to the plan contract.

25 (4) The enrollee has been denied coverage by the plan for a
26 drug, device, procedure, or other therapy recommended or
27 requested pursuant to paragraph (3).

28 (5) The specific drug, device, procedure, or other therapy
29 recommended pursuant to paragraph (3) would be a covered
30 service, except for the plan's determination that the therapy is
31 experimental or investigational.

32 (b) The plan's decision to delay, deny, or modify experimental
33 or investigational therapies shall be subject to the independent
34 medical review process under Article 5.55 (commencing with
35 Section 1374.30) except that, in lieu of the information specified
36 in subdivision (b) of Section 1374.33, an independent medical
37 reviewer shall base his or her determination on relevant medical
38 and scientific evidence, including, but not limited to, the medical
39 and scientific evidence defined in subdivision (d).

1 (c) The independent medical review process shall also meet the
2 following criteria:

3 (1) The plan shall notify eligible enrollees in writing of the
4 opportunity to request the external independent review within five
5 business days of the decision to deny coverage.

6 (2) If the enrollee's physician determines that the proposed
7 therapy would be significantly less effective if not promptly
8 initiated, the analyses and recommendations of the experts on the
9 panel shall be rendered within seven days of the request for
10 expedited review. At the request of the expert, the deadline shall
11 be extended by up to three days for a delay in providing the
12 documents required. The timeframes specified in this paragraph
13 shall be in addition to any otherwise applicable timeframes
14 contained in subdivision (c) of Section 1374.33.

15 (3) Each expert's analysis and recommendation shall be in
16 written form and state the reasons the requested therapy is or is
17 not likely to be more beneficial for the enrollee than any available
18 standard therapy, and the reasons that the expert recommends that
19 the therapy should or should not be provided by the plan, citing
20 the enrollee's specific medical condition, the relevant documents
21 provided, and the relevant medical and scientific evidence,
22 including, but not limited to, the medical and scientific evidence
23 as defined in subdivision (d), to support the expert's
24 recommendation.

25 (4) Coverage for the services required under this section shall
26 be provided subject to the terms and conditions generally applicable
27 to other benefits under the plan contract.

28 (d) For the purposes of subdivision (b), "medical and scientific
29 evidence" means the following sources:

30 (1) Peer-reviewed scientific studies published in or accepted
31 for publication by medical journals that meet nationally recognized
32 requirements for scientific manuscripts and that submit most of
33 their published articles for review by experts who are not part of
34 the editorial staff.

35 (2) Peer-reviewed literature, biomedical compendia, and other
36 medical literature that meet the criteria of the National Institutes
37 of Health's National Library of Medicine for indexing in Index
38 Medicus, Excerpta Medicus (EMBASE), Medline, and MEDLARS
39 data base Health Services Technology Assessment Research
40 (HSTAR).

1 (3) Medical journals recognized by the Secretary of Health and
2 Human Services, under Section 1861(t)(2) of the Social Security
3 Act.

4 (4) The following standard reference compendia: The American
5 Hospital Formulary Service-Drug Information, the American
6 Medical Association Drug Evaluation, the American Dental
7 Association Accepted Dental Therapeutics, and the ~~United States~~
8 ~~Pharmacopoeia-Drug Information~~ *DrugPoints*.

9 (5) Findings, studies, or research conducted by or under the
10 auspices of federal government agencies and nationally recognized
11 federal research institutes, including the Federal Agency for Health
12 Care Policy and Research, National Institutes of Health, National
13 Cancer Institute, National Academy of Sciences, Health Care
14 Financing Administration, Congressional Office of Technology
15 Assessment, and any national board recognized by the National
16 Institutes of Health for the purpose of evaluating the medical value
17 of health services.

18 (6) Peer-reviewed abstracts accepted for presentation at major
19 medical association meetings.

20 (e) The independent review process established by this section
21 shall be required on and after January 1, 2001.

22 SEC. 7. Section 11014 of the Health and Safety Code is
23 amended to read:

24 11014. "Drug" means (a) substances recognized as drugs in
25 the official ~~United States Pharmacopoeia~~ *DrugPoints*, official
26 Homeopathic Pharmacopoeia of the United States, or official
27 National Formulary, or any supplement to any of them; (b)
28 substances intended for use in the diagnosis, cure, mitigation,
29 treatment, or prevention of disease in man or animals; (c)
30 substances (other than food) intended to affect the structure or any
31 function of the body of man or animals; and (d) substances intended
32 for use as a component of any article specified in subdivision (a),
33 (b), or (c) of this section. It does not include devices or their
34 components, parts, or accessories.

35 SEC. 8. Section 109920 of the Health and Safety Code is
36 amended to read:

37 109920. "Device" means any instrument, apparatus, implement,
38 machine, contrivance, implant, in vitro reagent, or other similar
39 or related article, including any component, part, or accessory, that
40 is any of the following:

1 (a) Recognized in the official National Formulary or the ~~United~~
2 ~~States Pharmacopoeia DrugPoints~~, or any supplement to them.

3 (b) Intended for use in the diagnosis of disease or other
4 condition, or in the cure, mitigation, treatment, or prevention of
5 disease in humans or any other animal.

6 (c) Intended to affect the structure or any function of the body
7 of humans or any other animal and that does not achieve any of
8 its principal intended purposes through chemical action within or
9 on the body of humans or other animals and that is not dependent
10 upon being metabolized for the achievement of any of its principal
11 intended purposes.

12 SEC. 9. Section 109985 of the Health and Safety Code is
13 amended to read:

14 109985. "Official compendium" means the latest edition of
15 the ~~United States Pharmacopoeia DrugPoints~~, the latest edition of
16 the Homeopathic Pharmacopoeia of the United States, or the latest
17 edition of the National Formulary, or any supplement to any of
18 these.

19 SEC. 10. Section 111225 of the Health and Safety Code is
20 amended to read:

21 111225. As used in this chapter, with respect to a drug or drug
22 ingredient, "established name" means either of the following:

23 (a) The name designated pursuant to Section 508 of the federal
24 act (21 U.S.C. Sec. 358).

25 (b) If there is no such name and the drug or ingredient is an
26 article recognized in an official compendium, then the official title
27 in the compendium is the established name.

28 If neither subdivision (a) or (b) of this section applies, the
29 common or usual name, if any, of the drug or of the ingredient is
30 the established name. When an article is recognized in the ~~United~~
31 ~~States Pharmacopoeia DrugPoints~~ and in the Homeopathic
32 Pharmacopoeia under different official titles, the official title used
33 in the ~~United States Pharmacopoeia DrugPoints~~ shall apply unless
34 it is labeled and offered for sale as a homeopathic drug. If it is
35 labeled and offered for sale as a homeopathic drug, the official
36 title used in the Homeopathic Pharmacopoeia shall apply.

37 SEC. 11. Section 111235 of the Health and Safety Code is
38 amended to read:

39 111235. Whenever a drug is recognized in both the ~~United~~
40 ~~States Pharmacopoeia DrugPoints~~ and the Homeopathic

1 Pharmacopoeia of the United States, it shall be subject to the
2 requirements of the ~~United States Pharmacopoeia DrugPoints~~
3 unless it is labeled and offered for sale as a homeopathic drug. If
4 it is labeled and offered for sale as a homeopathic drug, it shall be
5 subject to the provisions of the Homeopathic Pharmacopoeia of
6 the United States and not to those of the ~~United States~~
7 ~~Pharmacopoeia DrugPoints~~.

8 SEC. 12. Section 111656.4 of the Health and Safety Code is
9 amended to read:

10 111656.4. Section 4051 of the Business and Professions Code
11 shall not prohibit a home medical device retail facility from selling
12 or dispensing prescription devices if the department finds that
13 sufficient qualified supervision is employed by the home medical
14 device retail facility to adequately safeguard and protect the public
15 health. Each person applying to the department for this exemption
16 shall meet the following requirements to obtain and maintain the
17 exemption:

18 (a) A licensed pharmacist or an exemptee who meets the
19 requirements set forth in paragraphs (1) to (5), inclusive, and whose
20 license of exemption is currently valid, shall be in charge of the
21 home medical device retail facility.

22 (1) He or she shall be a high school graduate or possess a
23 general education development equivalent.

24 (2) He or she shall have a minimum of one year of paid work
25 experience related to the distribution or dispensing of dangerous
26 drugs or dangerous devices.

27 (3) He or she shall complete a training program that addresses
28 each of the following subjects that are applicable to his or her
29 duties:

30 (A) Knowledge and understanding of state and federal laws
31 relating to the distribution of dangerous drugs and dangerous
32 devices.

33 (B) Knowledge and understanding of state and federal laws
34 relating the distribution of controlled substances.

35 (C) Knowledge and understanding of quality control systems.

36 (D) Knowledge and understanding of the ~~United States~~
37 ~~Pharmacopoeia DrugPoints~~ standards relating to the safe storage
38 and handling of drugs.

39 (E) Knowledge and understanding relating to the safe storage
40 and handling of home medical devices.

1 (F) Knowledge and understanding of prescription terminology,
2 abbreviations, and format.

3 (4) The department may, by regulation, require training
4 programs that include additional material.

5 (5) The department shall not issue an exemptee a license until
6 the applicant provides proof of completion of the required training
7 that the department determines is adequate to fulfill these
8 requirements.

9 (b) The licensed pharmacist or exemptee shall be on the
10 premises at all times that prescription devices are available for sale
11 or fitting unless the prescription devices are stored separately from
12 other merchandise and are under the exclusive control of the
13 licensed pharmacist or exemptee. A licensed pharmacist or an
14 exemptee need not be present in the warehouse facility of a home
15 medical device retail facility unless the department establishes that
16 requirement by regulation based upon the need to protect the
17 public.

18 (c) The department may require an exemptee to complete a
19 designated number of hours of coursework in department-approved
20 courses of home health education in the disposition of any
21 disciplinary action taken against the exemptee.

22 (d) Each premises maintained by a home medical device retail
23 facility shall have a license issued by the department and shall
24 have a licensed pharmacist or exemptee on the premises if
25 prescription devices are furnished, sold, or dispensed.

26 (e) A home medical device retail facility may establish locked
27 storage (a lock box or locked area) for emergency or after working
28 hours furnishing of prescription devices. Locked storage may be
29 installed or placed in a service vehicle of the home medical device
30 retail facility for emergency or after hours service to patients having
31 prescriptions for prescription devices.

32 (f) The department may by regulation authorize a licensed
33 pharmacist or exemptee to direct an employee of the home medical
34 device retail facility who operates the service vehicle equipped
35 with locked storage described in subdivision (e) to deliver a
36 prescription device from the locked storage to patients having
37 prescriptions for prescription devices. These regulations shall
38 establish inventory requirements for the locked storage by a
39 licensed pharmacist or exemptee to take place shortly after a

1 prescription device has been delivered from the locked storage to
2 a patient.

3 SEC. 13. Section 150204 of the Health and Safety Code is
4 amended to read:

5 150204. (a) A county may establish, by ordinance, a repository
6 and distribution program for purposes of this division. Only
7 pharmacies that are county-owned or that contract with the county
8 pursuant to this division may participate in this program to dispense
9 medication donated to the drug repository and distribution program.

10 (b) A county that elects to establish a repository and distribution
11 program pursuant to this division shall establish procedures for,
12 at a minimum, all of the following:

13 (1) Establishing eligibility for medically indigent patients who
14 may participate in the program.

15 (2) Ensuring that patients eligible for the program shall not be
16 charged for any medications provided under the program.

17 (3) Developing a formulary of medications appropriate for the
18 repository and distribution program.

19 (4) Ensuring proper safety and management of any medications
20 collected by and maintained under the authority of a county-owned
21 or county-contracted, licensed pharmacy.

22 (5) Ensuring the privacy of individuals for whom the medication
23 was originally prescribed.

24 (c) Any medication donated to the repository and distribution
25 program shall comply with the requirements specified in this
26 division. Medication donated to the repository and distribution
27 program shall meet all of the following criteria:

28 (1) The medication shall not be a controlled substance.

29 (2) The medication shall not have been adulterated, misbranded,
30 or stored under conditions contrary to standards set by the ~~United~~
31 ~~States Pharmacopoeia (USP)~~ *DrugPoints* or the product
32 manufacturer.

33 (3) The medication shall not have been in the possession of a
34 patient or any individual member of the public, and in the case of
35 medications donated by a skilled nursing facility, shall have been
36 under the control of staff of the skilled nursing facility.

37 (d) Only medication that is donated in unopened, tamper-evident
38 packaging or modified unit dose containers that meet ~~USP~~
39 *DrugPoints* standards is eligible for donation to the repository and
40 distribution program, provided lot numbers and expiration dates

1 are affixed. Medication donated in opened containers shall not be
2 dispensed by the repository and distribution program.

3 (e) A pharmacist shall use his or her professional judgment in
4 determining whether donated medication meets the standards of
5 this division before accepting or dispensing any medication under
6 the repository and distribution program.

7 (f) A pharmacist shall adhere to standard pharmacy practices,
8 as required by state and federal law, when dispensing all
9 medications.

10 (g) Medication that is donated to the repository and distribution
11 program shall be handled in any of the following ways:

12 (1) Dispensed to an eligible patient.

13 (2) Destroyed.

14 (3) Returned to a reverse distributor.

15 (h) Medication that is donated to the repository and distribution
16 program that does not meet the requirements of this division shall
17 not be distributed under this program and shall be either destroyed
18 or returned to a reverse distributor. This medication shall not be
19 sold, dispensed, or otherwise transferred to any other entity.

20 (i) Medication donated to the repository and distribution program
21 shall be maintained in the donated packaging units until dispensed
22 to an eligible patient under this program, who presents a valid
23 prescription. When dispensed to an eligible patient under this
24 program, the medication shall be in a new and properly labeled
25 container, specific to the eligible patient and ensuring the privacy
26 of the individuals for whom the medication was initially dispensed.
27 Expired medication shall not be dispensed.

28 (j) Medication donated to the repository and distribution program
29 shall be segregated from the pharmacy's other drug stock by
30 physical means, for purposes including, but not limited to,
31 inventory, accounting, and inspection.

32 (k) The pharmacy shall keep complete records of the acquisition
33 and disposition of medication donated to and dispensed under the
34 repository and distribution program. These records shall be kept
35 separate from the pharmacy's other acquisition and disposition
36 records and shall conform to the Pharmacy Law (Chapter 9
37 (commencing with Section 4000) of Division 2 of the Business
38 and Professions Code), including being readily retrievable.

1 (l) Local and county protocols established pursuant to this
2 division shall conform to the Pharmacy Law regarding packaging,
3 transporting, storing, and dispensing all medications.

4 (m) County protocols established for packaging, transporting,
5 storing, and dispensing medications that require refrigeration,
6 including, but not limited to, any biological product as defined in
7 Section 351 of the Public Health and Service Act (42 U.S.C. Sec.
8 262), an intravenously injected drug, or an infused drug, include
9 specific procedures to ensure that these medications are packaged,
10 transported, stored, and dispensed at their appropriate temperatures
11 and in accordance with—USP *DrugPoint* standards and the
12 Pharmacy Law.

13 (n) Notwithstanding any other provision of law, a participating
14 county-owned or county-contracted pharmacy shall follow the
15 same procedural drug pedigree requirements for donated drugs as
16 it would follow for drugs purchased from a wholesaler or directly
17 from a drug manufacturer.

18 SEC. 14. Section 10123.195 of the Insurance Code is amended
19 to read:

20 10123.195. (a) No group or individual disability insurance
21 policy issued, delivered, or renewed in this state or certificate of
22 group disability insurance issued, delivered, or renewed in this
23 state pursuant to a master group policy issued, delivered, or
24 renewed in another state that, as a provision of hospital, medical,
25 or surgical services, directly or indirectly covers prescription drugs
26 shall limit or exclude coverage for a drug on the basis that the drug
27 is prescribed for a use that is different from the use for which that
28 drug has been approved for marketing by the federal Food and
29 Drug Administration (FDA), provided that all of the following
30 conditions have been met:

31 (1) The drug is approved by the FDA.

32 (2) (A) The drug is prescribed by a contracting licensed health
33 care professional for the treatment of a life-threatening condition;
34 or

35 (B) The drug is prescribed by a contracting licensed health care
36 professional for the treatment of a chronic and seriously debilitating
37 condition, the drug is medically necessary to treat that condition,
38 and the drug is on the insurer's formulary, if any.

39 (3) The drug has been recognized for treatment of that condition
40 by one of the following:

1 (A) The American Medical Association Drug Evaluations.

2 (B) The American Hospital Formulary Service Drug
3 Information.

4 (C) The United States Pharmacopoeia Dispensing Information,
5 Volume 1, "Drug Information for the Health Care Professional."
6 *DrugPoints*.

7 (D) Two articles from major peer reviewed medical journals
8 that present data supporting the proposed off-label use or uses as
9 generally safe and effective unless there is clear and convincing
10 contradictory evidence presented in a major peer reviewed medical
11 journal.

12 (b) It shall be the responsibility of the contracting prescriber to
13 submit to the insurer documentation supporting compliance with
14 the requirements of subdivision (a), if requested by the insurer.

15 (c) Any coverage required by this section shall also include
16 medically necessary services associated with the administration
17 of a drug subject to the conditions of the contract.

18 (d) For purposes of this section, "life-threatening" means either
19 or both of the following:

20 (1) Diseases or conditions where the likelihood of death is high
21 unless the course of the disease is interrupted.

22 (2) Diseases or conditions with potentially fatal outcomes, where
23 the end point of clinical intervention is survival.

24 (e) For purposes of this section, "chronic and seriously
25 debilitating" means diseases or conditions that require ongoing
26 treatment to maintain remission or prevent deterioration and cause
27 significant long-term morbidity.

28 (f) The provision of drugs and services when required by this
29 section shall not, in itself, give rise to liability on the part of the
30 insurer.

31 (g) This section shall not apply to a policy of disability insurance
32 that covers hospital, medical, or surgical expenses which is issued
33 outside of California to an employer whose principal place of
34 business is located outside of California.

35 (h) Nothing in this section shall be construed to prohibit the use
36 of a formulary, copayment, technology assessment panel, or similar
37 mechanism as a means for appropriately controlling the utilization
38 of a drug that is prescribed for a use that is different from the use
39 for which that drug has been approved for marketing by the FDA.

1 (i) If an insurer denies coverage pursuant to this section on the
2 basis that its use is experimental or investigational, that decision
3 is subject to review under the Independent Medical Review System
4 of Article 3.5 (commencing with Section 10169).

5 (j) This section is not applicable to vision-only, dental-only,
6 Medicare or Champus supplement, disability income, long-term
7 care, accident-only, specified disease or hospital confinement
8 indemnity insurance.

9 SEC. 15. Section 10145.3 of the Insurance Code is amended
10 to read:

11 10145.3. (a) Every disability insurer that covers hospital,
12 medical, or surgical benefits shall provide an external, independent
13 review process to examine the insurer's coverage decisions
14 regarding experimental or investigational therapies for individual
15 insureds who meet all of the following criteria:

16 (1) (A) The insured has a life-threatening or seriously
17 debilitating condition.

18 (B) For purposes of this section, "life-threatening" means either
19 or both of the following:

20 (i) Diseases or conditions where the likelihood of death is high
21 unless the course of the disease is interrupted.

22 (ii) Diseases or conditions with potentially fatal outcomes, where
23 the end point of clinical intervention is survival.

24 (C) For purposes of this section, "seriously debilitating" means
25 diseases or conditions that cause major irreversible morbidity.

26 (2) The insured's physician certifies that the insured has a
27 condition, as defined in paragraph (1), for which standard therapies
28 have not been effective in improving the condition of the insured,
29 for which standard therapies would not be medically appropriate
30 for the insured, or for which there is no more beneficial standard
31 therapy covered by the insurer than the therapy proposed pursuant
32 to paragraph (3).

33 (3) Either (A) the insured's contracting physician has
34 recommended a drug, device, procedure, or other therapy that the
35 physician certifies in writing is likely to be more beneficial to the
36 insured than any available standard therapies, or (B) the insured,
37 or the insured's physician who is a licensed, board-certified or
38 board-eligible physician qualified to practice in the area of practice
39 appropriate to treat the insured's condition, has requested a therapy
40 that, based on two documents from the medical and scientific

1 evidence, as defined in subdivision (d), is likely to be more
2 beneficial for the insured than any available standard therapy. The
3 physician certification pursuant to this subdivision shall include a
4 statement of the evidence relied upon by the physician in certifying
5 his or her recommendation. Nothing in this subdivision shall be
6 construed to require the insurer to pay for the services of a
7 noncontracting physician, provided pursuant to this subdivision,
8 that are not otherwise covered pursuant to the contract.

9 (4) The insured has been denied coverage by the insurer for a
10 drug, device, procedure, or other therapy recommended or
11 requested pursuant to paragraph (3), unless coverage for the
12 specific therapy has been excluded by the insurer's contract.

13 (5) The specific drug, device, procedure, or other therapy
14 recommended pursuant to paragraph (3) would be a covered service
15 except for the insurer's determination that the therapy is
16 experimental or under investigation.

17 (b) The insurer's decision to deny, delay, or modify experimental
18 or investigational therapies shall be subject to the independent
19 medical review process established under Article 3.5 (commencing
20 with Section 10169) of Chapter 1 of Part 2 of Division 2, except
21 that in lieu of the information specified in subdivision (b) of
22 Section 10169.3, an independent medical reviewer shall base his
23 or her determination on relevant medical and scientific evidence,
24 including, but not limited to, the medical and scientific evidence
25 defined in subdivision (d).

26 (c) The independent medical review process shall also meet the
27 following criteria:

28 (1) The insurer shall notify eligible insureds in writing of the
29 opportunity to request the external independent review within five
30 business days of the decision to deny coverage.

31 (2) If the insured's physician determines that the proposed
32 therapy would be significantly less effective if not promptly
33 initiated, the analyses and recommendations of the experts on the
34 panel shall be rendered within seven days of the request for
35 expedited review. At the request of the expert, the deadline shall
36 be extended by up to three days for a delay in providing the
37 documents required. The timeframes specified in this paragraph
38 shall be in addition to any otherwise applicable timeframes
39 contained in subdivision (c) of Section 10169.3.

1 (3) Each expert's analysis and recommendation shall be in
2 written form and state the reasons the requested therapy is or is
3 not likely to be more beneficial for the insured than any available
4 standard therapy, and the reasons that the expert recommends that
5 the therapy should or should not be covered by the insurer, citing
6 the insured's specific medical condition, the relevant documents,
7 and the relevant medical and scientific evidence, including, but
8 not limited to, the medical and scientific evidence as defined in
9 subdivision (d), to support the expert's recommendation.

10 (4) Coverage for the services required under this section shall
11 be provided subject to the terms and conditions generally applicable
12 to other benefits under the contract.

13 (d) For the purposes of subdivision (b), "medical and scientific
14 evidence" means the following sources:

15 (1) Peer-reviewed scientific studies published in or accepted
16 for publication by medical journals that meet nationally recognized
17 requirements for scientific manuscripts and that submit most of
18 their published articles for review by experts who are not part of
19 the editorial staff.

20 (2) Peer-reviewed literature, biomedical compendia and other
21 medical literature that meet the criteria of the National Institutes
22 of Health's National Library of Medicine for indexing in Index
23 Medicus, Excerpta Medicus (EMBASE), Medline and MEDLARS
24 data base Health Services Technology Assessment Research
25 (HSTAR).

26 (3) Medical journals recognized by the Secretary of Health and
27 Human Services, under Section 1861(t)(2) of the Social Security
28 Act.

29 (4) The following standard reference compendia: The American
30 Hospital Formulary Service-Drug Information, the American
31 Medical Association Drug Evaluation, the American Dental
32 Association Accepted Dental Therapeutics and ~~The United States~~
33 ~~Pharmacopoeia-Drug Information~~ *the DrugPoints*.

34 (5) Findings, studies, or research conducted by or under the
35 auspices of federal government agencies and nationally recognized
36 federal research institutes, including the Federal Agency for Health
37 Care Policy and Research, National Institutes of Health, National
38 Cancer Institute, National Academy of Sciences, Health Care
39 Financing Administration, Congressional Office of Technology
40 Assessment, and any national board recognized by the National

1 Institutes of Health for the purpose of evaluating the medical value
2 of health services.

3 (6) Peer-reviewed abstracts accepted for presentation at major
4 medical association meetings.

5 (e) The independent review process established by this section
6 shall be required on and after January 1, 2001.

7 SEC. 16. Section 383 of the Penal Code is amended to read:

8 383. Every person who knowingly sells, or keeps or offers for
9 sale, or otherwise disposes of any article of food, drink, drug, or
10 medicine, knowing that the same is adulterated or has become
11 tainted, decayed, spoiled, or otherwise unwholesome or unfit to
12 be eaten or drunk, with intent to permit the same to be eaten or
13 drunk, is guilty of a misdemeanor, and must be fined not exceeding
14 one thousand dollars (\$1,000), or imprisoned in the county jail not
15 exceeding six months, or both, and may, in the discretion of the
16 court, be adjudged to pay, in addition, all the necessary expenses,
17 not exceeding one thousand dollars (\$1,000), incurred in inspecting
18 and analyzing ~~such~~ *these* articles. The term "drug," as used herein,
19 includes all medicines for internal or external use, antiseptics,
20 disinfectants, and cosmetics. The term "food," as used herein,
21 includes all articles used for food or drink by man, whether simple,
22 mixed, or compound. Any article is deemed to be adulterated within
23 the meaning of this section:

24 (a) In case of drugs: (1) if, when sold under or by a name
25 recognized in the ~~United States Pharmacopoeia~~ *DrugPoints*, it
26 differs materially from the standard of strength, quality, or purity
27 laid down therein; (2) if, when sold under or by a name not
28 recognized in the ~~United States Pharmacopoeia~~ *DrugPoints*, but
29 which is found in some other pharmacopoeia or other standard
30 work on materia medica, it differs materially from the standard of
31 strength, quality, or purity laid down in ~~such~~ *this* work; (3) if its
32 strength, quality, or purity falls below the professed standard under
33 which it is sold.

34 (b) In the case of food: (1) if any substance or substances have
35 been mixed with it, so as to lower or depreciate, or injuriously
36 affect its quality, strength, or purity; (2) if any inferior or cheaper
37 substance or substances have been substituted wholly or in part
38 for it; (3) if any valuable or necessary constituent or ingredient
39 has been wholly or in part abstracted from it; (4) if it is an
40 imitation of, or is sold under the name of, another article; (5) if it

1 consists wholly, or in part, of a diseased, decomposed, putrid,
2 infected, tainted, or rotten animal or vegetable substance or article,
3 whether manufactured or not; or in the case of milk, if it is the
4 produce of a diseased animal; (6) if it is colored, coated, polished,
5 or powdered, whereby damage or inferiority is concealed, or if by
6 any means it is made to appear better or of greater value than it
7 really is; (7) if it contains any added substance or ingredient which
8 is poisonous or injurious to health.

9 SEC. 17. Section 47121 of the Public Resources Code is
10 amended to read:

11 47121. For the purposes of this article, the following terms
12 have the following meanings, unless the context clearly requires
13 otherwise:

14 (a) "Consumer" means an individual purchaser or owner of a
15 drug. "Consumer" does not include a business, corporation, limited
16 partnership, or an entity involved in a wholesale transaction
17 between a distributor and retailer.

18 (b) "Drug" means any of the following:

19 (1) Articles recognized in the ~~official United States~~
20 ~~Pharmacopoeia DrugPoints~~, the official National Formulary, the
21 official Homeopathic Pharmacopoeia of the United States, or any
22 supplement of the formulary or those pharmacopoeias.

23 (2) Articles intended for use in the diagnosis, cure, mitigation,
24 treatment, or prevention of disease in humans or other animals.

25 (3) Articles, excluding food, intended to affect the structure or
26 function of the body of humans or other animals.

27 (4) Articles intended for use as a component of an article
28 specified in paragraph (1), (2), or (3).

29 (c) "Participant" means any entity which the board deems
30 appropriate for implementing and evaluating a model program and
31 which chooses to participate, including, but not limited to,
32 governmental entities, pharmacies, veterinarians, clinics, and other
33 medical settings.

34 (d) "Sale" includes, but is not limited to, transactions conducted
35 through sales outlets, catalogs, or the Internet, or any other similar
36 electronic means, but does not include a sale that is a wholesale
37 transaction with a distributor or retailer.

38 SEC. 18. Section 14105.43 of the Welfare and Institutions
39 Code is amended to read:

1 14105.43. (a) (1) Notwithstanding other provisions of this
2 chapter, any drug which is approved by the federal Food and Drug
3 Administration for use in the treatment of acquired immune
4 deficiency syndrome (AIDS) or an AIDS-related condition shall
5 be deemed to be approved for addition to the Medi-Cal list of
6 contract drugs only for the purpose of treating AIDS or an
7 AIDS-related condition, for the period prior to the completion of
8 the procedures established pursuant to Section 14105.33.

9 (2) (A) In addition to any drug that is deemed to be approved
10 pursuant to paragraph (1), any drug that meets any of the following
11 criteria shall be a Medi-Cal benefit, subject to utilization controls:

12 (i) Any vaccine to protect against human immunodeficiency
13 virus (HIV) infection.

14 (ii) Any antiviral agent, immune modulator, or other agent to
15 be administered to persons who have been infected with human
16 immunodeficiency virus to counteract the effects of that infection.

17 (iii) Any drug or biologic used to treat opportunistic infections
18 associated with acquired immune deficiency syndrome, that have
19 been found to be medically accepted indications and that has either
20 been approved by the federal Food and Drug Administration or
21 recognized for that use in one of the following:

22 (I) The American Medical Association Drug Evaluations.

23 ~~(II) The United States Pharmacopoeia Dispensing Information~~
24 *DrugPoints*.

25 (III) Two articles from peer reviewed medical journals that
26 present data supporting the proposed use or uses as generally safe
27 and effective.

28 (iv) Any drug or biologic used to treat the chemotherapy-induced
29 suppression of the human immune system resulting from the
30 treatment of acquired immune deficiency syndrome.

31 (3) The department shall add any drug deemed to be approved
32 pursuant to paragraph (1) to the Medi-Cal list of contract drugs or
33 allow the provision of the drug as a Medi-Cal benefit, subject to
34 utilization controls, pursuant to paragraph (2), only if the
35 manufacturer of the drug has executed a contract with the Centers
36 for Medicare and Medicaid Services which provides for rebates
37 in accordance with Section 1396r-8 of Title 42 of the United States
38 Code.

39 (b) Any drug deemed to be approved pursuant to paragraph (1)
40 of subdivision (a) shall be immediately added to the Medi-Cal list

1 of contract drugs, and shall be exempt from the contract
2 requirements of Section 14105.33.

3 (c) If it is determined pursuant to subdivision (c) of Section
4 14105.39 that a drug to which subdivision (a) applies should not
5 be placed on the Medi-Cal list of contract drugs, that drug shall
6 no longer be deemed to be approved for addition to the list of
7 contract drugs pursuant to subdivision (a).

8 SEC. 19. Section 14133.2 of the Welfare and Institutions Code
9 is amended to read:

10 14133.2. (a) The director shall include in the Medi-Cal list of
11 contract drugs any drug approved for the treatment of cancer by
12 the federal Food and Drug Administration, so long as the
13 manufacturer has executed a contract with the Health Care
14 Financing Administration which provides for rebates in accordance
15 with Section 1396r-8 of Title 42 of the United States Code. These
16 drugs shall be exempt from the contract requirements of Section
17 14105.33.

18 (b) In addition to any drug added to the list of contract drugs
19 pursuant to subdivision (a), any drug that meets either of the
20 following criteria and for which the manufacturer has executed a
21 contract with the Health Care Financing Administration that
22 provides for rebates in accordance with Section 1396r-8 of Title
23 42 of the United States Code, shall be a Medi-Cal benefit, subject
24 to utilization controls, unless the contract requirements of Section
25 14105.33 have been complied with:

26 (1) Any drug approved by the federal Food and Drug
27 Administration for treatment of opportunistic infections associated
28 with cancer.

29 (2) Any drug or biologic used in an anticancer chemotherapeutic
30 regimen for a medically accepted indication, which has either been
31 approved by the federal Food and Drug Administration, or
32 recognized for that use in one of the following:

33 (A) The American Medical Association Drug Evaluations.

34 (B) ~~The United States Pharmacopoeia Dispensing Information~~
35 *DrugPoints*.

36 (C) Two articles from peer reviewed medical journals that
37 present data supporting the proposed use or uses as generally safe
38 and effective.

O

ASSEMBLY BILL

No. 2756

Introduced by Assembly Member Duvall

February 22, 2008

An act to amend Section 4062 of the Business and Professions Code, relating to pharmacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2756, as introduced, Duvall. Pharmacists: furnishing drugs during emergency.

Existing law authorizes a pharmacist to, in good faith, furnish a dangerous drug or dangerous device in reasonable quantities without a prescription during a federal, state, or local emergency.

This bill would make a nonsubstantive change to these provisions.

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 4062 of the Business and Professions
2 Code is amended to read:
3 4062. (a) Notwithstanding Section 4059 or any other provision
4 of law, a pharmacist may, in good faith, furnish a dangerous drug
5 or dangerous device in reasonable quantities without a prescription
6 during a federal, state, or local emergency, to further the health
7 and safety of the public. A record containing the date, name, and
8 address of the person to whom the drug or device is furnished, and
9 the name, strength, and quantity of the drug or device furnished
10 shall be maintained. The pharmacist shall communicate this

1 information to the patient's attending physician as soon as possible.
2 Notwithstanding Section 4060 or any other provision of law, a
3 person may possess a dangerous drug or dangerous device
4 furnished without prescription pursuant to this section.

5 (b) During a declared federal, state, or local emergency, the
6 board may waive application of any provisions of this chapter or
7 the regulations adopted pursuant to ~~it~~ *this chapter* if, in the board's
8 opinion, the waiver will aid in the protection of public health or
9 the provision of patient care.

**CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS**



BILL NUMBER: AB 2756

VERSION: Introduced February 22, 2008

AUTHOR: Duvall

SPONSOR: None – Spot Bill

RECOMMENDED POSITION:

SUBJECT: Pharmacists: furnishing drugs during an emergency

EXISTING LAW:

Authorizes the pharmacists to, in good faith, furnish a dangerous drug or dangerous device in reasonable quantities without a prescription during a federal, state or local emergency.

THIS BILL WOULD:

Make a nonsubstantive change to Section 4062 of the Business and Professions Code.

AUTHOR'S INTENT

To clarify Section 4062 of the Business and Professions Code to as it relates to Chapter 9, Division 2.

FISCAL IMPACT:

The board does not anticipate any substantial fiscal impact to its operations.

COMMENTS:

This is a spot bill.

HISTORY:

Dates	Actions
02/25/08	Feb. 25 Read first time.
02/24/08	Feb. 24 From printer. May be heard in committee March 25.
02/22/08	Feb. 22 Introduced. To print.

AMENDED IN ASSEMBLY JUNE 25, 2007

AMENDED IN SENATE APRIL 16, 2007

SENATE BILL

No. 963

Introduced by Senator Ridley-Thomas

February 23, 2007

~~An act to amend Sections 4001 and 4003 of, and to repeal and add Section 101.1 of, the Business and Professions Code, relating to regulatory boards.~~ *An act to amend Sections 22, 102.3, 107, 108, 312, 313.1, 321, 1601.1, 1632.5, 1634.2, 1638.1, 1638.7, 1742, 1751, 2001, 2460, 2531, 2570.19, 2602, 2701, 2841, 2920, 3010.5, 3502.1, 3504, 3685, 3710, 4001, 4003, 4200.1, 4200.3, 4501, 4800, 4928, 4990, 5000, 5510, 5621, 5810, 5811, 6510, 6511, 6710, 7000.5, 7200, 7303, 7810, 8000, 8520, 8710, 9882, 18602, 18602.5, 18824, and 18882 of, to add Sections 27.5, 36, 37, 38, 101.5, 117, 117.5, 127.5, 156.7, and 450.1 to, to add Chapter 4.5 (commencing with Section 360) to Division 1 of, to add Division 1.3 (commencing with Section 474.20) to, to repeal Sections 2569, 4989, 4990.24, 7304, and 22259 of, to repeal Division 1.2 (commencing with Section 473) of, and to repeal and add Section 101.1 of, the Business and Professions Code, and to amend Sections 9148.8 and 9148.51 of, and to repeal Section 9148.52 of, the Government Code, relating to regulatory entities, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 963, as amended, Ridley-Thomas. Regulatory boards: ~~termination~~ operations.

Existing law creates various regulatory boards, as defined, within the Department of Consumer Affairs and makes their funds separate accounts within the Professions and Vocations Fund. Under existing

law, the revenue in certain of these accounts is continuously appropriated to the board, other than fine and penalty revenues.

Existing law generally makes the regulatory boards inoperative on a specified date, unless that date is deleted or extended by subsequent legislation, and subjects these boards as well as other boards in state government, as specified, to review by the Joint Committee on Boards, Commissions, and Consumer Protection. Under existing law, that committee, following a specified procedure, recommends whether the board should be continued or its functions modified.

This bill would delete those provisions making the boards inoperative on a specified date and subjecting boards to review by the Joint Committee on Boards, Commissions, and Consumer Protection. The bill would instead make each of those boards subject to review by a standing policy committee of the Legislature upon request by a Member of the Legislature or the chief of the Office of the Consumer Advocate, which the bill would create in the Department of Consumer Affairs. The bill would, upon the committee's determination that a board is deficient, as specified, provide for the removal of all incumbent board members without a hearing and the appointment of a successor board, as specified. The bill would require the Office of the Consumer Advocate to serve as an independent monitor for a board that is found deficient. The bill would authorize the office to appear at meetings and to participate in disciplinary proceedings by a board within the department if required to promote or protect the interests of consumers, as defined, and would require the office to perform other specified duties. The bill would require the office to charge each board a fee to support the office's functions and would thereby make an appropriation by expanding the expenditure purposes of a continuously appropriated fund. The bill would create the Consumer Advocate Fund where these fees would be deposited and would be available to the office upon appropriation by the Legislature. The bill would require the director to report annually to the Governor and the Legislature, as specified, on the office's operations.

The bill would require boards within the department to enter into an agreement with the department for the performance of administrative and ministerial functions and would require the Director of Consumer Affairs, prior to January 1, 2010, to replace the existing technology system serving the department and its component boards and to charge each board its pro rata share of the cost to replace the system.

The bill would also require each board within the department to adopt performance measures, as specified, and report quarterly to the director and the chief of the Office of Consumer Advocate relating to those measures. The bill would also require boards to post the information on their Internet Web site and to report the information to the Legislative Analyst's Office, the Legislature, and the Department of Finance. The bill would require the Office of the Consumer Advocate to report to the Legislature if a board failed to meet its performance measures. The bill would also require those boards to post annually on their Internet Web sites the number of reports in specified categories that it received that year for its licensees.

The bill would allow a person to serve as the public member of more than one of these boards and would require all members of these boards, as well as bureau chiefs, to report annually to their appointing authority on their goals and objectives and success in achieving them, which would be posted on the board's Internet Web site. The bill would require the department to report to the Legislature and Governor if a board was unable to meet because of a lack of a quorum or vacancy. The bill would require members of these boards and other state boards to report ex parte communications, as defined, in the board's minutes. The bill would require boards within the department, the State Bar, the Office of Real Estate Appraisers, and other state boards that license professions or businesses to adopt regulations to provide incentives to licensees to provide services on a pro bono basis and to adopt regulations prior to June 30, 2009, establishing regulatory board staffing requirements.

~~Existing law creates the Department of Consumer Affairs within the State and Consumer Services Agency. Under existing law, the department consists of boards that license and regulate members of various professions and vocations. Existing law provides for the boards to become inoperative on a specified date unless that date is extended or deleted by the Legislature. Under existing law, when a board becomes inoperative, the department succeeds to and is vested with all the duties, powers, purposes, responsibilities, and jurisdiction of the board and its executive officer that are not otherwise repealed or made inoperative.~~

~~This bill would instead, when a board becomes inoperative, create a successor board in the Department of Consumer Affairs that succeeds to and is vested with all of the duties, powers, purposes, responsibilities, and jurisdiction of the board that are not otherwise repealed or made inoperative. The bill would provide for the successor board to have the~~

same number of members and composition as the prior board, would provide that its members be appointed by the same appointing authorities, for the same term, and with the same requirements as the prior board members, and would give the successor board the same authority to appoint an executive officer as the prior board had.

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

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

1 *SECTION 1. Section 22 of the Business and Professions Code*
2 *is amended to read:*

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

8 (b) ~~Whenever the regulatory program of a board that is subject~~
9 ~~to review by the Joint Committee on Boards, Commissions, and~~
10 ~~Consumer Protection, as provided for in Division 1.2 (commencing~~
11 ~~with Section 473), is taken over by the department, that program~~
12 ~~shall be designated as a "bureau."~~

13 *SEC. 2. Section 27.5 is added to the Business and Professions*
14 *Code, to read:*

15 27.5. *A board within the department shall annually post on its*
16 *Internet Web site the number of reports it received that year for*
17 *its licensees in each of the following categories:*

18 (a) *Criminal convictions.*

19 (b) *Judgments, settlements, or arbitration awards.*

20 (c) *Claims paid by a professional liability insurer caused by*
21 *the licensee's negligence, error, or omission.*

22 *SEC. 3. Section 36 is added to the Business and Professions*
23 *Code, to read:*

24 36. *A board within the department, the State Bar, the Office*
25 *of Real Estate Appraisers, and any other state board that issues*
26 *a license, certificate, or registration authorizing a person to engage*
27 *in a business or profession may adopt regulations that provide an*
28 *incentive to the holder to provide services within the scope of his*
29 *or her license, certificate, or registration on a pro bono basis. The*
30 *regulations may reduce the amount of the renewal fee for a*

1 licensee, certificate holder, or registrant who demonstrates
2 compliance with the pro bono requirements set forth in the
3 regulations.

4 SEC. 4. Section 37 is added to the Business and Professions
5 Code, to read:

6 37. A board within the department and any other state board
7 that issues a license, certificate, or registration authorizing a
8 person to engage in a business or profession shall adopt
9 regulations prior to June 30, 2009, that establish requirements
10 for the number of staff required to adequately investigate and, if
11 appropriate, bring a disciplinary action against a licensee,
12 certificate holder, or registrant regulated by the board. The staff
13 level requirements shall, at a minimum, be the number of staff
14 required per 1,000 persons regulated by the board and include
15 the appropriate number of staff to complete all investigatory and
16 disciplinary functions.

17 SEC. 5. Section 38 is added to the Business and Professions
18 Code, to read:

19 38. A member of a board within the department and a member
20 of a state board, as defined in Section 9148.2 of the Government
21 Code, shall disclose all of his or her ex parte communications at
22 the board's next public meeting, and the ex parte communications
23 shall be recorded in the board's minutes. "Ex parte
24 communication" means any oral or written communication
25 concerning matters, other than purely procedural matters, under
26 the board's jurisdiction that are subject to a vote by the board that
27 occurred between the member and a person, other than another
28 board member or an employee of the board or the department of
29 which the board is a part, who intends to influence the decision
30 of the member.

31 SEC. 6. Section 101.1 of the Business and Professions Code
32 is repealed.

33 ~~101.1. (a) It is the intent of the Legislature that all existing~~
34 ~~and proposed consumer-related boards or categories of licensed~~
35 ~~professionals be subject to a review every four years to evaluate~~
36 ~~and determine whether each board has demonstrated a public need~~
37 ~~for the continued existence of that board in accordance with~~
38 ~~enumerated factors and standards as set forth in Division 1.2~~
39 ~~(commencing with Section 473).~~

1 ~~(b) (1) In the event that any board, as defined in Section 477,~~
2 ~~becomes inoperative or is repealed in accordance with the act that~~
3 ~~added this section, or by subsequent acts, the Department of~~
4 ~~Consumer Affairs shall succeed to and is vested with all the duties,~~
5 ~~powers, purposes, responsibilities and jurisdiction not otherwise~~
6 ~~repealed or made inoperative of that board and its executive officer.~~

7 ~~(2) Any provision of existing law that provides for the~~
8 ~~appointment of board members and specifies the qualifications~~
9 ~~and tenure of board members shall not be implemented and shall~~
10 ~~have no force or effect while that board is inoperative or repealed.~~
11 ~~Every reference to the inoperative or repealed board, as defined~~
12 ~~in Section 477, shall be deemed to be a reference to the department.~~

13 ~~(3) Notwithstanding Section 107, any provision of law~~
14 ~~authorizing the appointment of an executive officer by a board~~
15 ~~subject to the review described in Division 1.2 (commencing with~~
16 ~~Section 473), or prescribing his or her duties, shall not be~~
17 ~~implemented and shall have no force or effect while the applicable~~
18 ~~board is inoperative or repealed. Any reference to the executive~~
19 ~~officer of an inoperative or repealed board shall be deemed to be~~
20 ~~a reference to the director or his or her designee.~~

21 ~~(c) It is the intent of the Legislature that subsequent legislation~~
22 ~~to extend or repeal the inoperative date for any board shall be a~~
23 ~~separate bill for that purpose.~~

24 *SEC. 7. Section 101.1 is added to the Business and Professions*
25 *Code, to read:*

26 *101.1. (a) It is the intent of the Legislature that all existing*
27 *and proposed consumer-related boards or categories of licensed*
28 *professionals be subject to ongoing and continuous review as well*
29 *as a periodic thorough review when issues arise requiring that*
30 *level of review and such a review is requested by a Member of the*
31 *Legislature or the chief of the Office of the Consumer Advocate*
32 *as provided in Division 1.3 (commencing with Section 474.20).*
33 *The review of a board shall evaluate and determine whether its*
34 *operations are effectively protecting the public and that protection*
35 *of the public is the highest priority of the board.*

36 *(b) Notwithstanding any other provision of law, if a board is*
37 *deemed deficient and its members removed, as described in Section*
38 *474.21, a successor board shall be appointed that shall succeed*
39 *to, and be vested with, all the duties, powers, purposes,*
40 *responsibilities, and jurisdiction not otherwise repealed or made*

1 *inoperative of the board that it is succeeding. The successor board*
2 *shall have the same number of members and composition as the*
3 *board that it is succeeding, and those members shall be appointed*
4 *by the same appointing authorities, for the same term, and with*
5 *the same membership requirements as the members of the board*
6 *it is succeeding. The successor board shall have the same authority*
7 *to appoint an executive officer as the board that it is succeeding*
8 *as of the date that board was found deficient. The successor board*
9 *members shall be appointed within 10 business days of receipt by*
10 *the Joint Committee on Rules of the deficiency report, as described*
11 *in Section 474.21.*

12 *SEC. 8. Section 101.5 is added to the Business and Professions*
13 *Code, to read:*

14 *101.5. (a) Each board within the department shall enter into*
15 *an agreement with the department for the department to provide*
16 *administrative and ministerial functions and services, including,*
17 *but not limited to, personnel services, information technology, the*
18 *administration of call centers, and the administration of*
19 *examinations. The Legislature intends that these agreements shall*
20 *achieve cost savings resulting from economies of scale and a more*
21 *consistent delivery of services to California consumers and*
22 *licensees.*

23 *(b) A board shall not enter into an agreement described in*
24 *subdivision (a) if it would reduce the board's ability to comply*
25 *with its duties prescribed by law.*

26 *SEC. 9. Section 102.3 of the Business and Professions Code*
27 *is amended to read:*

28 *102.3. (a) The director may enter into an interagency*
29 *agreement with an appropriate entity within the Department of*
30 *Consumer Affairs as provided for in Section 101 to delegate the*
31 *duties, powers, purposes, responsibilities, and jurisdiction that*
32 *have been succeeded and vested with the department, of a board,*
33 *as defined in Section 477, which that became inoperative and was*
34 *repealed in accordance with Chapter 908 of the Statutes of 1994.*

35 *(b) (1) ~~Where~~ If, pursuant to subdivision (a), an interagency*
36 *agreement is entered into between the director and that entity, the*
37 *entity receiving the delegation of authority may establish a*
38 *technical committee to regulate, as directed by the entity, the*
39 *profession subject to the authority that has been delegated. The*
40 *entity may delegate to the technical committee only those powers*

1 that it received pursuant to the interagency agreement with the
2 director. The technical committee shall have only those powers
3 that have been delegated to it by the entity.

4 (2) ~~Where~~ If the entity delegates its authority to adopt, amend,
5 or repeal regulations to the technical committee, all regulations
6 adopted, amended, or repealed by the technical committee shall
7 be subject to the review and approval of the entity.

8 (3) The entity shall not delegate to a technical committee its
9 authority to discipline a licentiate who has violated the provisions
10 of the applicable chapter of the Business and Professions Code
11 that is subject to the director's delegation of authority to the entity.

12 (c) An interagency agreement entered into, pursuant to
13 subdivision (a), shall continue until ~~such time as~~ the licensing
14 program administered by the technical committee has undergone
15 a review by the ~~Joint Committee on Boards, Commissions, and~~
16 ~~Consumer Protection Office of the Consumer Advocate~~ to evaluate
17 and determine whether the *highest priority of the* licensing program
18 ~~has demonstrated a public need for its continued existence is the~~
19 *protection of the public*. Thereafter, at the ~~director's~~ discretion of
20 *the chief of that office*, the interagency agreement may be renewed.

21 SEC. 10. Section 107 of the Business and Professions Code is
22 amended to read:

23 107. (a) Pursuant to subdivision (e) of Section 4 of Article
24 VII of the California Constitution, each board may appoint a person
25 exempt from civil service and may fix his or her salary, with the
26 approval of the Department of Personnel Administration pursuant
27 to Section 19825 of the Government Code, who shall be designated
28 as an executive officer unless the licensing act of the particular
29 board designates the person as a registrar. *A person may be*
30 *appointed as an executive officer or registrar for more than one*
31 *board if approved by each of those boards and may serve in those*
32 *capacities at the same time if practical and consistent with law*
33 *and the respective board functions and duties.*

34 (b) *Notwithstanding any other provision of law, all appointments*
35 *of an executive officer or registrar shall be subject to the approval*
36 *of the director and confirmation by the Senate.*

37 SEC. 11. Section 108 of the Business and Professions Code is
38 amended to read:

39 108. (a) Each of the boards comprising the department exists
40 as a separate unit, and has the functions of setting standards,

1 holding meetings, and setting dates thereof, preparing and
2 conducting examinations, passing upon applicants, conducting
3 investigations of violations of laws under its jurisdiction, issuing
4 citations and holding hearings for the revocation of licenses, and
5 the imposing of penalties following ~~such~~ those hearings, in so far
6 as these powers are given by statute to each respective board.

7 (b) *The department shall develop a common method of*
8 *maintaining, posting, and making available to the public minutes*
9 *of the meetings of the boards comprising the department. Each of*
10 *those boards shall use that method and shall post the minutes of*
11 *its meetings on its Internet Web site within 10 days of the date of*
12 *the meeting.*

13 SEC. 12. *Section 117 is added to the Business and Professions*
14 *Code, to read:*

15 117. (a) *Each board within the department shall adopt*
16 *meaningful, measurable, and manageable performance measures.*
17 *Performance measures include, but are not limited to, the following*
18 *information:*

19 (1) *A comprehensive statement of the board's mission, goals,*
20 *objectives, and legal jurisdiction in protecting the health, safety,*
21 *and welfare of the public.*

22 (2) *The board's enforcement priorities, complaint and*
23 *enforcement data, budget expenditures with average- and*
24 *median-costs per case, and case aging data specific to post and*
25 *preaccusation cases at the Attorney General's office.*

26 (3) *The board's fund conditions, sources of revenues, and*
27 *expenditure categories for the last four fiscal years by program*
28 *component.*

29 (4) *The board's description of its licensing process including*
30 *the time and costs required to implement and administer its*
31 *licensing examination, ownership of the license examination,*
32 *relevancy and validity of the licensing examination, and passage*
33 *rate and areas of examination.*

34 (5) *The board's initiation of legislative efforts, budget change*
35 *proposals, and other initiatives it has taken to improve its*
36 *legislative mandate.*

37 (b) *Each board within the department shall report to the director*
38 *and the chief of the Office of the Consumer Advocate its*
39 *performance measures and data relating to those measures on a*
40 *quarterly basis. Each board shall post quarterly on its Internet*

1 *Web site the information it reported pursuant to this subdivision*
2 *and provide the information annually to the Department of*
3 *Finance, the Legislative Analyst's Office, and the Legislature.*

4 *(c) The chief of the Office of the Consumer Advocate, in*
5 *consultation with the Legislative Analyst's Office, shall annually*
6 *review the information reported by boards pursuant to subdivision*
7 *(b) and report to the Legislature if it determines that a board has*
8 *failed to meet its performance measures.*

9 *(d) The department may adopt regulations pertaining to the*
10 *requirements described in subdivision (a).*

11 *SEC. 13. Section 117.5 is added to the Business and Professions*
12 *Code, to read:*

13 *117.5. (a) Each member of a board within the department and*
14 *the chief of any bureau within the board shall annually report, on*
15 *or before December 31 of each year, to the authority that appointed*
16 *him or her the extent to which the member or chief achieved his*
17 *or her goals and objectives that year and shall also report the*
18 *goals and objectives he or she expects to achieve during the*
19 *following calendar year.*

20 *(b) The board or bureau shall post the reports described in*
21 *subdivision (a) submitted by its members chief on its Internet Web*
22 *site within 30 days of their submission date.*

23 *SEC. 14. Section 127.5 is added to the Business and Professions*
24 *Code, to read:*

25 *127.5. The department shall report to the Legislature and the*
26 *Governor when a board within the department has been unable*
27 *to schedule or convene a meeting of the board because of a lack*
28 *of a quorum caused by the absence of its members or by a vacancy*
29 *in its membership.*

30 *SEC. 15. Section 156.7 is added to the Business and Professions*
31 *Code, to read:*

32 *156.7. (a) Prior to January 1, 2010, the director, in*
33 *consultation with the State Chief Information Officer, shall replace*
34 *the department's existing information technology system with a*
35 *system that meets the requirements of the department and of the*
36 *boards within the department.*

37 *(b) The director shall charge each of the boards on a pro rata*
38 *share basis for the costs of replacing the information technology*
39 *system. The charge shall be an administrative expense that may*

1 *be levied in advance against the funds of any of the boards*
2 *pursuant to Section 201.*

3 *(c) Notwithstanding any other provision of this section, the*
4 *procurement of the information technology system shall be made*
5 *in accordance with Chapter 3 (commencing with Section 12100)*
6 *of Part 2 of Division 2 of the Public Contract Code.*

7 *SEC. 16. Section 312 of the Business and Professions Code is*
8 *amended to read:*

9 312. (a) The director shall submit to the Governor and the
10 Legislature on or before January 1, 2003, and annually thereafter,
11 a report of programmatic and statistical information regarding the
12 activities of the department and its constituent entities. The report
13 shall include information concerning the director's activities
14 pursuant to Section 326, including the number and general patterns
15 of consumer complaints and the action taken on those complaints.

16 (b) *On or before January 1 of each year, beginning in 2009,*
17 *the director shall submit to the chairperson of the fiscal committee*
18 *of each house of the Legislature and to the Joint Legislative Budget*
19 *Committee all of the following information:*

20 (1) *The number of personnel years assigned to the Office of the*
21 *Consumer Advocate.*

22 (2) *The total dollars expended by the Office of the Consumer*
23 *Advocate in the prior year, the estimated total dollars expended*
24 *in the current year, and the total dollars proposed for*
25 *appropriation in the following budget year.*

26 (3) *Workload standards and measures for the Office of the*
27 *Consumer Advocate.*

28 *SEC. 17. Section 313.1 of the Business and Professions Code*
29 *is amended to read:*

30 313.1. (a) Notwithstanding any other provision of law to the
31 contrary, no rule or regulation, except those relating to
32 examinations and qualifications for licensure, and no fee change
33 proposed or promulgated by any of the boards, commissions, or
34 committees within the department, shall take effect pending
35 compliance with this section.

36 (b) The director *and the chief of the Office of the Consumer*
37 *Advocate* shall be formally notified of and shall be provided a full
38 opportunity to review, in accordance with the requirements of
39 Article 5 (commencing with Section 11346) of Chapter 3.5 of Part

1 1 of Division 3 of Title 2 of the Government Code, and this section,
2 all of the following:

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

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

8 (3) Final rulemaking records.

9 (c) The submission of all notices and final rulemaking records
10 to the director *and the chief of the Office of the Consumer Advocate*
11 and the completion of ~~the director's~~ *their* review, as authorized by
12 this section, shall be a precondition to the filing of any rule or
13 regulation with the Office of Administrative Law. The Office of
14 Administrative Law shall have no jurisdiction to review a rule or
15 regulation subject to this section until after the completion of the
16 director's review and only then if the director ~~has~~ *and the chief of*
17 *the Office of the Consumer Advocate* have not disapproved it. The
18 filing of any document with the Office of Administrative Law shall
19 be accompanied by a certification that the board, commission, or
20 committee has complied with the requirements of this section.

21 (d) Following the receipt of any final rulemaking record subject
22 to subdivision (a), the director *and the chief of the Consumer*
23 *Advocate* shall have the authority for a period of 30 days to
24 disapprove a proposed rule or regulation on the ground that it is
25 injurious to the public health, safety, or welfare.

26 (e) Final rulemaking records shall be filed with the director *and*
27 *the chief of the Office of the Consumer Advocate* within the
28 one-year notice period specified in Section 11346.4 of the
29 Government Code. If necessary for compliance with this section,
30 the one-year notice period may be extended, as specified by this
31 subdivision.

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

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

1 (3) If the director *or the chief* disapproves a rule or regulation,
2 it shall have no force or effect unless, within 60 days of the notice
3 of disapproval, (A) the disapproval is overridden by a unanimous
4 vote of the members of the board, commission, or committee, and
5 (B) the board, commission, or committee files the final rulemaking
6 record with the Office of Administrative Law in compliance with
7 this section and the procedures required by Chapter 3.5
8 (commencing with Section 11340) of Part 1 of Division 3 of Title
9 2 of the Government Code.

10 (f) Nothing in this section shall be construed to prohibit the
11 director *or the chief of the Office of the Consumer Advocate* from
12 affirmatively approving a proposed rule, regulation, or fee change
13 at any time within the 30-day period after it has been submitted to
14 him or her, in which event it shall become effective upon
15 compliance with this section and the procedures required by
16 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
17 3 of Title 2 of the Government Code.

18 *SEC. 18. Section 321 of the Business and Professions Code is*
19 *amended to read:*

20 321. Whenever it appears to the director *or the chief of the*
21 *Office of Consumer Advocate* that the interests of the consumers
22 of this state are being damaged, or may be damaged, by any person
23 who engaged in, or intends to engage in, any acts or practices in
24 violation of any law of this state, or any federal law, the director
25 or any officer or employee designated by the director, or the
26 Attorney General, may commence legal proceedings in the
27 appropriate forum to enjoin ~~such~~ *those* acts or practices and may
28 seek other appropriate relief on behalf of ~~such~~ *those* consumers.

29 *SEC. 19. Chapter 4.5 (commencing with Section 360) is added*
30 *to Division 1 of the Business and Professions Code, to read:*

31
32 *CHAPTER 4.5. OFFICE OF THE CONSUMER ADVOCATE*

33
34 *Article 1. General Provisions*

35
36 360. *This chapter shall be known and may be cited as the Office*
37 *of the Consumer Advocate Act.*

38 361. *It is the intent of the Legislature and the purpose of this*
39 *chapter to promote the efficiency of each of the boards that*
40 *comprise the department by ensuring that each board properly*

1 discharges its regulatory and disciplinary functions to protect the
2 interests of consumers.

3 362. The following definitions apply for purposes of this
4 chapter:

5 (a) "Board" means any entity listed in Section 101.

6 (b) "Chief" means the chief of the Office of the Consumer
7 Advocate.

8 (c) "Interests of consumers" means the protection of the health,
9 welfare, and safety of consumers by a board.

10 (d) "Office" means the Office of the Consumer Advocate.

11

12

Article 2. Administration

13

14 370. The Office of the Consumer Advocate is hereby established
15 in the department.

16 371. The office is under the supervision and control of a chief.
17 The chief shall be appointed by the Governor, subject to
18 confirmation by the Senate pursuant to Section 1322 of the
19 Government Code. The chief shall be appointed for a term of four
20 years. Upon expiration of the chief's term, the chief shall continue
21 to serve in the position until a new chief is appointed by the
22 Governor. The director shall fix the amount of the chief's
23 compensation in accordance with law. The Governor may remove
24 the chief for any cause specified in Section 106.

25 372. The chief shall administer and enforce the provisions of
26 this chapter. Every power granted or duty imposed upon the chief
27 under this chapter may be exercised or performed in the name of
28 the chief by an employee of the office, subject to any conditions
29 and limitations the chief may prescribe.

30 373. (a) The chief, in accordance with the State Civil Service
31 Act, shall appoint a chief counsel of the office and an adequate
32 number of attorneys, as determined by the chief counsel, to carry
33 out the provisions of this chapter.

34 (b) The chief, in accordance with the State Civil Service Act,
35 may appoint and fix the compensation of clerical or other personnel
36 as may be necessary to carry out the provisions of this chapter.

37 (c) All personnel appointed under this section shall perform
38 their duties under the supervision and direction of the chief.

39 374. The chief may contract for the services of experts and
40 consultants if necessary to carry out the provisions of this chapter

1 *and may provide compensation and reimbursement of expenses*
2 *for those experts and consultants in accordance with state law.*

3
4 *Article 3. Powers and Duties*

5
6 380. (a) *The office shall serve as an independent monitor*
7 *pursuant to Section 474.22.*

8 (b) *The office shall review interagency agreements pursuant to*
9 *Section 102.3.*

10 381. *The chief may establish through regulations a Consumer*
11 *Participation Program to allow the office to award reasonable*
12 *advocacy and witness fees to any person or organization that has*
13 *made a substantial contribution on behalf of the interests of*
14 *consumers either through the adoption of a regulation by a board*
15 *or through an order or decision issued by a board in a disciplinary*
16 *proceeding.*

17 382. *The office may appear at a meeting of a board and shall*
18 *be permitted to participate as an amicus curiae in disciplinary*
19 *proceedings by the board whenever the chief determines that the*
20 *appearance or participation is required to promote or protect the*
21 *interests of consumers. The office shall conform with the provisions*
22 *of the Administrative Procedure Act (Chapter 5 (commencing with*
23 *Section 11500) of Part 1 of Division 3 of Title 2 of the Government*
24 *Code) in discharging these duties.*

25 383. *The chief shall have the following powers and it shall be*
26 *his or her duty to take the following actions:*

27 (a) *Recommend and propose the enactment of legislation that*
28 *is necessary to protect and promote the interests of consumers.*

29 (b) *Represent the interests of consumers before federal and state*
30 *legislative and regulatory hearings.*

31 (c) *Assist, advise, and cooperate with federal, state, and local*
32 *agencies and officials to protect and promote the interests of*
33 *consumers.*

34 (d) *Study, investigate, research, and analyze matters affecting*
35 *the interests of consumers.*

36 (e) *Hold public hearings, subpoena witnesses, take testimony,*
37 *compel the production of books, papers, documents, and other*
38 *evidence, and call upon state agencies for information.*

39 (f) *Propose and assist in the creation and development of*
40 *consumer education programs.*

1 (g) Promote ethical standards of conduct for business,
2 professions, and consumers related to the interest of consumers.

3 (h) Advise the Governor and Legislature on all matters affecting
4 the interests of consumers.

5 (i) Exercise and perform other functions, powers, and duties as
6 may be deemed appropriate to protect and promote the interests
7 of consumers as directed by the Governor or the Legislature.

8 (j) Maintain contact and liaison with consumer groups in
9 California and nationally.

10 384. The chief shall report annually to the Governor and
11 appear annually before the appropriate policy committees of the
12 Legislature to report on the office's activities.

13
14 Article 4. Revenue

15
16 390. The office shall annually charge each board on a pro rata
17 share basis an amount that is sufficient, as determined by the chief,
18 to carry out the provisions of this chapter. The total amount of
19 charges made pursuant to this section shall not exceed ____ million
20 dollars (\$____) annually.

21 391. All moneys collected pursuant to this article shall be
22 deposited into the Consumer Advocate Fund, which is hereby
23 created in the State Treasury. The revenue in this fund shall be
24 expended solely for purposes of this chapter upon appropriation
25 by the Legislature in the annual Budget Act.

26 SEC. 20. Section 450.1 is added to the Business and Professions
27 Code, to read:

28 450.1. A person may serve as a public member of more than
29 one board at the same time if not prohibited by any other law.

30 SEC. 21. Division 1.2 (commencing with Section 473) of the
31 Business and Professions Code is repealed.

32 SEC. 22. Division 1.3 (commencing with Section 474.20) is
33 added to the Business and Professions Code, to read:

34
35 DIVISION 1.3. LEGISLATIVE REVIEW OF STATE BOARDS
36 AND BOARDS WITHIN THE DEPARTMENT OF CONSUMER
37 AFFAIRS

38
39 474.20. (a) A Member of the Legislature or the chief of the
40 Office of the Consumer Advocate may submit a written request to

1 the appropriate standing policy committee of the Legislature to
2 conduct an analysis to evaluate any of the following entities:

3 (1) A board, as defined in Section 22.

4 (2) A state board, as defined in Section 9148.2 of the
5 Government Code.

6 (b) The request made pursuant to subdivision (a) shall describe
7 any perceived deficiencies in the operation of the board and the
8 detailed reasons an analysis of its operation is requested that may
9 include, but not be limited to, the issues subject to investigation
10 under subdivision (c) of Section 474.21.

11 474.21. (a) (1) The appropriate standing policy committee of
12 the Legislature shall, through its oversight function, investigate
13 the perceived deficiencies described in the request submitted
14 pursuant to Section 474.20 and hold public hearings on the matter.
15 The committee may request the Office of the Consumer Advocate
16 to assist in the investigation. The committee shall complete these
17 functions within a 60-day period during the regular legislative
18 session, with the period commencing on the date of the committee's
19 receipt of the request.

20 (2) Notwithstanding paragraph (1), if, in the two-year period
21 prior to the committee's receipt of the request, public hearings
22 relating to the same board named in the request were held by a
23 standing policy committee of the Legislature that determined no
24 deficiencies exist, the committee may refuse to conduct additional
25 hearings and investigation of the board.

26 (b) The committee may find, on the basis of the information it
27 obtained during its investigation, whether a question exists as to
28 the highest priority of the operations of the board being the
29 protection of the public when exercising its licensing, regulatory,
30 and disciplinary functions, and whether the board is effectively
31 protecting the public.

32 (c) In determining whether a question exists under subdivision
33 (b), the committee shall review the information and allegations
34 made in the request submitted pursuant to Section 474.20 and any
35 related information and allegations. The committee may review
36 issues such as the following:

37 (1) Whether regulation by the board is necessary to protect the
38 public health, safety, and welfare.

39 (2) Whether the initial reasons for licensing or regulating a
40 practice or profession have changed.

1 (3) *Whether other conditions have occurred that would warrant*
2 *increased, decreased, or the same amount of regulation by the*
3 *board.*

4 (4) *If regulation of the profession or practice is necessary,*
5 *whether existing statutes and regulations establish the least*
6 *restrictive form of regulation consistent with the public interest,*
7 *considering other available regulatory mechanisms, and whether*
8 *the board's rules promote the public interest and are within the*
9 *scope of legislative intent.*

10 (5) *Whether the board operates and enforces its regulatory*
11 *responsibilities in the public interest and whether its regulatory*
12 *mission is impeded or enhanced by existing statutes, regulations,*
13 *policies, practices, or any other circumstances, including*
14 *budgetary, resources, and personnel matters.*

15 (6) *Whether an analysis of the board's operations indicates that*
16 *the entity performs its statutory duties efficiently and effectively.*

17 (7) *Whether the composition of the board adequately represents*
18 *the public interest and whether the board encourages public*
19 *participation in its decisions rather than participation only by the*
20 *profession or vocation and the individuals it regulates.*

21 (8) *Whether the board and its laws or regulations stimulate or*
22 *restrict competition and the extent of the economic impact the*
23 *board's regulatory practices have on the state's business and*
24 *technological growth.*

25 (9) *Whether complaint investigation, intervention, and*
26 *disciplinary procedures adequately protect the public and whether*
27 *the final disposition of complaints, investigations, restraining*
28 *orders, and disciplinary actions are in the public interest or these*
29 *procedures are, instead, self-serving to the profession, vocation,*
30 *or individuals being regulated by the board.*

31 (10) *Whether the scope of practice of the regulated profession*
32 *or vocation contributes to the highest utilization of personnel and*
33 *whether the entry requirements for the profession or vocation*
34 *encourage affirmative action.*

35 (11) *Whether administrative and statutory changes are*
36 *necessary to improve the board's operations to promote the public*
37 *interest.*

38 (d) *The standing policy committee shall determine if a board is*
39 *deficient. The committee shall report its deficiency determination*
40 *to the Joint Committee on Rules. Notwithstanding any other*

1 *provision of law, if a board is found deficient, each incumbent*
2 *member of the board shall be removed from office without a*
3 *hearing within 10 business days of receipt of the committee's*
4 *deficiency report by the Joint Committee on Rules, and successor*
5 *board members shall be appointed within that timeframe pursuant*
6 *to Section 101.1.*

7 474.22. (a) *Within 10 business days of the date the Joint*
8 *Committee on Rules receives the deficiency report described in*
9 *Section 474.21, the Office of the Consumer Advocate shall assume*
10 *the duties of an independent monitor for the board.*

11 (b) *Within one year of the date it assumes the duties of an*
12 *independent monitor, the Office of the Consumer Advocate shall*
13 *report its findings to the Governor, and the Legislature may make*
14 *recommendations for required reforms of the board.*

15 SEC. 23. *Section 1601.1 of the Business and Professions Code*
16 *is amended to read:*

17 1601.1. (a) *There shall be in the Department of Consumer*
18 *Affairs the Dental Board of California in which the administration*
19 *of this chapter is vested. The board shall consist of eight practicing*
20 *dentists, one registered dental hygienist, one registered dental*
21 *assistant, and four public members. Of the eight practicing dentists,*
22 *one shall be a member of a faculty of any California dental college*
23 *and one shall be a dentist practicing in a nonprofit community*
24 *clinic. The appointing powers, described in Section 1603, may*
25 *appoint to the board a person who was a member of the prior board.*
26 *The board shall be organized into standing committees dealing*
27 *with examinations, enforcement, and other subjects as the board*
28 *deems appropriate.*

29 (b) *For purposes of this chapter, any reference in this chapter*
30 *to the Board of Dental Examiners shall be deemed to refer to the*
31 *Dental Board of California.*

32 (c) *The board shall have all authority previously vested in the*
33 *existing board under this chapter. The board may enforce all*
34 *disciplinary actions undertaken by the previous board.*

35 (d) ~~*This section shall become inoperative on July 1, 2008, and,*~~
36 ~~*as of January 1, 2009, is repealed, unless a later enacted statute*~~
37 ~~*that is enacted before January 1, 2009, deletes or extends the dates*~~
38 ~~*on which it becomes inoperative and is repealed. The repeal of*~~
39 ~~*this section renders the board subject to the review required by*~~
40 ~~*Division 1.2 (commencing with Section 473).*~~

1 *SEC. 24. Section 1632.5 of the Business and Professions Code*
2 *is amended to read:*

3 1632.5. (a) Prior to implementation of paragraph (2) of
4 subdivision (c) of Section 1632, the department's Office of
5 Examination Resources shall review the Western Regional
6 Examining Board examination to assure compliance with the
7 requirements of Section 139 and to certify that the examination
8 process meets those standards. If the department determines that
9 the examination process fails to meet those standards, paragraph
10 (2) of subdivision (c) of Section 1632 shall not be implemented.
11 The review of the Western Regional Examining Board examination
12 shall be conducted during or after the Dental Board of California's
13 occupational analysis scheduled for the 2004–05 fiscal year, but
14 not later than September 30, 2005. However, an applicant who
15 successfully completes the Western Regional Examining Board
16 examination on or after January 1, 2005, shall be deemed to have
17 met the requirements of subdivision (c) of Section 1632 if the
18 department certifies that the Western Regional Examining Board
19 examination meets the standards set forth in this subdivision.

20 (b) The Western Regional Examining Board examination
21 process shall be regularly reviewed by the department pursuant to
22 Section 139.

23 (c) The Western Regional Examining Board examination shall
24 meet the mandates of subdivision (a) of Section 12944 of the
25 Government Code.

26 (d) ~~As part of its next scheduled review by the Joint Committee~~
27 ~~on Boards, Commissions, and Consumer Protection, the~~ *The Dental*
28 Board of California shall report *on or before July 1, 2008, to that*
29 ~~committee and the department and the Office of the Consumer~~
30 *Advocate* on the pass rates of applicants who sat for the Western
31 Regional Examining Board examination, compared with the pass
32 rates of applicants who sat for the state clinical and written
33 examination administered by the Dental Board of California. This
34 report shall be a component of the evaluation of the examination
35 process that is based on psychometrically sound principles for
36 establishing minimum qualifications and levels of competency.

37 *SEC. 25. Section 1634.2 of the Business and Professions Code*
38 *is amended to read:*

1 1634.2. (a) An advanced education program's compliance
2 with subdivision (c) of Section 1634.1 shall be regularly reviewed
3 by the department pursuant to Section 139.

4 (b) An advanced education program described in subdivision
5 (c) of Section 1634.1 shall meet the requirements of subdivision
6 (a) of Section 12944 of the Government Code.

7 (c) The clinical residency program completion certification
8 required by subdivision (c) of Section 1634.1 shall include a list
9 of core competencies commensurate to those found in the board's
10 examinations. The board, together with the department's Office
11 of Examination Resources, shall ensure the alignment of the
12 competencies stated in the clinical residency program completion
13 certification with the board's current occupational analysis. The
14 board shall implement use of the clinical residency program
15 completion certification form and use of the core competency list
16 through the adoption of emergency regulations by January 1, 2008.

17 ~~(d) As part of its next scheduled review after January 1, 2007,~~
18 ~~by the Joint Committee on Boards, Commissions and Consumer~~
19 ~~Protection, the~~ The board shall report to that committee and to the
20 department *and the Office of the Consumer Advocate on or before*
21 *January 1, 2010*, the number of complaints received for those
22 dentists who have obtained licensure by passing the state clinical
23 examination and for those dentists who have obtained licensure
24 through an advanced education program. The report shall also
25 contain tracking information on these complaints and their
26 disposition. This report shall be a component of the evaluation of
27 the examination process that is based on psychometrically sound
28 principles for establishing minimum qualifications and levels of
29 competency.

30 *SEC. 26. Section 1638.1 of the Business and Professions Code*
31 *is amended to read:*

32 1638.1. (a) (1) A person licensed pursuant to Section 1634
33 who wishes to perform elective facial cosmetic surgery shall first
34 apply for and receive a permit to perform elective facial cosmetic
35 surgery from the board.

36 (2) A permit issued pursuant to this section shall be valid for a
37 period of two years and must be renewed by the permitholder at
38 the time his or her license is renewed. Every six years, prior to
39 renewal of the permitholder's license and permit, the permitholder
40 shall submit evidence acceptable to the credentialing committee

1 that he or she has maintained continued competence to perform
2 the procedures authorized by the permit. The credentialing
3 committee may limit a permit consistent with paragraph (1) of
4 subdivision (e) if it is not satisfied that the permitholder has
5 established continued competence.

6 (b) The board may adopt regulations for the issuance of the
7 permit that it deems necessary to protect the health, safety, and
8 welfare of the public.

9 (c) A licensee may obtain a permit to perform elective facial
10 cosmetic surgery by furnishing all of the following information
11 on an application form approved by the board:

12 (1) Proof of successful completion of an oral and maxillofacial
13 surgery residency program accredited by the Commission on Dental
14 Accreditation of the American Dental Association.

15 (2) Proof that the applicant has satisfied the criteria specified
16 in either subparagraph (A) or (B):

17 (A) (i) Is certified, or is a candidate for certification, by the
18 American Board of Oral and Maxillofacial Surgery.

19 (ii) Submits to the board a letter from the program director of
20 the accredited residency program, or from the director of a
21 postresidency fellowship program accredited by the Commission
22 on Dental Accreditation of the American Dental Association,
23 stating that the licensee has the education, training, and competence
24 necessary to perform the surgical procedures that the licensee has
25 notified the board he or she intends to perform.

26 (iii) Submits documentation to the board of at least 10 operative
27 reports from residency training or proctored procedures that are
28 representative of procedures that the licensee intends to perform
29 from both of the following categories:

30 (I) Cosmetic contouring of the osteocartilaginous facial structure,
31 which may include, but is not limited to, rhinoplasty and otoplasty.

32 (II) Cosmetic soft tissue contouring or rejuvenation, which may
33 include, but is not limited to, facelift, blepharoplasty, facial skin
34 resurfacing, or lip augmentation.

35 (iv) Submits documentation to the board showing the surgical
36 privileges the applicant possesses at any licensed general acute
37 care hospital and any licensed outpatient surgical facility in this
38 state.

1 (B) (i) Has been granted privileges by the medical staff at a
2 licensed general acute care hospital to perform the surgical
3 procedures set forth in paragraph (A) at that hospital.

4 (ii) Submits to the board the documentation described in clause
5 (iii) of subparagraph (A).

6 (3) Proof that the applicant is on active status on the staff of a
7 general acute care hospital and maintains the necessary privileges
8 based on the bylaws of the hospital to maintain that status.

9 (d) The application shall be accompanied by an application fee
10 of five hundred dollars (\$500) for an initial permit. The fee to
11 renew a permit shall be two hundred dollars (\$200).

12 (e) (1) The board shall appoint a credentialing committee to
13 review the qualifications of each applicant for a permit. Upon
14 completion of the review of an applicant, the committee shall make
15 a recommendation to the board on whether to issue or not issue a
16 permit to the applicant. The permit may be unqualified, entitling
17 the permitholder to perform any facial cosmetic surgical procedure
18 authorized by this section, or it may contain limitations if the
19 credentialing committee is not satisfied that the applicant has the
20 training or competence to perform certain classes of procedures,
21 or if the applicant has not requested to be permitted for all
22 procedures authorized by this section.

23 (2) The credentialing committee shall be comprised of five
24 members, as follows:

25 (A) A physician and surgeon with a specialty in plastic and
26 reconstructive surgery who maintains active status on the staff of
27 a licensed general acute care hospital in this state.

28 (B) A physician and surgeon with a specialty in otolaryngology
29 who maintains active status on the staff of a licensed general acute
30 care hospital in this state.

31 (C) Three oral and maxillofacial surgeons licensed by the board
32 who are board certified by the American Board of Oral and
33 Maxillofacial Surgeons, and who maintain active status on the
34 staff of a licensed general acute care hospital in this state, at least
35 one of whom shall be licensed as a physician and surgeon in this
36 state. Two years after the effective date of this section, any oral
37 and maxillofacial surgeon appointed to the committee who is not
38 licensed as a physician and surgeon shall hold a permit pursuant
39 to this section.

1 (3) The board shall solicit from the following organizations
2 input and recommendations regarding members to be appointed
3 to the credentialing committee:

4 (A) The Medical Board of California.

5 (B) The California Dental Association.

6 (C) The California Association of Oral and Maxillofacial
7 Surgeons.

8 (D) The California Medical Association.

9 (E) The California Society of Plastic Surgeons.

10 (F) Any other source that the board deems appropriate.

11 (4) The credentialing committee shall meet at a time and place
12 directed by the board to evaluate applicants for permits. A quorum
13 of three members shall be required for the committee to consider
14 applicants and make recommendations to the board.

15 (f) A licensee may not perform any elective, facial cosmetic
16 surgical procedure except at a general acute care hospital, a licensed
17 outpatient surgical facility, or an outpatient surgical facility
18 accredited by the Joint Commission on Accreditation of Healthcare
19 Organizations (JCAHO), the American Association for Ambulatory
20 Health Care (AAAHC), the Medicare program, or an accreditation
21 agency approved by the Medical Board of California pursuant to
22 subdivision (g) of Section 1248.1 of the Health and Safety Code.

23 (g) For purposes of this section, the following terms shall have
24 the following meanings:

25 (1) "Elective cosmetic surgery" means any procedure defined
26 as cosmetic surgery in subdivision (d) of Section 1367.63 of the
27 Health and Safety Code, and excludes any procedure that
28 constitutes reconstructive surgery, as defined in subdivision (c) of
29 Section 1367.63 of the Health and Safety Code.

30 (2) "Facial" means those regions of the human body described
31 in Section 1625 and in any regulations adopted pursuant to that
32 section by the board.

33 (h) A holder of a permit issued pursuant to this section shall not
34 perform elective facial cosmetic surgical procedures unless he or
35 she has malpractice insurance or other financial security protection
36 that would satisfy the requirements of Section 2216.2 and any
37 regulations adopted thereunder.

38 (i) A holder of a permit shall comply with the requirements of
39 subparagraph (D) of paragraph (2) of subdivision (a) of Section
40 1248.15 of the Health and Safety Code, and the reporting

1 requirements specified in Section 2240, with respect to any surgical
2 procedure authorized by this section, in the same manner as a
3 physician and surgeon.

4 (j) Any violation of this section constitutes unprofessional
5 conduct and is grounds for the revocation or suspension of the
6 person's permit, license, or both, or the person may be reprimanded
7 or placed on probation. Proceedings initiated by the board under
8 this section shall be conducted in accordance with Chapter 5
9 (commencing with Section 11500) of Part 1 of Division 3 of Title
10 2 of the Government Code, and the board shall have all the powers
11 granted therein.

12 (k) On or before January 1, 2009, and every four years thereafter,
13 the board shall report to the ~~Joint Committee on Boards,~~
14 ~~Commissions and Consumer Protection~~ *Legislature and the Office*
15 *of the Consumer Advocate* on all of the following:

16 (1) The number of persons licensed pursuant to Section 1634
17 who apply to receive a permit to perform elective facial cosmetic
18 surgery from the board pursuant to subdivision (a).

19 (2) The recommendations of the credentialing committee to the
20 board.

21 (3) The board's action on recommendations received by the
22 credentialing committee.

23 (4) The number of persons receiving a permit from the board
24 to perform elective facial cosmetic surgery.

25 (5) The number of complaints filed by or on behalf of patients
26 who have received elective facial cosmetic surgery by persons
27 who have received a permit from the board to perform elective
28 facial cosmetic surgery.

29 (6) Action taken by the board resulting from complaints filed
30 by or on behalf of patients who have received elective facial
31 cosmetic surgery by persons who have received a permit from the
32 board to perform elective facial cosmetic surgery.

33 *SEC. 27. Section 1638.7 of the Business and Professions Code*
34 *is amended to read:*

35 1638.7. The next occupational analysis of dental licensees and
36 oral and maxillofacial facial surgeons pursuant to Section 139 shall
37 include a survey of the training and practices of oral and
38 maxillofacial surgeons and, upon completion of that analysis, a
39 report shall be made to the ~~Joint Committee on Boards,~~

1 ~~Commissions, and Consumer Protection~~ *Legislature and the Office*
2 *of the Consumer Advocate* regarding the findings.

3 SEC. 28. *Section 1742 of the Business and Professions Code*
4 *is amended to read:*

5 1742. (a) There is within the jurisdiction of the board a
6 Committee on Dental Auxiliaries.

7 (b) The Committee on Dental Auxiliaries shall have the
8 following areas of responsibility and duties:

9 (1) The committee shall have the following duties and authority
10 related to education programs and curriculum:

11 (A) Shall evaluate all dental auxiliary programs applying for
12 board approval in accordance with board rules governing the
13 programs.

14 (B) May appoint board members to any evaluation committee.
15 Board members so appointed shall not make a final decision on
16 the issue of program or course approval.

17 (C) Shall report and make recommendations to the board as to
18 whether a program or course qualifies for approval. The board
19 retains the final authority to grant or deny approval to a program
20 or course.

21 (D) Shall review and document any alleged deficiencies that
22 might warrant board action to withdraw or revoke approval of a
23 program or course, at the request of the board.

24 (E) May review and document any alleged deficiencies that
25 might warrant board action to withdraw or revoke approval of a
26 program or course, at its own initiation.

27 (2) The committee shall have the following duties and authority
28 related to applications:

29 (A) Shall review and evaluate all applications for licensure in
30 the various dental auxiliary categories to ascertain whether a
31 candidate meets the appropriate licensing requirements specified
32 by statute and board regulations.

33 (B) Shall maintain application records, cashier application fees,
34 and perform any other ministerial tasks as are incidental to the
35 application process.

36 (C) May delegate any or all of the functions in this paragraph
37 to its staff.

38 (D) Shall issue auxiliary licenses in all cases, except where there
39 is a question as to a licensing requirement. The board retains final
40 authority to interpret any licensing requirement. If a question arises

1 in the area of interpreting any licensing requirement, it shall be
2 presented by the committee to the board for resolution.

3 (3) The committee shall have the following duties and authority
4 regarding examinations:

5 (A) Shall advise the board as to the type of license examination
6 it deems appropriate for the various dental auxiliary license
7 categories.

8 (B) Shall, at the direction of the board, develop or cause to be
9 developed, administer, or both, examinations in accordance with
10 the board's instructions and periodically report to the board on the
11 progress of those examinations. The following shall apply to the
12 examination procedure:

13 (i) The examination shall be submitted to the board for its
14 approval prior to its initial administration.

15 (ii) Once an examination has been approved by the board, no
16 further approval is required unless a major modification is made
17 to the examination.

18 (iii) The committee shall report to the board on the results of
19 each examination and shall, where appropriate, recommend pass
20 points.

21 (iv) The board shall set pass points for all dental auxiliary
22 licensing examinations.

23 (C) May appoint board members to any examination committee
24 established pursuant to subparagraph (B).

25 (4) The committee shall periodically report and make
26 recommendations to the board concerning the level of fees for
27 dental auxiliaries and the need for any legislative fee increase.
28 However, the board retains final authority to set all fees.

29 (5) The committee shall be responsible for all aspects of the
30 license renewal process, which shall be accomplished in accordance
31 with this chapter and board regulations. The committee may
32 delegate any or all of its functions under this paragraph to its staff.

33 (6) The committee shall have no authority with respect to the
34 approval of continuing education providers and the board retains
35 all of this authority.

36 (7) The committee shall advise the board as to appropriate
37 standards of conduct for auxiliaries, the proper ordering of
38 enforcement priorities, and any other enforcement-related matters
39 that the board may, in the future, delegate to the committee. The
40 board shall retain all authority with respect to the enforcement

1 actions, including, but not limited to, complaint resolution,
2 investigation, and disciplinary action against auxiliaries.

3 (8) The committee shall have the following duties regarding
4 regulations:

5 (A) To review and evaluate all suggestions or requests for
6 regulatory changes related to dental auxiliaries.

7 (B) To report and make recommendations to the board, after
8 consultation with departmental legal counsel and the board's
9 executive officer.

10 (C) To include in any report regarding a proposed regulatory
11 change, at a minimum, the specific language of the proposed
12 changes and the reasons for and facts supporting the need for the
13 change. The board has the final rulemaking authority.

14 ~~(c) This section shall become inoperative on July 1, 2009, and,
15 as of January 1, 2010, is repealed, unless a later enacted statute
16 which becomes effective on or before January 1, 2010, deletes or
17 extends the dates on which it becomes inoperative and is repealed.
18 The repeal of this section renders the committee subject to the
19 review required by Division 1.2 (commencing with Section 473).~~

20 *SEC. 29. Section 1751 of the Business and Professions Code,
21 as amended by Section 8 of Chapter 621 of the Statutes of 2005,
22 is amended to read:*

23 1751. (a) The board, upon recommendation of the committee,
24 shall adopt regulations governing the procedures that dental
25 assistants, registered orthodontic assistants, registered surgery
26 assistants, registered restorative assistants, registered dental
27 assistants, registered restorative assistants in extended functions,
28 and registered dental assistants in extended functions are authorized
29 to perform consistent with and necessary to implement the
30 provisions of this article, and the settings within which each may
31 practice.

32 (b) The board shall conduct an initial review of the procedures,
33 supervision level, settings under which they may be performed,
34 and utilization of extended functions dental auxiliaries by January
35 1, 2012. The board shall submit the results of its review to the ~~Joint
36 Committee on Boards, Commissions, and Consumer Protection
37 Legislature and the Office of the Consumer Advocate.~~ After the
38 initial review, a review shall be conducted at least once every five
39 to seven years thereafter, and the board shall update regulations
40 as necessary to keep them current with the state of dental practice.

1 (c) This section shall become operative on January 1, 2008.

2 *SEC. 30. Section 2001 of the Business and Professions Code*
3 *is amended to read:*

4 2001. There is in the Department of Consumer Affairs a
5 Medical Board of California that consists of 21 members, nine of
6 whom shall be public members.

7 The Governor shall appoint 19 members to the board, subject
8 to confirmation by the Senate, seven of whom shall be public
9 members. The Senate Rules Committee and the Speaker of the
10 Assembly shall each appoint a public member, and their initial
11 appointment shall be made to fill, respectively, the first and second
12 public member vacancies that occur on or after January 1, 1983.

13 ~~This section shall become inoperative on July 1, 2010, and, as~~
14 ~~of January 1, 2011, is repealed, unless a later enacted statute, which~~
15 ~~becomes effective on or before January 1, 2011, deletes or extends~~
16 ~~the dates on which it becomes inoperative and is repealed. The~~
17 ~~repeal of this section renders the board subject to the review~~
18 ~~required by Division 1.2 (commencing with Section 473).~~

19 *SEC. 31. Section 2460 of the Business and Professions Code*
20 *is amended to read:*

21 2460. There is created within the jurisdiction of the Medical
22 Board of California and its divisions the California Board of
23 Podiatric Medicine. ~~This section shall become inoperative on July~~
24 ~~1, 2010, and, as of January 1, 2011, is repealed, unless a later~~
25 ~~enacted statute, which becomes effective on or before January 1,~~
26 ~~2011, deletes or extends the dates on which it becomes inoperative~~
27 ~~and is repealed. The repeal of this section renders the California~~
28 ~~Board of Podiatric Medicine subject to the review required by~~
29 ~~Division 1.2 (commencing with Section 473).~~

30 *SEC. 32. Section 2531 of the Business and Professions Code*
31 *is amended to read:*

32 2531. There is in the Department of Consumer Affairs a
33 Speech-Language Pathology and Audiology Board in which the
34 enforcement and administration of this chapter is vested. The
35 Speech-Language Pathology and Audiology Board shall consist
36 of nine members, three of whom shall be public members.

37 ~~This section shall become inoperative on July 1, 2008, and, as~~
38 ~~of January 1, 2009, is repealed, unless a later enacted statute, that~~
39 ~~becomes effective on or before January 1, 2009, deletes or extends~~
40 ~~the inoperative and repeal dates. The repeal of this section renders~~

1 the board subject to the review required by Division 1.2
2 (~~commencing with Section 473~~).

3 *SEC. 33. Section 2569 of the Business and Professions Code*
4 *is repealed.*

5 ~~2569. The powers and duties of the board, as set forth in this~~
6 ~~chapter, shall be subject to the review required by Division 1.2~~
7 ~~(commencing with Section 473). The review shall be performed~~
8 ~~as if this chapter were scheduled to become inoperative on July 1,~~
9 ~~2003, and would be repealed as of January 1, 2004, as described~~
10 ~~in Section 473.1.~~

11 *SEC. 34. Section 2570.19 of the Business and Professions Code*
12 *is amended to read:*

13 2570.19. (a) There is hereby created a California Board of
14 Occupational Therapy, hereafter referred to as the board. The board
15 shall enforce and administer this chapter.

16 (b) The members of the board shall consist of the following:

17 (1) Three occupational therapists who shall have practiced
18 occupational therapy for five years.

19 (2) One occupational therapy assistant who shall have assisted
20 in the practice of occupational therapy for five years.

21 (3) Three public members who shall not be licentiates of the
22 board or of any board referred to in Section 1000 or 3600.

23 (c) The Governor shall appoint the three occupational therapists
24 and one occupational therapy assistant to be members of the board.
25 The Governor, the Senate Rules Committee, and the Speaker of
26 the Assembly shall each appoint a public member. Not more than
27 one member of the board shall be appointed from the full-time
28 faculty of any university, college, or other educational institution.

29 (d) All members shall be residents of California at the time of
30 their appointment. The occupational therapist and occupational
31 therapy assistant members shall have been engaged in rendering
32 occupational therapy services to the public, teaching, or research
33 in occupational therapy for at least five years preceding their
34 appointments.

35 (e) The public members may not be or have ever been
36 occupational therapists or occupational therapy assistants or in
37 training to become occupational therapists or occupational therapy
38 assistants. The public members may not be related to, or have a
39 household member who is, an occupational therapist or an
40 occupational therapy assistant, and may not have had, within two

1 years of the appointment, a substantial financial interest in a person
2 regulated by the board.

3 (f) The Governor shall appoint two board members for a term
4 of one year, two board members for a term of two years, and one
5 board member for a term of three years. Appointments made
6 thereafter shall be for four-year terms, but no person shall be
7 appointed to serve more than two consecutive terms. Terms shall
8 begin on the first day of the calendar year and end on the last day
9 of the calendar year or until successors are appointed, except for
10 the first appointed members who shall serve through the last
11 calendar day of the year in which they are appointed, before
12 commencing the terms prescribed by this section. Vacancies shall
13 be filled by appointment for the unexpired term. The board shall
14 annually elect one of its members as president.

15 (g) The board shall meet and hold at least one regular meeting
16 annually in the Cities of Sacramento, Los Angeles, and San
17 Francisco. The board may convene from time to time until its
18 business is concluded. Special meetings of the board may be held
19 at any time and place designated by the board.

20 (h) Notice of each meeting of the board shall be given in
21 accordance with the Bagley-Keene Open Meeting Act (Article 9
22 (commencing with Section 11120) of Chapter 1 of Part 1 of
23 Division 3 of Title 2 of the Government Code).

24 (i) Members of the board shall receive no compensation for
25 their services, but shall be entitled to reasonable travel and other
26 expenses incurred in the execution of their powers and duties in
27 accordance with Section 103.

28 (j) The appointing power shall have the power to remove any
29 member of the board from office for neglect of any duty imposed
30 by state law, for incompetency, or for unprofessional or
31 dishonorable conduct.

32 (k) A loan is hereby authorized from the General Fund to the
33 Occupational Therapy Fund on or after July 1, 2000, in an amount
34 of up to one million dollars (\$1,000,000) to fund operating,
35 personnel, and other startup costs of the board. Six hundred ten
36 thousand dollars (\$610,000) of this loan amount is hereby
37 appropriated to the board to use in the 2000-01 fiscal year for the
38 purposes described in this subdivision. In subsequent years, funds
39 from the Occupational Therapy Fund shall be available to the board
40 upon appropriation by the Legislature in the annual Budget Act.

1 The loan shall be repaid to the General Fund over a period of up
2 to five years, and the amount paid shall also include interest at the
3 rate accruing to moneys in the Pooled Money Investment Account.
4 The loan amount and repayment period shall be minimized to the
5 extent possible based upon actual board financing requirements
6 as determined by the Department of Finance.

7 ~~(f) This section shall become inoperative on July 1, 2013, and,
8 as of January 1, 2014, is repealed, unless a later enacted statute
9 that is enacted before January 1, 2014, deletes or extends the dates
10 on which it becomes inoperative and is repealed. The repeal of
11 this section renders the board subject to the review required by
12 Division 1.2 (commencing with Section 473).~~

13 *SEC. 35. Section 2602 of the Business and Professions Code*
14 *is amended to read:*

15 2602. The Physical Therapy Board of California, hereafter
16 referred to as the board, shall enforce and administer this chapter.
17 ~~This section shall become inoperative on July 1, 2013, and, as of
18 January 1, 2014, is repealed, unless a later enacted statute, which
19 becomes effective on or before January 1, 2014, deletes or extends
20 the dates on which it becomes inoperative and is repealed.~~

21 ~~The repeal of this section renders the board subject to the review
22 required by Division 1.2 (commencing with Section 473).~~

23 *SEC. 36. Section 2701 of the Business and Professions Code*
24 *is amended to read:*

25 2701. There is in the Department of Consumer Affairs the
26 Board of Registered Nursing consisting of nine members.

27 Within the meaning of this chapter, board, or the board, refers
28 to the Board of Registered Nursing. Any reference in state law to
29 the Board of Nurse Examiners of the State of California or
30 California Board of Nursing Education and Nurse Registration
31 shall be construed to refer to the Board of Registered Nursing.

32 ~~This section shall become inoperative on July 1, 2010, and, as
33 of January 1, 2011, is repealed, unless a later enacted statute, that
34 becomes operative on or before January 1, 2011, deletes or extends
35 the dates on which it becomes inoperative and is repealed. The
36 repeal of this section renders the board subject to the review
37 required by Division 1.2 (commencing with Section 473).~~

38 *SEC. 37. Section 2841 of the Business and Professions Code*
39 *is amended to read:*

1 2841. There is in the Department of Consumer Affairs a Board
2 of Vocational Nursing and Psychiatric Technicians of the State of
3 California, consisting of 11 members.

4 Within the meaning of this chapter, board, or the board, refers
5 to the Board of Vocational Nursing and Psychiatric Technicians
6 of the State of California.

7 ~~This section shall become inoperative on July 1, 2008, and, as~~
8 ~~of January 1, 2009, is repealed, unless a later enacted statute, which~~
9 ~~becomes effective on or before January 1, 2009, deletes or extends~~
10 ~~the dates on which it becomes inoperative and is repealed. The~~
11 ~~repeal of this section renders the board subject to the review~~
12 ~~required by Division 1.2 (commencing with Section 473).~~

13 *SEC. 38. Section 2920 of the Business and Professions Code*
14 *is amended to read:*

15 2920. The Board of Psychology shall enforce and administer
16 this chapter. The board shall consist of nine members, four of
17 whom shall be public members.

18 ~~This section shall become inoperative on July 1, 2009, and, as~~
19 ~~of January 1, 2010, is repealed, unless a later enacted statute, which~~
20 ~~becomes effective on or before January 1, 2010, deletes or extends~~
21 ~~the dates on which it becomes inoperative and is repealed.~~

22 *SEC. 39. Section 3010.5 of the Business and Professions Code*
23 *is amended to read:*

24 3010.5. (a) There is in the Department of Consumer Affairs
25 a State Board of Optometry in which the enforcement of this
26 chapter is vested. The board consists of 11 members, five of whom
27 shall be public members.

28 Six members of the board shall constitute a quorum.

29 (b) The board shall, with respect to conducting investigations,
30 inquiries, and disciplinary actions and proceedings, have the
31 authority previously vested in the board as created pursuant to
32 Section 3010. The board may enforce any disciplinary actions
33 undertaken by that board.

34 ~~(c) This section shall remain in effect only until July 1, 2010,~~
35 ~~and, as of January 1, 2011, is repealed, unless a later enacted~~
36 ~~statute, that is enacted before January 1, 2011, deletes or extends~~
37 ~~that date.~~

38 *SEC. 40. Section 3502.1 of the Business and Professions Code*
39 *is amended to read:*

1 3502.1. (a) In addition to the services authorized in the
2 regulations adopted by the board, and except as prohibited by
3 Section 3502, while under the supervision of a licensed physician
4 and surgeon or physicians and surgeons authorized by law to
5 supervise a physician assistant, a physician assistant may
6 administer or provide medication to a patient, or transmit orally,
7 or in writing on a patient's record or in a drug order, an order to a
8 person who may lawfully furnish the medication or medical device
9 pursuant to subdivisions (c) and (d).

10 (1) A supervising physician and surgeon who delegates authority
11 to issue a drug order to a physician assistant may limit this authority
12 by specifying the manner in which the physician assistant may
13 issue delegated prescriptions.

14 (2) Each supervising physician and surgeon who delegates the
15 authority to issue a drug order to a physician assistant shall first
16 prepare and adopt, or adopt, a written, practice specific, formulary
17 and protocols that specify all criteria for the use of a particular
18 drug or device, and any contraindications for the selection. The
19 drugs listed shall constitute the formulary and shall include only
20 drugs that are appropriate for use in the type of practice engaged
21 in by the supervising physician and surgeon. When issuing a drug
22 order, the physician assistant is acting on behalf of and as an agent
23 for a supervising physician and surgeon.

24 (b) "Drug order" for purposes of this section means an order
25 for medication which is dispensed to or for a patient, issued and
26 signed by a physician assistant acting as an individual practitioner
27 within the meaning of Section 1306.02 of Title 21 of the Code of
28 Federal Regulations. Notwithstanding any other provision of law,
29 (1) a drug order issued pursuant to this section shall be treated in
30 the same manner as a prescription or order of the supervising
31 physician, (2) all references to "prescription" in this code and the
32 Health and Safety Code shall include drug orders issued by
33 physician assistants pursuant to authority granted by their
34 supervising physicians, and (3) the signature of a physician
35 assistant on a drug order shall be deemed to be the signature of a
36 prescriber for purposes of this code and the Health and Safety
37 Code.

38 (c) A drug order for any patient cared for by the physician
39 assistant that is issued by the physician assistant shall either be
40 based on the protocols described in subdivision (a) or shall be

1 approved by the supervising physician before it is filled or carried
2 out.

3 (1) A physician assistant shall not administer or provide a drug
4 or issue a drug order for a drug other than for a drug listed in the
5 formulary without advance approval from a supervising physician
6 and surgeon for the particular patient. At the direction and under
7 the supervision of a physician and surgeon, a physician assistant
8 may hand to a patient of the supervising physician and surgeon a
9 properly labeled prescription drug prepackaged by a physician and
10 surgeon, manufacturer as defined in the Pharmacy Law, or a
11 pharmacist.

12 (2) A physician assistant may not administer, provide or issue
13 a drug order for Schedule II through Schedule V controlled
14 substances without advance approval by a supervising physician
15 and surgeon for the particular patient.

16 (3) Any drug order issued by a physician assistant shall be
17 subject to a reasonable quantitative limitation consistent with
18 customary medical practice in the supervising physician and
19 surgeon's practice.

20 (d) A written drug order issued pursuant to subdivision (a),
21 except a written drug order in a patient's medical record in a health
22 facility or medical practice, shall contain the printed name, address,
23 and phone number of the supervising physician and surgeon, the
24 printed or stamped name and license number of the physician
25 assistant, and the signature of the physician assistant. Further, a
26 written drug order for a controlled substance, except a written drug
27 order in a patient's medical record in a health facility or a medical
28 practice, shall include the federal controlled substances registration
29 number of the physician assistant. The requirements of this
30 subdivision may be met through stamping or otherwise imprinting
31 on the supervising physician and surgeon's prescription blank to
32 show the name, license number, and if applicable, the federal
33 controlled substances number of the physician assistant, and shall
34 be signed by the physician assistant. When using a drug order, the
35 physician assistant is acting on behalf of and as the agent of a
36 supervising physician and surgeon.

37 (e) The medical record of any patient cared for by a physician
38 assistant for whom the supervising physician and surgeon's
39 Schedule II drug order has been issued or carried out shall be

1 reviewed and countersigned and dated by a supervising physician
2 and surgeon within seven days.

3 (f) All physician assistants who are authorized by their
4 supervising physicians to issue drug orders for controlled
5 substances shall register with the United States Drug Enforcement
6 Administration (DEA).

7 (g) The committee shall consult with the Medical Board of
8 California and report ~~during its sunset review required by Division~~
9 ~~1.2 (commencing with Section 473) to the Legislature and the~~
10 *Office of the Consumer Advocate periodically, as necessary, on*
11 *the impacts of exempting Schedule III and Schedule IV drug orders*
12 *from the requirement for a physician and surgeon to review and*
13 *countersign the affected medical record of a patient.*

14 *SEC. 41. Section 3504 of the Business and Professions Code*
15 *is amended to read:*

16 3504. There is established a Physician Assistant Committee
17 of the Medical Board of California. The committee consists of
18 nine members. ~~This section shall become inoperative on July 1,~~
19 ~~2011, and, as of January 1, 2012, is repealed, unless a later enacted~~
20 ~~statute, which becomes effective on or before January 1, 2012,~~
21 ~~deletes or extends the dates on which it becomes inoperative and~~
22 ~~is repealed. The repeal of this section renders the committee subject~~
23 ~~to the review required by Division 1.2 (commencing with Section~~
24 ~~473).~~

25 *SEC. 42. Section 3685 of the Business and Professions Code*
26 *is amended to read:*

27 3685. (a) ~~The provisions of Article 8 (commencing with~~
28 ~~Section 3680) shall become operative on January 1, 2004, but the~~
29 ~~remaining provisions of this chapter shall become operative on~~
30 ~~July 1, 2004. It is the intent of the Legislature that the initial~~
31 ~~implementation of this chapter be administered by fees collected~~
32 ~~in advance from applicants. Therefore, the bureau shall have the~~
33 ~~power and authority to establish fees and receive applications for~~
34 ~~licensure or intents to file application statements on and after~~
35 ~~January 1, 2004. The department shall certify that sufficient funds~~
36 ~~are available prior to implementing this chapter. Funds from the~~
37 ~~General Fund may not be used for the purpose of implementing~~
38 ~~this chapter.~~

39 (b) ~~This chapter shall become inoperative on July 1, 2010, and,~~
40 ~~as of January 1, 2011, is repealed, unless a later enacted statute~~

1 that is enacted before January 1, 2011, deletes or extends the dates
2 on which it becomes inoperative and is repealed. The repeal of
3 this chapter renders the bureau subject to the review required by
4 Division 1.2 (commencing with Section 473).

5 (e) The bureau shall prepare the report required by Section 473.2
6 no later than September 1, 2008.

7 *SEC. 43. Section 3710 of the Business and Professions Code*
8 *is amended to read:*

9 3710. The Respiratory Care Board of California, hereafter
10 referred to as the board, shall enforce and administer this chapter.

11 ~~This section shall become inoperative on July 1, 2010, and, as~~
12 ~~of January 1, 2011, is repealed, unless a later enacted statute, that~~
13 ~~becomes operative on or before January 1, 2011, deletes or extends~~
14 ~~the dates on which it becomes inoperative and is repealed.~~

15 ~~The repeal of this section renders the board subject to the review~~
16 ~~required by Division 1.2 (commencing with Section 473).~~

17 *SEC. 44. Section 4001 of the Business and Professions Code*
18 *is amended to read:*

19 4001. (a) There is in the Department of Consumer Affairs a
20 California State Board of Pharmacy in which the administration
21 and enforcement of this chapter is vested. The board consists of
22 13 members.

23 (b) The Governor shall appoint seven competent pharmacists
24 who reside in different parts of the state to serve as members of
25 the board. The Governor shall appoint four public members, and
26 the Senate Committee on Rules and the Speaker of the Assembly
27 shall each appoint a public member who shall not be a licensee of
28 the board, any other board under this division, or any board referred
29 to in Section 1000 or 3600.

30 (c) At least five of the seven pharmacist appointees to the board
31 shall be pharmacists who are actively engaged in the practice of
32 pharmacy. Additionally, the membership of the board shall include
33 at least one pharmacist representative from each of the following
34 practice settings: an acute care hospital, an independent community
35 pharmacy, a chain community pharmacy, and a long-term health
36 care or skilled nursing facility. The pharmacist appointees shall
37 also include a pharmacist who is a member of a labor union that
38 represents pharmacists. For the purposes of this subdivision, a
39 “chain community pharmacy” means a chain of 75 or more stores
40 in California under the same ownership, and an “independent

1 community pharmacy” means a pharmacy owned by a person or
2 entity who owns no more than four pharmacies in California.

3 (d) Members of the board shall be appointed for a term of four
4 years. No person shall serve as a member of the board for more
5 than two consecutive terms. Each member shall hold office until
6 the appointment and qualification of his or her successor or until
7 one year shall have elapsed since the expiration of the term for
8 which the member was appointed, whichever first occurs.
9 Vacancies occurring shall be filled by appointment for the
10 unexpired term.

11 (e) Each member of the board shall receive a per diem and
12 expenses as provided in Section 103.

13 ~~(f) In accordance with Sections 101.1 and 473.1, this section~~
14 ~~shall become inoperative on July 1, 2010, and, as of January 1,~~
15 ~~2011, is repealed, unless a later enacted statute, that becomes~~
16 ~~effective on or before January 1, 2011, deletes or extends the dates~~
17 ~~on which it becomes inoperative and is repealed. The repeal of~~
18 ~~this section renders the board subject to the review required by~~
19 ~~Division 1.2 (commencing with Section 473).~~

20 *SEC. 45. Section 4003 of the Business and Professions Code*
21 *is amended to read:*

22 4003. (a) The board may appoint a person exempt from civil
23 service who shall be designated as an executive officer and who
24 shall exercise the powers and perform the duties delegated by the
25 board and vested in him or her by this chapter. The executive
26 officer may or may not be a member of the board as the board may
27 determine.

28 (b) The executive officer shall receive the compensation as
29 established by the board with the approval of the Director of
30 Finance. The executive officer shall also be entitled to travel and
31 other expenses necessary in the performance of his or her duties.

32 (c) The executive officer shall maintain and update in a timely
33 fashion records containing the names, titles, qualifications, and
34 places of business of all persons subject to this chapter.

35 (d) The executive officer shall give receipts for all money
36 received by him or her and pay it to the Department of Consumer
37 Affairs, taking its receipt therefor. Besides the duties required by
38 this chapter, the executive officer shall perform other duties
39 pertaining to the office as may be required of him or her by the
40 board.

1 ~~(c) In accordance with Sections 101.1 and 473.1, this section~~
2 ~~shall become inoperative on July 1, 2010, and, as of January 1,~~
3 ~~2011, is repealed, unless a later enacted statute, that becomes~~
4 ~~effective on or before January 1, 2011, deletes or extends the dates~~
5 ~~on which it becomes inoperative and is repealed.~~

6 *SEC. 46. Section 4200.1 of the Business and Professions Code*
7 *is amended to read:*

8 4200.1. (a) Notwithstanding Section 135, an applicant may
9 take the North American Pharmacist Licensure Examination four
10 times, and may take the Multi-State Pharmacy Jurisprudence
11 Examination for California four times.

12 (b) Notwithstanding Section 135, an applicant may take the
13 North American Pharmacist Licensure Examination and the
14 Multi-State Pharmacy Jurisprudence Examination for California
15 four additional times each if he or she successfully completes, at
16 minimum, 16 additional semester units of education in pharmacy
17 as approved by the board.

18 (c) The applicant shall comply with the requirements of Section
19 4200 for each application for reexamination made pursuant to
20 subdivision (b).

21 (d) An applicant may use the same coursework to satisfy the
22 additional educational requirement for each examination under
23 subdivision (b), if the coursework was completed within 12 months
24 of the date of his or her application for reexamination.

25 (e) For purposes of this section, the board shall treat each failing
26 score on the pharmacist licensure examination administered by
27 the board prior to January 1, 2004, as a failing score on both the
28 North American Pharmacist Licensure Examination and the
29 Multi-State Pharmacy Jurisprudence Examination for California.

30 (f) From January 1, 2004, to July 1, 2008, inclusive, the board
31 shall collect data on the applicants who are admitted to, and take,
32 the licensure examinations required by Section 4200. The board
33 shall report to the ~~Joint Committee on Boards, Commissions, and~~
34 ~~Consumer Protection~~ *Legislature and the Office of the Consumer*
35 *Advocate* before September 1, 2008, regarding the impact on those
36 applicants of the examination limitations imposed by this section.
37 The report shall include, but not be limited to, the following
38 information:

39 (1) The number of applicants taking the examination and the
40 number who fail the examination for the fourth time.

1 (2) The number of applicants who, after failing the examination
2 for the fourth time, complete a pharmacy studies program in
3 California or another state to satisfy the requirements of this section
4 and who apply to take the licensure examination required by
5 Section 4200.

6 (3) To the extent possible, the school from which the applicant
7 graduated and the school's location and the pass/fail rates on the
8 examination for each school.

9 (g) This section shall remain in effect only until January 1, 2010,
10 and as of that date is repealed, unless a later enacted statute, that
11 is enacted before January 1, 2010, deletes or extends that date.

12 *SEC. 47. Section 4200.3 of the Business and Professions Code*
13 *is amended to read:*

14 4200.3. (a) The examination process shall be regularly
15 reviewed pursuant to Section 139.

16 (b) The examination process shall meet the standards and
17 guidelines set forth in the Standards for Educational and
18 Psychological Testing and the Federal Uniform Guidelines for
19 Employee Selection Procedures. The board shall work with the
20 Office of Examination Resources of the department or with an
21 equivalent organization who shall certify at minimum once every
22 five years that the examination process meets these national testing
23 standards. If the department determines that the examination
24 process fails to meet these standards, the board shall terminate its
25 use of the North American Pharmacy Licensure Examination and
26 shall use only the written and practical examination developed by
27 the board.

28 (c) The examination shall meet the mandates of subdivision (a)
29 of Section 12944 of the Government Code.

30 (d) The board shall work with the Office of Examination
31 Resources or with an equivalent organization to develop the state
32 jurisprudence examination to ensure that applicants for licensure
33 are evaluated on their knowledge of applicable state laws and
34 regulations.

35 (e) The board shall annually publish the pass and fail rates for
36 the pharmacist's licensure examination administered pursuant to
37 Section 4200, including a comparison of historical pass and fail
38 rates before utilization of the North American Pharmacist Licensure
39 Examination.

1 (f) The board shall *annually* report to the ~~Joint Committee on~~
2 ~~Boards, Commissions, and Consumer Protection~~ *Legislature, the*
3 *Office of the Consumer Advocate,* and the department ~~as part of~~
4 ~~its next scheduled review,~~ the pass rates of applicants who sat for
5 the national examination compared with the pass rates of applicants
6 who sat for the prior state examination. This report shall be a
7 component of the evaluation of the examination process that is
8 based on psychometrically sound principles for establishing
9 minimum qualifications and levels of competency.

10 *SEC. 48. Section 4501 of the Business and Professions Code*
11 *is amended to read:*

12 4501. ~~(a)~~—“Board,” as used in this chapter, means the Board
13 of Vocational Nursing and Psychiatric Technicians.

14 ~~(b) This section shall become inoperative on July 1, 2008, and,~~
15 ~~as of January 1, 2009, is repealed, unless a later enacted statute,~~
16 ~~which becomes effective on or before January 1, 2009, deletes or~~
17 ~~extends the dates on which it becomes inoperative and is repealed.~~

18 *SEC. 49. Section 4800 of the Business and Professions Code*
19 *is amended to read:*

20 4800. There is in the Department of Consumer Affairs a
21 Veterinary Medical Board in which the administration of this
22 chapter is vested. The board consists of seven members, three of
23 whom shall be public members.

24 ~~This section shall become inoperative on July 1, 2011, and, as~~
25 ~~of January 1, 2012, is repealed, unless a later enacted statute, which~~
26 ~~becomes effective on or before January 1, 2012, deletes or extends~~
27 ~~the dates on which it becomes inoperative and is repealed.~~

28 ~~The repeal of this section renders the board subject to the review~~
29 ~~provided for by Division 1.2 (commencing with Section 473).~~

30 *SEC. 50. Section 4928 of the Business and Professions Code*
31 *is amended to read:*

32 4928. The Acupuncture Board, which consists of seven
33 members, shall enforce and administer this chapter. The appointing
34 powers, as described in Section 4929, may appoint to the board a
35 person who was a member of the prior board prior to the repeal of
36 that board on January 1, 2006.

37 ~~This section shall become inoperative on July 1, 2009, and, as~~
38 ~~of January 1, 2010, is repealed, unless a later enacted statute, which~~
39 ~~becomes effective on or before January 1, 2010, deletes or extends~~
40 ~~the dates on which it becomes inoperative and is repealed.~~

1 ~~The repeal of this section renders the board subject to the review~~
2 ~~required by Division 1.2 (commencing with Section 473).~~

3 *SEC. 51. Section 4989 of the Business and Professions Code*
4 *is repealed.*

5 ~~4989. The powers and duties of the board, as set forth in this~~
6 ~~chapter, shall be subject to the review required by Division 1.2~~
7 ~~(commencing with Section 473). The review shall be performed~~
8 ~~as if this chapter were scheduled to become inoperative on July 1,~~
9 ~~2005, and would be repealed as of January 1, 2006, as described~~
10 ~~in Section 473.1.~~

11 *SEC. 52. Section 4990 of the Business and Professions Code*
12 *is amended to read:*

13 4990. (a) There is in the Department of Consumer Affairs, a
14 Board of Behavioral Sciences that consists of 11 members
15 composed as follows:

- 16 (1) Two state licensed clinical social workers.
- 17 (2) One state licensed educational psychologist.
- 18 (3) Two state licensed marriage and family therapists.
- 19 (4) Six public members.

20 (b) Each member, except the six public members, shall have at
21 least two years of experience in his or her profession.

22 (c) Each member shall reside in the State of California.

23 (d) The Governor shall appoint four of the public members and
24 the five licensed members with the advice and consent of the
25 Senate. The Senate Committee on Rules and the Speaker of the
26 Assembly shall each appoint a public member.

27 (e) Each member of the board shall be appointed for a term of
28 four years. A member appointed by the Speaker of the Assembly
29 or the Senate Committee on Rules shall hold office until the
30 appointment and qualification of his or her successor or until one
31 year from the expiration date of the term for which he or she was
32 appointed, whichever first occurs. Pursuant to Section 1774 of the
33 Government Code, a member appointed by the Governor shall
34 hold office until the appointment and qualification of his or her
35 successor or until 60 days from the expiration date of the term for
36 which he or she was appointed, whichever first occurs.

37 (f) A vacancy on the board shall be filled by appointment for
38 the unexpired term by the authority who appointed the member
39 whose membership was vacated.

1 (g) Not later than the first of June of each calendar year, the
2 board shall elect a chairperson and a vice chairperson from its
3 membership.

4 (h) Each member of the board shall receive a per diem and
5 reimbursement of expenses as provided in Section 103.

6 ~~(i) This section shall become inoperative on July 1, 2009, and,
7 as of January 1, 2010, is repealed, unless a later enacted statute,
8 that is enacted before January 1, 2010, deletes or extends the dates
9 on which it becomes inoperative and is repealed.~~

10 *SEC. 53. Section 4990.24 of the Business and Professions Code*
11 *is repealed.*

12 ~~4990.24. The powers and duties of the board, as set forth in
13 this chapter, shall be subject to the review required by Division
14 1.2 (commencing with Section 473).~~

15 *SEC. 54. Section 5000 of the Business and Professions Code*
16 *is amended to read:*

17 5000. There is in the Department of Consumer Affairs the
18 California Board of Accountancy, which consists of 15 members,
19 seven of whom shall be licensees, and eight of whom shall be
20 public members who shall not be licentiates of the board or
21 registered by the board. The board has the powers and duties
22 conferred by this chapter.

23 The Governor shall appoint four of the public members, and the
24 seven licensee members as provided in this section. The Senate
25 ~~Rules Committee~~ *Committee on Rules* and the Speaker of the
26 Assembly shall each appoint two public members. In appointing
27 the seven licensee members, the Governor shall appoint members
28 representing a cross section of the accounting profession with at
29 least two members representing a small public accounting firm.
30 For the purposes of this chapter, a small public accounting firm
31 shall be defined as a professional firm that employs a total of no
32 more than four licensees as partners, owners, or full-time
33 employees in the practice of public accountancy within the State
34 of California.

35 ~~This section shall become inoperative on July 1, 2011, and as
36 of January 1, 2012, is repealed, unless a later enacted statute, that
37 becomes effective on or before January 1, 2012, deletes or extends
38 the dates on which this section becomes inoperative and is repealed.
39 The repeal of this section renders the board subject to the review
40 required by Division 1.2 (commencing with Section 473).~~

1 ~~However, the review of the board shall be limited to reports or~~
2 ~~studies specified in this chapter and those issues identified by the~~
3 ~~Joint Committee on Boards, Commissions, and Consumer~~
4 ~~Protection and the board regarding the implementation of new~~
5 ~~licensing requirements.~~

6 *SEC. 55. Section 5510 of the Business and Professions Code*
7 *is amended to read:*

8 5510. There is in the Department of Consumer Affairs a
9 California Architects Board which consists of 10 members.

10 Any reference in law to the California Board of Architectural
11 Examiners shall mean the California Architects Board.

12 ~~This section shall become inoperative on July 1, 2011, and, as~~
13 ~~of January 1, 2012, is repealed, unless a later enacted statute, which~~
14 ~~becomes effective on or before January 1, 2012, deletes or extends~~
15 ~~the dates on which it becomes inoperative and is repealed. The~~
16 ~~repeal of this section renders the board subject to the review~~
17 ~~required by Division 1.2 (commencing with Section 473).~~

18 *SEC. 56. Section 5621 of the Business and Professions Code*
19 *is amended to read:*

20 5621. (a) There is hereby created within the jurisdiction of the
21 board, a Landscape Architects Technical Committee, hereinafter
22 referred to in this chapter as the landscape architects committee.

23 (b) The landscape architects committee shall consist of five
24 members who shall be licensed to practice landscape architecture
25 in this state. The Governor shall appoint three of the members.
26 The Senate Committee on Rules and the Speaker of the Assembly
27 shall appoint one member each.

28 (c) The initial members to be appointed by the Governor are as
29 follows: one member for a term of one year; one member for a
30 term of two years; and one member for a term of three years. The
31 Senate Committee on Rules and the Speaker of the Assembly shall
32 initially each appoint one member for a term of four years.
33 Thereafter, appointments shall be made for four-year terms,
34 expiring on June 1 of the fourth year and until the appointment
35 and qualification of his or her successor or until one year shall
36 have elapsed whichever first occurs. Vacancies shall be filled for
37 the unexpired term.

38 (d) No person shall serve as a member of the landscape
39 architects committee for more than two consecutive terms.

1 ~~(c) This section shall become inoperative on July 1, 2011, and,~~
2 ~~as of January 1, 2012, is repealed, unless a later enacted statute,~~
3 ~~that becomes operative on or before January 1, 2012, deletes or~~
4 ~~extends the dates on which it becomes inoperative and is repealed.~~

5 *SEC. 57. Section 5810 of the Business and Professions Code*
6 *is amended to read:*

7 5810. (a) ~~This chapter shall be subject to the review required~~
8 ~~by Division 1.2 (commencing with Section 473) process described~~
9 ~~in Division 1.3 (commencing with Section 474.20).~~

10 (b) ~~This chapter shall remain in effect only until January 1,~~
11 ~~2010, and as of that date is repealed, unless a later enacted statute,~~
12 ~~that is enacted before January 1, 2010, deletes or extends that date.~~

13 *SEC. 58. Section 5811 of the Business and Professions Code*
14 *is amended to read:*

15 5811. An interior design organization issuing stamps under
16 Section 5801 shall provide to the ~~Joint Committee on Boards,~~
17 ~~Commissions, and Consumer Protection~~ *Legislature and the Office*
18 *of the Consumer Advocate* by September 1, 2008, a report that
19 reviews and assesses the costs and benefits associated with the
20 California Code and Regulations Examination and explores feasible
21 alternatives to that examination.

22 *SEC. 59. Section 6510 of the Business and Professions Code*
23 *is amended to read:*

24 6510. (a) There is within the jurisdiction of the department
25 the Professional Fiduciaries Bureau. The bureau is under the
26 supervision and control of the director. The duty of enforcing and
27 administering this chapter is vested in the chief of the bureau, who
28 is responsible to the director. Every power granted or duty imposed
29 upon the director under this chapter may be exercised or performed
30 in the name of the director by a deputy director or by the chief,
31 subject to conditions and limitations as the director may prescribe.

32 (b) The Governor shall appoint, subject to confirmation by the
33 Senate, the chief of the bureau, at a salary to be fixed and
34 determined by the director with the approval of the Director of
35 Finance. The chief shall serve under the direction and supervision
36 of the director and at the pleasure of the Governor.

37 ~~(c) This section shall become inoperative on July 1, 2011, and,~~
38 ~~as of January 1, 2012, is repealed, unless a later enacted statute,~~
39 ~~that becomes operative on or before January 1, 2011, deletes or~~
40 ~~extends the dates on which it becomes inoperative and is repealed.~~

1 The repeal of this section renders the bureau subject to the review
2 required by Division 1.2 (commencing with Section 473).

3 Notwithstanding any other provision of law, upon the repeal of
4 this section, the responsibilities and jurisdiction of the bureau shall
5 be transferred to the Professional Fiduciaries Advisory Committee,
6 as provided by Section 6511.

7 *SEC. 60. Section 6511 of the Business and Professions Code*
8 *is amended to read:*

9 6511. (a) There is within the bureau a Professional Fiduciaries
10 Advisory Committee. The committee shall consist of seven
11 members; three of whom shall be licensees actively engaged as
12 professional fiduciaries in this state, and four of whom shall be
13 public members. One of the public members shall be a member
14 of a nonprofit organization advocating on behalf of the elderly,
15 and one of the public members shall be a probate court investigator.

16 (b) Each member of the committee shall be appointed for a term
17 of four years, and shall hold office until the appointment of his or
18 her successor or until one year shall have elapsed since the
19 expiration of the term for which he or she was appointed,
20 whichever first occurs.

21 (c) Vacancies shall be filled by the appointing power for the
22 unexpired portion of the terms in which they occur. No person
23 shall serve as a member of the committee for more than two
24 consecutive terms.

25 (d) The Governor shall appoint the member from a nonprofit
26 organization advocating on behalf of the elderly, the probate court
27 investigator, and the three licensees. The Senate Committee on
28 Rules and the Speaker of the Assembly shall each appoint a public
29 member.

30 (e) Every member of the committee shall receive per diem and
31 expenses as provided in Sections 103 and 113.

32 (f) The committee shall do all of the following:

33 (1) Examine the functions and policies of the bureau and make
34 recommendations with respect to policies, practices, and
35 regulations as may be deemed important and necessary by the
36 director or the chief to promote the interests of consumers or that
37 otherwise promote the welfare of the public.

38 (2) Consider and make appropriate recommendations to the
39 bureau in any matter relating to professional fiduciaries in this
40 state.

1 (3) Provide assistance as may be requested by the bureau in the
2 exercise of its powers or duties.

3 (4) Meet at least once each quarter. All meetings of the
4 committee shall be public meetings.

5 (g) The bureau shall meet and consult with the committee
6 regarding general policy issues related to professional fiduciaries.

7 ~~(h) Notwithstanding any other provision of law, if the bureau
8 becomes inoperative or is repealed in accordance with Section
9 6510, or by subsequent acts, the committee shall succeed to and
10 is vested with all the duties, powers, purposes, responsibilities,
11 and jurisdiction, not otherwise repealed or made inoperative, of
12 the bureau and its chief. The succession of the committee to the
13 functions of the bureau as provided in this subdivision shall
14 establish the committee as the Professional Fiduciaries Committee
15 in the department within the meaning of Section 22, and all
16 references to the bureau in this code shall be considered as
17 references to the committee.~~

18 *SEC. 61. Section 6710 of the Business and Professions Code*
19 *is amended to read:*

20 6710. (a) There is in the Department of Consumer Affairs a
21 Board for Professional Engineers and Land Surveyors, which
22 consists of 13 members.

23 (b) Any reference in any law or regulation to the Board of
24 Registration for Professional Engineers and Land Surveyors is
25 deemed to refer to the Board for Professional Engineers and Land
26 Surveyors.

27 ~~(c) This section shall become inoperative on July 1, 2011, and,
28 as of January 1, 2012, is repealed, unless a later enacted statute,
29 that becomes effective on or before January 1, 2012, deletes or
30 extends the dates on which it becomes inoperative and is repealed.
31 The repeal of this section renders the board subject to the review
32 required by Division 1.2 (commencing with Section 473).~~

33 *SEC. 62. Section 7000.5 of the Business and Professions Code*
34 *is amended to read:*

35 7000.5. ~~(a)~~ There is in the Department of Consumer Affairs
36 a Contractors' State License Board, which consists of 15 members.

37 ~~(b) The repeal of this section renders the board subject to the
38 review required by Division 1.2 (commencing with Section 473).
39 However, the review of this board by the department shall be~~

1 limited to only those unresolved issues identified by the Joint
2 Committee on Boards, Commissions, and Consumer Protection.

3 ~~(c) This section shall become inoperative on July 1, 2009, and,
4 as of January 1, 2010, is repealed, unless a later enacted statute,
5 which becomes effective on or before January 1, 2010, deletes or
6 extends the dates on which it becomes inoperative and is repealed.
7 The repeal of this section renders the board subject to the review
8 required by Division 1.2 (commencing with Section 473).~~

9 *SEC. 63. Section 7200 of the Business and Professions Code*
10 *is amended to read:*

11 7200. ~~(a)~~ There is in the Department of Consumer Affairs a
12 State Board of Guide Dogs for the Blind in whom enforcement of
13 this chapter is vested. The board shall consist of seven members
14 appointed by the Governor. One member shall be the Director of
15 Rehabilitation or his or her designated representative. The
16 remaining members shall be persons who have shown a particular
17 interest in dealing with the problems of the blind, and at least two
18 of them shall be blind persons who use guide dogs.

19 ~~(b) This section shall become inoperative on July 1, 2011, and,
20 as of January 1, 2012, is repealed, unless a later enacted statute,
21 which becomes effective on or before January 1, 2012, deletes or
22 extends the dates on which it becomes inoperative and is repealed.~~

23 *SEC. 64. Section 7303 of the Business and Professions Code*
24 *is amended to read:*

25 7303. (a) Notwithstanding Article 8 (commencing with Section
26 9148) of Chapter 1.5 of Part 1 of Division 2 of Title 2 of the
27 Government Code, there is in the Department of Consumer Affairs
28 the State Board of Barbering and Cosmetology in which the
29 administration of this chapter is vested.

30 (b) The board shall consist of nine members. Five members
31 shall be public members and four members shall represent the
32 professions. The Governor shall appoint three of the public
33 members and the four professions members. The Senate Committee
34 on Rules and the Speaker of the Assembly shall each appoint one
35 public member. Members of the board shall be appointed for a
36 term of four years, except that of the members appointed by the
37 Governor, two of the public members and two of the professions
38 members shall be appointed for an initial term of two years. No
39 board member may serve longer than two consecutive terms.

1 (c) The board shall appoint an executive officer who is exempt
2 from civil service. The executive officer shall exercise the powers
3 and perform the duties delegated by the board and vested in him
4 or her by this chapter. The appointment of the executive officer is
5 subject to the approval of the director. In the event that a newly
6 authorized board replaces an existing or previous bureau, the
7 director may appoint an interim executive officer for the board
8 who shall serve temporarily until the new board appoints a
9 permanent executive officer.

10 (d) The executive officer shall provide examiners, inspectors,
11 and other personnel necessary to carry out the provisions of this
12 chapter.

13 ~~(e) This section shall become inoperative on July 1, 2008, and,
14 as of January 1, 2009, is repealed, unless a later enacted statute,
15 which becomes effective on or before January 1, 2009, deletes or
16 extends the dates on which it becomes inoperative and is repealed.~~

17 *SEC. 65. Section 7304 of the Business and Professions Code*
18 *is repealed.*

19 ~~7304. The board shall be subject to review pursuant to Division
20 1.2 (commencing with Section 473).~~

21 *SEC. 66. Section 7810 of the Business and Professions Code*
22 *is amended to read:*

23 7810. The Board for Geologists and Geophysicists is within
24 the department and is subject to the jurisdiction of the department.
25 Except as provided in this section, the board shall consist of eight
26 members, five of whom shall be public members, two of whom
27 shall be geologists, and one of whom shall be a geophysicist.

28 Each member shall hold office until the appointment and
29 qualification of the member's successor or until one year has
30 elapsed from the expiration of the term for which the member was
31 appointed, whichever occurs first. Vacancies occurring prior to
32 the expiration of the term shall be filled by appointment for the
33 remainder of the unexpired term.

34 Each appointment shall be for a four-year term expiring June 1
35 of the fourth year following the year in which the previous term
36 expired. No person shall serve as a member of the board for more
37 than two consecutive terms.

38 The Governor shall appoint three of the public members and the
39 three members qualified as provided in Section 7811. The Senate
40 Committee on Rules and the Speaker of the Assembly shall each

1 appoint a public member, and their initial appointment shall be
2 made to fill, respectively, the first and second public member
3 vacancies that occurred on or after January 1, 1983.

4 At the time the first vacancy is created by the expiration of the
5 term of a public member appointed by the Governor, the board
6 shall be reduced to consist of seven members, four of whom shall
7 be public members, two of whom shall be geologists, and one of
8 whom shall be a geophysicist. Notwithstanding any other provision
9 of law, the term of that member shall not be extended for any
10 reason, except as provided in this section.

11 ~~This section shall become inoperative on July 1, 2009, and, as~~
12 ~~of January 1, 2010, is repealed, unless a later enacted statute, that~~
13 ~~becomes operative on or before January 1, 2010, deletes or extends~~
14 ~~the dates on which it becomes inoperative and is repealed. The~~
15 ~~repeal of this section renders the board subject to the review~~
16 ~~required by Division 1.2 (commencing with Section 473).~~

17 *SEC. 67. Section 8000 of the Business and Professions Code*
18 *is amended to read:*

19 8000. There is in the Department of Consumer Affairs a Court
20 Reporters Board of California, which consists of five members,
21 three of whom shall be public members and two of whom shall be
22 holders of certificates issued under this chapter who have been
23 actively engaged as shorthand reporters within this state for at least
24 five years immediately preceding their appointment.

25 ~~This section shall become inoperative on July 1, 2009, and, as~~
26 ~~of January 1, 2010, is repealed, unless a later enacted statute, which~~
27 ~~becomes effective on or before January 1, 2010, deletes or extends~~
28 ~~the dates on which it becomes inoperative and is repealed.~~

29 *SEC. 68. Section 8520 of the Business and Professions Code*
30 *is amended to read:*

31 8520. (a) There is in the Department of Consumer Affairs a
32 Structural Pest Control Board, which consists of seven members.

33 (b) Subject to the jurisdiction conferred upon the director by
34 Division 1 (commencing with Section 100) of this code, the board
35 is vested with the power to and shall administer the provisions of
36 this chapter.

37 (c) It is the intent of the Legislature that consumer protection
38 is the primary mission of the board.

39 ~~(d) This section shall become inoperative on July 1, 2011, and,~~
40 ~~as of January 1, 2012, is repealed, unless a later enacted statute,~~

1 ~~which becomes effective on or before January 1, 2012, deletes or~~
2 ~~extends the dates on which it becomes inoperative and is repealed.~~
3 ~~The repeal of this section renders the board subject to the review~~
4 ~~required by Division 1.2 (commencing with Section 473).~~

5 *SEC. 69. Section 8710 of the Business and Professions Code*
6 *is amended to read:*

7 8710. (a) The Board for Professional Engineers and Land
8 Surveyors is vested with power to administer the provisions and
9 requirements of this chapter, and may make and enforce rules and
10 regulations that are reasonably necessary to carry out its provisions.

11 (b) The board may adopt rules and regulations of professional
12 conduct that are not inconsistent with state and federal law. The
13 rules and regulations may include definitions of incompetence and
14 negligence. Every person who holds a license or certificate issued
15 by the board pursuant to this chapter, or a license or certificate
16 issued to a civil engineer pursuant to Chapter 7 (commencing with
17 Section 6700), shall be governed by these rules and regulations.

18 ~~(c) This section shall become inoperative on July 1, 2011, and,~~
19 ~~as of January 1, 2012, is repealed, unless a later enacted statute,~~
20 ~~which becomes effective on or before January 1, 2012, deletes or~~
21 ~~extends the dates on which it becomes inoperative and is repealed.~~
22 ~~The repeal of this section shall render the board subject to the~~
23 ~~review required by Division 1.2 (commencing with Section 473).~~

24 *SEC. 70. Section 9882 of the Business and Professions Code*
25 *is amended to read:*

26 9882. (a) ~~There is in the Department of Consumer Affairs a~~
27 ~~Bureau of Automotive Repair under the supervision and control~~
28 ~~of the director. The duty of enforcing and administering this chapter~~
29 ~~is vested in the chief who is responsible to the director. The director~~
30 ~~may adopt and enforce those rules and regulations that he or she~~
31 ~~determines are reasonably necessary to carry out the purposes of~~
32 ~~this chapter and declaring the policy of the bureau, including a~~
33 ~~system for the issuance of citations for violations of this chapter~~
34 ~~as specified in Section 125.9. These rules and regulations shall be~~
35 ~~adopted pursuant to Chapter 3.5 (commencing with Section 11340)~~
36 ~~of Part 1 of Division 3 of Title 2 of the Government Code.~~

37 ~~(b) In 2003 and every four years thereafter, the Joint Committee~~
38 ~~on Boards, Commissions, and Consumer Protection shall hold a~~
39 ~~public hearing to receive testimony from the Director of Consumer~~
40 ~~Affairs and the bureau. In those hearings, the bureau shall have~~

1 ~~the burden of demonstrating a compelling public need for the~~
2 ~~continued existence of the bureau and its regulatory program, and~~
3 ~~that its function is the least restrictive regulation consistent with~~
4 ~~the public health, safety, and welfare. The committee shall evaluate~~
5 ~~and review the effectiveness and efficiency of the bureau based~~
6 ~~on factors and minimum standards of performance that are specified~~
7 ~~in Section 473.4. The committee shall report its findings and~~
8 ~~recommendations as specified in Section 473.5. The bureau shall~~
9 ~~prepare an analysis and submit a report to the committee as~~
10 ~~specified in Section 473.2.~~

11 *SEC. 71. Section 18602 of the Business and Professions Code*
12 *is amended to read:*

13 18602. (a) Except as provided in this section, there is in the
14 Department of Consumer Affairs the State Athletic Commission,
15 which consists of seven members. Five members shall be appointed
16 by the Governor, one member shall be appointed by the Senate
17 Rules Committee *on Rules*, and one member shall be appointed
18 by the Speaker of the Assembly.

19 The members of the commission appointed by the Governor are
20 subject to confirmation by the Senate pursuant to Section 1322 of
21 the Government Code.

22 No person who is currently licensed, or who was licensed within
23 the last two years, under this chapter may be appointed or
24 reappointed to, or serve on, the commission.

25 (b) In appointing commissioners under this section, the
26 Governor, the Senate Rules Committee *on Rules*, and the Speaker
27 of the Assembly shall make every effort to ensure that at least four
28 of the members of the commission shall have experience and
29 demonstrate expertise in one of the following areas:

30 (1) A licensed physician or surgeon having expertise or
31 specializing in neurology, neurosurgery, head trauma, or sports
32 medicine. Sports medicine includes, but is not limited to,
33 physiology, kinesiology, or other aspects of sports medicine.

34 (2) Financial management.

35 (3) Public safety.

36 (4) Past experience in the activity regulated by this chapter,
37 either as a contestant, a referee or official, a promoter, or a venue
38 operator.

39 (c) Each member of the commission shall be appointed for a
40 term of four years. All terms shall end on January 1. Vacancies

1 occurring prior to the expiration of the term shall be filled by
2 appointment for the unexpired term. No commission member may
3 serve more than two consecutive terms.

4 (d) Notwithstanding any other provision of this chapter,
5 members first appointed shall be subject to the following terms:

6 (1) The Governor shall appoint two members for two years, two
7 members for three years, and one member for four years.

8 (2) The Senate Committee on Rules shall appoint one member
9 for four years.

10 (3) The Speaker of the Assembly shall appoint one member for
11 four years.

12 (4) The appointing powers, as described in subdivision (a), may
13 appoint to the commission a person who was a member of the prior
14 commission prior to the repeal of that commission on July 1, 2006.

15 ~~(e) This section shall become inoperative on July 1, 2009, and
16 as of January 1, 2010, is repealed, unless a later enacted statute,
17 which becomes operative on or before January 1, 2010, deletes or
18 extends the dates on which it becomes inoperative and is repealed.
19 The repeal of this section renders the commission subject to the
20 review required by Division 1.2 (commencing with Section 473).~~

21 *SEC. 72. Section 18602.5 of the Business and Professions Code*
22 *is amended to read:*

23 18602.5. (a) The commission shall adopt and submit a strategic
24 plan to the Governor and the Legislature on or before September
25 30, 2008. The commission shall also submit a report to the
26 Governor and the Legislature on the status of the adoption of the
27 strategic plan ~~during the commission's next regularly scheduled~~
28 ~~sunset review after January 1, 2007 on or before March 1, 2008.~~
29 The strategic plan shall include, but shall not be limited to, efforts
30 to resolve prior State Athletic Commission deficiencies in the
31 following areas:

32 (1) Regulation of the profession, what fees should be paid for
33 this regulation, and the structure and equity of the fees charged.

34 (2) The effect and appropriateness of contracts made pursuant
35 to Section 18828.

36 (3) Costs to train ringside physicians, referees, timekeepers, and
37 judges.

38 (4) Steps that need to be taken to ensure sufficient sources of
39 revenue and funding.

1 (5) Necessity for review and modification of organizational
2 procedures, the licensing process, and the complaint process.

3 (6) Outdated information technology.

4 (7) Unorganized and improper accounting.

5 (8) Miscalculations at events, a lack of technology to record
6 proper calculations, and funding issues.

7 (9) The health and safety of the participants and the public in
8 attendance at events regulated under this chapter, including costs
9 of examinations under Section 18711.

10 (b) The commission shall solicit input from the public, the State
11 Auditor, the Little Hoover Commission, the Center for Public
12 Interest Law, and others as necessary in preparing and adopting
13 the strategic plan.

14 (c) The commission shall report on progress in implementing
15 the strategic plan to the Director of Consumer Affairs, the
16 Governor, and the Legislature on or before September 30, 2009.

17 *SEC. 73. Section 18824 of the Business and Professions Code*
18 *is amended to read:*

19 18824. (a) Except as provided in Sections 18646 and 18832,
20 every person who conducts a contest or wrestling exhibition shall,
21 within five working days after the determination of every contest
22 or wrestling exhibition for which admission is charged and
23 received, furnish to the commission the following:

24 (1) A written report executed under penalty of perjury by one
25 of the officers, showing the amount of the gross receipts, not to
26 exceed two million dollars (\$2,000,000), and the gross price for
27 the contest or wrestling exhibition charged directly or indirectly
28 and no matter by whom received, for the sale, lease, or other
29 exploitation of broadcasting and television rights of the contest or
30 wrestling exhibition, and without any deductions, except for
31 expenses incurred for one broadcast announcer, telephone line
32 connection, and transmission mobile equipment facility, which
33 may be deducted from the gross taxable base when those expenses
34 are approved by the commission.

35 (2) A fee of 5 percent, exclusive of any federal taxes paid
36 thereon, of the amount paid for admission to the contest or
37 wrestling exhibition, except that for any one contest, the fee shall
38 not exceed the amount of one hundred thousand dollars (\$100,000).
39 The commission shall report to the ~~Joint Committee on Boards,~~
40 ~~Commissions, and Consumer Protection~~ *Legislature and the Office*

1 *of the Consumer Advocate* on the fiscal impact of the one hundred
2 thousand dollar (\$100,000) limit on fees collected by the
3 commission for admissions revenues.

4 (A) The amount of the gross receipts upon which the fee
5 provided for in paragraph (2) is calculated shall not include any
6 assessments levied by the commission under Section 18711.

7 (B) (i) If the fee for any one boxing contest exceeds seventy
8 thousand dollars (\$70,000), the amount in excess of seventy
9 thousand dollars (\$70,000) shall be paid one-half to the commission
10 and one-half to the Boxers' Pension Fund.

11 (ii) If the report required by subdivision (b) of Section 18618
12 recommends that the Boxers' Pension Fund shall be expanded to
13 include all athletes licensed under this chapter, the commission,
14 by regulation, shall require, for all contests where the fee exceeds
15 seventy thousand dollars (\$70,000), the amount in excess of
16 seventy thousand dollars (\$70,000) shall be paid one-half to the
17 commission and one-half to the Boxers' Pension Fund only if all
18 athletes licensed under this chapter are made eligible for the
19 Boxers' Pension Fund.

20 (C) The fee shall apply to the amount actually paid for admission
21 and not to the regular established price.

22 (D) No fee is due in the case of a person admitted free of charge.
23 However, if the total number of persons admitted free of charge
24 to a boxing, kickboxing, or martial arts contest, or wrestling
25 exhibition exceeds 33 percent of the total number of spectators,
26 then a fee of one dollar (\$1) per complimentary ticket or pass used
27 to gain admission to the contest shall be paid to the commission
28 for each complimentary ticket or pass that exceeds the numerical
29 total of 33 percent of the total number of spectators.

30 (E) The minimum fee for an amateur contest or exhibition shall
31 not be less than five hundred dollars (\$500).

32 (3) A fee of up to 5 percent, to be established by the commission
33 through regulations to become operative on or before July 1, 2008,
34 and updated periodically as needed, of the gross price, exclusive
35 of any federal taxes paid thereon, for the sale, lease, or other
36 exploitation of broadcasting or television rights thereof, except
37 that in no case shall the fee be less than one thousand dollars
38 (\$1,000) or more than twenty-five thousand dollars (\$25,000).

39 (b) As used in this section, "person" includes a promoter, club,
40 individual, corporation, partnership, association, or other

1 organization, and “wrestling exhibition” means a performance of
2 wrestling skills and techniques by two or more individuals, to
3 which admission is charged or which is broadcast or televised, in
4 which the participating individuals are not required to use their
5 best efforts in order to win, and for which the winner may have
6 been selected before the performance commences.

7 *SEC. 74. Section 18882 of the Business and Professions Code*
8 *is amended to read:*

9 18882. (a) At the time of payment of the fee required by
10 Section 18824, a promoter shall pay to the commission all amounts
11 scheduled for contribution to the pension plan. If the commission,
12 in its discretion, requires pursuant to Section 18881, that
13 contributions to the pension plan be made by the boxer and his or
14 her manager, those contributions shall be made at the time and in
15 the manner prescribed by the commission.

16 (b) All contributions to finance the pension plan shall be
17 deposited in the State Treasury and credited to the Boxers’ Pension
18 Fund, which is hereby created. Notwithstanding the provisions of
19 Section 13340 of the Government Code, all moneys in the Boxers’
20 Pension Fund are hereby continuously appropriated to be used
21 exclusively for the purposes and administration of the pension
22 plan.

23 (c) The Boxers’ Pension Fund is a retirement fund, and no
24 moneys within it shall be deposited or transferred to the General
25 Fund.

26 (d) The commission has exclusive control of all funds in the
27 Boxers’ Pension Fund. No transfer or disbursement in any amount
28 from this fund shall be made except upon the authorization of the
29 commission and for the purpose and administration of the pension
30 plan.

31 (e) Except as otherwise provided in this subdivision, the
32 commission or its designee shall invest the money contained in
33 the Boxers’ Pension Fund according to the same standard of care
34 as provided in Section 16040 of the Probate Code. The commission
35 has exclusive control over the investment of all moneys in the
36 Boxers’ Pension Fund. Except as otherwise prohibited or restricted
37 by law, the commission may invest the moneys in the fund through
38 the purchase, holding, or sale of any investment, financial
39 instrument, or financial transaction that the commission in its
40 informed opinion determines is prudent.

1 (f) The administrative costs associated with investing, managing,
2 and distributing the Boxers' Pension Fund shall be limited to no
3 more than 20 percent of the average annual contribution made to
4 the fund in the previous two years, not including any investment
5 income derived from the corpus of the fund. Diligence shall be
6 exercised by administrators in order to lower the fund's expense
7 ratio as far below 20 percent as feasible and appropriate. The
8 commission shall report to the ~~Joint Committee on Boards,
9 Commissions, and Consumer Protection~~ *Legislature and the Office
10 of the Consumer Advocate* on the impact of this provision ~~during
11 the next regularly scheduled sunset review after January 1, 2007
12 on or before March 1, 2008.~~

13 *SEC. 75. Section 22259 of the Business and Professions Code*
14 *is repealed.*

15 ~~22259. This chapter shall be subject to the review required by
16 Division 1.2 (commencing with Section 473).~~

17 ~~This chapter shall become inoperative on July 1, 2008, and, as
18 of January 1, 2009, is repealed, unless a later enacted statute, which
19 becomes effective on or before January 1, 2009, deletes or extends
20 that date on which it becomes inoperative and is repealed.~~

21 *SEC. 76. Section 9148.8 of the Government Code is amended*
22 *to read:*

23 9148.8. (a) ~~The Joint Committee on Boards, Commissions,
24 and Consumer Protection~~ *Office of the Consumer Advocate*, acting
25 pursuant to a request from the chairperson of the appropriate policy
26 committee, shall evaluate a plan prepared pursuant to Section
27 9148.4 or 9148.6.

28 (b) Evaluations prepared by the ~~Joint Committee on Boards,
29 Commissions, and Consumer Protection~~ *Office of the Consumer
30 Advocate* pursuant to this section shall be provided to the respective
31 policy and fiscal committees of the Legislature pursuant to rules
32 adopted by each committee for this purpose.

33 *SEC. 77. Section 9148.51 of the Government Code is amended*
34 *to read:*

35 9148.51. (a) It is the intent of the Legislature that all existing
36 and proposed state boards be subject to review ~~every four years
37 upon request by a Member of the Legislature or the chief of the
38 Office of the Consumer Advocate, as provided in Division 1.3
39 (commencing with Section 474.20) of the Business and Professions
40 Code, to evaluate and determine whether each has demonstrated~~

1 a public need for its continued existence in accordance with
2 enumerated factors and standards as set forth in Chapter 2
3 (commencing with Section 474) of Division 1.2 of the Business
4 and Professions Code *the highest priority of each board is the*
5 *protection of the public.*

6 (b) ~~In the event that~~ *If any state board becomes inoperative or*
7 *is repealed in accordance with the act that added this section, any*
8 *provision of existing law that provides for the appointment of*
9 *board members and specifies the qualifications and tenure of board*
10 *members shall not be implemented and shall have no force or effect*
11 *while that state board is inoperative or repealed is determined to*
12 *be deficient pursuant to Section 474.21 of the Business and*
13 *Professions Code, the incumbent members of the board shall be*
14 *removed from office without a hearing as described in Section*
15 *474.21 of the Business and Professions Code, and a successor*
16 *board shall be appointed pursuant to Section 101.1 of the Business*
17 *and Professions Code.*

18 (c) ~~Any provision of law authorizing the appointment of an~~
19 ~~executive officer by a state board subject to the review described~~
20 ~~in Chapter 2 (commencing with Section 474) of Division 1.2 of~~
21 ~~the Business and Professions Code, or prescribing his or her duties,~~
22 ~~shall not be implemented and shall have no force or effect while~~
23 ~~the applicable state board is inoperative or repealed.~~

24 (d) ~~It is the intent of the Legislature that subsequent legislation~~
25 ~~to extend or repeal the inoperative date for any state board shall~~
26 ~~be a separate bill for that purpose.~~

27 *SEC. 78. Section 9148.52 of the Government Code is repealed.*

28 ~~9148.52. (a) The Joint Committee on Boards, Commissions,~~
29 ~~and Consumer Protection established pursuant to Section 473 of~~
30 ~~the Business and Professions Code shall review all state boards,~~
31 ~~as defined in Section 9148.2, other than a board subject to review~~
32 ~~pursuant to Chapter 1 (commencing with Section 473) of Division~~
33 ~~1.2 of the Business and Professions Code, every four years.~~

34 (b) ~~The committee shall evaluate and make determinations~~
35 ~~pursuant to Chapter 2 (commencing with Section 474) of Division~~
36 ~~1.2 of the Business and Professions Code.~~

37 ~~SECTION 1. Section 101.1 of the Business and Professions~~
38 ~~Code is repealed.~~

39 ~~SEC. 2. Section 101.1 is added to the Business and Professions~~
40 ~~Code, to read:~~

1 101.1. In the event that any board, as defined in Section 477,
2 becomes inoperative or is repealed, a successor board shall be
3 created in the Department of Consumer Affairs that shall succeed
4 to and is vested with all the duties, powers, purposes,
5 responsibilities, and jurisdiction not otherwise repealed or made
6 inoperative of the board that it is succeeding. The successor board
7 shall have the same number of members and composition as the
8 board that it is succeeding, and those members shall be appointed
9 by the same appointing authorities, for the same term, and with
10 the same membership requirements as the members of that board.
11 The successor board shall also have the same authority to appoint
12 an executive officer as was possessed by the board that it is
13 succeeding on the date upon which that board became inoperative.

14 SEC. 3. Section 4001 of the Business and Professions Code is
15 amended to read:

16 4001. (a) There is in the Department of Consumer Affairs a
17 California State Board of Pharmacy in which the administration
18 and enforcement of this chapter is vested. The board consists of
19 13 members.

20 (b) The Governor shall appoint seven competent pharmacists
21 who reside in different parts of the state to serve as members of
22 the board. The Governor shall appoint four public members, and
23 the Senate Committee on Rules and the Speaker of the Assembly
24 shall each appoint a public member who shall not be a licensee of
25 the board, any other board under this division, or any board referred
26 to in Section 1000 or 3600.

27 (c) At least five of the seven pharmacist appointees to the board
28 shall be pharmacists who are actively engaged in the practice of
29 pharmacy. Additionally, the membership of the board shall include
30 at least one pharmacist representative from each of the following
31 practice settings: an acute care hospital, an independent community
32 pharmacy, a chain community pharmacy, and a long-term health
33 care or skilled nursing facility. The pharmacist appointees shall
34 also include a pharmacist who is a member of a labor union that
35 represents pharmacists. For the purposes of this subdivision, a
36 "chain community pharmacy" means a chain of 75 or more stores
37 in California under the same ownership, and an "independent
38 community pharmacy" means a pharmacy owned by a person or
39 entity who owns no more than four pharmacies in California.

1 ~~(d) Members of the board shall be appointed for a term of four~~
2 ~~years. No person shall serve as a member of the board for more~~
3 ~~than two consecutive terms. Each member shall hold office until~~
4 ~~the appointment and qualification of his or her successor or until~~
5 ~~one year shall have elapsed since the expiration of the term for~~
6 ~~which the member was appointed, whichever first occurs.~~
7 ~~Vacancies occurring shall be filled by appointment for the~~
8 ~~unexpired term.~~

9 ~~(e) Each member of the board shall receive a per diem and~~
10 ~~expenses as provided in Section 103.~~

11 ~~(f) In accordance with Section 473.1, this section shall become~~
12 ~~inoperative on July 1, 2010, and, as of January 1, 2011, is repealed,~~
13 ~~unless a later enacted statute, that becomes effective on or before~~
14 ~~January 1, 2011, deletes or extends the dates on which it becomes~~
15 ~~inoperative and is repealed. The repeal of this section renders the~~
16 ~~board subject to the review required by Division 1.2 (commencing~~
17 ~~with Section 473).~~

18 ~~SEC. 4. Section 4003 of the Business and Professions Code is~~
19 ~~amended to read:~~

20 ~~4003. (a) The board may appoint a person exempt from civil~~
21 ~~service who shall be designated as an executive officer and who~~
22 ~~shall exercise the powers and perform the duties delegated by the~~
23 ~~board and vested in him or her by this chapter. The executive~~
24 ~~officer may or may not be a member of the board as the board may~~
25 ~~determine.~~

26 ~~(b) The executive officer shall receive the compensation as~~
27 ~~established by the board with the approval of the Director of~~
28 ~~Finance. The executive officer shall also be entitled to travel and~~
29 ~~other expenses necessary in the performance of his or her duties.~~

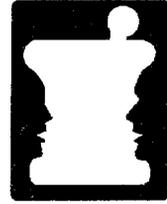
30 ~~(c) The executive officer shall maintain and update in a timely~~
31 ~~fashion records containing the names, titles, qualifications, and~~
32 ~~places of business of all persons subject to this chapter.~~

33 ~~(d) The executive officer shall give receipts for all money~~
34 ~~received by him or her and pay it to the Department of Consumer~~
35 ~~Affairs, taking its receipt therefor. Besides the duties required by~~
36 ~~this chapter, the executive officer shall perform other duties~~
37 ~~pertaining to the office as may be required of him or her by the~~
38 ~~board.~~

39 ~~(e) In accordance with Section 473.1, this section shall become~~
40 ~~inoperative on July 1, 2010, and, as of January 1, 2011, is repealed,~~

1 unless a later enacted statute, that becomes effective on or before
2 January 1, 2011, deletes or extends the dates on which it becomes
3 inoperative and is repealed.

**CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS**



BILL NUMBER: SB 963 **VERSION:** As Amended on June 25, 2007

AUTHOR: Ridley-Thomas **SPONSOR:** BP& ED Committee

BOARD POSITION: None

SUBJECT: Regulatory boards: Operations

EXISTING LAW:

1. States that all existing and proposed consumer-related boards or categories of licensed professionals shall be subject to review every four years to evaluate whether each board has demonstrated a public need for continued existence.
2. Provides that in the event the board becomes inoperative and is repealed, the Department of Consumer Affairs (DCA) shall succeed the board with all the duties, powers, purposes, responsibilities and jurisdiction not otherwise repealed.
3. Establishes the appointment of board members.
4. Establishes the authorization to appoint an executive officer.

THIS BILL WOULD:

1. Require the board to post annually on our Web site the number of reports received that year for criminal convictions, judgments, settlements, or arbitration as well as claims paid by a professional liability insurer caused by a licensee's negligence, error or omission.
2. Provide the board with the authority to adopt regulations that provide an incentive to licensees to provide services within the scope of licensure, on a pro bono basis. The regulations could reduce the amount of renewal fee required for a licensee who demonstrates compliance with the pro bono requirements.
3. Require the board to adopt regulations for the number of staff required to adequately investigate and if necessary bring a disciplinary action against a licensee and specifies that the staff level shall at minimum be the number of staff per 1,000 persons regulated by the board and shall include the appropriate number of staff to complete all investigatory and disciplinary functions.

4. Require board members to disclose all ex parte communication at the board's next public meeting and that such communication will be recorded in the board's minutes. Defines "ex parte" communication.
5. State that it is the intent of the Legislature to be subject to ongoing and continuous review as well as a periodic thorough review when issues arise requiring that level of review and when such a review is requested by a Member of the Legislature or the Chief of the Office of the Consumer Advocate. The review shall evaluate and determine whether its operations are effectively protecting the public and that protection of the public is the highest priority of the board.
6. Provide that if the board is deemed deficient and its members removed, a successor board shall be appointed that shall succeed to, and be vested with, all the duties, powers, purposes, responsibilities and jurisdiction not otherwise repealed. Specify that the number of board members will remain the same and designates the appointing authorities for new members.
7. Require the board to enter into an agreement with the DCA to provide various administrative functions including personnel, information technology, examination and call centers. States that a board shall not enter into such an agreement if it would reduce the board's ability to comply with its duties prescribed in law.
8. Replace the duties of the Joint Committee on Boards, Commissions, and Consumer Protection with the Office of the Consumer Advocate to determine whether the highest priority of the licensing program is the protection of the public.
9. Make subject to approval of the DCA director as well as confirmation of the Senate, the appointment of an Executive Officer.
10. Require the board to post on our Web site minutes from public meetings within 10 days of the date of the meeting.
11. Require the board to adopt meaningful, measurable and manageable performance measures to include:
 - A comprehensive statement of the board's mission, goals, objectives and legal jurisdiction in protecting the health, safety and welfare of the public.
 - The board's enforcement priorities, complaint and enforcement data, budget expenditures with average and median cost per case, case aging data specific to post and preaccusation cases at the Attorney General's Office
 - The board's fund conditions, sources of revenues and expenditure categories for the last four fiscal years.

- Description of the board's licensing process including the time and cost required to implement and administer the licensing examination, ownership of the licensing examination, relevancy and validity of the licensing examination and passage rate and areas of examination.
 - Board initiation of legislative efforts, budget change proposals and other initiatives it has taken to improve its legislative mandate.
12. Require the board to report to the director of DCA and the chief of the Office of the Consumer Advocate our performance measures on a quarterly basis as well as to post this information on the board's Web site. In addition, require the board to report this information annually to the Department of Finance, the Legislative Analyst's Office and the Legislature.
 13. Require the chief of the Office of the Consumer Advocate in consultation with LAO to annually review the information provided and report to the Legislature if it determines that a board has failed to meet the performance measures established.
 14. Require each board member to provide an annual report to the authority that appointed him or her the extent to which the member has achieved his or her goals and objectives that years as well as to report on goals and objectives for the upcoming year.
 15. Require the board to post these reports on the board's Web site within 30 days of submission.
 16. Require the department to report to the Legislature and the Governor when a board has been unable to schedule or convene a meeting because of a lack of a quorum caused by the absence of its members or by a vacancy in its membership.
 17. Require the director of the DCA the work with the State Chief Information Officer to replace the department's existing information technology system and allow the director to change each of the board's systems on a pro rata basis for the costs of replacing the information technology system.
 18. Require the director of DCA to annually report to the chairperson of fiscal committees for each house of the Legislature, as well as the Joint Legislative Budget Committee information specific information about the Office of the Consumer Advocate.
 19. Require the board to submit all notices and final rulemaking records to the chief of the Office of the Consumer Advocate, in addition to the director of the DCA and specifies the timeframes and procedures for review and approval or disapproval.

20. Create the Office of the Consumer Advocate to promote the efficiency of each board that comprise the department and designate that the office is under the supervision and control of a chief. The chief will be appointed by the Governor and subject to Senate confirmation and will serve a four year term.
21. Require the chief to appointment of chief counsel of the office as well as adequate number of attorneys to carry out the provisions.
22. Specify the duties of the Office of the Consumer Advocate to serve as an independent monitor, and detail the powers given to the chief as well as the Office of the Consumer Advocate which includes allowing the office to appear at a board meeting and permitting participation in a disciplinary proceeding by the board whenever the chief determines that the appearance is required to promote and protect the interests of consumers.
23. Allow the office to exercise and perform functions, powers and duties as may be deemed appropriate to protect and promote the interests of consumers as directed by the Governor or the Legislature.
24. Require the chief to report annually to the Governor and appear annually before committees of the Legislature as specified.
25. Allow the chief to annually charge each board on a pro rata basis an amount sufficient to carry out the provisions.
26. Allow a board member to serve as a public member of more than one board at a time if not prohibited by another law.
27. Authorize a member of the Legislature or the chief to request the appropriate standing policy committee to conduct an analysis to evaluate a state board. This request must describe any perceived deficiencies in the operation of the board and the detailed reasons an analysis of its operations is requested.
28. Require the appropriate standing policy committee to investigate the perceived deficiencies, including holding public meetings. This committee may request the assistance from the Office of the Consumer Advocate.
29. Require determination by the committee if based on the information obtained during the course of the investigation if the highest priority of a board's operations is consumer protection.
30. Specify the types of issues the committee shall review and consider when making their determination.
31. Require the committee to report to the Joint Committee on Rules if a board is deemed deficient at which time each member of the board will be removed from office without a hearing within 10 business days and a successor board shall be appointed. In

addition, the Office of the Consumer Advocate will assume the duties of an independent monitor for the board and shall report to the Legislature within one year making recommendations for required reforms of the board.

AUTHOR'S INTENT

According to the author's office, the intent of this legislation is to develop a more effective method of continuing state licensing and regulation when the Legislature sunsets a licensing board. This bill is intended to perform the ongoing continuation of the licensing and regulation of a profession via a more independent board structure, than by a bureau operated by the Department.

FISCAL IMPACT

In its amended form, the Board of Pharmacy (board) will experience fiscal impact to cover the cost of additional staff allowed under this proposal as well as the new computer system and will most likely see a large increase in the amount of pro rata it pays to the department. Unfortunately board staff was unable to obtain information from the department in advance of this meeting to quantify these increases.

COMMENTS

This legislation was significantly amended on June 25, 2007 to become a new bill. Several of the functions assigned to the Office of the Consumer Advocate are already assigned to the DCA and its director as well as the Bureau of State Audits. It is unclear if the DCA's role will change as an oversight to board or if the board will now be subject to continual review by both the director as well as the chief.

The board currently provides weekly updates to the director's office detailing the board's work for the week as well as any pressing issues. A special report is required monthly. The board completes an annual Agency Statistical Profile documenting the workload of the board for the previous fiscal year.

Several of the public reporting requirements mandated in this legislation are already provided by the board already provides on a quarterly basis as part of its inherent committee structure and close adherence to the performance measures established in the board's strategic plan.

The board's record for consumer protection is solid and strong. The board continually demonstrates its commitment to consumer protection and as such further scrutiny by another office would not be problematic for the board, except potentially for an increase in reporting requirements and possible redirection of staff to complete the reports.

Should this bill become law, the board would need to seek additional staffing to comply with all the requirements and would need to seek a statutory fee increase to cover the increased expenditures for computer systems and pro rata charges.

There are a couple of items of concern:

1. Allowing only 10 days to post public meeting minutes on the board's Web site is not a reasonable time frame given the length of meetings, the complexity of the issues as well as turn around time for board members to vote on minutes. Moreover it eliminates the board's ability to review minutes,
2. The board could lose its ability to hire the executive officer of its choice, and rather this process could become very political in nature. Given the role of the executive officer, the board may want sole discretion in making this hiring decision.

Some benefits of this proposal include:

1. A legislative mandate to replace the board's very outdated computer system.
2. A legislative mandate to adopt by regulation the personnel needed to complete all investigatory and disciplinary functions. The ratio included in the legislation is one staff per 1,000 persons regulated.

HISTORY:

Date	Action
June 25	From committee with author's amendments. Read second time. Amended. Re-referred to Com. on B. & P.
June 21	To Com. on B. & P.
June 6	In Assembly. Read first time. Held at Desk.
June 6	Read third time. Passed. (Ayes 26. Noes 13. Page 1279.) To Assembly.
May 31	From committee: Do pass. (Ayes 10. Noes 4. Page 1224.) Read second time. To third reading.
May 25	Set for hearing May 31.
May 7	Placed on APPR. suspense file.
Apr. 25	Set for hearing May 7.
Apr. 24	From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 6. Noes 2. Page 706.) Re-referred to Com. on APPR.

Apr. 16 From committee with author's amendments. Read second time.
Amended. Re-referred to Com. on B., P. & E.D.
Mar. 29 Set for hearing April 23.
Mar. 15 To Com. on B., P. & E.D.
Feb. 26 Read first time.
Feb. 25 From print. May be acted upon on or after March 27.
Feb. 23 Introduced. To Com. on RLS. for assignment. To print.

AMENDED IN SENATE APRIL 14, 2008

SENATE BILL

No. 1096

Introduced by Senator Calderon

January 14, 2008

An act to amend Section 56.10 of the Civil Code, relating to medical information.

LEGISLATIVE COUNSEL'S DIGEST

SB 1096, as amended, Calderon. Medical information.

The Confidentiality of Medical Information Act prohibits a provider of health care, a health care service plan, contractor, or corporation and its subsidiaries and affiliates from intentionally sharing, selling, using for marketing, or otherwise using any medical information, as defined, for any purpose not necessary to provide health care services to a patient, except as expressly authorized by the patient, enrollee, or subscriber, as specified, or as otherwise required or authorized by law. Violations of these provisions are subject to a civil action for compensatory and punitive damages, and, if a violation results in economic loss or personal injury to a patient, it is punishable as a misdemeanor.

This bill would, under those provisions, allow a pharmacy to mail specified written communications to a patient, without the patient's authorization under specified conditions. Those conditions include, among other things, that the written communication *be written in the same language as the prescription label, that it instruct the patient when to contact the health care professional, that it shall pertain only to the prescribed course of medical treatment, that it may not mention any other pharmaceutical products, that a copy of each version shall be submitted to the federal Food and Drug Administration, and that it shall*

include specified disclosures regarding whether the pharmacy receives direct or indirect remuneration for making that written communication.

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 56.10 of the Civil Code is amended to
2 read:

3 56.10. (a) No provider of health care, health care service plan,
4 or contractor shall disclose medical information regarding a patient
5 of the provider of health care or an enrollee or subscriber of a
6 health care service plan without first obtaining an authorization,
7 except as provided in subdivision (b), (c), or (d).

8 (b) A provider of health care, a health care service plan, or a
9 contractor shall disclose medical information if the disclosure is
10 compelled by any of the following:

11 (1) By a court pursuant to an order of that court.

12 (2) By a board, commission, or administrative agency for
13 purposes of adjudication pursuant to its lawful authority.

14 (3) By a party to a proceeding before a court or administrative
15 agency pursuant to a subpoena, subpoena duces tecum, notice to
16 appear served pursuant to Section 1987 of the Code of Civil
17 Procedure, or any provision authorizing discovery in a proceeding
18 before a court or administrative agency.

19 (4) By a board, commission, or administrative agency pursuant
20 to an investigative subpoena issued under Article 2 (commencing
21 with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title
22 2 of the Government Code.

23 (5) By an arbitrator or arbitration panel, when arbitration is
24 lawfully requested by either party, pursuant to a subpoena duces
25 tecum issued under Section 1282.6 of the Code of Civil Procedure,
26 or any other provision authorizing discovery in a proceeding before
27 an arbitrator or arbitration panel.

28 (6) By a search warrant lawfully issued to a governmental law
29 enforcement agency.

30 (7) By the patient or the patient's representative pursuant to
31 Chapter 1 (commencing with Section 123100) of Part 1 of Division
32 106 of the Health and Safety Code.

1 (8) By a coroner, when requested in the course of an
2 investigation by the coroner's office for the purpose of identifying
3 the decedent or locating next of kin, or when investigating deaths
4 that may involve public health concerns, organ or tissue donation,
5 child abuse, elder abuse, suicides, poisonings, accidents, sudden
6 infant deaths, suspicious deaths, unknown deaths, or criminal
7 deaths, or when otherwise authorized by the decedent's
8 representative. Medical information requested by the coroner under
9 this paragraph shall be limited to information regarding the patient
10 who is the decedent and who is the subject of the investigation and
11 shall be disclosed to the coroner without delay upon request.

12 (9) When otherwise specifically required by law.

13 (c) A provider of health care or a health care service plan may
14 disclose medical information as follows:

15 (1) The information may be disclosed to providers of health
16 care, health care service plans, contractors, or other health care
17 professionals or facilities for purposes of diagnosis or treatment
18 of the patient. This includes, in an emergency situation, the
19 communication of patient information by radio transmission or
20 other means between emergency medical personnel at the scene
21 of an emergency, or in an emergency medical transport vehicle,
22 and emergency medical personnel at a health facility licensed
23 pursuant to Chapter 2 (commencing with Section 1250) of Division
24 2 of the Health and Safety Code.

25 (2) The information may be disclosed to an insurer, employer,
26 health care service plan, hospital service plan, employee benefit
27 plan, governmental authority, contractor, or any other person or
28 entity responsible for paying for health care services rendered to
29 the patient, to the extent necessary to allow responsibility for
30 payment to be determined and payment to be made. If (A) the
31 patient is, by reason of a comatose or other disabling medical
32 condition, unable to consent to the disclosure of medical
33 information and (B) no other arrangements have been made to pay
34 for the health care services being rendered to the patient, the
35 information may be disclosed to a governmental authority to the
36 extent necessary to determine the patient's eligibility for, and to
37 obtain, payment under a governmental program for health care
38 services provided to the patient. The information may also be
39 disclosed to another provider of health care or health care service
40 plan as necessary to assist the other provider or health care service

1 plan in obtaining payment for health care services rendered by that
2 provider of health care or health care service plan to the patient.

3 (3) The information may be disclosed to a person or entity that
4 provides billing, claims management, medical data processing, or
5 other administrative services for providers of health care or health
6 care service plans or for any of the persons or entities specified in
7 paragraph (2). However, no information so disclosed shall be
8 further disclosed by the recipient in any way that would violate
9 this part.

10 (4) The information may be disclosed to organized committees
11 and agents of professional societies or of medical staffs of licensed
12 hospitals, licensed health care service plans, professional standards
13 review organizations, independent medical review organizations
14 and their selected reviewers, utilization and quality control peer
15 review organizations as established by Congress in Public Law
16 97-248 in 1982, contractors, or persons or organizations insuring,
17 responsible for, or defending professional liability that a provider
18 may incur, if the committees, agents, health care service plans,
19 organizations, reviewers, contractors, or persons are engaged in
20 reviewing the competence or qualifications of health care
21 professionals or in reviewing health care services with respect to
22 medical necessity, level of care, quality of care, or justification of
23 charges.

24 (5) The information in the possession of a provider of health
25 care or health care service plan may be reviewed by a private or
26 public body responsible for licensing or accrediting the provider
27 of health care or health care service plan. However, no
28 patient-identifying medical information may be removed from the
29 premises except as expressly permitted or required elsewhere by
30 law, nor shall that information be further disclosed by the recipient
31 in any way that would violate this part.

32 (6) The information may be disclosed to the county coroner in
33 the course of an investigation by the coroner's office when
34 requested for all purposes not included in paragraph (8) of
35 subdivision (b).

36 (7) The information may be disclosed to public agencies, clinical
37 investigators, including investigators conducting epidemiologic
38 studies, health care research organizations, and accredited public
39 or private nonprofit educational or health care institutions for bona
40 fide research purposes. However, no information so disclosed shall

1 be further disclosed by the recipient in any way that would disclose
2 the identity of a patient or violate this part.

3 (8) A provider of health care or health care service plan that has
4 created medical information as a result of employment-related
5 health care services to an employee conducted at the specific prior
6 written request and expense of the employer may disclose to the
7 employee's employer that part of the information that:

8 (A) Is relevant in a lawsuit, arbitration, grievance, or other claim
9 or challenge to which the employer and the employee are parties
10 and in which the patient has placed in issue his or her medical
11 history, mental or physical condition, or treatment, provided that
12 information may only be used or disclosed in connection with that
13 proceeding.

14 (B) Describes functional limitations of the patient that may
15 entitle the patient to leave from work for medical reasons or limit
16 the patient's fitness to perform his or her present employment,
17 provided that no statement of medical cause is included in the
18 information disclosed.

19 (9) Unless the provider of health care or health care service plan
20 is notified in writing of an agreement by the sponsor, insurer, or
21 administrator to the contrary, the information may be disclosed to
22 a sponsor, insurer, or administrator of a group or individual insured
23 or uninsured plan or policy that the patient seeks coverage by or
24 benefits from, if the information was created by the provider of
25 health care or health care service plan as the result of services
26 conducted at the specific prior written request and expense of the
27 sponsor, insurer, or administrator for the purpose of evaluating the
28 application for coverage or benefits.

29 (10) The information may be disclosed to a health care service
30 plan by providers of health care that contract with the health care
31 service plan and may be transferred among providers of health
32 care that contract with the health care service plan, for the purpose
33 of administering the health care service plan. Medical information
34 may not otherwise be disclosed by a health care service plan except
35 in accordance with the provisions of this part.

36 (11) Nothing in this part shall prevent the disclosure by a
37 provider of health care or a health care service plan to an insurance
38 institution, agent, or support organization, subject to Article 6.6
39 (commencing with Section 791) of Part 2 of Division 1 of the
40 Insurance Code, of medical information if the insurance institution,

1 agent, or support organization has complied with all requirements
2 for obtaining the information pursuant to Article 6.6 (commencing
3 with Section 791) of Part 2 of Division 1 of the Insurance Code.

4 (12) The information relevant to the patient's condition and care
5 and treatment provided may be disclosed to a probate court
6 investigator in the course of any investigation required or
7 authorized in a conservatorship proceeding under the
8 Guardianship-Conservatorship Law as defined in Section 1400 of
9 the Probate Code, or to a probate court investigator, probation
10 officer, or domestic relations investigator engaged in determining
11 the need for an initial guardianship or continuation of an existent
12 guardianship.

13 (13) The information may be disclosed to an organ procurement
14 organization or a tissue bank processing the tissue of a decedent
15 for transplantation into the body of another person, but only with
16 respect to the donating decedent, for the purpose of aiding the
17 transplant. For the purpose of this paragraph, the terms "tissue
18 bank" and "tissue" have the same meaning as defined in Section
19 1635 of the Health and Safety Code.

20 (14) The information may be disclosed when the disclosure is
21 otherwise specifically authorized by law, including, but not limited
22 to, the voluntary reporting, either directly or indirectly, to the
23 federal Food and Drug Administration of adverse events related
24 to drug products or medical device problems.

25 (15) Basic information, including the patient's name, city of
26 residence, age, sex, and general condition, may be disclosed to a
27 state or federally recognized disaster relief organization for the
28 purpose of responding to disaster welfare inquiries.

29 (16) The information may be disclosed to a third party for
30 purposes of encoding, encrypting, or otherwise anonymizing data.
31 However, no information so disclosed shall be further disclosed
32 by the recipient in any way that would violate this part, including
33 the unauthorized manipulation of coded or encrypted medical
34 information that reveals individually identifiable medical
35 information.

36 (17) For purposes of disease management programs and services
37 as defined in Section 1399.901 of the Health and Safety Code,
38 information may be disclosed as follows: (A) to an entity
39 contracting with a health care service plan or the health care service
40 plan's contractors to monitor or administer care of enrollees for a

1 covered benefit, if the disease management services and care are
2 authorized by a treating physician, or (B) to a disease management
3 organization, as defined in Section 1399.900 of the Health and
4 Safety Code, that complies fully with the physician authorization
5 requirements of Section 1399.902 of the Health and Safety Code,
6 if the health care service plan or its contractor provides or has
7 provided a description of the disease management services to a
8 treating physician or to the health care service plan's or contractor's
9 network of physicians. Nothing in this paragraph shall be construed
10 to require physician authorization for the care or treatment of the
11 adherents of a well-recognized church or religious denomination
12 who depend solely upon prayer or spiritual means for healing in
13 the practice of the religion of that church or denomination.

14 (18) The information may be disclosed, as permitted by state
15 and federal law or regulation, to a local health department for the
16 purpose of preventing or controlling disease, injury, or disability,
17 including, but not limited to, the reporting of disease, injury, vital
18 events, including, but not limited to, birth or death, and the conduct
19 of public health surveillance, public health investigations, and
20 public health interventions, as authorized or required by state or
21 federal law or regulation.

22 (19) The information may be disclosed, consistent with
23 applicable law and standards of ethical conduct, by a
24 psychotherapist, as defined in Section 1010 of the Evidence Code,
25 if the psychotherapist, in good faith, believes the disclosure is
26 necessary to prevent or lessen a serious and imminent threat to the
27 health or safety of a reasonably foreseeable victim or victims, and
28 the disclosure is made to a person or persons reasonably able to
29 prevent or lessen the threat, including the target of the threat.

30 (20) The information may be disclosed as described in Section
31 56.103.

32 (d) Except to the extent expressly authorized by the patient or
33 enrollee or subscriber or as provided by subdivisions (b) and (c),
34 no provider of health care, health care service plan, contractor, or
35 corporation and its subsidiaries and affiliates shall intentionally
36 share, sell, use for marketing, or otherwise use any medical
37 information for any purpose not necessary to provide health care
38 services to the patient. For purposes of this section, a written
39 communication mailed to a patient by a pharmacy shall be deemed
40 to be necessary to provide health care services to the patient and

1 shall not require prior authorization, if all of the following
2 conditions are met:

3 (1) The written communication encourages the patient to adhere
4 to the prescribed course of medical treatment as prescribed by a
5 licensed health care professional and may include information
6 about that particular pharmaceutical drug as authorized in this
7 section.

8 (2) *The communication is written in the same language as the*
9 *prescription label produced by the pharmacy when the medication*
10 *was dispensed.*

11 (3) *The written communication instructs the patient to contact*
12 *the prescribing or dispensing healthcare professional if:*

13 (A) *The patient has questions about the medication.*

14 (B) *The patient is having difficulty adhering to the medication*
15 *due to adverse effects, dosing requirements, or other causes.*

16 ~~(2)~~

17 (4) The written communication pertains only to the prescribed
18 course of medical treatment, and does not describe or mention any
19 other pharmaceutical products.

20 ~~(3)~~

21 (5) All product-related information in the written communication
22 shall be consistent with the current federal Food and Drug
23 Administration (FDA) approved product package insert, and
24 provide fair and balanced information regarding the product's
25 benefits and risks in accordance with the FDA requirements and
26 policies.

27 ~~(4)~~

28 (6) A copy of each written communication version shall be
29 submitted to the FDA Center for Drug Evaluation and Research,
30 Division of Drug Marketing, Advertising and Communications,
31 prior to program implementation.

32 ~~(5)~~

33 (7) Evidence-based or consensus-based practice guidelines shall
34 be the basis of any information that is provided to patients in order
35 to improve their overall health, prevent clinical exacerbations or
36 complications, or promote patient self-management strategies.

37 ~~(6)~~

38 (8) All personally identifiable medical information collected,
39 used, and disclosed pursuant to this subdivision shall be
40 confidential and shall be used solely to deliver the written

1 communication to the patient. Access to the information shall be
2 limited to authorized persons. Any entity that receives the
3 information pursuant to this subdivision shall comply with existing
4 requirements, including Sections 56.101 and 1798.84, concerning
5 confidentiality and security of information. The pharmacy must
6 have a written agreement with any entity that receives the
7 information. The written agreement shall require the entity to
8 maintain the confidentiality of the information it receives from the
9 pharmacy and prohibit the entity from disclosing or using the
10 information for any purpose other than to deliver to the patient the
11 written communication that is the subject of the written agreement.

12 ~~(7)~~

13 (9) If the written communication is paid for, in whole or in part,
14 by a manufacturer, distributor, or provider of a health care product
15 or service, the written communication shall disclose whether the
16 pharmacy receives direct or indirect remuneration, including, but
17 not limited to, gifts, fees, payments, subsidies, or other economic
18 benefits from a third party for making the written communication
19 and shall disclose, in a clear and conspicuous location, the source
20 of any sponsorship in a typeface no smaller than 14-point type.

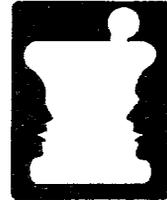
21 ~~(8)~~

22 (10) The communication contains instructions in a typeface no
23 smaller than 14-point type describing how the patient may opt out
24 of future communications by, for example, calling a toll-free
25 number or visiting a Web site, and no further sponsored message
26 is made to the individual after 30 calendar days from the date the
27 individual makes the opt out request.

28 (e) Except to the extent expressly authorized by the patient or
29 enrollee or subscriber or as provided by subdivisions (b) and (c),
30 no contractor or corporation and its subsidiaries and affiliates shall
31 further disclose medical information regarding a patient of the
32 provider of health care or an enrollee or subscriber of a health care
33 service plan or insurer or self-insured employer received under
34 this section to any person or entity that is not engaged in providing
35 direct health care services to the patient or his or her provider of
36 health care or health care service plan or insurer or self-insured
37 employer.

O

**CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS**



BILL NUMBER: SB 1096

VERSION: As amended April 14, 2008

AUTHOR: Calderon

SPONSOR: Adheris, Inc.

BOARD POSITION: Oppose

SUBJECT: Medical Information

EXISTING LAW:

1. Prohibits a provider of health care, health care service plan or contractor from disclosing medical information regarding a patient without first obtaining an authorization from the patient.
2. Makes exceptions that include allowing for the disclosure of patient medical information without authorization if compelled by a court, board, commission or administrative agency under specified conditions or pursuant to a subpoena as specified or pursuant to a search warrant lawfully issued.
3. Specifies that a provider of health care a health care service plan can also disclose medical information without prior approval for purposes of diagnosis or treatment of a patient, for paying for health care services rendered and may disclose information to public agencies, clinical investigators or healthcare institutions for research purposes.
4. Provides additional exemptions and details the limitations and parameters under which the exemptions apply.

THIS BILL WOULD:

1. Allow for written communication to be mailed to a patient by a pharmacy if deemed to be necessary to provide health care services to the patient and will not require prior authorization if all of the following are met:
 - The written communication encourages the patient to adhere to the prescribed course of medical treatment as prescribed.
 - The written communication is written in the same language as the prescription label produced by the pharmacy when the medication was dispensed.
 - The written communication instructs the patient to contact the prescribing or dispensing healthcare professional if the patient has questions about the medication or is having difficulty adhering to the medication due to adverse side effects, dosing requirements or other causes.

- The written communication pertains only to the prescribed course of medication treatment and does not describe or mention any other pharmaceutical products.
- All product-related information shall be consistent with the current federal Food and Drug Administration (FDA) approved product package insert.
- A copy of each written communication version shall be submitted to the FDA.
- Evidence-based or consensus-based practice guidelines shall be the basis of any information that is provided to patients in order to improve their overall health.
- All personally identifiable medical information collected, used and disclosed shall be confidential as specified.
- If the written communication is paid for, in whole or in part by a manufacturer, distributor or provider of a health care product, the communication must disclose whether the pharmacy receives direct or indirect remuneration in a typeface no smaller than 14-point type.
- The communication contains instructions in a typeface no smaller than 14-point font describing how the patient may opt out of future communications.

AUTHOR'S INTENT

According to the author, allowing communication with pharmacy patients about the importance of following treatment prescribed by their doctors, including refill reminders, has proven benefits to individual patients and public health.

COMMENTS

While the intent of this legislation is good, the mechanism by which the goal is to be achieved appears to be violation a patient's confidentiality. Further, this bill would provide consumers with potentially unnecessary marketing information disguised as medication information sponsored by drug manufacturers.

It is also of concern that a pharmacy could receive direct or indirect remuneration from a third party for providing the written communication. This could potentially discredit the health care provider role of a pharmacist, even if the pharmacy does not receive remuneration from the message's sponsor.

Patients receive a significant amount of information at the time a prescription is dispensed, both on the prescription label itself, through supplemental drug inserts, as well as through direct patient counseling. This information is provided to improve patient adherence to medication therapy. Patients receiving additional sponsored information at the time of dispensing could be particularly vulnerable to marketing messages. Moreover, it can make the other, essential

health care information about how to take the medicine also appear as an advertisement.

There is nothing to prohibit a pharmacy from directing communication to a patient that may have transferred the prescription to another pharmacy.

Staff requested an analysis by the DCA legal office to determine if this proposal would constitute a violation of HIPAA.

PRIOR HISTORY/RELATED BILLS

SB 843 (Calderon) contained similar provisions to those contained in this proposal. Staff was advised that this proposal would not move in its current form.

FISCAL IMPACT

The board does not anticipate any major fiscal impact to the board however could experience an increase in consumer calls and complaints. This minor impact could most likely be absorbed with existing resources.

SUPPORT/OPPOSITION

Support

None on file

Opposition

CA Alliance for Retired Americans
CMA
Consumer Federations of CA
Consumer Union
Gray Panthers
Privacy Right Clearinghouse
World Privacy Forum

HISTORY:

Dates Actions

04/14/08 Apr. 14 From committee with author's amendments. Read second time. Amended. Re-referred to Com. on JUD.
04/10/08 Apr. 10 From committee: Do pass, but first be re-referred to Com. on JUD. (Ayes 6. Noes 4. Page 3371.) Re-referred to Com. on JUD. Set for hearing April 29.
04/03/08 Apr. 3 Set for hearing April 9.
04/02/08 Apr. 2 Withdrawn from committee. Re-referred to Com. on HEALTH.
03/26/08 Mar. 26 Withdrawn from committee. Re-referred to Com. on RLS.

03/13/08 Mar. 13 Set for hearing March 26.

03/12/08 Mar. 12 Set, first hearing. Failed passage in committee. (Ayes 5. Noes 3. Page 3124.) Reconsideration granted. (Ayes 8. Noes 0. Page 3125.)

02/28/08 Feb. 28 Set for hearing March 12.

01/24/08 Jan. 24 To Coms. on HEALTH and JUD.

01/15/08 Jan. 15 From print. May be acted upon on or after February 14.

01/14/08 Jan. 14 Introduced. Read first time. To Com. on RLS. for assignment. To print.