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STATE AND CONSUMER SERVICES AGENCY  
DEPARTMENT OF CONSUMER AFFAIRS  
ARNOLD SCHWARZENEGGER, GOVERNOR

## Legislation and Regulation Committee

**Andrea Zinder, Board Member and Chair**  
**D. Timothy Dazé, Esq. Board Member**  
**Robert Graul, RPh, Board Member**  
**Kenneth Schell, PharmD, Board Member**

## LEGISLATION REPORT

### ITEM F: BOARD SPONSORED LEGISLATION

#### 1. Omnibus Provisions Previously Approved by the Board

##### **FOR INFORMATION:**

During the October 2007 Board Meeting, the board voted to approve language to allow for the use of mobile pharmacies in the event of a declared emergency or when a pharmacy is damaged or destroyed.

(a) Section 4062 Furnishing Dangerous Drugs During an Emergency

This section allows for the use of a mobile pharmacy in the event of a declared natural disaster if certain criteria are met.

(b) Section 4110 License Required, Temporary Permit Upon Transfer of Ownership

This section allows for the use of a mobile pharmacy on a temporary basis when a pharmacy is destroyed or damaged.

#### 2. Omnibus Provisions Needing Board Approval

##### **FOR ACTION:**

At the October 2007 Legislation and Regulation Committee Meeting, the committee discussed several omnibus provisions.

A motion and vote from the board is necessary to formally approve the proposed language to be included in the omnibus provisions.

(a) Pharmacist-in-Charge and Designated Representative in Charge

(1) Amend Sections 4022.5, 4101, 4101, 4160, 4196, 4305, 4329, 4330 and Add section 4036.5.

The Board of Pharmacy is proposing changes to several sections to Business and Professions Code to clarify the reporting requirements to document a change in the

Pharmacist-In-Charge (PIC). The PIC is responsible for the overall operations in a pharmacy. There are also similar changes for the Designated Representative-in-Charge (DRC) of a wholesaler or veterinary food-animal drug retailer. This proposal would also define the term “pharmacist-in-charge” currently referenced throughout pharmacy law as well as place into statute the approval process currently used by the board when evaluating a pharmacy application for approval of a proposed PIC or DRC.

#### *General Omnibus Provisions*

- (b) Amend Section 4059.5 - Who May order Dangerous Drugs or Devices, Exceptions.  
A technical change to this section clarifies that a designated representative must sign for and receive delivery of drugs by a wholesaler. This is important for accountability for drug purchases and receipt in wholesale operations.
- (c) Section 4081 - Records of Dangerous Drugs and Devices Kept Open for Inspection; Maintenance of Records, Current Inventory  
This section corrects a drafting error that occurred in Senate Bill 1307 (Chapter 857, statutes of 2004). The term “exemptee-in-charge was incorrected updated to “representative-in-charge” and requires correction to the appropriate term “designated representative in charge.”
- (d) Amend Section 4126.5 – Furnishing Dangerous Drugs by Pharmacy  
This section clarifies specifically who in the supply chain may receive dangerous drugs furnished by a pharmacy.
- (e) Amend Section 4231 – Requirements for Renewal of Pharmacist License: Clock Hours; Exemption for New Licensee  
This section addresses the need to authorize the board to automatically inactivate a pharmacist license when a pharmacist who certifies completion of the required CE as part of a renewal, fails to provide proof either as part of an audit or investigation. This authority already exists when a pharmacist fails to certify completion of continuing education as part of the renewal application.
- (f) Section 4362 – Entry Into Pharmacists Recovery Program (PRP)  
This section specifies the administrative co-pay participants pay as part of their participation in the PRP. In board subsidizes the administrative cost, however requires the participant to also pay a portion of the administrative costs of the program. The current administrative co-pay, \$75.00, is set by contract only. The board has not sought a change in this co-pay in over 10 years, and has continually absorbed the additional monthly administrative fee, currently about \$230/month per participant.  
  
This section allows the board the ability to waive a participant’s co-pay for demonstrated financial hardship.
- (g) H&SC 11165 – Controlled Substance Utilization Review and Evaluation System: Establishment; Operation; Funding; Reporting to Legislature  
This section requires amendment to require that a clinic that dispenses schedule III and schedule IV controlled substances must report weekly to CURES, similar to the requirements for pharmacies and prescribers who dispense controlled drugs as specified.

#### *Corrections to Sections Referencing Prior Business and Professions Code §§ 4052*

(h) Omnibus changes based on recodification of Business and Professions Code section 4052

In 2006 Business and Professions Code section 4052 was recodified into four sections. The below B&PC and H&SC sections reference 4052 and require update.

- Section 733 – Dispensing Prescription Drugs and Devices
- Section 4027 – Skilled Nursing Facility – Intermediate Care Facility – Other Health Care Facilities
- Section 4040 – Prescription; Content Requirements
- Section 4051 – Conduct Limited to Pharmacist; Conduct Authorized by Pharmacist
- Section 4060 – Controlled Substance – Prescription Required, Exceptions
- Section 4076 – Prescription Container – Requirements for Labeling
- Section 4111 – Restrictions on Prescriber Ownership
- Section 4174 – Dispensing by Pharmacist Upon Order of Nurse Practitioner
- H&SC 11150 – Persons Authorized to Write or Issue a Prescription

A copy of the proposed language was submitted to the staff with the Senate Business and Professions Committee in advance of this meeting as required procedurally. Should the language not be approved as presented, board staff will follow up with the committee to ensure necessary corrections are made.

A copy of the proposed language as presented to Senate Business and Professions is provided in **ATTACHMENT F-1**.

### 3. Immunizations by Pharmacists Pursuant to Published Recommendations of the Advisory Committee on Immunization Practices

At the April 2007 Board Meeting, the board voted to pursue a statutory change to allow a pharmacist to initiate and administer immunizations pursuant to the published recommendations of the Advisory Committee on Immunization Practices.

Beginning in November 2007, board staff have been working with stakeholders to address questions as well as to elicit support for this proposal. Included in **ATTACHMENT F-3** is the most recent draft of the language as well as the Adolescent and Adult Schedules and draft Fact Sheets developed by board staff.

## **ITEM G: LEGISLATION INTRODUCED IMPACTING THE PRACTICE OF PHARMACY OR THE BOARD'S JURISDICTION**

### **FOR ACTION:**

Provided in this packet are copies of bills and analysis of legislation impacting the practice of pharmacy or the board's jurisdiction (**ATTACHMENT G**). A brief summary of the measure is included below. Items 1 through 5 were considered by the board last year and the Board Position noted was based on board action at the July 2007 Board Meeting. Items 6 through 8 reflect legislation that has been introduced either during a Special Session or since the Legislature reconvened on January 7, 2007.

If the board so chooses, it can reconsider positions previously taken as well as take positions on new legislation. There are no committee recommendations.

1. AB 501 (Swanson and Hancock) Pharmaceutical Devices

Require a pharmaceutical manufacturer whose product is administered for home use through a prefilled syringe, prefilled pen, or other prefilled injection to device to provide at no additional charge, a postage prepaid mail-back sharps container for safe disposal of the used device.

Board Position: Support  
Status: Assembly Health Committee

2. AB 865 (Davis) State Agencies: Live Customer Service Agents

Require all state agencies to answer incoming phone calls within 10 rings by either a live customer service agent or an automated telephone answering equipment which then must allow include an option to reach a live customer service agent.

Board Position: Neutral  
Status: Assembly Appropriations Committee

3. AB 1436 (Hernandez) Nurse Practitioners

Revise the educational requirements for qualification or certification as a nurse practitioner and would require a nurse practitioner to be certified by a nationally recognized body approved by the Board of Registered Nursing.

Board Position: None  
Status: Assembly Health Committee

4. AB 1587 (De La Torre) Personal Information: Pharmacy

Exclude from the definition of marketing a written communication or written message provided to a pharmacy patient by a pharmacist or pharmacy personnel that meets specified conditions.

Board Position: None  
Status: Withdrawn from Committee. According to sponsor this bill will not be moved.

5. SB 963 (Ridley Thomas) Regulatory Boards: Sunset Review

Delete provisions subjecting boards to review by the Joint Committee on Boards, Commissions, and Consumer Protection and 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.

Board Position: None

Status: Assembly Business and Professions Committee

6. ABX1 1 (Nunez) Health Care Reform

Among other areas of Health Care Reform, establishes electronic prescribing requirements in pharmacy law.

Board Position:

Status: Senate Health Committee

7. AB 1394 (Krekorian) Counterfeit: Trademarks

Makes it a misdemeanor or a felony for a person to willfully manufacture, intentionally sell, or knowingly possess for sale any counterfeit registered trademark and make it a misdemeanor or a felony for a person to intentionally transport, offer for sale, or distribute any counterfeit registered trademark.

Board Position:

Status: Assembly Appropriations Committee

8. SB 1096 (Calderon) Medical Information

Allow a pharmacy to mail specified written communications to a patient, without the patient's authorization under specified conditions.

Board Position:

Status: Senate Rules for Assignment

**ITEM 7: FIRST QUARTERLY REPORT ON COMMITTEE GOALS FOR 2007/08**

**FOR INFORMATION:**

The update on the second quarterly report on committee's strategic goals for 2007/08 is included in **Attachment G-7**.

# Attachment F-1

***Omnibus Language***

## Proposed Omnibus Provisions for 2008

### Business and Professions Code Amendments

#### **§ 733. Dispensing Prescription Drugs and Devices**

(a) No licentiate shall obstruct a patient in obtaining a prescription drug or device that has been legally prescribed or ordered for that patient. A violation of this section constitutes unprofessional conduct by the licentiate and shall subject the licentiate to disciplinary or administrative action by his or her licensing agency.

(b) Notwithstanding any other provision of law, a licentiate shall dispense drugs and devices, as described in subdivision (a) of Section 4024, pursuant to a lawful order or prescription unless one of the following circumstances exists:

(1) Based solely on the licentiate's professional training and judgment, dispensing pursuant to the order or the prescription is contrary to law, or the licentiate determines that the prescribed drug or device would cause a harmful drug interaction or would otherwise adversely affect the patient's medical condition.

(2) The prescription drug or device is not in stock. If an order, other than an order described in Section 4019, or prescription cannot be dispensed because the drug or device is not in stock, the licentiate shall take one of the following actions:

(A) Immediately notify the patient and arrange for the drug or device to be delivered to the site or directly to the patient in a timely manner.

(B) Promptly transfer the prescription to another pharmacy known to stock the prescription drug or device that is near enough to the site from which the prescription or order is transferred, to ensure the patient has timely access to the drug or device.

(C) Return the prescription to the patient and refer the patient. The licentiate shall make a reasonable effort to refer the patient to a pharmacy that stocks the prescription drug or device that is near enough to the referring site to ensure that the patient has timely access to the drug or device.

(3) The licentiate refuses on ethical, moral, or religious grounds to dispense a drug or device pursuant to an order or prescription. A licentiate may decline to dispense a prescription drug or device on this basis only if the licentiate has previously notified his or her employer, in writing, of the drug or class of drugs to which he or she objects, and the licentiate's employer can, without creating undue hardship, provide a reasonable accommodation of the licentiate's objection. The licentiate's employer shall establish protocols that ensure that the patient has timely access to the prescribed drug or device despite the licentiate's refusal to dispense the prescription or order. For purposes of this section, "reasonable accommodation" and "undue hardship" shall have the same meaning as applied to those terms pursuant to subdivision (l) of Section 12940 of the Government Code.

(c) For the purposes of this section, "prescription drug or device" has the same meaning as the definition in Section 4022.

(d) The provisions of this section shall apply to the drug therapy described in paragraph (8) of subdivision (a) of Section ~~4052~~ 4052.3.

(e) This section imposes no duty on a licentiate to dispense a drug or device pursuant to a prescription or order without payment for the drug or device, including payment directly by the patient or through a third party payer accepted by the licentiate or payment of any required copayment by the patient.

**§ 4022.5. Designated representative; designated representative-in-charge**

(a) "Designated representative" means an individual to whom a license has been granted pursuant to Section 4053. A pharmacist fulfilling the duties in Section 4053 shall not be required to obtain a license as a designated representative.

(b) "Designated representative-in-charge" means a designated representative or a pharmacist proposed by a wholesaler or veterinary food-animal drug retailer and approved by the board who is as the supervisor or manager of a responsible for ensuring the wholesaler's or veterinary food-animal drug retailer's compliance with all state and federal laws and regulations pertaining to practice in the applicable license category.

**§ 4027. Skilled Nursing Facility – Intermediate Care Facility – Other Health Care Facilities**

(a) As used in this chapter, the terms "skilled nursing facility," "intermediate care facility," and other references to health facilities shall be construed with respect to the definitions contained in Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code.

(b) As used in paragraph (4) of subdivision (a) of Section ~~4052~~ 4052.1, "licensed health care facility" means a facility licensed pursuant to Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code or a facility, as defined in Section 1250 of the Health and Safety Code, operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(c) As used in paragraph (5) of subdivision (a) of Section ~~4052~~ 4052.2, "health care facility" means a facility, other than a facility licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code, that is owned or operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of the Health and Safety Code, or by an organization under common ownership or control of the health care service plan; "licensed home health agency" means a private or public organization licensed by the State Department of Health Services pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code, as further defined in Section 1727 of the Health and Safety Code; and "licensed clinic" means a clinic licensed pursuant to Article 1 (commencing with Section 1200) of Chapter 1 of Division 2 of the Health and Safety Code.

(d) "Licensed health care facility" or "facility," as used in Section 4065, means a health facility licensed pursuant to Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code or a facility that is owned or operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or by an organization under common ownership or control with the health care service plan.

**§ 4036.5. Pharmacist-in-charge**

"Pharmacist-in-charge" means a pharmacist proposed by a pharmacy and approved by the board as the supervisor or manager responsible for ensuring the pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

#### **§ 4040. Prescription; Content Requirements**

(a) "Prescription" means an oral, written, or electronic transmission order that is both of the following:

(1) Given individually for the person or persons for whom ordered that includes all of the following:

(A) The name or names and address of the patient or patients.

(B) The name and quantity of the drug or device prescribed and the directions for use.

(C) The date of issue.

(D) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and telephone number of the prescriber, his or her license classification, and his or her federal registry number, if a controlled substance is prescribed.

(E) A legible, clear notice of the condition for which the drug is being prescribed, if requested by the patient or patients.

(F) If in writing, signed by the prescriber issuing the order, or the certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor who issues a drug order pursuant to Section 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist who issues a drug order pursuant to ~~either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052~~ 4052.2.

(2) Issued by a physician, dentist, optometrist, podiatrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7 or, if a drug order is issued pursuant to Section 2746.51, 2836.1, 3502.1, or 3460.5, by a certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor licensed in this state, or pursuant to ~~either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052~~ 4052.2 by a pharmacist licensed in this state.

(b) Notwithstanding subdivision (a), a written order of the prescriber for a dangerous drug, except for any Schedule II controlled substance, that contains at least the name and signature of the prescriber, the name and address of the patient in a manner consistent with paragraph (3) of subdivision (b) of Section 11164 of the Health and Safety Code, the name and quantity of the drug prescribed, directions for use, and the date of issue may be treated as a prescription by the dispensing pharmacist as long as any additional information required by subdivision (a) is readily retrievable in the pharmacy. In the event of a conflict between this subdivision and Section 11164 of the Health and Safety Code, Section 11164 of the Health and Safety Code shall prevail.

(c) "Electronic transmission prescription" includes both image and data prescriptions. "Electronic image transmission prescription" means any prescription order for which a facsimile of the order is received by a pharmacy from a licensed prescriber. "Electronic data transmission prescription" means any prescription order, other than an electronic image transmission prescription, that is electronically transmitted from a licensed prescriber to a pharmacy.

(d) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(e) Nothing in the amendments made to this section (formerly Section 4036) at the 1969 Regular Session of the Legislature shall be construed as expanding or limiting the right that a chiropractor, while acting within the scope of his or her license, may have to prescribe a device.

**§ 4051. Conduct Limited to Pharmacist; Conduct Authorized by Pharmacist**

(a) Except as otherwise provided in this chapter, it is unlawful for any person to manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to dispense or compound any prescription pursuant to Section 4040 of a prescriber unless he or she is a pharmacist under this chapter.

(b) Notwithstanding any other law, a pharmacist may authorize the initiation of a prescription, pursuant to Section ~~4052~~ 4052.2, and otherwise provide clinical advice or information or patient consultation if all of the following conditions are met:

- (1) The clinical advice or information or patient consultation is provided to a health care professional or to a patient.
- (2) The pharmacist has access to prescription, patient profile, or other relevant medical information for purposes of patient and clinical consultation and advice.
- (3) Access to the information described in paragraph (2) is secure from unauthorized access and use.

**§ 4059.5. Who may order dangerous drugs or devices, exceptions**

(a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and shall be delivered to the licensed premises and signed for and received by a pharmacist. Where a licensee is permitted to operate through a designated representative, the designated representative ~~may~~ must sign for and receive the delivery.

(b) A dangerous drug or dangerous device transferred, sold, or delivered to a person within this state shall be transferred, sold, or delivered only to an entity licensed by the board, to a manufacturer, or to an ultimate user or the ultimate user's agent.

(c) Notwithstanding subdivisions (a) and (b), deliveries to a hospital pharmacy may be made to a central receiving location within the hospital. However, the dangerous drugs or dangerous devices shall be delivered to the licensed pharmacy premises within one working day following receipt by the hospital, and the pharmacist on duty at that time shall immediately inventory the dangerous drugs or dangerous devices.

(d) Notwithstanding any other provision of law, a dangerous drug or dangerous device may be ordered by and provided to a manufacturer, physician, dentist, podiatrist, optometrist, veterinarian, naturopathic doctor pursuant to Section 3640.7, or laboratory, or a physical therapist acting within the scope of his or her license. A person or entity receiving delivery of a dangerous drug or dangerous device, or a duly authorized representative of the person or entity, shall sign for the receipt of the dangerous drug or dangerous device.

(e) A dangerous drug or dangerous device shall not be transferred, sold, or delivered to a person outside this state, whether foreign or domestic, unless the transferor, seller, or deliverer does so in compliance with the laws of this state and of the United States and of the

state or country to which the dangerous drugs or dangerous devices are to be transferred, sold, or delivered. Compliance with the laws of this state and the United States and of the state or country to which the dangerous drugs or dangerous devices are to be delivered shall include, but not be limited to, determining that the recipient of the dangerous drugs or dangerous devices is authorized by law to receive the dangerous drugs or dangerous devices.

(f) Notwithstanding subdivision (a), a pharmacy may take delivery of dangerous drugs and dangerous devices when the pharmacy is closed and no pharmacist is on duty if all of the following requirements are met:

- (1) The drugs are placed in a secure storage facility in the same building as the pharmacy.
- (2) Only the pharmacist-in-charge or a pharmacist designated by the pharmacist-in-charge has access to the secure storage facility after dangerous drugs or dangerous devices have been delivered.
- (3) The secure storage facility has a means of indicating whether it has been entered after dangerous drugs or dangerous devices have been delivered.
- (4) The pharmacy maintains written policies and procedures for the delivery of dangerous drugs and dangerous devices to a secure storage facility.
- (5) The agent delivering dangerous drugs and dangerous devices pursuant to this subdivision leaves documents indicating the name and amount of each dangerous drug or dangerous device delivered in the secure storage facility.

The pharmacy shall be responsible for the dangerous drugs and dangerous devices delivered to the secure storage facility. The pharmacy shall also be responsible for obtaining and maintaining records relating to the delivery of dangerous drugs and dangerous devices to a secure storage facility.

(g) This section shall become operative on January 1, 2006.

#### **§ 4060. Controlled Substance – Prescription Required, Exceptions**

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 ~~4052.2~~. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer. Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

#### **§ 4062. Furnishing Dangerous Drugs During and Emergency**

(a) Notwithstanding Section 4059 or any other provision of law, a pharmacist may, in good faith, furnish a dangerous drug or dangerous device in reasonable quantities without a prescription during a federal, state, or local emergency, to further the health and safety of the public. A record containing the date, name, and address of the person to whom the drug or

device is furnished, and the name, strength, and quantity of the drug or device furnished shall be maintained. The pharmacist shall communicate this information to the patient's attending physician as soon as possible. Notwithstanding Section 4060 or any other provision of law, a person may possess a dangerous drug or dangerous device furnished without prescription pursuant to this section.

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

(c) During a declared federal, state, or local emergency the board will allow for the deployment of a mobile pharmacy to impacted areas to ensure the continuity of patient care if all of the following conditions are met:

- (1) The mobile pharmacy shares common ownership with at least one currently licensed pharmacy in good standing;
- (2) The mobile pharmacy retains records of dispensing as required in subdivision (a);
- (3) A licensed pharmacist is on the premises, and the mobile pharmacy is under the control and management of a pharmacist while the drugs are being dispensed;
- (4) Reasonable security measures are taken to safeguard the drug supply maintained in the mobile pharmacy;
- (5) The mobile pharmacy is located within the declared disaster area or affected areas; and
- (6) The mobile pharmacy ceases the provisions of services within forty-eight (48) hours following the termination of the declared emergency.

#### **§ 4076. Prescription Container – Requirements for Labeling**

(a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

- (1) Except where the prescriber or the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, the physician assistant who functions pursuant to Section 3502.1, the naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 ~~4052.2~~ orders otherwise, either the manufacturer's trade name of the drug or the generic name and the name of the manufacturer. Commonly used abbreviations may be used. Preparations containing two or more active ingredients may be identified by the manufacturer's trade name or the commonly used name or the principal active ingredients.
- (2) The directions for the use of the drug.
- (3) The name of the patient or patients.
- (4) The name of the prescriber or, if applicable, the name of the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, the physician assistant who functions pursuant to Section 3502.1, the naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
- (5) The date of issue.

- (6) The name and address of the pharmacy, and prescription number or other means of identifying the prescription.
- (7) The strength of the drug or drugs dispensed.
- (8) The quantity of the drug or drugs dispensed.
- (9) The expiration date of the effectiveness of the drug dispensed.
- (10) The condition for which the drug was prescribed if requested by the patient and the condition is indicated on the prescription.
- (11) (A) Commencing January 1, 2006, the physical description of the dispensed medication, including its color, shape, and any identification code that appears on the tablets or capsules, except as follows:
  - (i) Prescriptions dispensed by a veterinarian.
  - (ii) An exemption from the requirements of this paragraph shall be granted to a new drug for the first 120 days that the drug is on the market and for the 90 days during which the national reference file has no description on file.
  - (iii) Dispensed medications for which no physical description exists in any commercially available database.
- (B) This paragraph applies to outpatient pharmacies only.
- (C) The information required by this paragraph may be printed on an auxiliary label that is affixed to the prescription container.
- (D) This paragraph shall not become operative if the board, prior to January 1, 2006, adopts regulations that mandate the same labeling requirements set forth in this paragraph.

(b) If a pharmacist dispenses a prescribed drug by means of a unit dose medication system, as defined by administrative regulation, for a patient in a skilled nursing, intermediate care, or other health care facility, the requirements of this section will be satisfied if the unit dose medication system contains the aforementioned information or the information is otherwise readily available at the time of drug administration.

(c) If a pharmacist dispenses a dangerous drug or device in a facility licensed pursuant to Section 1250 of the Health and Safety Code, it is not necessary to include on individual unit dose containers for a specific patient, the name of the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, the physician assistant who functions pursuant to Section 3502.1, the naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

(d) If a pharmacist dispenses a prescription drug for use in a facility licensed pursuant to Section 1250 of the Health and Safety Code, it is not necessary to include the information required in paragraph (11) of subdivision (a) when the prescription drug is administered to a patient by a person licensed under the Medical Practice Act (Chapter 5 (commencing with Section 2000)), the Nursing Practice Act (Chapter 6 (commencing with Section 2700)), or the Vocational Nursing Practice Act (Chapter 6.5 (commencing with Section 2840)), who is acting within his or her scope of practice.

**§ 4081. Records of Dangerous Drugs and Devices Kept Open for Inspection; Maintenance of Records, Current Inventory**

(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized

officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of a pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or designated representative-in-charge, for maintaining the records and inventory described in this section.

(c) The pharmacist-in-charge or representative-in-charge shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or designated representative-in-charge had no knowledge, or in which he or she did not knowingly participate.

(d) This section shall become operative on January 1, 2006.

**§ 4101. Persons in charge of pharmacy or exemptees Pharmacist-in-charge; designated-representative-in-charge; termination of employment status; duty to notify board**

(a) A pharmacist ~~who takes~~ may take charge of, ~~or acts and act as~~ the pharmacist-in-charge of a pharmacy ~~or other entity licensed by the board upon application by the pharmacy and approval by the board.~~ Any pharmacist-in-charge who terminates his or her employment at the pharmacy, gives up or is stripped of his or her role as pharmacist-in-charge, or otherwise ceases to act as the pharmacist-in-charge of the pharmacy or other entity, shall notify the board in writing within 30 days of the termination of employment date of such change in status.

(b) ~~An exemptee~~ A designated representative or a pharmacist may take charge of and act as the designated representative-in-charge of a wholesaler or veterinary food drug-animal retailer upon application by the wholesaler or veterinary food drug-animal retailer and approval by the board. Any designated representative-in-charge who terminates his or her employment, gives up or is stripped of his or her role as designated representative-in-charge, or otherwise ceases to act as the designated representative-in-charge at that entity, shall notify the board in writing within 30 days of the termination of employment date of such change in status.

**§ 4110 License Required, Temporary Permit Upon Transfer of Ownership**

(a) No person shall conduct a pharmacy in the State of California unless he or she has obtained a license from the board. A license shall be required for each pharmacy owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a pharmacy in more than one location. The license shall be renewed annually. The board may, by regulation, determine the circumstances under which a license may be transferred.

(b) The board may, at its discretion, issue a temporary permit, when the ownership of a pharmacy is transferred from one person to another, upon the conditions and for any periods

of time as the board determines to be in the public interest. A temporary permit fee shall be established by the board at an amount not to exceed the annual fee for renewal of a permit to conduct a pharmacy. When needed to protect public safety, a temporary permit may be issued for a period not to exceed 180 days, and may be issued subject to terms and conditions the board deems necessary. If the board determines a temporary permit was issued by mistake or denies the application for a permanent license or registration, the temporary license or registration shall terminate upon either personal service of the notice of termination upon the permit holder or service by certified mail, return receipt requested, at the permit holder's address of record with the board, whichever comes first. Neither for purposes of retaining a temporary permit nor for purposes of any disciplinary or license denial proceeding before the board shall the temporary permit holder be deemed to have a vested property right or interest in the permit.

(c) The board may allow the temporary use of a mobile pharmacy, when a pharmacy is destroyed or damaged and when needed to protect the health and safety of the public and the following conditions are met:

(1) The mobile pharmacy shall provide services only on or immediately contiguous to the site of the damaged or destroyed pharmacy.

(2) The mobile pharmacy is under the control and management of the Pharmacist-in-Charge of the pharmacy that was destroyed or damaged.

(3) A licensed pharmacist is on the premises while drugs are being dispensed.

(4) Reasonable security measures are taken to safeguard the drug supply maintained in the mobile pharmacy.

(5) The pharmacy operating the mobile pharmacy provides the board with records of the destruction or damage and an expected restoration date.

(6) Within three (3) calendar days of restoration of the pharmacy services, the board is provided with notice of the restoration to the permanent pharmacy.

(7) The mobile pharmacy is not operated for more than forty-eight (48) hours following the restoration of the pharmacy.

#### **§ 4111. Restrictions on Prescriber Ownership**

(a) Except as otherwise provided in subdivision (b), (d), or (e), the board shall not issue or renew a license to conduct a pharmacy to any of the following:

(1) A person or persons authorized to prescribe or write a prescription, as specified in Section 4040, in the State of California.

(2) A person or persons with whom a person or persons specified in paragraph (1) shares a community or other financial interest in the permit sought.

(3) Any corporation that is controlled by, or in which 10 percent or more of the stock is owned by a person or persons prohibited from pharmacy ownership by paragraph (1) or (2).

(b) Subdivision (a) shall not preclude the issuance of a permit for an inpatient hospital pharmacy to the owner of the hospital in which it is located.

(c) The board may require any information the board deems is reasonably necessary for the enforcement of this section.

(d) Subdivision (a) shall not preclude the issuance of a new or renewal license for a pharmacy to be owned or owned and operated by a person licensed on or before August 1, 1981, under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and qualified on or before August 1, 1981, under subsection (d) of Section 1310 of Title XIII of the federal Public Health Service Act, as

amended, whose ownership includes persons defined pursuant to paragraphs (1) and (2) of subdivision (a).

(e) Subdivision (a) shall not preclude the issuance of a new or renewal license for a pharmacy to be owned or owned and operated by a pharmacist authorized to issue a drug order pursuant to subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 4052.2.

**§ 4113. Pharmacists-in-charge; designation approval; responsibilities; notifications**

(a) Every pharmacy shall designate a pharmacist in charge and within 30 days thereof, shall notify the board in writing of the identity and license number of that pharmacist and the date he or she was designated be supervised or managed by a pharmacist-in-charge. As part of its initial application for a license, and for each renewal, each pharmacy shall, on a form designed by the board, provide identifying information and the California license number for a pharmacist proposed to serve as the pharmacist-in-charge. The proposed pharmacist-in-charge shall be subject to approval by the board. The board shall not issue or renew a pharmacy license without identification of an approved pharmacist-in-charge for the pharmacy.

(b) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

(c) Every pharmacy shall notify the board in writing, on a form designed by the board, within 30 days of the date when a pharmacist ceases to be a pharmacist-in-charge is terminated, gives up or is stripped of that role, or in any other manner ceases to act as pharmacist-in-charge, and shall on the same form propose another pharmacist to take over as pharmacist-in-charge. The proposed replacement pharmacist-in-charge shall be subject to approval by the board. If disapproved, the pharmacy shall propose another replacement within 15 days of the date of disapproval, and shall continue to name proposed replacements until a pharmacist-in-charge is approved by the board.

(d) If a pharmacy is unable, in the exercise of reasonable diligence, to identify within 30 days a permanent replacement pharmacist-in-charge to propose to the board on the notification form, the pharmacy may instead supply on that form the name of any pharmacist who is an employee, officer or administrator of the pharmacy or the entity which owns the pharmacy and who is actively involved in the management of the pharmacy on a daily basis, to act as the interim pharmacist-in-charge for a period not to exceed 120 days. The pharmacy, or the entity which owns the pharmacy, shall be prepared during normal business hours to provide a representative of the board with the name of the interim pharmacist-in-charge, with documentation of the active involvement of the interim pharmacist-in-charge in the daily management of the pharmacy, and with documentation of the pharmacy's good faith efforts prior to naming the interim pharmacist-in-charge to obtain a permanent pharmacist-in-charge. By no later than 120 days following the identification of the interim pharmacist-in-charge, the pharmacy shall propose to the board the name of a pharmacist to serve as the permanent pharmacist-in-charge. The proposed permanent pharmacist-in-charge shall be subject to approval by the board. If disapproved, the pharmacy shall propose another replacement within 15 days of the date of disapproval, and shall continue to name proposed replacements until a pharmacist-in-charge is approved by the board.

**§ 4126.5. Persons or organizations that pharmacies may furnish with dangerous drugs; violations; offset of amounts due; definitions**

(a) A pharmacy may furnish dangerous drugs only to the following, and only the following may receive dangerous drugs furnished by a pharmacy:

(1) A wholesaler owned or under common control by the wholesaler from whom the dangerous drug was acquired.

(2) The pharmaceutical manufacturer from whom the dangerous drug was acquired.

(3) A licensed wholesaler acting as a reverse distributor.

(4) Another pharmacy or wholesaler to alleviate a temporary shortage of a dangerous drug that could result in the denial of health care. A pharmacy furnishing dangerous drugs pursuant to this paragraph may only furnish a quantity sufficient to alleviate the temporary shortage.

(5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized by law.

(6) A health care provider that is not a pharmacy but that is authorized to purchase dangerous drugs.

(7) To another pharmacy under common control.

(b) Notwithstanding any other provision of law, a violation of this section ~~by either a pharmacy whose primary or sole business is filling prescriptions for patients of long-term care facilities or a person engaged in a prohibited transaction with a pharmacy whose primary or sole business is filling prescriptions for patients of long-term care facilities~~ may subject the person or persons who committed the violation to a fine not to exceed the amount specified in Section 125.9 for each occurrence pursuant to a citation issued by the board.

(c) Amounts due from any person under this section on or after January 1, 2005, shall be offset as provided under Section 12419.5 of the Government Code. Amounts received by the board under this section shall be deposited into the Pharmacy Board Contingent Fund.

(d) For purposes of this section, "common control" means the power to direct or cause the direction of the management and policies of another person whether by ownership, by voting rights, by contract, or by other means.

For purposes of subdivision (b) of this section and subdivision (s) of Section 4301, "long-term care facility" shall have the same meaning given the term in Section 1418 of the Health and Safety Code.

**§ 4160. Wholesaler Licenses**

(a) A person may not act as a wholesaler of any dangerous drug or dangerous device unless he

or she has obtained a license from the board.

(b) Upon approval by the board and the payment of the required fee, the board shall issue a license to the applicant.

(c) A separate license shall be required for each place of business owned or operated by a wholesaler. Each license shall be renewed annually and shall not be transferable.

~~(d) The board shall not issue or renew a wholesaler license until the wholesaler identifies a designated representative in charge and notifies the board in writing of the identity and license number of that designated representative. Every wholesaler shall be supervised or managed by a designated representative-in-charge. The designated representative-in-charge shall be responsible for the wholesaler's compliance with state and federal laws governing wholesalers. As part of its initial application for a license, and for each renewal, each wholesaler shall, on a form designed by the board, provide identifying information and the California license number for a designated representative or pharmacist proposed to serve as the designated representative-in-charge. The proposed designated representative-in-charge shall be subject to approval by the board. The board shall not issue or renew a wholesaler license without identification of an approved designated representative-in-charge for the wholesaler.~~

~~(e) A wholesaler shall identify and notify the board of a new designated representative in charge within 30 days of the date that the prior designated representative in charge ceases to be the designated representative in charge. A pharmacist may be identified as the designated representative in charge. Every wholesaler shall notify the board in writing, on a form designed by the board, within 30 days of the date when a designated representative-in-charge is terminated, gives up or is stripped of that role, or in any other manner ceases to act as designated representative-in-charge, and shall on the same form propose another designated representative or pharmacist to take over as designated representative-in-charge. The proposed replacement designated representative-in-charge shall be subject to approval by the board. If disapproved, the wholesaler shall propose another replacement within 15 days of the date of disapproval, and shall continue to name proposed replacements until a designated representative-in-charge is approved by the board.~~

(e f) A drug manufacturer licensed by the Food and Drug Administration or licensed pursuant to Section 111615 of the Health and Safety Code that only distributes dangerous drugs and dangerous devices of its own manufacture is exempt from this section and Section 4161.

~~(f g) The board may issue a temporary license, upon conditions and for periods of time as the board determines to be in the public interest. A temporary license fee shall be five hundred fifty dollars (\$550) six hundred dollars (\$600) or another amount established by the board not to exceed the annual fee for renewal of a license to compound injectable sterile drug products. When needed to protect public safety, a temporary license may be issued for a period not to exceed 180 days, subject to terms and conditions that the board deems necessary. If the board determines that a temporary license was issued by mistake or denies the application for a permanent license, the temporary license shall terminate upon either personal service of the notice of termination upon the licenseholder or service by certified mail, return receipt requested, at the licenseholder's address of record with the board, whichever occurs first. Neither for purposes of retaining a temporary license, nor for purposes of any disciplinary or license denial proceeding before the board, shall the temporary licenseholder be deemed to have a vested property right or interest in the license.~~

~~(g) This section shall become operative on January 1, 2006.~~

**§ 4174. Dispensing by Pharmacist Upon Order of a Nurse Practitioner**

Notwithstanding any other provision of law, a pharmacist may dispense drugs or devices upon the drug order of a nurse practitioner functioning pursuant to Section 2836.1 or a certified nurse-midwife functioning pursuant to Section 2746.51, a drug order of a physician assistant functioning pursuant to Section 3502.1 or a naturopathic doctor functioning pursuant to Section 3640.5, or the order of a pharmacist acting under Section 4052 4052.2.

**§ 4196. Veterinary Food-Animal Drug Retailer Licenses; persons allowed in areas where drugs stored, possessed, or repacked**

(a) No person shall conduct a veterinary food-animal drug retailer in the State of California unless he or she has obtained a license from the board. A license shall be required for each veterinary food-animal drug retailer owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a veterinary food-animal drug retailer in more than one location. The license shall be renewed annually and shall not be transferable.

(b) The board may issue a temporary license, upon conditions and for periods of time as the board determines to be in the public interest. A temporary license fee shall be fixed by the board at an amount not to exceed the annual fee for renewal of a license to conduct a veterinary food-animal drug retailer.

(c) No person other than a pharmacist, an intern pharmacist, a designated representative, an authorized officer of the law, or a person authorized to prescribe, shall be permitted in that area, place, or premises described in the permit issued by the board pursuant to Section 4041, wherein veterinary food-animal drugs are stored, possessed, or repacked. A pharmacist or designated representative shall be responsible for any individual who enters the veterinary food-animal drug retailer for the purpose of performing clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to the veterinary food-animal drug retailer.

~~(d) The board shall not issue or renew a veterinary food-animal retailer license until the veterinary food-animal drug retailer identifies a designated representative in charge and notifies the board in writing of the identity and license number of that designated representative. Every veterinary food-animal drug retailer shall be supervised or managed by a designated representative-in-charge. The designated representative-in-charge shall be responsible for the veterinary food-animal drug retailer's compliance with state and federal laws governing veterinary food-animal drug retailers. As part of its initial application for a license, and for each renewal, each veterinary food-animal drug retailer shall, on a form designed by the board, provide identifying information and the California license number for a designated representative or pharmacist proposed to serve as the designated representative-in-charge. The proposed designated representative-in-charge shall be subject to approval by the board. The board shall not issue or renew a veterinary food-animal drug retailer license without identification of an approved designated representative-in-charge for the veterinary food-animal drug retailer.~~

~~(e) Each veterinary food-animal drug retailer shall identify, and notify the board of, a new designated representative in charge within 30 days of the date that the prior designated representative in charge ceases to be the designated representative in charge. A pharmacist may be identified as the designated representative in charge. Every veterinary food-animal~~

drug retailer shall notify the board in writing, on a form designed by the board, within 30 days of the date when a designated representative-in-charge is terminated, gives up or is stripped of that role, or in any other manner ceases to act as designated representative-in-charge, and shall on the same form propose another designated representative or pharmacist to take over as designated representative-in-charge. The proposed replacement designated representative-in-charge shall be subject to approval by the board. If disapproved, the veterinary food-animal drug retailer shall propose another replacement within 15 days of the date of disapproval, and shall continue to name proposed replacements until a designated representative-in-charge is approved by the board.

(e f) For purposes of this section, designated representative-in-charge means a person granted a designated representative license pursuant to Section 4053, or a registered pharmacist, who is the supervisor or manager of the facility.

~~(f) This section shall become operative on January 1, 2006.~~

**§ 4231. Requirements for renewal of pharmacist license; clock hours; exemption for new licensee**

(a) The board shall not renew a pharmacist license unless the applicant submits proof satisfactory to the board that he or she has successfully completed 30 hours of approved courses of continuing pharmacy education during the two years preceding the application for renewal.

(b) Notwithstanding subdivision (a), the board shall not require completion of continuing education for the first renewal of a pharmacist license.

(c) If an applicant for renewal of a pharmacist license submits the renewal application and payment of the renewal fee but does not submit proof satisfactory to the board that the licensee has completed 30 hours of continuing pharmacy education, the board shall not renew the license and shall issue the applicant an inactive pharmacist license. A licensee with an inactive pharmacist license issued pursuant to this section may obtain an active pharmacist license by paying the renewal fees due and submitting satisfactory proof to the board that the licensee has completed 30 hours of continuing pharmacy education.

(d) If, as part of an investigation or audit conducted by the board, a pharmacist fails to provide documentation substantiating the completion of continuing education as required in subdivision (a) the board shall cancel the active pharmacist license and issue an inactive pharmacist license in its place. A licensee with an inactive pharmacist license issued pursuant to this section may obtain an active pharmacist license by paying the renewal fees due and submitting satisfactory proof to the board that the licensee has completed 30 hours of continuing pharmacy education.

**§ 4305. Licensees conducting pharmacies; Pharmacist-in-charge; notice to board; disciplinary action**

~~(a) Any person who has obtained a license to conduct a pharmacy, shall notify the board within 30 days of the termination of employment of any pharmacist who takes charge of, or acts as manager of the pharmacy. Failure by any pharmacist to notify the board in writing that he or she has ceased to act as pharmacist-in-charge of a pharmacy, or by any pharmacy to notify~~

the board in writing that a pharmacist-in-charge is no longer acting in that capacity, within the 30-day period specified by sections 4101 and 4113, shall constitute grounds for disciplinary action.

(b) Operation of a pharmacy for more than 30 days without supervision or management thereof by a pharmacist-in-charge shall constitute grounds for disciplinary action.

(b c) Any person who has obtained a license to conduct a pharmacy, who willfully fails to timely notify the board of the termination of employment of that any pharmacist who takes charge of, or acts as manager the pharmacist-in-charge of the pharmacy has ceased to act in that capacity, and who continues to permit the compounding or dispensing of prescriptions, or the furnishing of drugs or poisons, in his or her pharmacy, except by a pharmacist subject to the supervision and management of a responsible pharmacist-in-charge, shall be subject to summary suspension or revocation of his or her license to conduct a pharmacy.

(c) Any pharmacist who takes charge of, or acts as manager of a pharmacy, who terminates his or her employment at the pharmacy, shall notify the board within 30 days of termination of employment. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

#### **§ 4329. Nonpharmacists; prohibited acts**

Any nonpharmacist who takes charge of or acts as supervisor, manager, or pharmacist-in-charge of any pharmacy, or who compounds or dispenses a prescription or furnishes dangerous drugs except as otherwise provided in this chapter, is guilty of a misdemeanor.

#### **§ 4330. Proprietors; prohibited acts**

(a) Any person who has obtained a license to conduct a pharmacy, who fails to place in charge of the pharmacy a pharmacist, or any person, who by himself or herself, or by any other person, permits the compounding or dispensing of prescriptions, or the furnishing of dangerous drugs, in his or her pharmacy, except by a pharmacist, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(b) Any ~~nonpharmacist~~ pharmacy owner who commits any act that would subvert or tend to subvert the efforts of the pharmacist-in-charge to comply with the laws governing the operation of the pharmacy is guilty of a misdemeanor.

#### **§ 4362. Entry into the Pharmacists Recovery Program**

(a) A pharmacist or intern pharmacist may enter the pharmacists recovery program if:

- (1) The pharmacist or intern pharmacist is referred by the board instead of, or in addition to, other means of disciplinary action.
- (2) The pharmacist or intern pharmacist voluntarily elects to enter the pharmacists recovery program.

(b) A pharmacist or intern pharmacist who enters the pharmacists recovery program pursuant to paragraph (2) of subdivision (a) shall not be subject to discipline or other enforcement action by the board solely on his or her entry into the pharmacists recovery program or on

information obtained from the pharmacist or intern pharmacist while participating in the program unless the pharmacist or intern pharmacist would pose a threat to the health and safety of the public. However, if the board receives information regarding the conduct of the pharmacist or intern pharmacist, that information may serve as a basis for discipline or other enforcement by the board.

(c) A pharmacist or intern pharmacist enrolled in the pharmacists recovery program shall be responsible to pay an administrative co-pay of \$125 monthly to cover a portion of the administrative costs borne by the board to contract for these services. This fee may be waived, reduced, or deferred by the board or its designee if the participant demonstrates a financial hardship.

## **Health and Safety Code Amendment**

### **§ 11150 – Persons Authorized to Write or Issue a Prescription**

No person other than a physician, dentist, podiatrist, or veterinarian, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or within the scope of either ~~subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of~~ Section ~~4052~~ 4052.2 of the Business and Professions Code, a registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, a certified nurse-midwife acting within the scope of Section 2746.51 of the Business and Professions Code, a nurse practitioner acting within the scope of Section 2836.1 of the Business and Professions Code, a physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or Section 3502.1 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code, or an out-of-state prescriber acting pursuant to Section 4005 of the Business and Professions Code shall write or issue a prescription.

### **§ 11165. Controlled Substance Utilization Review and Evaluation System: Establishment; Operations; Funding; Reporting to Legislature**

(a) To assist law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II, Schedule III, and Schedule IV controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, and the Osteopathic Medical Board of California Contingent Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

(b) The reporting of Schedule III and Schedule IV controlled substance prescriptions to CURES shall be contingent upon the availability of adequate funds from the Department of Justice. The Department of Justice may seek and use grant funds to pay the costs incurred from the reporting of controlled substance prescriptions to CURES. Funds shall not be appropriated from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund,

the State Dentistry Fund, the Board of Registered Nursing Fund, the Naturopathic Doctor's Fund, or the Osteopathic Medical Board of California Contingent Fund to pay the costs of reporting Schedule III and Schedule IV controlled substance prescriptions to CURES.

(c) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal persons or public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, provided that patient information, including any information that may identify the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party.

(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, the dispensing pharmacy or clinic shall provide the following information to the Department of Justice on a weekly basis and in a format specified by the Department of Justice:

- (1) Full name, address, and the telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.
- (2) The prescriber's category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.
- (3) Pharmacy prescription number, license number, and federal controlled substance registration number.
- (4) NDC (National Drug Code) number of the controlled substance dispensed.
- (5) Quantity of the controlled substance dispensed.
- (6) ICD-9 (diagnosis code), if available.
- (7) Number of refills ordered.
- (8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.
- (9) Date of origin of the prescription.
- (10) Date of dispensing of the prescription.

(e) This section shall become operative on January 1, 2005.

# Attachment F-3

- *Draft Immunization Language*
- *Adolescent and Adult Schedules*
- *Fact Sheets*

4052. (a) Notwithstanding any other provision of law, a pharmacist may:
- 1) Furnish a reasonable quantity of compounded drug product to a prescriber for office use by the prescriber.
  - 2) Transmit a valid prescription to another pharmacist.
  - 3) Administer, orally or topically, drugs and biologicals pursuant to a prescriber's order.
  - 4) Perform procedures or functions in a licensed health care facility as authorized by Section 4052.1.
  - 5) Perform procedures or functions as part of the care provided by a health care facility, a licensed home health agency, a licensed clinic in which there is a physician oversight, a provider who contracts with a licensed health care service plan with regard to the care or services provided to the enrollees of that health care service plan, or a physician, as authorized by Section 4052.2.
  - 6) Manufacture, measure, fit to the patient, or sell and repair dangerous devices or furnish instructions to the patient or the patient's representative concerning the use of those devices.
  - 7) Provide consultation to patients and professional information, including clinical or pharmacological information, advice, or consultation to other health care professionals.
  - 8) Furnish emergency contraception drug therapy as authorized by Section 4052.3.
  - 9) ~~Initiate and administer immunizations pursuant to a protocol with a prescriber~~ as authorized by Section 4052.8.
- (b) A pharmacist who is authorized to issue an order to initiate or adjust a controlled substance therapy pursuant to this section shall personally register with the federal Drug Enforcement Administration.
- (c) Nothing in this section shall affect the requirements of existing law relating to maintaining the confidentiality of medical records.
- (d) Nothing in this section shall affect the requirements of existing law relating to the licensing of a health care facility.

4052.8 (a) A pharmacist may initiate and administer immunizations pursuant to a protocol with a prescriber. A pharmacist may also initiate and administer immunizations pursuant to the current Recommended Adult (19+ years) and Adolescent (7-18 years) Immunization Schedules, provided by the Centers for Disease Control and Prevention (CDC) pursuant to published recommendations of the CDC Advisory Committee on Immunization Practices (ACIP).

(b) Prior to initiating and administering an immunization pursuant to this section, a pharmacist shall have completed the American Pharmacists Association pharmacy-based immunization certificate program or another pharmacy-based immunization training certificate program endorsed by the Centers for Disease Control and Prevention or the American Council of Pharmaceutical Education.

(c) A pharmacist initiating and administering any immunization pursuant to this section shall also complete 3 hours of immunization-related continuing education coursework annually. Failure at any time to meet this requirement shall, in addition to any other sanctions, require the pharmacist to re-take the training identified in subdivision (b) prior to administration of any further immunization(s).

(d) A pharmacist shall at all times maintain current Basic Life Support certification.

(e) At the time of administration of an immunization, the pharmacist shall:

(1) Provide the patient or patient's agent with the appropriate Vaccine Information Statement for each immunization administered; and

(2) Provide documentation of administration of the immunization to the patient and patient's physician or primary care provider, if one can be identified.

(f) Any pharmacist initiating and administering vaccines pursuant to this section may initiate and administer epinephrine by injection for severe allergic reactions.

(g) Any adverse event shall be reported to the Vaccine Adverse Event Reporting System within the U.S. Department of Health and Human Services.

(h) The pharmacist shall maintain an immunization administration record, which includes, but is not limited to, the name of the vaccine, expiration date, date of administration, manufacturer and lot number, administration site and route, Vaccine Information Statement date, and the name and title of the person administering, for the longer of the following periods:

(1) Ten years from the date of administration; or

(2) If less than 18 years at the time of administration, three years beyond the patient's eighteenth birthday.

(i) Upon receipt of a vaccine as authorized by this section, a pharmacist is responsible to assure that proper vaccine temperatures are maintained during subsequent storage and handling to preserve potency.

# Recommended Immunization Schedule for Persons Aged 7–18 Years—UNITED STATES • 2007

Vaccine ▼	Age ▶	7–10 years	11–12 YEARS	13–14 years	15 years	16–18 years
Tetanus, Diphtheria, Pertussis <sup>1</sup>	see footnote 1		<b>Tdap</b>		<b>Tdap</b>	
Human Papillomavirus <sup>2</sup>	see footnote 2		<b>HPV (3 doses)</b>		<b>HPV Series</b>	
Meningococcal <sup>3</sup>		<b>MPSV4</b>	<b>MCV4</b>		<b>MCV4<sup>4</sup></b> <b>MCV4</b>	
Pneumococcal <sup>4</sup>			<b>PPV</b>			
Influenza <sup>5</sup>			<b>Influenza (Yearly)</b>			
Hepatitis A <sup>6</sup>			<b>HepA Series</b>			
Hepatitis B <sup>7</sup>			<b>HepB Series</b>			
Inactivated Poliovirus <sup>8</sup>			<b>IPV Series</b>			
Measles, Mumps, Rubella <sup>9</sup>			<b>MMR Series</b>			
Varicella <sup>10</sup>			<b>Varicella Series</b>			

 Range of recommended ages

 Catch-up immunization

 Certain high-risk groups

This schedule indicates the recommended ages for routine administration of currently licensed childhood vaccines, as of December 1, 2006, for children aged 7–18 years. Additional information is available at <http://www.cdc.gov/nip/recs/child-schedule.htm>. Any dose not administered at the recommended age should be administered at any subsequent visit, when indicated and feasible. Additional vaccines may be licensed and recommended during the year. Licensed combination vaccines may be used whenever any components of the combination are indicated and other components

of the vaccine are not contraindicated and if approved by the Food and Drug Administration for that dose of the series. Providers should consult the respective Advisory Committee on Immunization Practices statement for detailed recommendations. Clinically significant adverse events that follow immunization should be reported to the Vaccine Adverse Event Reporting System (VAERS). Guidance about how to obtain and complete a VAERS form is available at <http://www.vaers.hhs.gov> or by telephone, 800-822-7967.

**1. Tetanus and diphtheria toxoids and acellular pertussis vaccine (Tdap).**

(Minimum age: 10 years for BOOSTRIX® and 11 years for ADACEL™)

- Administer at age 11–12 years for those who have completed the recommended childhood DTP/DTaP vaccination series and have not received a tetanus and diphtheria toxoids vaccine (Td) booster dose.
- Adolescents aged 13–18 years who missed the 11–12 year Td/Tdap booster dose should also receive a single dose of Tdap if they have completed the recommended childhood DTP/DTaP vaccination series.

**2. Human papillomavirus vaccine (HPV).** (Minimum age: 9 years)

- Administer the first dose of the HPV vaccine series to females at age 11–12 years.
- Administer the second dose 2 months after the first dose and the third dose 6 months after the first dose.
- Administer the HPV vaccine series to females at age 13–18 years if not previously vaccinated.

**3. Meningococcal vaccine.** (Minimum age: 11 years for meningococcal conjugate vaccine [MCV4]; 2 years for meningococcal polysaccharide vaccine [MPSV4])

- Administer MCV4 at age 11–12 years and to previously unvaccinated adolescents at high school entry (at approximately age 15 years).
- Administer MCV4 to previously unvaccinated college freshmen living in dormitories; MPSV4 is an acceptable alternative.
- Vaccination against invasive meningococcal disease is recommended for children and adolescents aged ≥2 years with terminal complement deficiencies or anatomic or functional asplenia and certain other high-risk groups. See *MMWR* 2005;54(No. RR-7):1–21. Use MPSV4 for children aged 2–10 years and MCV4 or MPSV4 for older children.

**4. Pneumococcal polysaccharide vaccine (PPV).** (Minimum age: 2 years)

- Administer for certain high-risk groups. See *MMWR* 1997;46(No. RR-8):1–24, and *MMWR* 2000;49(No. RR-9):1–35.

**5. Influenza vaccine.** (Minimum age: 6 months for trivalent inactivated influenza vaccine [TIV]; 5 years for live, attenuated influenza vaccine [LAIV])

- Influenza vaccine is recommended annually for persons with certain risk factors, health-care workers, and other persons (including household members) in close contact with persons in groups at high risk. See *MMWR* 2006;55 (No. RR-10):1–41.
- For healthy persons aged 5–49 years, LAIV may be used as an alternative to TIV.
- Children aged <9 years who are receiving influenza vaccine for the first time should receive 2 doses (separated by ≥4 weeks for TIV and ≥6 weeks for LAIV).

**6. Hepatitis A vaccine (HepA).** (Minimum age: 12 months)

- The 2 doses in the series should be administered at least 6 months apart.
- HepA is recommended for certain other groups of children, including in areas where vaccination programs target older children. See *MMWR* 2006;55 (No. RR-7):1–23.

**7. Hepatitis B vaccine (HepB).** (Minimum age: birth)

- Administer the 3-dose series to those who were not previously vaccinated.
- A 2-dose series of Recombivax HB® is licensed for children aged 11–15 years.

**8. Inactivated poliovirus vaccine (IPV).** (Minimum age: 6 weeks)

- For children who received an all-IPV or all-oral poliovirus (OPV) series, a fourth dose is not necessary if the third dose was administered at age ≥4 years.
- If both OPV and IPV were administered as part of a series, a total of 4 doses should be administered, regardless of the child's current age.

**9. Measles, mumps, and rubella vaccine (MMR).** (Minimum age: 12 months)

- If not previously vaccinated, administer 2 doses of MMR during any visit, with ≥4 weeks between the doses.

**10. Varicella vaccine.** (Minimum age: 12 months)

- Administer 2 doses of varicella vaccine to persons without evidence of immunity.
- Administer 2 doses of varicella vaccine to persons aged <13 years at least 3 months apart. Do not repeat the second dose, if administered ≥28 days after the first dose.
- Administer 2 doses of varicella vaccine to persons aged ≥13 years at least 4 weeks apart.

The Recommended Immunization Schedules for Persons Aged 0–18 Years are approved by the Advisory Committee on Immunization Practices (<http://www.cdc.gov/nip/acip>), the American Academy of Pediatrics (<http://www.aap.org>), and the American Academy of Family Physicians (<http://www.aafp.org>).

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# Catch-up Immunization Schedule

UNITED STATES • 2007

## for Persons Aged 4 Months–18 Years Who Start Late or Who Are More Than 1 Month Behind

The table below provides catch-up schedules and minimum intervals between doses for children whose vaccinations have been delayed. A vaccine series does not need to be restarted, regardless of the time that has elapsed between doses. Use the section appropriate for the child's age.

CATCH-UP SCHEDULE FOR PERSONS AGED 4 MONTHS–6 YEARS					
Vaccine	Minimum Age for Dose 1	Minimum Interval Between Doses			
		Dose 1 to Dose 2	Dose 2 to Dose 3	Dose 3 to Dose 4	Dose 4 to Dose 5
Hepatitis B <sup>1</sup>	Birth	4 weeks	8 weeks (and 16 weeks after first dose)		
Rotavirus <sup>2</sup>	6 wks	4 weeks	4 weeks		
Diphtheria, Tetanus, Pertussis <sup>3</sup>	6 wks	4 weeks	4 weeks	6 months	6 months <sup>3</sup>
<i>Haemophilus influenzae</i> type b <sup>4</sup>	6 wks	4 weeks if first dose administered at age <12 months 8 weeks (as final dose) if first dose administered at age 12–14 months No further doses needed if first dose administered at age ≥15 months	4 weeks <sup>4</sup> if current age <12 months 8 weeks (as final dose) <sup>4</sup> if current age ≥12 months and second dose administered at age <15 months No further doses needed if previous dose administered at age ≥15 months	8 weeks (as final dose) This dose only necessary for children aged 12 months–5 years who received 3 doses before age 12 months	
Pneumococcal <sup>5</sup>	6 wks	4 weeks if first dose administered at age <12 months and current age <24 months 8 weeks (as final dose) if first dose administered at age ≥12 months or current age 24–59 months No further doses needed for healthy children if first dose administered at age ≥24 months	4 weeks if current age <12 months 8 weeks (as final dose) if current age ≥12 months No further doses needed for healthy children if previous dose administered at age ≥24 months	8 weeks (as final dose) This dose only necessary for children aged 12 months–5 years who received 3 doses before age 12 months	
Inactivated Poliovirus <sup>6</sup>	6 wks	4 weeks	4 weeks	4 weeks <sup>6</sup>	
Measles, Mumps, Rubella <sup>7</sup>	12 mos	4 weeks			
Varicella <sup>8</sup>	12 mos	3 months			
Hepatitis A <sup>9</sup>	12 mos	6 months			
CATCH-UP SCHEDULE FOR PERSONS AGED 7–18 YEARS					
Tetanus, Diphtheria/ Tetanus, Diphtheria, Pertussis <sup>10</sup>	7 yrs <sup>10</sup>	4 weeks	8 weeks if first dose administered at age <12 months 6 months if first dose administered at age ≥12 months	6 months if first dose administered at age <12 months	
Human Papillomavirus <sup>11</sup>	9 yrs	4 weeks	12 weeks		
Hepatitis A <sup>9</sup>	12 mos	6 months			
Hepatitis B <sup>1</sup>	Birth	4 weeks	8 weeks (and 16 weeks after first dose)		
Inactivated Poliovirus <sup>6</sup>	6 wks	4 weeks	4 weeks	4 weeks <sup>6</sup>	
Measles, Mumps, Rubella <sup>7</sup>	12 mos	4 weeks			
Varicella <sup>8</sup>	12 mos	4 weeks if first dose administered at age ≥13 years 3 months if first dose administered at age <13 years			

### 1. Hepatitis B vaccine (HepB). (Minimum age: birth)

- Administer the 3-dose series to those who were not previously vaccinated.
- A 2-dose series of Recombivax HB<sup>®</sup> is licensed for children aged 11–15 years.

### 2. Rotavirus vaccine (Rota). (Minimum age: 6 weeks)

- Do not start the series later than age 12 weeks.
- Administer the final dose in the series by age 32 weeks. Do not administer a dose later than age 32 weeks.
- Data on safety and efficacy outside of these age ranges are insufficient.

### 3. Diphtheria and tetanus toxoids and acellular pertussis vaccine (DTaP). (Minimum age: 6 weeks)

- The fifth dose is not necessary if the fourth dose was administered at age ≥4 years.
- DTaP is not indicated for persons aged ≥7 years.

### 4. *Haemophilus influenzae* type b conjugate vaccine (Hib). (Minimum age: 6 weeks)

- Vaccine is not generally recommended for children aged ≥5 years.
- If current age <12 months and the first 2 doses were PRP-OMP (PedvaxHIB<sup>®</sup> or ComVax<sup>®</sup> [Merck]), the third (and final) dose should be administered at age 12–15 months and at least 8 weeks after the second dose.
- If first dose was administered at age 7–11 months, administer 2 doses separated by 4 weeks plus a booster at age 12–15 months.

### 5. Pneumococcal conjugate vaccine (PCV). (Minimum age: 6 weeks)

- Vaccine is not generally recommended for children aged ≥5 years.

### 6. Inactivated poliovirus vaccine (IPV). (Minimum age: 6 weeks)

- For children who received an all-IPV or all-oral poliovirus (OPV) series, a fourth dose is not necessary if third dose was administered at age ≥4 years.
- If both OPV and IPV were administered as part of a series, a total of 4 doses should be administered, regardless of the child's current age.

### 7. Measles, mumps, and rubella vaccine (MMR). (Minimum age: 12 months)

- The second dose of MMR is recommended routinely at age 4–6 years but may be administered earlier if desired.
- If not previously vaccinated, administer 2 doses of MMR during any visit with ≥4 weeks between the doses.

### 8. Varicella vaccine. (Minimum age: 12 months)

- The second dose of varicella vaccine is recommended routinely at age 4–6 years but may be administered earlier if desired.
- Do not repeat the second dose in persons aged <13 years if administered ≥28 days after the first dose.

### 9. Hepatitis A vaccine (HepA). (Minimum age: 12 months)

- HepA is recommended for certain groups of children, including in areas where vaccination programs target older children. See *MMWR* 2006;55(No. RR-7):1–23.

### 10. Tetanus and diphtheria toxoids vaccine (Td) and tetanus and diphtheria toxoids and acellular pertussis vaccine (Tdap). (Minimum ages: 7 years for Td, 10 years for BOOSTRIX<sup>®</sup>, and 11 years for ADACEL<sup>™</sup>)

- Tdap should be substituted for a single dose of Td in the primary catch-up series or as a booster if age appropriate; use Td for other doses.
- A 5-year interval from the last Td dose is encouraged when Tdap is used as a booster dose. A booster (fourth) dose is needed if any of the previous doses were administered at age <12 months. Refer to ACIP recommendations for further information. See *MMWR* 2006;55(No. RR-3).

### 11. Human papillomavirus vaccine (HPV). (Minimum age: 9 years)

- Administer the HPV vaccine series to females at age 13–18 years if not previously vaccinated.

Information about reporting reactions after immunization is available online at <http://www.vaers.hhs.gov> or by telephone via the 24-hour national toll-free information line 800-822-7967. Suspected cases of vaccine-preventable diseases should be reported to the state or local health department. Additional information, including precautions and contraindications for immunization, is available from the National Center for Immunization and Respiratory Diseases at <http://www.cdc.gov/nip/default.htm> or telephone, 800-CDC-INFO (800-232-4636).

FIGURE 1. Recommended adult immunization schedule, by vaccine and age group — United States, October 2007–September 2008

Vaccine	Age group (yrs)		
	19–49	50–64	≥65
Tetanus, diphtheria, pertussis (Td/Tdap) <sup>1*</sup>	1-dose Td booster every 10 yrs Substitute 1 dose of Tdap for Td		
Human papillomavirus (HPV) <sup>2*</sup>	3 doses (females) (0, 2, 6 mos)		
Measles, mumps, rubella (MMR) <sup>3*</sup>	1 or 2 doses		1 dose
Varicella <sup>4*</sup>	2 doses (0, 4–8 wks)		
Influenza <sup>5*</sup>	1 dose annually		1 dose annually
Pneumococcal (polysaccharide) <sup>6,7</sup>	1–2 doses		1 dose
Hepatitis A <sup>8*</sup>	2 doses (0, 6–12 mos, or 0, 6–18 mos)		
Hepatitis B <sup>9*</sup>	3 doses (0, 1–2, 4–6 mos)		
Meningococcal <sup>10*</sup>	1 or more doses		
Zoster <sup>11</sup>			1 dose

\* Covered by the Vaccine Injury Compensation Program.

 For all persons in this category who meet the age requirements and who lack evidence of immunity (e.g., lack documentation of vaccination or have no evidence of prior infection)

 Recommended if some other risk factor is present (e.g., on the basis of medical, occupational, lifestyle, or other indications)

**NOTE: These recommendations must be read along with the footnotes, which are on pages Q2–Q4 of this schedule.**

Approved by the Advisory Committee on Immunization Practices (ACIP), the American Academy of Family Physicians, the American College of Obstetricians and Gynecologists, and the American College of Physicians. Complete statements from ACIP are available at <http://www.cdc.gov/vaccines/pubs/acip-list.htm>.

### 1. Tetanus, diphtheria, and acellular pertussis (Td/Tdap) vaccination

Tdap should replace a single dose of Td for adults aged <65 years who have not previously received a dose of Tdap. Only one of two Tdap products (Adacel<sup>®</sup> [Sanofi Pasteur]) is licensed for use in adults.

Adults with uncertain histories of a complete primary vaccination series with tetanus and diphtheria toxoid-containing vaccines should begin or complete a primary vaccination series. A primary series for adults is 3 doses of tetanus and diphtheria toxoid-containing vaccines; administer the first 2 doses at least 4 weeks apart and the third dose 6–12 months after the second. However, Tdap can substitute for any one of the doses of Td in the 3-dose primary series. The booster dose of tetanus and diphtheria toxoid-containing vaccine should be administered to adults who have completed a primary series and if the last vaccination was received ≥10 years previously. Tdap or Td vaccine may be used, as indicated.

If the person is pregnant and received the last Td vaccination ≥10 years previously, administer Td during the second or third trimester; if the person received the last Td vaccination in <10 years, administer Tdap during the immediate postpartum period. A one-time administration of 1 dose of Tdap with an interval as short as 2 years from a previous Td vaccination is recommended for postpartum women, close contacts of infants aged <12 months, and all health-care workers with direct patient contact. In certain situations, Td can be deferred during pregnancy and Tdap substituted in the immediate postpartum period, or Tdap can be administered instead of Td to a pregnant woman after an informed discussion with the woman.

Consult the ACIP statement for recommendations for administering Td as prophylaxis in wound management.

### 2. Human papillomavirus (HPV) vaccination

HPV vaccination is recommended for all females aged ≤26 years who have not completed the vaccine series. History of genital warts, abnormal Papanicolaou test, or positive HPV DNA test is not evidence

of prior infection with all vaccine HPV types; HPV vaccination is still recommended for these persons.

Ideally, vaccine should be administered before potential exposure to HPV through sexual activity; however, females who are sexually active should still be vaccinated. Sexually active females who have not been infected with any of the HPV vaccine types receive the full benefit of the vaccination. Vaccination is less beneficial for females who have already been infected with one or more of the HPV vaccine types.

A complete series consists of 3 doses. The second dose should be administered 2 months after the first dose; the third dose should be administered 6 months after the first dose.

Although HPV vaccination is not specifically recommended for females with the medical indications described in Figure 2, "Vaccines that might be indicated for adults based on medical and other indications," it is not a live-virus vaccine and can be administered. However, immune response and vaccine efficacy might be less than in persons who do not have the medical indications described or who are immunocompetent.

### 3. Measles, mumps, rubella (MMR) vaccination

**Measles component:** adults born before 1957 can be considered immune to measles. Adults born during or after 1957 should receive ≥1 dose of MMR unless they have a medical contraindication, documentation of ≥1 dose, history of measles based on health-care provider diagnosis, or laboratory evidence of immunity.

A second dose of MMR is recommended for adults who 1) have been recently exposed to measles or are in an outbreak setting; 2) have been previously vaccinated with killed measles vaccine; 3) have been vaccinated with an unknown type of measles vaccine during 1963–1967; 4) are students in postsecondary educational institutions; 5) work in a health-care facility; or 6) plan to travel internationally.

**Mumps component:** adults born before 1957 can generally be

**FIGURE 2. Vaccines that might be indicated for adults based on medical and other indications — United States, October 2007–September 2008**

Vaccine	Pregnancy	Indication							
		Immuno-compromising conditions (excluding human immunodeficiency virus [HIV]), medications, radiation <sup>13</sup>	HIV infection <sup>3,12,13</sup>		Diabetes, heart disease, chronic pulmonary disease, chronic alcoholism	Asplenia <sup>12</sup> (including elective splenectomy and terminal complement component deficiencies)	Chronic liver disease	Kidney failure, end-stage renal disease, receipt of hemodialysis	Health-care personnel
			CD4+ T lymphocyte count	<200 cells/μL					
Tetanus, diphtheria, pertussis (Td/Tdap) <sup>1*</sup>			1 dose Td booster every 10 yrs Substitute 1 dose of Tdap for Td						
Human papillomavirus (HPV) <sup>2*</sup>			3 doses for females through age 26 yrs (0, 2, 6 mos)						
Measles, mumps, rubella (MMR) <sup>3*</sup>		Contraindicated					1 or 2 doses		
Varicella <sup>4*</sup>		Contraindicated					2 doses (0, 4–8 wks)		
Influenza <sup>5*</sup>							1 dose TIV annually		1 dose TIV or LAIV annually
Pneumococcal (polysaccharide) <sup>6,7</sup>							1–2 doses		
Hepatitis A <sup>8*</sup>							2 doses (0, 6–12 mos, or 0, 6–18 mos)		
Hepatitis B <sup>9*</sup>							3 doses (0, 1–2, 4–6 mos)		
Meningococcal <sup>10*</sup>							1 or more doses		
Zoster <sup>11</sup>		Contraindicated					1 dose		

\* Covered by the Vaccine Injury Compensation Program.   
 [Pattern 1] For all persons in this category who meet the age requirements and who lack evidence of immunity (e.g., lack documentation of vaccination or have no evidence of prior infection)   
 [Pattern 2] Recommended if some other risk factor is present (e.g., on the basis of medical, occupational, lifestyle, or other indications)

considered immune to mumps. Adults born during or after 1957 should receive 1 dose of MMR unless they have a medical contraindication, history of mumps based on health-care provider diagnosis, or laboratory evidence of immunity.

A second dose of MMR is recommended for adults who 1) are in an age group that is affected during a mumps outbreak; 2) are students in postsecondary educational institutions; 3) work in a health-care facility; or 4) plan to travel internationally. For unvaccinated health-care workers born before 1957 who do not have other evidence of mumps immunity, consider administering 1 dose on a routine basis and strongly consider administering a second dose during an outbreak.

**Rubella component:** administer 1 dose of MMR vaccine to women whose rubella vaccination history is unreliable or who lack laboratory evidence of immunity. For women of childbearing age, regardless of birth year, routinely determine rubella immunity and counsel women regarding congenital rubella syndrome. Women who do not have evidence of immunity should receive MMR vaccine on completion or termination of pregnancy and before discharge from the health-care facility.

**4. Varicella vaccination**

All adults without evidence of immunity to varicella should receive 2 doses of single-antigen varicella vaccine unless they have a medical contraindication. Special consideration should be given to those who 1) have close contact with persons at high risk for severe disease (e.g., health-care personnel and family contacts of immunocompromised persons) or 2) are at high risk for exposure or transmission (e.g., teachers; child care employees; residents and staff members of institutional settings, including correctional institutions; college students; military personnel; adolescents and adults living in households with children; nonpregnant women of childbearing age; and international travelers).

Evidence of immunity to varicella in adults includes any of the

following: 1) documentation of 2 doses of varicella vaccine at least 4 weeks apart; 2) U.S.-born before 1980 (although for health-care personnel and pregnant women, birth before 1980 should not be considered evidence of immunity); 3) history of varicella based on diagnosis or verification of varicella by a health-care provider (for a patient reporting a history of or presenting with an atypical case, a mild case, or both, health-care providers should seek either an epidemiologic link with a typical varicella case or to a laboratory-confirmed case or evidence of laboratory confirmation, if it was performed at the time of acute disease); 4) history of herpes zoster based on health-care provider diagnosis; or 5) laboratory evidence of immunity or laboratory confirmation of disease.

Assess pregnant women for evidence of varicella immunity. Women who do not have evidence of immunity should receive the first dose of varicella vaccine upon completion or termination of pregnancy and before discharge from the health-care facility. The second dose should be administered 4–8 weeks after the first dose.

**5. Influenza vaccination**

**Medical indications:** chronic disorders of the cardiovascular or pulmonary systems, including asthma; chronic metabolic diseases, including diabetes mellitus, renal or hepatic dysfunction, hemoglobinopathies, or immunosuppression (including immunosuppression caused by medications or human immunodeficiency virus [HIV]); any condition that compromises respiratory function or the handling of respiratory secretions or that can increase the risk of aspiration (e.g., cognitive dysfunction, spinal cord injury, or seizure disorder or other neuromuscular disorder); and pregnancy during the influenza season. No data exist on the risk for severe or complicated influenza disease among persons with asplenia; however, influenza is a risk factor for secondary bacterial infections that can cause severe disease among persons with asplenia.

*Occupational indications:* health-care personnel and employees of long-term-care and assisted-living facilities.

*Other indications:* residents of nursing homes and other long-term-care and assisted-living facilities; persons likely to transmit influenza to persons at high risk (e.g., in-home household contacts and caregivers of children aged 0–59 months, or persons of all ages with high-risk conditions); and anyone who would like to be vaccinated. Healthy, nonpregnant adults aged  $\leq 49$  years without high-risk medical conditions who are not contacts of severely immunocompromised persons in special care units can receive either intranasally administered live, attenuated influenza vaccine (FluMist<sup>®</sup>) or inactivated vaccine. Other persons should receive the inactivated vaccine.

#### 6. Pneumococcal polysaccharide vaccination

*Medical indications:* chronic pulmonary disease (excluding asthma); chronic cardiovascular diseases; diabetes mellitus; chronic liver diseases, including liver disease as a result of alcohol abuse (e.g., cirrhosis); chronic alcoholism, chronic renal failure, or nephrotic syndrome; functional or anatomic asplenia (e.g., sickle cell disease or splenectomy [if elective splenectomy is planned, vaccinate at least 2 weeks before surgery]); immunosuppressive conditions; and cochlear implants and cerebrospinal fluid leaks. Vaccinate as close to HIV diagnosis as possible.

*Other indications:* Alaska Natives and certain American Indian populations and residents of nursing homes or other long-term-care facilities.

#### 7. Revaccination with pneumococcal polysaccharide vaccine

One-time revaccination after 5 years for persons with chronic renal failure or nephrotic syndrome; functional or anatomic asplenia (e.g., sickle cell disease or splenectomy); or immunosuppressive conditions. For persons aged  $\geq 65$  years, one-time revaccination if they were vaccinated  $\geq 5$  years previously and were aged  $< 65$  years at the time of primary vaccination.

#### 8. Hepatitis A vaccination

*Medical indications:* persons with chronic liver disease and persons who receive clotting factor concentrates.

*Behavioral indications:* men who have sex with men and persons who use illegal drugs.

*Occupational indications:* persons working with hepatitis A virus (HAV)-infected primates or with HAV in a research laboratory setting.

*Other indications:* persons traveling to or working in countries that have high or intermediate endemicity of hepatitis A (a list of countries is available at <http://www.cdc.gov/travel/content/diseases.aspx>) and any person seeking protection from HAV infection.

Single-antigen vaccine formulations should be administered in a 2-dose schedule at either 0 and 6–12 months (Havrix<sup>®</sup>), or 0 and 6–18 months (Vaqta<sup>®</sup>). If the combined hepatitis A and hepatitis B vaccine (Twinrix<sup>®</sup>) is used, administer 3 doses at 0, 1, and 6 months.

#### 9. Hepatitis B vaccination

*Medical indications:* persons with end-stage renal disease, including patients receiving hemodialysis; persons seeking evaluation or treatment for a sexually transmitted disease (STD); persons with HIV infection; and persons with chronic liver disease.

*Occupational indications:* health-care personnel and public-safety workers who are exposed to blood or other potentially infectious body fluids.

*Behavioral indications:* sexually active persons who are not in a long-term, mutually monogamous relationship (e.g., persons with more than one sex partner during the previous 6 months); current or recent injection-drug users; and men who have sex with men.

*Other indications:* household contacts and sex partners of persons with chronic hepatitis B virus (HBV) infection; clients and staff members of institutions for persons with developmental disabilities; international travelers to countries with high or intermediate prevalence of chronic HBV infection (a list of countries is available at <http://www.cdc.gov/travel/content/diseases.aspx>); and any adult seeking protection from HBV infection.

Settings where hepatitis B vaccination is recommended for all adults: STD treatment facilities; HIV testing and treatment facilities; facilities providing drug-abuse treatment and prevention services; health-care settings targeting services to injection-drug users or men who have sex with men; correctional facilities; end-stage renal disease programs and facilities for chronic hemodialysis patients; and institutions and nonresidential day care facilities for persons with developmental disabilities.

*Special formulation indications:* for adult patients receiving hemodialysis and other immunocompromised adults, 1 dose of 40  $\mu\text{g}/\text{mL}$  (Recombivax HB<sup>®</sup>) or 2 doses of 20  $\mu\text{g}/\text{mL}$  (Engerix-B<sup>®</sup>), administered simultaneously.

#### 10. Meningococcal vaccination

*Medical indications:* adults with anatomic or functional asplenia or terminal complement component deficiencies.

*Other indications:* first-year college students living in dormitories; microbiologists who are routinely exposed to isolates of *Neisseria meningitidis*; military recruits; and persons who travel to or live in countries in which meningococcal disease is hyperendemic or epidemic (e.g., the "meningitis belt" of sub-Saharan Africa during the dry season [December–June]), particularly if their contact with local populations will be prolonged. Vaccination is required by the government of Saudi Arabia for all travelers to Mecca during the annual Hajj.

Meningococcal conjugate vaccine is preferred for adults with any of the preceding indications who are aged  $\leq 55$  years, although meningococcal polysaccharide vaccine (MPSV4) is an acceptable alternative. Revaccination after 3–5 years might be indicated for adults previously vaccinated with MPSV4 who remain at increased risk for infection (e.g., persons residing in areas in which disease is epidemic).

#### 11. Herpes zoster vaccination

A single dose of zoster vaccine is recommended for adults aged  $\geq 60$  years regardless of whether they report a prior episode of herpes zoster. Persons with chronic medical conditions may be vaccinated unless a contraindication or precaution exists for their condition.

#### 12. Selected conditions for which *Haemophilus influenzae* type b (Hib) vaccine may be used

Hib conjugate vaccines are licensed for children aged 6 weeks–71 months. No efficacy data are available on which to base a recommendation concerning use of Hib vaccine for older children and adults with the chronic conditions associated with an increased risk for Hib disease. However, studies suggest good immunogenicity in patients who have sickle cell disease, leukemia, or HIV infection or who have had splenectomies; administering vaccine to these patients is not contraindicated.

#### 13. Immunocompromising conditions

Inactivated vaccines generally are acceptable (e.g., pneumococcal, meningococcal, and influenza [trivalent inactivated influenza vaccine]) and live vaccines generally are avoided in persons with immune deficiencies or immune suppressive conditions. Information on specific conditions is available at <http://www.cdc.gov/vaccines/pubs/acip-list.htm>.

This schedule indicates the recommended age groups and medical indications for routine administration of currently licensed vaccines for persons aged  $\geq 19$  years, as of October 1, 2007. Licensed combination vaccines may be used whenever any components of the combination are indicated and when the vaccine's other components are not contraindicated. For detailed recommendations on all vaccines, including those used primarily for travelers or those issued during the year, consult the manufacturers' package inserts and the complete statements from the Advisory Committee on Immunization Practices (available at <http://www.cdc.gov/vaccines/pubs/acip-list.htm>).

Report all clinically significant postvaccination reactions to the Vaccine Adverse Event Reporting System (VAERS). Reporting forms and instructions on filing a VAERS report are available at <http://www.vaers.hhs.gov> or by telephone, 800-822-7967.

Information on how to file a Vaccine Injury Compensation Program claim is available at <http://www.hrsa.gov/vaccinecompensation> or by telephone, 800-338-2382. To file a claim for vaccine injury, contact the U.S. Court of Federal Claims, 717 Madison Place, N.W., Washington, D.C. 20005; telephone, 202-357-6400.

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The American Council on Pharmaceutical Education requires that each accredited school of pharmacy provide training in immunizations as part of its curriculum.

As trusted and accessible health professionals in the community, pharmacists play an important role in educating the public as well as providing needed access to life-saving vaccines.

Pharmacists represent the third largest health professional group in the U.S.

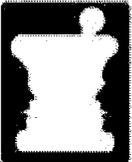
According to the National Association of Chain Drug Stores, 3.4 billion prescriptions were dispensed in the U.S. in 2006. Assuming California patients received 15% of the dispensed medicines, over 510 million prescriptions were dispensed to California consumers in 2006.

Each prescription dispensed creates an opportunity for a consumer to receive an immunization when they pick up a prescription.

Vaccines are used to prevent disease -- no diagnosis is required prior to administration of vaccines.

According to the American Pharmacists Association, no other health care professional is as accessible, especially in rural and other underserved areas.

There are approximately 33,000 active pharmacists licensed in California.



# CALIFORNIA STATE BOARD OF PHARMACY

1625 N Market Blvd., Suite N-219, Sacramento, CA 95834

Be Aware & Take Care: Talk to your pharmacist!

## What Immunizations are Covered by the Schedules

The CDC currently has 10 immunizations recommended for persons aged 7-18 and adults.

Recommended Immunization Schedule for Persons Aged 7-18 Years	Recommended adult Immunization Schedule
Tetanus, Diphtheria, Pertussis	Tetanus, Diphtheria, Pertussis
Human Papillomavirus	Human Papillomavirus
Meningococcal	Meningococcal
Pneumococcal	Pneumococcal
Influenza	Influenza
Hepatitis A	Hepatitis A
Hepatitis B	Hepatitis B
Inactivated Poliovirus	Measles, Mumps, Rubella
Measles, Mumps, Rubella	Varicella
Varicella	Zoster

The majority of the estimated 60,000 new hepatitis B infections each year strike adolescents and young adults. The hepatitis B virus is 100 times more infectious than HIV.

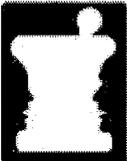
The hepatitis B vaccine is recognized as the first anti-cancer vaccine because it can prevent primary liver cancer caused by hepatitis B infection.

Combined, influenza and pneumonia are the 8<sup>th</sup> leading cause of death in people of all ages and the 7<sup>th</sup> leading cause of death in people over the age of 65.

During most influenza seasons, 5% to 20% of the people in the United States may be infected with influenza virus. Influenza immunization can reduce physician visits, lost work days, and reduce antibiotic use.

Nearly one in every 10 people who get diphtheria will die from it.

About 1 out of every 20 people who get pneumococcal pneumonia die from it, as to about 2 people out of 10 who get bacteremia and 3 people out of 10 who get meningitis.



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### What Immunizations are Covered by the Schedules

About 2,600 people get meningococcal disease each year in the U.S. 10 – 15% of these people die, in spite of treatment with antibiotics, and of those who live, another 11-19% lose their arms or legs, become deaf, have problems with their nervous systems, become mentally retarded, or suffer seizure or strokes.

Tetanus leads to death in up to 2 cases out of 10.

Diphtheria can lead to breathing problems, paralysis, heart failure and death.

Genital human papillomavirus (HPV) can cause cervical cancer in women. Every year in the U.S. about 10,000 women get cervical cancer and 3,700 die from it. More than 50% of sexually active men and women are infected with HPV at some time in their lives.

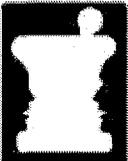
Hepatitis A can cause mild flu like symptoms, jaundice and severe stomach pains and diarrhea. Up to one in five persons with hepatitis A will have to be hospitalized.

Polio used to be very common in the United States. It used to paralyze and kill thousands of people a year before the vaccine.<sup>6</sup> This disease however is still common in other parts of the world. Given the mobility of our society, this creates a risk for a reemergence in the U.S. if we stop this vaccination.

Measles virus causes rash, cough, runny nose, eye irritation and fever and can lead to ear infection, pneumonia, seizures, brain damage and death.<sup>6</sup>

Mumps can lead to deafness, meningitis, painful swelling of the testicles or ovaries and rarely death.

Rubella virus causes rash, mild fever and arthritis.



## CALIFORNIA STATE BOARD OF PHARMACY

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Be Aware & Take Care: Talk to your pharmacist!

# Why Vaccinate?

Vaccines are a safe, cost effective and efficient way to prevent sickness and death from infectious diseases.

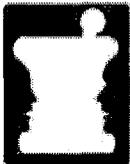
One of the greatest public health achievements of the 20<sup>th</sup> century is the ability to prevent disability and death from infectious diseases for individuals, and to control the spread of infectious diseases for individuals.

Some diseases once considered practically eradicated have re-emerged in recent years, and new infectious agents and infectious diseases remain major causes of illness, disability and death.

Healthy People 2010 contains several objectives specific to immunizations, including increasing levels of immunizations and expanding immunization laws.

Diseases that could be prevented by vaccines kill thousands of American adults every year.

DRAFT



# Attachment G

- ***Bills***
- ***Bill Analysis***

AMENDED IN ASSEMBLY JANUARY 9, 2008

AMENDED IN ASSEMBLY JANUARY 7, 2008

AMENDED IN ASSEMBLY JUNE 21, 2007

AMENDED IN ASSEMBLY APRIL 30, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 501**

---

**Introduced by Assembly Members Swanson and Hancock  
(Coauthor: Assembly Member Dymally)**

February 20, 2007

---

An act to add Section 118288 to the Health and Safety Code, relating to pharmaceutical devices.

LEGISLATIVE COUNSEL'S DIGEST

AB 501, as amended, Swanson. Pharmaceutical devices.

The existing Medical Waste Management Act, administered by the State Department of Public Health, regulates the management and handling of medical waste, as defined. Under existing law, certain items, such as home-generated sharps waste, as defined, are specifically excluded from the definition of medical waste. The act also prohibits, on or after September 1, 2008, a person from knowingly placing home-generated sharps waste in certain types of containers, provides that home-generated sharps waste is to be transported only in a sharps container, as defined, or other container approved by the department or local enforcement agency, and requires this waste to only be managed at specified locations consistent with existing law.

This bill would, ~~if any specified conditions are met,~~ require a pharmaceutical manufacturer whose product is administered for home

use through a prefilled syringe, prefilled pen, or other prefilled injection device to *arrange to provide, at no additional charge upon request from a consumer, a postage prepaid, mail-back sharps container, for the safe disposal of the used device that has been approved by the United States Postal Services and the department.*

~~The bill would, if these specified conditions are not met, require the pharmaceutical manufacturer to either provide the mail-back container or provide a toll-free telephone number for persons to receive information about safe needle disposal methods in their community.~~

~~The bill would require the pharmaceutical manufacturer to keep specified records and make them available to the State Department of Public Health and the California Integrated Waste Management Board.~~

*The bill would also authorize pharmaceutical manufacturers to provide to their consumers concise information on specified disposal options.*

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) An estimated 1 million Californians must self-inject
- 4 prescription medications annually to treat a broad range of serious
- 5 health problems.
- 6 (b) The use of prefilled syringes, prefilled pens, and other
- 7 prefilled devices with needles is an effective method of prescription
- 8 drug delivery and is expected to increase significantly in the future.
- 9 Prefilled syringes, prefilled pens, and other prefilled devices with
- 10 needles are clearly identified and linked to specific pharmaceutical
- 11 manufacturers for the provision of their product to California
- 12 residents.
- 13 (c) The increased use of prefilled syringes, prefilled pens, and
- 14 other prefilled devices with needles will generate millions of
- 15 home-generated sharps each year. Prefilled pen devices are being
- 16 used for the treatment of some of the most serious health conditions
- 17 such as HIV/AIDS, hepatitis C, and many other diseases. If
- 18 improperly disposed in solid waste and recycling containers these
- 19 needles will result in significant public health risks.

1 (d) The Legislature has found that sharps mail-back programs  
2 utilizing containers and packaging approved by the United States  
3 Postal Service offer one of the most convenient means for  
4 collecting and destroying home-generated sharps and that the  
5 cooperative efforts of the pharmaceutical industry are needed to  
6 develop a safe needle disposal system for California.

7 SEC. 2. Section 118288 is added to the Health and Safety Code,  
8 to read:

9 ~~118288. (a) Effective January 1, 2009, a pharmaceutical~~  
10 ~~manufacturer whose product is administered for home use via a~~  
11 ~~prefilled syringe, prefilled pen, or other prefilled injection device~~  
12 ~~shall, with respect to each person to whom the product is dispensed,~~  
13 ~~comply with subdivision (b) no later than 30 days after the product~~  
14 ~~has been dispensed.~~

15 ~~(b) In accordance with subdivision (a), a pharmaceutical~~  
16 ~~manufacturer shall meet the following requirements:~~

17 ~~(1) A pharmaceutical manufacturer shall provide, at no~~  
18 ~~additional charge, a postage prepaid, mail-back sharps container,~~  
19 ~~to be mailed to an approved medical waste treatment facility for~~  
20 ~~treatment and disposal if any of the following conditions exist:~~

21 ~~(A) The person requests a mail-back sharps container from the~~  
22 ~~pharmaceutical manufacturer.~~

23 ~~(B) A safe needle disposal method, as defined in paragraph (1)~~  
24 ~~of subdivision (g), does not exist in the person's community.~~

25 ~~(C) It would be impractical for the person to use any of the safe~~  
26 ~~needle disposal methods available in his or her community.~~

27 ~~(2) If none of the conditions specified in subparagraphs (A) to~~  
28 ~~(C) of paragraph (1), inclusive, exist, the pharmaceutical~~  
29 ~~manufacturer shall do either of the following:~~

30 ~~(A) Provide, at no additional charge, a postage prepaid,~~  
31 ~~mail-back sharps container, to be mailed to an approved medical~~  
32 ~~waste treatment facility for treatment and disposal.~~

33 ~~(B) Inform the person of a toll-free telephone number, which~~  
34 ~~shall be established by the pharmaceutical manufacturer, for~~  
35 ~~persons to receive information about safe needle disposal methods~~  
36 ~~in their community.~~

37 ~~(c) A mail-back container shall not be used pursuant to this~~  
38 ~~section unless approved by the United States Postal Service and~~  
39 ~~State Department of Public Health.~~

1 ~~(d) When a pharmaceutical manufacturer or local community~~  
2 ~~provides a safe needle disposal method, as defined in paragraph~~  
3 ~~(1) of subdivision (g), the manufacturer or community shall provide~~  
4 ~~evidence of the number of units dispensed and treated. The~~  
5 ~~appropriate pharmaceutical manufacturer shall provide this~~  
6 ~~information to the department or the California Integrated Waste~~  
7 ~~Management Board, at the request of the department or the board,~~  
8 ~~respectively, in order to document that prefilled devices to which~~  
9 ~~this section applies are being disposed of properly and diverted~~  
10 ~~from the solid wastestream.~~

11 ~~(e) The pharmaceutical manufacturer shall also make available,~~  
12 ~~at no additional charge, a renewable program that provides postage~~  
13 ~~prepaid mail-back sharps containers to persons already receiving~~  
14 ~~these containers pursuant to subdivision (b).~~

15 ~~(f) This section shall not apply to drugs compounded or~~  
16 ~~dispensed for use within a hospital.~~

17 ~~(g) For purposes of this section, the following definitions shall~~  
18 ~~apply:~~

19 ~~(1) "Safe needle disposal method" includes dropoff collection~~  
20 ~~sites, hazardous waste collection centers, residential special waste~~  
21 ~~pickup services, and mail-back services. "Safe needle disposal~~  
22 ~~method" does not include disposal directly into the solid~~  
23 ~~wastestream or recycling stream, placement into a sharps container,~~  
24 ~~bottle or other container that is then sent to a solid waste landfill~~  
25 ~~without treatment at a medical waste treatment facility.~~

26 ~~(2) "Sharps container" has the same meaning as in Section~~  
27 ~~117750.~~

28 *118288. (a) Upon request of a consumer of a prefilled syringe,*  
29 *prefilled pen, or other prefilled injection device administered at*  
30 *home, a pharmaceutical manufacturer shall arrange to provide a*  
31 *postage prepaid, mail-back sharps container that has been*  
32 *approved by the United States Postal Service and the State*  
33 *Department of Public Health.*

34 *(b) A pharmaceutical manufacturer may provide to its*  
35 *consumers concise information on convenient locally available*  
36 *safe needle disposal options.*

37 *(c) For purposes of this section, "sharps container" has the*  
38 *same meaning as in Section 117750.*

O

AMENDED IN ASSEMBLY APRIL 23, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 865**

---

**Introduced by Assembly Member Davis**

February 22, 2007

---

An act to amend Section 11022 of the Government Code, relating to state agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 865, as amended, Davis. State agencies: live customer service agents.

Existing law requires each state agency to establish a procedure whereby incoming telephone calls on any public line shall be answered within 10 rings during regular business hours, subject to certain exceptions.

This bill would *name these provisions the "State Agency Live Customer Service Act."* It would require each state agency to answer an incoming call with a live customer service agent *or automated telephone answering equipment with an automated prompt that allows a caller to select the option to speak with a live customer service agent*, subject to certain exceptions.

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 11022 of the Government Code is  
2 amended to read:

1 11022. (a) *This section shall be known and may be cited as*  
2 *the "State Agency Live Customer Service Act."*

3 (b) Each state agency shall establish a procedure pursuant to  
4 which incoming telephone calls on any public line shall be  
5 answered by a live customer service agent, or *automated telephone*  
6 *answering equipment in accordance with subdivision (c)*, within  
7 10 rings during regular business hours as set forth in Section 11020,  
8 except when emergency or illness requires adjustments to normal  
9 staffing levels.

10 (c) *During regular business hours, as set forth in Section 11020,*  
11 *the headquarters of every state agency that uses automated*  
12 *telephone answering equipment shall have for all incoming*  
13 *telephone calls on a public line, an automated prompt that allows*  
14 *a caller to select the option to speak with a live customer service*  
15 *agent and shall have a live customer service agent available for*  
16 *this purpose.*

17 (d) *Subdivision (c) does not apply to the following:*

18 (1) *Field offices.*

19 (2) *Telephone lines dedicated as hotlines for emergency services,*  
20 *telephone lines dedicated exclusively to providing general*  
21 *information, and any system that is designed to permit an*  
22 *individual to conduct a complete transaction with a state agency*  
23 *over the telephone solely by pressing one or more touch-tone*  
24 *telephone keys in response to automated prompts.*

25 (e) *For the purposes of this section, "headquarters" means the*  
26 *office of the agency located in Sacramento, California, or where*  
27 *the director or head of the agency is located.*

AMENDED IN ASSEMBLY JANUARY 7, 2008

AMENDED IN ASSEMBLY MAY 30, 2007

AMENDED IN ASSEMBLY APRIL 17, 2007

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1436**

---

**Introduced by Assembly Member Hernandez  
(Coauthor: Assembly Member Niello)**

February 23, 2007

---

An act to amend Sections 2725, 2725.1, Section 2835.5, and 2836.1 of, and to add Section 2835.7 to, of the Business and Professions Code, relating to the nursing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1436, as amended, Hernandez. Nurse practitioners: scope of practice.

Existing law, the Nursing Practice Act, provides for the certification and regulation of nurse practitioners and nurse-midwives by the Board of Registered Nursing and specifies requirements for *qualification or* certification as a nurse practitioner. Under the act, the practice of nursing is defined, in part, as providing direct and indirect patient care service ordered by specified healing arts practitioners, including dispensing of drugs or devices upon their order in a clinic setting, as defined.

This bill would specify that the practice of nursing includes those actions taken pursuant to an order by a nurse practitioner or a nurse-midwife. The bill would provide that a nurse practitioner is authorized to perform comprehensive health care services for which he

~~or she is educationally prepared and competent to perform and to admit and discharge patients from health facilities in collaboration, as defined, with specified healing arts practitioners. The bill would deem specified authorizations by a physician and surgeon to include authorizations provided by a certified nurse practitioner. The bill would require a certified nurse practitioner to consult or refer a patient to another health care provider if a situation or condition occurs beyond the nurse practitioner's knowledge and experience. The~~

*This bill would revise the educational requirements for qualification or certification as a nurse practitioner and would require a nurse practitioner to be certified by a nationally recognized certifying body approved by the board.*

~~Because this bill would impose additional requirements under the Nursing Practice Act, the violation of which would be a crime, it would impose a state-mandated local program.~~

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

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

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

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

- 1     *SECTION 1. Section 2835.5 of the Business and Professions*
- 2     *Code is amended to read:*
- 3     2835.5. (a) A registered nurse who is holding himself or herself
- 4     out as a nurse practitioner or who desires to hold himself or herself
- 5     out as a nurse practitioner shall, within the time prescribed by the
- 6     board and prior to his or her next license renewal or the issuance
- 7     of an initial license, submit educational, experience, and other
- 8     credentials and information as the board may require for it to
- 9     determine that the person qualifies to use the title "nurse
- 10    practitioner," pursuant to the standards and qualifications
- 11    established by the board.
- 12    (b) Upon finding that a person is qualified to hold himself or
- 13    herself out as a nurse practitioner, the board shall appropriately
- 14    indicate on the license issued or renewed, that the person is
- 15    qualified to use the title "nurse practitioner." The board shall also

1 issue to each qualified person a certificate evidencing that the  
2 person is qualified to use the title “nurse practitioner.”

3 (c) A person who has been found to be qualified by the board  
4 to use the title “nurse practitioner” prior to the effective date of  
5 this section, shall not be required to submit any further  
6 qualifications or information to the board and shall be deemed to  
7 have met the requirements of this section.

8 ~~On and after January 1, 2008, an~~ *An* applicant for initial  
9 qualification or certification as a nurse practitioner under this article  
10 who has not been qualified or certified as a nurse practitioner in  
11 California or any other state shall meet the following requirements:

12 (1) Hold a valid and active registered nursing license issued  
13 under this chapter.

14 (2) Possess a master’s degree ~~in nursing, a master’s degree in~~  
15 ~~a clinical field related to nursing, or a graduate or doctoral degree~~  
16 in nursing.

17 (3) Satisfactorily complete a nurse practitioner program  
18 approved by the board.

19 (4) *Be certified as a nurse practitioner by a nationally*  
20 *recognized certifying body approved by the board.*

21 SECTION 1. ~~Section 2725 of the Business and Professions~~  
22 ~~Code is amended to read:~~

23  
24  
25 **All matter omitted in this version of the bill**  
26 **appears in the bill as amended in the**  
27 **Assembly 05/30/07. (JR11)**  
28

AMENDED IN SENATE AUGUST 20, 2007

AMENDED IN SENATE JULY 19, 2007

AMENDED IN SENATE JULY 16, 2007

AMENDED IN SENATE JUNE 27, 2007

AMENDED IN ASSEMBLY MAY 21, 2007

AMENDED IN ASSEMBLY MAY 8, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1587**

---

**Introduced by Assembly Member De La Torre**  
(Principal coauthor: Senator Lowenthal)

February 23, 2007

---

~~An act to relating to recall elections, and declaring the urgency thereof, to take effect immediately.~~ *An act to amend Section 56.05 of the Civil Code, relating to personal information.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1587, as amended, De La Torre. ~~Recall elections: City of Lynwood.~~ *Personal information: pharmacy.*

*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, unless a specified exception applies. That law excludes from the definition of marketing communications that are for a specified descriptive purpose, that are tailored to the circumstances of a*

*particular individual, or for which the communicator does not receive remuneration from a 3rd party, as specified.*

*This bill would additionally exclude from the definition of marketing a written communication or written message provided to a pharmacy patient by a pharmacist or pharmacy personnel that meets specified conditions.*

~~Existing law provides the procedure for the recall of local government officers pursuant to a petition that is circulated for signatures and submitted by the proponents of the recall. It requires that when the city or county elections official is the officer sought to be recalled, the elections official's duties in connection with the recall process be performed by some other person designated by the applicable governing board.~~

~~This bill would state legislative findings that there exists a need for an experienced, objective, impartial, and professional entity to conduct any recall or special election that is held in the City of Lynwood in the County of Los Angeles during calendar years 2007 and 2008, and would state the intent of the Legislature in connection with this bill. It would require any recall or special election held in the City of Lynwood during the 2007 and 2008 calendar years to be administered by the Los Angeles County Registrar-Recorder, subject to approval by the Board of Supervisors.~~

~~This bill would require the City of Lynwood to pay the County of Los Angeles from the city treasury for any expenses authorized and necessarily incurred in conducting any recall or special election held in the City of Lynwood pursuant to this bill. It would provide a procedure under which the Controller would reallocate to the county amounts otherwise scheduled for distribution to the city from unrestricted funds or moneys, as specified.~~

~~The California Constitution provides that a local or special statute is invalid in any case if a general statute can be made applicable.~~

~~This bill would declare that, due to the unique circumstances pertaining to the City of Lynwood that the bill is intended to remedy, a general statute within the meaning of specified provisions of the California Constitution cannot be made applicable and a special statute is necessary.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote:  $\frac{2}{3}$ -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 56.05 of the Civil Code is amended to  
2 read:

3     56.05. For purposes of this part:

4     (a) "Authorization" means permission granted in accordance  
5 with Section 56.11 or 56.21 for the disclosure of medical  
6 information.

7     (b) "Authorized recipient" means any person who is authorized  
8 to receive medical information pursuant to Section 56.10 or 56.20.

9     (c) "Contractor" means any person or entity that is a medical  
10 group, independent practice association, pharmaceutical benefits  
11 manager, or a medical service organization and is not a health care  
12 service plan or provider of health care. "Contractor" does not  
13 include insurance institutions as defined in subdivision (k) of  
14 Section 791.02 of the Insurance Code or pharmaceutical benefits  
15 managers licensed pursuant to the Knox-Keene Health Care Service  
16 Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340)  
17 of Division 2 of the Health and Safety Code).

18     (d) "Health care service plan" means any entity regulated  
19 pursuant to the Knox-Keene Health Care Service Plan Act of 1975  
20 (Chapter 2.2 (commencing with Section 1340) of Division 2 of  
21 the Health and Safety Code).

22     (e) "Licensed health care professional" means any person  
23 licensed or certified pursuant to Division 2 (commencing with  
24 Section 500) of the Business and Professions Code, the Osteopathic  
25 Initiative Act or the Chiropractic Initiative Act, or Division 2.5  
26 (commencing with Section 1797) of the Health and Safety Code.

27     (f) "Marketing" means to make a communication about a  
28 product or service that encourages recipients of the communication  
29 to purchase or use the product or service.

30     "Marketing" does not include any of the following:

31     (1) Communications made orally or in writing for which the  
32 communicator does not receive direct or indirect remuneration,  
33 including, but not limited to, gifts, fees, payments, subsidies, or  
34 other economic benefits, from a third party for making the  
35 communication.

36     (2) Communications made to current enrollees solely for the  
37 purpose of describing a provider's participation in an existing  
38 health care provider network or health plan network of a

1 Knox-Keene licensed health plan to which the enrollees already  
2 subscribe; communications made to current enrollees solely for  
3 the purpose of describing if, and the extent to which, a product or  
4 service, or payment for a product or service, is provided by a  
5 provider, contractor, or plan or included in a plan of benefits of a  
6 Knox-Keene licensed health plan to which the enrollees already  
7 subscribe; or communications made to plan enrollees describing  
8 the availability of more cost-effective pharmaceuticals.

9 (3) Communications that are tailored to the circumstances of a  
10 particular individual to educate or advise the individual about  
11 treatment options, and otherwise maintain the individual's  
12 adherence to a prescribed course of medical treatment, as provided  
13 in Section 1399.901 of the Health and Safety Code, for a chronic  
14 and seriously debilitating or life-threatening condition as defined  
15 in subdivisions (d) and (e) of Section 1367.21 of the Health and  
16 Safety Code, if the health care provider, contractor, or health plan  
17 receives direct or indirect remuneration, including, but not limited  
18 to, gifts, fees, payments, subsidies, or other economic benefits,  
19 from a third party for making the communication, if all of the  
20 following apply:

21 (A) The individual receiving the communication is notified in  
22 the communication in typeface no smaller than 14-point type of  
23 the fact that the provider, contractor, or health plan has been  
24 remunerated and the source of the remuneration.

25 (B) The individual is provided the opportunity to opt out of  
26 receiving future remunerated communications.

27 (C) The communication contains instructions in typeface no  
28 smaller than 14-point type describing how the individual can opt  
29 out of receiving further communications by calling a toll-free  
30 number of the health care provider, contractor, or health plan  
31 making the remunerated communications. No further  
32 communication may be made to an individual who has opted out  
33 after 30 calendar days from the date the individual makes the opt  
34 out request.

35 (4) *A written communication or written message provided to a*  
36 *pharmacy patient during a face-to-face interaction with a*  
37 *pharmacist or pharmacy personnel, in conjunction with dispensing*  
38 *a prescription drug, if all of the following apply:*

39 (A) *The communication does not involve the sale or transfer of*  
40 *medical information by the pharmacy to any other entity, or to the*

1 *pharmacy from another entity. Additionally, the communication*  
2 *is based only on medical information that has already been*  
3 *provided to, and maintained by, the pharmacist as necessary to*  
4 *the performance of the pharmacist's duties to fill prescriptions.*

5 *(B) The communication, either in whole or in part, assists the*  
6 *pharmacist or pharmacy personnel in meeting the goals of Section*  
7 *601 of Public Law 104-180 with respect to the transmittal of useful*  
8 *information regarding a prescription drug dispensed to the patient.*

9 *(C) The content of the communication provides information*  
10 *regarding any of the following:*

11 *(i) The dispensed drug or a disease or health condition for which*  
12 *the dispensed drug is indicated.*

13 *(ii) Another treatment or therapy for a disease or health*  
14 *condition for which the dispensed drug is indicated if the content*  
15 *of the communication does not include any mention of, or negative*  
16 *statements regarding, the dispensed drug by proprietary or brand*  
17 *name and the treatment or therapy satisfies one or more of the*  
18 *following conditions:*

19 *(I) Is an adjunctive treatment or therapy that augments or assists*  
20 *the dispensed drug or therapy.*

21 *(II) Is a generic alternative for the dispensed drug.*

22 *(III) Has demonstrable benefits for the patient as compared to*  
23 *the dispensed drug based upon the prescribing information*  
24 *approved by the federal Food and Drug Administration (FDA), a*  
25 *finding or conclusion contained in the FDA approval package, or*  
26 *requirements or policies of the FDA. Any such claim may not be*  
27 *inconsistent with applicable requirements or policies of the FDA.*  
28 *These demonstrable benefits may include being more effective,*  
29 *having fewer or less serious side effects, or offering more*  
30 *convenient dosing.*

31 *(iii) A drug dispensed to the patient during the preceding year*  
32 *or a disease or health condition for which that drug is indicated.*

33 *(iv) General information about a health condition for which the*  
34 *patient's disease or health condition puts the patient at risk and*  
35 *that, if left untreated, may result in worsening of the health,*  
36 *symptoms, or daily functioning of the patient.*

37 *(v) General information about a health condition for which the*  
38 *patient may be at risk given the age or gender of the patient and*  
39 *that, if left untreated, may result in worsening of the health,*  
40 *symptoms, or daily functioning of the patient.*

1 (vi) *The information described in clauses (iii) to (v), inclusive,*  
2 *shall not include any mention, by the proprietary name, brand*  
3 *name, or generic name, of a specific drug or other product,*  
4 *treatment, therapy, or service, other than the dispensed drug or a*  
5 *drug dispensed to the patient during the preceding year.*

6 (D) *The pharmacist is available upon request of the patient to*  
7 *answer questions regarding the communication and the*  
8 *communication notifies the patient that he or she should consult*  
9 *a health care provider.*

10 (E) *If the communication is paid for, in whole or in part, by a*  
11 *manufacturer, distributor, or provider of a health care product or*  
12 *service, other than the pharmacy or a business associate of the*  
13 *pharmacy, the communication shall comply with all of the*  
14 *following:*

15 (i) *The communication shall, in a clear written statement placed*  
16 *in a clear and conspicuous location, disclose the source of the*  
17 *sponsorship in a typeface no smaller than 14-point type.*

18 (ii) *If the communication is related to information referenced*  
19 *in clause (i), (ii), or (iii) of subparagraph (C) and mentions a*  
20 *prescription drug or other product, treatment, therapy, or service,*  
21 *other than the dispensed prescription drug, by its proprietary*  
22 *name, brand name, or generic name, the communication shall also*  
23 *contain the words "paid advertisement" in a typeface no smaller*  
24 *than 14-point type at the top of each sponsored message.*

25 (iii) *If a sponsored message is printed on more than one page*  
26 *of a communication, the statement required by clause (ii) shall*  
27 *appear on each page on which the sponsored message appears.*

28 (iv) *If a sponsored message is printed on more than one panel*  
29 *of the same page of a communication, the statement required by*  
30 *clause (ii) shall appear on each panel on which the sponsored*  
31 *message appears.*

32 (v) *If the communication is related to information referenced*  
33 *in clause (i), (ii), or (iii) of subparagraph (C) and mentions a*  
34 *prescription or other product, treatment, therapy, or service, other*  
35 *than the dispensed prescription drug, by its proprietary name,*  
36 *brand name, or generic name, the communication shall also*  
37 *contain the words "results may vary—consult your doctor."*

38 (F) *The communication contains instructions in a typeface no*  
39 *smaller than 14-point type describing how the patient can opt out*  
40 *of the portion of a pharmacy's communication that is paid for by*

1 *a manufacturer, distributor, or provider of a health care product*  
2 *or service by calling a toll-free number. No further sponsored*  
3 *message from the pharmacy may be made to an individual who*  
4 *has opted out after 30 calendar days from the date the individual*  
5 *makes the opt out request.*

6 *(G) A majority of the printed space of the entire communication*  
7 *delivered to the patient in the pharmacy is used for purposes other*  
8 *than a sponsored message that is subject to clause (ii) of*  
9 *subparagraph (E).*

10 *(H) Compliance with any provision in this paragraph shall not*  
11 *necessarily render any communication as truthful, not misleading,*  
12 *fairly balanced, or adequately substantiated, within the meaning*  
13 *of any applicable federal or state law, if that communication is*  
14 *otherwise false, misleading, lacking in fair balance, or not*  
15 *adequately substantiated.*

16 (g) “Medical information” means any individually identifiable  
17 information, in electronic or physical form, in possession of or  
18 derived from a provider of health care, health care service plan,  
19 pharmaceutical company, or contractor regarding a patient’s  
20 medical history, mental or physical condition, or treatment.  
21 “Individually identifiable” means that the medical information  
22 includes or contains any element of personal identifying  
23 information sufficient to allow identification of the individual,  
24 such as the patient’s name, address, electronic mail address,  
25 telephone number, or social security number, or other information  
26 that, alone or in combination with other publicly available  
27 information, reveals the individual’s identity.

28 (h) “Patient” means any natural person, whether or not still  
29 living, who received health care services from a provider of health  
30 care and to whom medical information pertains.

31 (i) “Pharmaceutical company” means any company or business,  
32 or an agent or representative thereof, that manufactures, sells, or  
33 distributes pharmaceuticals, medications, or prescription drugs.  
34 “Pharmaceutical company” does not include a pharmaceutical  
35 benefits manager, as included in subdivision (c), or a provider of  
36 health care.

37 (j) “Provider of health care” means any person licensed or  
38 certified pursuant to Division 2 (commencing with Section 500)  
39 of the Business and Professions Code; any person licensed pursuant  
40 to the Osteopathic Initiative Act or the Chiropractic Initiative Act;

1 any person certified pursuant to Division 2.5 (commencing with  
2 Section 1797) of the Health and Safety Code; any clinic, health  
3 dispensary, or health facility licensed pursuant to Division 2  
4 (commencing with Section 1200) of the Health and Safety Code.  
5 “Provider of health care” does not include insurance institutions  
6 as defined in subdivision (k) of Section 791.02 of the Insurance  
7 Code.

8 ~~SECTION 1. The Legislature finds and declares that there~~  
9 ~~exists a need for an experienced, objective, impartial, and~~  
10 ~~professional entity to conduct any recall or special election that is~~  
11 ~~held in the City of Lynwood in the County of Los Angeles during~~  
12 ~~the 2007 and 2008 calendar years. It is the intent of the Legislature~~  
13 ~~in enacting this statute to ensure the integrity, efficiency, and lawful~~  
14 ~~conduct of recall and special elections in the City of Lynwood, to~~  
15 ~~avoid real bias or the perception of bias or impropriety, and to~~  
16 ~~strengthen the public’s confidence in the fair and free operation~~  
17 ~~of the election process and the reporting of election results.~~

18 ~~SEC. 2. Any recall or special election in the City of Lynwood~~  
19 ~~held during the 2007 and 2008 calendar years shall be administered;~~  
20 ~~for all purposes, by the Los Angeles County Registrar-Recorder~~  
21 ~~upon approval by the Board of Supervisors of the County of Los~~  
22 ~~Angeles.~~

23 ~~SEC. 3. (a) The City of Lynwood shall pay from its city~~  
24 ~~treasury for all expenses authorized and necessarily incurred in~~  
25 ~~conducting any special or recall election held during the 2007 and~~  
26 ~~2008 calendar years. These expenses shall be paid to the County~~  
27 ~~of Los Angeles to reimburse the county for the costs of conducting~~  
28 ~~the special or recall election.~~

29 ~~(b) If payment is not made in a timely manner, and after~~  
30 ~~sufficient notice to the City of Lynwood, the Board of Supervisors~~  
31 ~~of the County of Los Angeles may pass a resolution informing the~~  
32 ~~Controller that some or all of the amount due is outstanding.~~

33 ~~(c) Following receipt of the resolution, the Controller shall~~  
34 ~~deduct from apportionments scheduled for periodic distribution~~  
35 ~~to the City of Lynwood, from any unrestricted funds or moneys,~~  
36 ~~the outstanding balance owed and instead pay the amount to the~~  
37 ~~County of Los Angeles.~~

38 ~~SEC. 4. The Legislature finds and declares that because of the~~  
39 ~~unique circumstances of the City of Lynwood, relating to the~~  
40 ~~conduct of elections, a statute of general applicability cannot be~~

1 ~~enacted within the meaning of subdivision (b) of Section 16 of~~  
2 ~~Article IV of the California Constitution. Therefore, it is necessary~~  
3 ~~to enact a special statute applicable only to the City of Lynwood.~~

4 ~~SEC. 5. This act is an urgency statute necessary for the~~  
5 ~~immediate preservation of the public peace, health, or safety within~~  
6 ~~the meaning of Article IV of the Constitution and shall go into~~  
7 ~~immediate effect. The facts constituting the necessity are:~~

8 ~~In order to ensure that recall elections in the City of Lynwood~~  
9 ~~proceed in a timely fashion in accordance with state law, and to~~  
10 ~~preserve the public's confidence in the electoral process and the~~  
11 ~~voters' reserve power to recall elected officials, it is necessary that~~  
12 ~~this act take effect immediately.~~

AMENDED IN ASSEMBLY JUNE 25, 2007

AMENDED IN SENATE APRIL 16, 2007

**SENATE BILL**

**No. 963**

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**Introduced by Senator Ridley-Thomas**

February 23, 2007

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~~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 permit holder 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 ~~(e) 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 ~~(d) 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 ~~(e) 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 ~~(e) 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 ~~(e) 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.~~

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AMENDED IN ASSEMBLY DECEMBER 17, 2007

AMENDED IN ASSEMBLY DECEMBER 13, 2007

AMENDED IN ASSEMBLY NOVEMBER 8, 2007

CALIFORNIA LEGISLATURE—2007—08 FIRST EXTRAORDINARY SESSION

**ASSEMBLY BILL**

**No. 1**

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**Introduced by Assembly Member Nunez**  
(Principal coauthor: Senator Perata)

September 11, 2007

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An act to amend Section 2069 of, to add Sections 4040.1, 4071.2, 4071.3, and 4071.4 to, and to add and repeal Section 2838 of, the Business and Professions Code, to add Section 49452.9 to the Education Code, to add Sections 12803.2, 12803.25, 22830.5, and 22830.6 to, and to add Chapter 15 (commencing with Section 8899.50) to Division 1 of Title 2 of, the Government Code, to amend Sections 1357.54, ~~1363~~, 1365, ~~124900~~, ~~124905~~, ~~124910~~, ~~124920~~, 128745, and 128748 of, *to amend, repeal, and add Section 1399.56 of*, to add Sections 1262.9, 1342.9, 1347, 1356.2, 1367.16, 1367.205, 1367.38, 1368.025, 1378.1, 1395.2, ~~104376~~ ~~1399.58~~, ~~104376~~, ~~124905.1~~, ~~124946~~, and 130545 to, to add Chapter 1.6 (commencing with Section 155) to Part 1 of Division 1 of, to add ~~Article 3.11 (commencing with Section 1357.20)~~ and Article 11.6 (commencing with Section 1399.820) to Chapter 2.2 of Division 2 of, to add Article 1 (commencing with Section 104250) to Chapter 4 of Part 1 of Division 103 of, to add Article 3 (commencing with Section 104705) to Chapter 2 of Part 3 of Division 103 of, and to add Chapter 4 (commencing with Section 128850) to Part 5 of Division 107 of, the Health and Safety Code, to amend Sections ~~10607~~, 12693.43, 12693.70, 12693.73, and 12693.76 of, *to amend, repeal, and add Section 796.02 of*, to add Sections 796.05, 10113.10, 10113.11, 10123.56, 10176.15, 10273.6, 12693.56, 12693.57, 12693.58, 12693.59, 12693.766, ~~12694.5~~,

1 (1) The Director of Consumer Affairs, who shall serve as an ex  
2 officio member of the task force and shall cast the deciding vote  
3 in any matter voted upon by the task force that results in a tie vote.

4 (2) Three members of the Medical Board of California, two of  
5 whom shall be appointed to the task force by the Governor, and  
6 one of whom shall be appointed to the task force by the Speaker  
7 of the Assembly.

8 (3) Three members of the Board of Registered Nursing, two of  
9 whom shall be appointed to the task force by the Governor, and  
10 one of whom shall be appointed to the task force by the Senate  
11 Committee on Rules.

12 (4) Two representatives of an institution of higher education,  
13 who shall be appointed to the task force by the Governor as  
14 nonvoting members.

15 (b) The duty of the task force shall be to develop a recommended  
16 scope of practice for nurse practitioners.

17 (c) The task force shall report its recommended scope of practice  
18 for nurse practitioners to the Governor and the Legislature on or  
19 before June 30, 2009.

20 (d) On or before July 1, 2010, the Director of Consumer Affairs  
21 shall promulgate regulations that adopt the task force's  
22 recommended scope of practice.

23 (e) The Medical Board of California and the Board of Registered  
24 Nursing shall pay the state administrative costs of implementing  
25 this section.

26 (f) This section shall become inoperative on July 1, 2011, and,  
27 as of January 1, 2012, is repealed, unless a later enacted statute,  
28 that is enacted before January 1, 2012, deletes or extends the dates  
29 on which it becomes inoperative and is repealed.

30 SEC. 7. Section 4040.1 is added to the Business and Professions  
31 Code, to read:

32 4040.1. (a) Electronic prescribing shall not interfere with a  
33 patient's existing freedom to choose a pharmacy, and shall not  
34 interfere with the prescribing decision at the point of care.

35 (b) Notwithstanding subdivision (c) of Section 4040, "electronic  
36 prescribing" or "e-prescribing" means a prescription or  
37 prescription-related information transmitted between the point of  
38 care and the pharmacy using electronic media.

39 SEC. 8. Section 4071.2 is added to the Business and Professions  
40 Code, to read:

1 4071.2. (a) On or before January 1, ~~2010~~ 2012, every licensed  
2 prescriber, prescriber's authorized agent, or pharmacy operating  
3 in California shall have the ability to transmit and receive  
4 prescriptions by electronic data transmission.

5 (b) The Medical Board of California, the State Board of  
6 Optometry, the Bureau of Naturopathic Medicine, the Dental Board  
7 of California, the Osteopathic Medical Board of California, the  
8 Board of Registered Nursing, and the Physician Assistant  
9 Committee shall have authority with the California State Board of  
10 Pharmacy to ensure compliance with this section, and those boards  
11 are specifically charged with the enforcement of this section with  
12 respect to their respective licensees.

13 (c) Nothing in this section shall be construed to diminish or  
14 modify any requirements or protections provided for in the  
15 prescription of controlled substances as otherwise established by  
16 this chapter or by the California Uniform Controlled Substances  
17 Act (Division 10 (commencing with Section 11000) of the Health  
18 and Safety Code).

19 SEC. 9. Section 4071.3 is added to the Business and Professions  
20 Code, to read:

21 4071.3. Every electronic prescription system shall meet all of  
22 the following requirements:

23 (a) Comply with nationally recognized or certified standards  
24 for data exchange or be accredited by a recognized accreditation  
25 organization.

26 (b) Allow real-time verification of an individual's eligibility for  
27 benefits and whether the prescribed medication is a covered benefit.

28 (c) Comply with applicable state and federal confidentiality and  
29 data security requirements.

30 (d) Comply with applicable state record retention and reporting  
31 requirements.

32 SEC. 10. Section 4071.4 is added to the Business and  
33 Professions Code, to read:

34 4071.4. A prescriber or prescriber's authorized agent using an  
35 electronic prescription system shall offer patients a written receipt  
36 of the information that has been transmitted electronically to the  
37 pharmacy. The receipt shall include the patient's name, the dosage  
38 and drug prescribed, the name of the pharmacy where the electronic  
39 prescription was sent, and shall indicate that the receipt cannot be  
40 used as a duplicate order for the same medicine.

1 SEC. 11. Section 49452.9 is added to the Education Code, to  
2 read:

3 49452.9. (a) On and after January 1, 2010, the school district  
4 may provide an information sheet regarding health insurance  
5 requirements to the parent or guardian of all of the following:

- 6 (1) A pupil enrolled in kindergarten.
- 7 (2) A pupil enrolled in first grade if the pupil was not previously  
8 enrolled in kindergarten.
- 9 (3) A pupil enrolled during the course of the year in the case of  
10 children who have recently arrived, and intend to remain, in  
11 California.

12 (b) The information sheet described in subdivision (a) shall  
13 include all of the following:

- 14 (1) An explanation of the health insurance requirements under  
15 Section 8899.50 of the Government Code.
- 16 (2) Information on the important relationship between health  
17 and learning.
- 18 (3) A toll-free telephone number to request an application for  
19 Healthy Families, Medi-Cal, or other government-subsidized health  
20 insurance programs.
- 21 (4) Contact information for county public health departments.
- 22 (5) A statement of privacy applicable under state and federal  
23 laws and regulations.

24 (c) By January 1, 2010, the State Department of Education shall,  
25 in consultation with the State Department of Health Care Services  
26 and the Managed Risk Medical Insurance Board, develop a  
27 standardized template for the information sheet required by this  
28 section. To the extent possible, the information provided pursuant  
29 to this section shall be consolidated with the information listed in  
30 subdivision (c) of Section 49452.8 into one document. The State  
31 Department of Education shall make the template available on its  
32 Internet Web site and shall, upon request, provide written copies  
33 of the template to a school district.

34 SEC. 12. Chapter 15 (commencing with Section 8899.50) is  
35 added to Division 1 of Title 2 of the Government Code, to read:

36

37 CHAPTER 15. MINIMUM HEALTH CARE COVERAGE

38

39 8899.50. (a) On and after July 1, 2010, every California  
40 resident shall be enrolled in and maintain at least minimum

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**Introduced by Senator Calderon**

January 14, 2008

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An act to amend Section 56.10 of the Civil Code, relating to medical information.

LEGISLATIVE COUNSEL'S DIGEST

SB 1096, as introduced, 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 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) or (e)~~ (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.

33 (8) By a coroner, when requested in the course of an  
34 investigation by the coroner's office for the purpose of identifying  
35 the decedent or locating next of kin, or when investigating deaths  
36 that may involve public health concerns, organ or tissue donation,  
37 child abuse, elder abuse, suicides, poisonings, accidents, sudden  
38 infant deaths, suspicious deaths, unknown deaths, or criminal

1 deaths, or when otherwise authorized by the decedent's  
2 representative. Medical information requested by the coroner under  
3 this paragraph shall be limited to information regarding the patient  
4 who is the decedent and who is the subject of the investigation and  
5 shall be disclosed to the coroner without delay upon request.

6 (9) When otherwise specifically required by law.

7 (c) A provider of health care or a health care service plan may  
8 disclose medical information as follows:

9 (1) The information may be disclosed to providers of health  
10 care, health care service plans, contractors, or other health care  
11 professionals or facilities for purposes of diagnosis or treatment  
12 of the patient. This includes, in an emergency situation, the  
13 communication of patient information by radio transmission or  
14 other means between emergency medical personnel at the scene  
15 of an emergency, or in an emergency medical transport vehicle,  
16 and emergency medical personnel at a health facility licensed  
17 pursuant to Chapter 2 (commencing with Section 1250) of Division  
18 2 of the Health and Safety Code.

19 (2) The information may be disclosed to an insurer, employer,  
20 health care service plan, hospital service plan, employee benefit  
21 plan, governmental authority, contractor, or any other person or  
22 entity responsible for paying for health care services rendered to  
23 the patient, to the extent necessary to allow responsibility for  
24 payment to be determined and payment to be made. If (A) the  
25 patient is, by reason of a comatose or other disabling medical  
26 condition, unable to consent to the disclosure of medical  
27 information and (B) no other arrangements have been made to pay  
28 for the health care services being rendered to the patient, the  
29 information may be disclosed to a governmental authority to the  
30 extent necessary to determine the patient's eligibility for, and to  
31 obtain, payment under a governmental program for health care  
32 services provided to the patient. The information may also be  
33 disclosed to another provider of health care or health care service  
34 plan as necessary to assist the other provider or health care service  
35 plan in obtaining payment for health care services rendered by that  
36 provider of health care or health care service plan to the patient.

37 (3) The information may be disclosed to a person or entity that  
38 provides billing, claims management, medical data processing, or  
39 other administrative services for providers of health care or health  
40 care service plans or for any of the persons or entities specified in

1 paragraph (2). However, no information so disclosed shall be  
2 further disclosed by the recipient in any way that would violate  
3 this part.

4 (4) The information may be disclosed to organized committees  
5 and agents of professional societies or of medical staffs of licensed  
6 hospitals, licensed health care service plans, professional standards  
7 review organizations, independent medical review organizations  
8 and their selected reviewers, utilization and quality control peer  
9 review organizations as established by Congress in Public Law  
10 97-248 in 1982, contractors, or persons or organizations insuring,  
11 responsible for, or defending professional liability that a provider  
12 may incur, if the committees, agents, health care service plans,  
13 organizations, reviewers, contractors, or persons are engaged in  
14 reviewing the competence or qualifications of health care  
15 professionals or in reviewing health care services with respect to  
16 medical necessity, level of care, quality of care, or justification of  
17 charges.

18 (5) The information in the possession of a provider of health  
19 care or health care service plan may be reviewed by a private or  
20 public body responsible for licensing or accrediting the provider  
21 of health care or health care service plan. However, no  
22 patient-identifying medical information may be removed from the  
23 premises except as expressly permitted or required elsewhere by  
24 law, nor shall that information be further disclosed by the recipient  
25 in any way that would violate this part.

26 (6) The information may be disclosed to the county coroner in  
27 the course of an investigation by the coroner's office when  
28 requested for all purposes not included in paragraph (8) of  
29 subdivision (b).

30 (7) The information may be disclosed to public agencies, clinical  
31 investigators, including investigators conducting epidemiologic  
32 studies, health care research organizations, and accredited public  
33 or private nonprofit educational or health care institutions for bona  
34 fide research purposes. However, no information so disclosed shall  
35 be further disclosed by the recipient in any way that would disclose  
36 the identity of a patient or violate this part.

37 (8) A provider of health care or health care service plan that has  
38 created medical information as a result of employment-related  
39 health care services to an employee conducted at the specific prior

1 written request and expense of the employer may disclose to the  
2 employee's employer that part of the information that:

3 (A) Is relevant in a lawsuit, arbitration, grievance, or other claim  
4 or challenge to which the employer and the employee are parties  
5 and in which the patient has placed in issue his or her medical  
6 history, mental or physical condition, or treatment, provided that  
7 information may only be used or disclosed in connection with that  
8 proceeding.

9 (B) Describes functional limitations of the patient that may  
10 entitle the patient to leave from work for medical reasons or limit  
11 the patient's fitness to perform his or her present employment,  
12 provided that no statement of medical cause is included in the  
13 information disclosed.

14 (9) Unless the provider of health care or health care service plan  
15 is notified in writing of an agreement by the sponsor, insurer, or  
16 administrator to the contrary, the information may be disclosed to  
17 a sponsor, insurer, or administrator of a group or individual insured  
18 or uninsured plan or policy that the patient seeks coverage by or  
19 benefits from, if the information was created by the provider of  
20 health care or health care service plan as the result of services  
21 conducted at the specific prior written request and expense of the  
22 sponsor, insurer, or administrator for the purpose of evaluating the  
23 application for coverage or benefits.

24 (10) The information may be disclosed to a health care service  
25 plan by providers of health care that contract with the health care  
26 service plan and may be transferred among providers of health  
27 care that contract with the health care service plan, for the purpose  
28 of administering the health care service plan. Medical information  
29 may not otherwise be disclosed by a health care service plan except  
30 in accordance with the provisions of this part.

31 (11) Nothing in this part shall prevent the disclosure by a  
32 provider of health care or a health care service plan to an insurance  
33 institution, agent, or support organization, subject to Article 6.6  
34 (commencing with Section 791) of Part 2 of Division 1 of the  
35 Insurance Code, of medical information if the insurance institution,  
36 agent, or support organization has complied with all requirements  
37 for obtaining the information pursuant to Article 6.6 (commencing  
38 with Section 791) of Part 2 of Division 1 of the Insurance Code.

39 (12) The information relevant to the patient's condition and care  
40 and treatment provided may be disclosed to a probate court

1 investigator in the course of any investigation required or  
2 authorized in a conservatorship proceeding under the  
3 Guardianship-Conservatorship Law as defined in Section 1400 of  
4 the Probate Code, or to a probate court investigator, probation  
5 officer, or domestic relations investigator engaged in determining  
6 the need for an initial guardianship or continuation of an existent  
7 guardianship.

8 (13) The information may be disclosed to an organ procurement  
9 organization or a tissue bank processing the tissue of a decedent  
10 for transplantation into the body of another person, but only with  
11 respect to the donating decedent, for the purpose of aiding the  
12 transplant. For the purpose of this paragraph, the terms “tissue  
13 bank” and “tissue” have the same meaning as defined in Section  
14 1635 of the Health and Safety Code.

15 (14) The information may be disclosed when the disclosure is  
16 otherwise specifically authorized by law, including, but not limited  
17 to, the voluntary reporting, either directly or indirectly, to the  
18 federal Food and Drug Administration of adverse events related  
19 to drug products or medical device problems.

20 (15) Basic information, including the patient’s name, city of  
21 residence, age, sex, and general condition, may be disclosed to a  
22 state or federally recognized disaster relief organization for the  
23 purpose of responding to disaster welfare inquiries.

24 (16) The information may be disclosed to a third party for  
25 purposes of encoding, encrypting, or otherwise anonymizing data.  
26 However, no information so disclosed shall be further disclosed  
27 by the recipient in any way that would violate this part, including  
28 the unauthorized manipulation of coded or encrypted medical  
29 information that reveals individually identifiable medical  
30 information.

31 (17) For purposes of disease management programs and services  
32 as defined in Section 1399.901 of the Health and Safety Code,  
33 information may be disclosed as follows: (A) to an entity  
34 contracting with a health care service plan or the health care service  
35 plan’s contractors to monitor or administer care of enrollees for a  
36 covered benefit, if the disease management services and care are  
37 authorized by a treating physician, or (B) to a disease management  
38 organization, as defined in Section 1399.900 of the Health and  
39 Safety Code, that complies fully with the physician authorization  
40 requirements of Section 1399.902 of the Health and Safety Code,

1 if the health care service plan or its contractor provides or has  
2 provided a description of the disease management services to a  
3 treating physician or to the health care service plan's or contractor's  
4 network of physicians. Nothing in this paragraph shall be construed  
5 to require physician authorization for the care or treatment of the  
6 adherents of a well-recognized church or religious denomination  
7 who depend solely upon prayer or spiritual means for healing in  
8 the practice of the religion of that church or denomination.

9 (18) The information may be disclosed, as permitted by state  
10 and federal law or regulation, to a local health department for the  
11 purpose of preventing or controlling disease, injury, or disability,  
12 including, but not limited to, the reporting of disease, injury, vital  
13 events, including, but not limited to, birth or death, and the conduct  
14 of public health surveillance, public health investigations, and  
15 public health interventions, as authorized or required by state or  
16 federal law or regulation.

17 (19) The information may be disclosed, consistent with  
18 applicable law and standards of ethical conduct, by a  
19 psychotherapist, as defined in Section 1010 of the Evidence Code,  
20 if the psychotherapist, in good faith, believes the disclosure is  
21 necessary to prevent or lessen a serious and imminent threat to the  
22 health or safety of a reasonably foreseeable victim or victims, and  
23 the disclosure is made to a person or persons reasonably able to  
24 prevent or lessen the threat, including the target of the threat.

25 (20) The information may be disclosed as described in Section  
26 56.103.

27 (d) Except to the extent expressly authorized by the patient or  
28 enrollee or subscriber or as provided by subdivisions (b) and (c),  
29 no provider of health care, health care service plan, contractor, or  
30 corporation and its subsidiaries and affiliates shall intentionally  
31 share, sell, use for marketing, or otherwise use any medical  
32 information for any purpose not necessary to provide health care  
33 services to the patient. *For purposes of this section, a written*  
34 *communication mailed to a patient by a pharmacy shall be deemed*  
35 *to be necessary to provide health care services to the patient and*  
36 *shall not require prior authorization, if all of the following*  
37 *conditions are met:*

38 (1) *The written communication encourages the patient to adhere*  
39 *to the prescribed course of medical treatment as prescribed by a*  
40 *licensed health care professional and may include information*

1 *about that particular pharmaceutical drug as authorized in this*  
2 *section.*

3 *(2) The written communication pertains only to the prescribed*  
4 *course of medical treatment, and does not describe or mention*  
5 *any other pharmaceutical products.*

6 *(3) All product-related information in the written communication*  
7 *shall be consistent with the current federal Food and Drug*  
8 *Administration (FDA) approved product package insert, and*  
9 *provide fair and balanced information regarding the product's*  
10 *benefits and risks in accordance with the FDA requirements and*  
11 *policies.*

12 *(4) A copy of each written communication version shall be*  
13 *submitted to the FDA Center for Drug Evaluation and Research,*  
14 *Division of Drug Marketing, Advertising and Communications,*  
15 *prior to program implementation.*

16 *(5) Evidence-based or consensus-based practice guidelines*  
17 *shall be the basis of any information that is provided to patients*  
18 *in order to improve their overall health, prevent clinical*  
19 *exacerbations or complications, or promote patient*  
20 *self-management strategies.*

21 *(6) All personally identifiable medical information collected,*  
22 *used, and disclosed pursuant to this subdivision shall be*  
23 *confidential and shall be used solely to deliver the written*  
24 *communication to the patient. Access to the information shall be*  
25 *limited to authorized persons. Any entity that receives the*  
26 *information pursuant to this subdivision shall comply with existing*  
27 *requirements, including Sections 56.101 and 1798.84, concerning*  
28 *confidentiality and security of information. The pharmacy must*  
29 *have a written agreement with any entity that receives the*  
30 *information. The written agreement shall require the entity to*  
31 *maintain the confidentiality of the information it receives from the*  
32 *pharmacy and prohibit the entity from disclosing or using the*  
33 *information for any purpose other than to deliver to the patient*  
34 *the written communication that is the subject of the written*  
35 *agreement.*

36 *(7) If the written communication is paid for, in whole or in part,*  
37 *by a manufacturer, distributor, or provider of a health care product*  
38 *or service, the written communication shall disclose whether the*  
39 *pharmacy receives direct or indirect remuneration, including, but*  
40 *not limited to, gifts, fees, payments, subsidies, or other economic*

1 *benefits from a third party for making the written communication*  
2 *and shall disclose, in a clear and conspicuous location, the source*  
3 *of any sponsorship in a typeface no smaller than 14-point type.*

4 *(8) The communication contains instructions in a typeface no*  
5 *smaller than 14-point type describing how the patient may opt out*  
6 *of future communications by, for example, calling a toll-free*  
7 *number or visiting a Web site, and no further sponsored message*  
8 *is made to the individual after 30 calendar days from the date the*  
9 *individual makes the opt out request.*

10 (e) Except to the extent expressly authorized by the patient or  
11 enrollee or subscriber or as provided by subdivisions (b) and (c),  
12 no contractor or corporation and its subsidiaries and affiliates shall  
13 further disclose medical information regarding a patient of the  
14 provider of health care or an enrollee or subscriber of a health care  
15 service plan or insurer or self-insured employer received under  
16 this section to any person or entity that is not engaged in providing  
17 direct health care services to the patient or his or her provider of  
18 health care or health care service plan or insurer or self-insured  
19 employer.

AMENDED IN ASSEMBLY JANUARY 9, 2008

AMENDED IN ASSEMBLY JANUARY 7, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1394**

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**Introduced by Assembly Member Krekorian**

February 23, 2007

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An act to amend Section 350 of the Penal Code, relating to counterfeiting.

LEGISLATIVE COUNSEL'S DIGEST

AB 1394, as amended, Krekorian. Counterfeit: trademarks.

Existing law makes it a misdemeanor or a felony for a person to willfully manufacture, intentionally sell, or knowingly possess for sale any counterfeit registered trademark, as specified. Existing law also provides, upon conviction, for the forfeiture and destruction of all the counterfeit trademarks and related articles, as specified. Existing law regarding counterfeited trademarks also applies to unassembled components of computer software packages. Under existing law, a court is required to order restitution, as specified, to a victim of a crime.

This bill would, in addition, make it a misdemeanor or a felony for a person to *intentionally* transport, offer for sale, or distribute any counterfeit registered trademark, as specified. This bill would also increase the maximum fine allowed to be imposed upon conviction. This bill would require the forfeiture of all proceeds from the willful manufacture, *intentional* transport, ~~intentional~~ sale, offering for sale, distribution, or knowing possession for sale of any counterfeit registered trademark. This bill would also apply provisions related to counterfeited

trademarks to unassembled components, as specified, *and would require restitution to be paid to the victim of a trademark offense.*

Because this bill would expand the definition of an existing crime, it would impose a state-mandated local program.

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

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

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

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

1 SECTION 1. Section 350 of the Penal Code is amended to  
2 read:

3 350. (a) Any person who willfully manufactures, *intentionally*  
4 transports, ~~intentionally~~ sells, offers for sale, *or* distributes, or  
5 knowingly possesses for sale any counterfeit of a mark registered  
6 with the Secretary of State or registered on the Principal Register  
7 of the United States Patent and Trademark Office, shall, upon  
8 conviction, be punishable as follows:

9 (1) When the offense involves less than 1,000 of the articles  
10 described in this subdivision, with a total retail or fair market value  
11 less than that required for grand theft as defined in Section 487,  
12 and if the person is an individual, he or she shall be punished by  
13 a fine of not more than five thousand dollars (\$5,000), or by  
14 imprisonment in a county jail for not more than one year, or by  
15 both that fine and imprisonment; or, if the person is a corporation,  
16 by a fine of not more than one hundred thousand dollars  
17 (\$100,000).

18 (2) When the offense involves 1,000 or more of the articles  
19 described in this subdivision, or has a total retail or fair market  
20 value equal to or greater than that required for grand theft as  
21 defined in Section 487, and if the person is an individual, he or  
22 she shall be punished by imprisonment in a county jail not to  
23 exceed one year, or in the state prison for 16 months, or two or  
24 three years, or by a fine not to exceed the greater of two hundred  
25 fifty thousand dollars (\$250,000), or three times the total retail or  
26 fair market value of the articles described in this subdivision, or

1 by both that imprisonment and fine; or, if the person is a  
2 corporation, by a fine not to exceed the greater of five hundred  
3 thousand dollars (\$500,000) or three times the total retail or fair  
4 market value of the articles described in this subdivision.

5 (b) Any person who has been convicted of a violation of either  
6 paragraph (1) or (2) of subdivision (a) shall, upon a subsequent  
7 conviction of paragraph (1) of subdivision (a), if the person is an  
8 individual, be punished by a fine of not more than fifty thousand  
9 dollars (\$50,000), or by imprisonment in a county jail for not more  
10 than one year, or in the state prison for 16 months, or two or three  
11 years, or by both that fine and imprisonment; or, if the person is  
12 a corporation, by a fine of not more than two hundred thousand  
13 dollars (\$200,000).

14 (c) Any person who has been convicted of a violation of  
15 subdivision (a) and who, by virtue of the conduct that was the basis  
16 of the conviction, has directly and foreseeably caused death or  
17 great bodily injury to another through reliance on the counterfeited  
18 item for its intended purpose shall, if the person is an individual,  
19 be punished by a fine of not more than fifty thousand dollars  
20 (\$50,000), or by imprisonment in the state prison for two, three,  
21 or four years, or by both that fine and imprisonment; or, if the  
22 person is a corporation, by a fine of not more than two hundred  
23 thousand dollars (\$200,000).

24 (d) In any action brought under this section resulting in a  
25 conviction or a plea of nolo contendere, the court shall order the  
26 forfeiture and destruction of all of those marks and of all goods,  
27 articles, or other matter bearing the marks, and the forfeiture and  
28 destruction or other disposition of all means of making the marks,  
29 and any and all electrical, mechanical, or other devices for  
30 manufacturing, reproducing, transporting, or assembling these  
31 marks, that were used in connection with, or were part of, any  
32 violation of this section, and the forfeiture of all proceeds of the  
33 crime. However, no vehicle shall be forfeited under this section  
34 that may be lawfully driven on the highway with a class 3 or 4  
35 license, as prescribed in Section 12804 of the Vehicle Code, and  
36 that is any of the following:

37 (1) A community property asset of a person other than the  
38 defendant.

39 (2) The sole class 3 or 4 vehicle available to the immediate  
40 family of that person or of the defendant.

1 (3) Reasonably necessary to be retained by the defendant for  
2 the purpose of lawfully earning a living, or for any other reasonable  
3 and lawful purpose.

4 (e) For the purposes of this section, the following definitions  
5 shall apply:

6 (1) When counterfeited but unassembled components of  
7 computer software packages are recovered, including, but not  
8 limited to, counterfeited computer diskettes, instruction manuals,  
9 or licensing envelopes, the number of “articles” shall be equivalent  
10 to the number of completed computer software packages that could  
11 have been made from those components.

12 (2) “Counterfeit mark” means a spurious mark that is identical  
13 with, or confusingly similar to, a registered mark and is used, or  
14 intended to be used, on or in connection with the same type of  
15 goods or services for which the genuine mark is registered. It is  
16 not necessary for the mark to be displayed on the outside of an  
17 article for there to be a violation. For articles containing digitally  
18 stored information, it shall be sufficient to constitute a violation  
19 if the counterfeit mark appears on a video display when the  
20 information is retrieved from the article. The term “spurious mark”  
21 includes genuine marks used on or in connection with spurious  
22 articles and includes identical articles containing identical marks,  
23 where the goods or marks were reproduced without authorization  
24 of, or in excess of any authorization granted by, the registrant.  
25 When counterfeited but unassembled components of any articles  
26 described under subdivision (a) are recovered, including, but not  
27 limited to, labels, patches, fabric, stickers, wrappers, badges,  
28 emblems, medallions, charms, boxes, containers, cans, cases,  
29 hangtags, documentation, or packaging, or any other components  
30 of any type or nature that are designed, marketed, or otherwise  
31 intended to be used on or in connection with any articles described  
32 under subdivision (a), the number of “articles” shall be equivalent  
33 to the number of completed articles that could have been made  
34 from those components.

35 (3) “Knowingly possess” means that the person possessing an  
36 article knew or had reason to believe that it was spurious, or that  
37 it was used on or in connection with spurious articles, or that it  
38 was reproduced without authorization of, or in excess of any  
39 authorization granted by, the registrant.

1 (4) "Registrant" means any person to whom the registration of  
2 a mark is issued and that person's legal representatives, successors,  
3 or assigns.

4 (5) "Sale" includes resale.

5 (6) "Value" has the following meanings:

6 (A) When counterfeit items of computer software are  
7 manufactured or possessed for sale, the "value" of those items  
8 shall be equivalent to the retail price or fair market price of the  
9 true items that are counterfeited.

10 (B) When counterfeited but unassembled components of  
11 computer software packages or any other articles described under  
12 subdivision (a) are recovered, including, but not limited to,  
13 counterfeited digital disks, instruction manuals, licensing  
14 envelopes, labels, patches, fabric, stickers, wrappers, badges,  
15 emblems, medallions, charms, boxes, containers, cans, cases,  
16 hangtags, documentation, or packaging, or any other components  
17 of any type or nature that are designed, marketed, or otherwise  
18 intended to be used on or in connection with any articles described  
19 under subdivision (a), the "value" of those components shall be  
20 equivalent to the retail price or fair market value of the number of  
21 completed computer software packages or other completed articles  
22 described under subdivision (a) that could have been made from  
23 those components.

24 (C) "Retail or fair market value" of a counterfeit article means  
25 a value equivalent to the retail price or fair market value, as of the  
26 last day of the charged crime, of a completed similar genuine article  
27 containing a genuine mark.

28 (f) This section shall not be enforced against any party who has  
29 adopted and lawfully used the same or confusingly similar mark  
30 in the rendition of like services or the manufacture or sale of like  
31 goods in this state from a date prior to the earliest effective date  
32 of registration of the service mark or trademark either with the  
33 Secretary of State or on the Principle Register of the United States  
34 Patent and Trademark Office.

35 (g) An owner, officer, employee, or agent who provides, rents,  
36 leases, licenses, or sells real property upon which a violation of  
37 subdivision (a) occurs shall not be subject to a criminal penalty  
38 pursuant to this section, unless he or she sells, or possesses for  
39 sale, articles bearing a counterfeit mark in violation of this section.

1 This subdivision shall not be construed to abrogate or limit any  
2 civil rights or remedies for a trademark violation.

3 *(h) This section shall not be enforced against any party who*  
4 *engages in fair uses of a mark, as specified in Section 14247 of*  
5 *the Business and Professions Code.*

6 ~~(h)~~

7 *(i) When a person is convicted of an offense under this section,*  
8 *the court shall order the person to pay restitution to the trademark*  
9 *owner and any other victim of the offense pursuant to Section*  
10 *1202.4. In determining the value of the economic loss in a case*  
11 *involving an offense against the trademark owner, a court shall*  
12 *grant restitution for any and all economic loss, including, but not*  
13 *limited to, expenses incurred by the trademark owner in the*  
14 *investigation and prosecution of the offense.*

15 SEC. 2. No reimbursement is required by this act pursuant to  
16 Section 6 of Article XIII B of the California Constitution because  
17 the only costs that may be incurred by a local agency or school  
18 district will be incurred because this act creates a new crime or  
19 infraction, eliminates a crime or infraction, or changes the penalty  
20 for a crime or infraction, within the meaning of Section 17556 of  
21 the Government Code, or changes the definition of a crime within  
22 the meaning of Section 6 of Article XIII B of the California  
23 Constitution.

**CALIFORNIA STATE BOARD OF PHARMACY  
BILL ANALYSIS**



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**BILL NUMBER: AB 501**

**VERSION: As amended January 9, 2008**

**AUTHOR: Swanson**

**SPONSOR: Alameda County Board of Supervisors**

**POSITION: Support**

**SUBJECT: Pharmaceutical devices: hypodermic needle and syringe disposal**

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**EXISTING LAW:**

1. Prohibits the disposal of a hypodermic needle or syringe on the grounds of a playground, beach, park, or any public or private elementary school, vocational, junior high or high school.
2. States that a person who knowingly violates this section is guilty of a misdemeanor.
3. Requires that on or after September 1, 2008, no person shall knowingly place home-generated sharps waste in any of the following containers:
  - a. Any container used for collection of solid waste or recyclable materials for greenwaste
  - b. Any container used for the commercial collection of solid waste or recyclable materials from a business establishment
  - c. Any roll-off container used for collectables of solid waste, construction, and demolition debris, greenwaste or other recyclable materials
4. Requires that on or after September 1, 2008, home generated sharps waste shall be transported only in a sharps container, or other container approved by the enforcement agency as managed by one of the following:
  - a. A household hazardous waste facility
  - b. A "home generated sharps consolidation point"
  - c. A medical waste generator's facility
  - d. A facility through the use of an approved medical waster mail-back container

## **THIS BILL WOULD:**

1. Make a number of findings and declarations about the medical need and use of prefilled self-injection prescription medications.
2. State that the Legislature has found that sharps mail-back programs approved by the U.S. Postal Service offer one of the most convenient means for collecting and destroying home-generated sharps and that cooperative efforts of the pharmaceutical industry is necessary to develop a safe needle disposal system.
3. Require a pharmaceutical manufacturer to arrange to provide a postage prepaid, mail-back sharps container that has been approved by the U.S. Postal Service and the Department of Public Health as requested by a consumer of a prefilled syringe, prefilled pen, or other prefilled injection device administered at home.
4. Allow a pharmaceutical manufacturer to provide its consumers concise information on convenient locally available safe needle disposal options.
5. Defines "sharps container" consistent with the definition in Health and Safety Code Section 117750.

## **AUTHOR'S INTENT**

This bill is intended as a continuation of the legislation regarding the safe needle program - - and to further that purpose. Consumers currently do not have a safe way to dispose of used needles and syringes.

## **PRIOR HISTORY/RELATED BILLS**

SB 1305 (Figueroa) Chapter 64, Statutes of 2006 – Prohibits, as of January 1, 2008, a person from placing home-generated sharps waste in specified commercial and residential solid waste collection containers, including containers used for recyclable materials or greenwaste as well as roll-off containers used for construction and demolition debris. It also requires that home generated-sharps waste be transported in an approved sharps container with an approved facility approved by the Department of Toxics and removes home generated sharps waste as among those items subject to the state's medical waste control laws. The board had no position on this legislation.

## **FISCAL IMPACT**

The board does not anticipate any substantial fiscal impact on its operations. Any minor impact could be absorbed within existing resources.

## HISTORY:

Dates	Actions
01/10/08	Jan. 10 Re-referred to Com. on HEALTH
01/09/08	Jan. 9 From committee chair, with author's amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.
01/08/08	Jan. 8 Re-referred to Com. on HEALTH.
01/07/08	Jan. 7 From committee chair, with author's amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.
06/22/07	June 22 Re-referred to Com. on HEALTH.
06/21/07	June 21 From committee chair, with author's amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.
05/08/07	May 8 In committee: Set, second hearing. Hearing canceled at the request of author.
05/01/07	May 1 In committee: Set, first hearing. Hearing canceled at the request of author.
05/01/07	May 1 Re-referred to Com. on HEALTH.
04/30/07	Apr. 30 From committee chair, with author's amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.
03/22/07	Mar. 22 Referred to Com. on HEALTH.
02/21/07	Feb. 21 From printer. May be heard in committee March 23.
02/20/07	Feb. 20 Read first time. To print.

**CALIFORNIA STATE BOARD OF PHARMACY  
BILL ANALYSIS**



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**BILL NUMBER: AB 865**

**VERSION: As amended April 23, 2007**

**AUTHOR: Davis**

**SPONSOR: Author**

**RECOMMENDED POSITION: Neutral**

**SUBJECT: State agencies, live customer service agents**

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**EXISTING LAW:**

1. Requires each state agency to establish a procedure to ensure that incoming calls on any public line will be answered within 10 rings during regular business hours.

**THIS BILL WOULD:**

1. Require the headquarter for each state agency to answer telephone calls on any public line by a live customer service agent within 10 rings during regular business hours or an automated answering service. If an automated answering service is used, an option must be available to the caller to speak with a live customer service agent.
2. Provide exemptions to field offices and telephone lines dedicated as hotlines for emergency services or others as specified.
3. Define headquarters as the office or agency located in Sacramento, or where the director or head of the agency is located.

**AUTHOR'S INTENT**

This legislation is to address the general frustration some constituents experience trying to access a live agent to speak with. Illinois enacted a similar requirement in 2005.

**FISCAL IMPACT**

Should this bill be enacted, the board will need to pursue a part-time office assistant to help assist board receptionists during peak calling times, (e.g., Mondays, during renewal cycles etc.).

## COMMENTS

The board's main public number is currently automated with the use of a phone tree. Callers are advised at the beginning of the recorded message of the option to zero-out to speak with a board receptionist. This proposal would require the board to eliminate the use of the phone tree resulting in additional staff resources to respond to incoming calls. Because of limitations with the current phone system, staff is not aware of a new incoming call when the line is already in use.

The author's office indicates that there may be room to negotiate a requirement similar to the Illinois legislation.

## HISTORY:

<b>Dates</b>	<b>Actions</b>
04/24/07	Apr. 24 Re-referred to Com. on B. & P.
04/23/07	Apr. 23 From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.
04/17/07	Apr. 17 In committee: Set, second hearing. Hearing canceled at the request of author.
04/10/07	Apr. 10 In committee: Set, first hearing. Hearing canceled at the request of author.
03/12/07	Mar. 12 Referred to Com. on B. & P.
02/23/07	Feb. 23 From printer. May be heard in committee March 25.
02/22/07	Feb. 22 Read first time. To print.

**CALIFORNIA STATE BOARD OF PHARMACY  
BILL ANALYSIS**



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**BILL NUMBER:** AB 1436

**VERSION:** As amended January 7, 2008

**AUTHOR:** Hernandez

**SPONSOR:** CA Association for Nurse  
Practitioners

**RECOMMENDED POSITION:**

**SUBJECT:** Nurse practitioners: scope of practice.

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**EXISTING LAW:**

1. Defines the scope of practice for nurse practitioners.
2. Allows a nurse practitioner to dispense drugs pursuant to a protocol and specifies the conditions under which this can be done.
3. Details the requirements for a certificate evidencing that a person is qualified as a nurse practitioner.
4. Specifies the information required on a written order for a prescriber.

**THIS BILL WOULD:**

1. Revise the education requirement for an initial qualification or certification as a nurse practitioner to include either a master's degree or a doctoral degree in nursing.
2. Require that the nurse practitioner be certified by a nationally recognized certifying body approved by the board.

**AUTHOR'S INTENT:**

The board is awaiting a response from the author's office.

**PRIOR HISTORY/RELATED BILLS:**

Prior to amendment, this bill contained several of the provisions found in SB 809. This bill was amended and is requiring annual certification as a nurse practitioner as well as allowing a nurse practitioner to use a doctoral degree in nursing as a qualification method.

**FISCAL IMPACT:**

The board does not anticipate any fiscal impact.

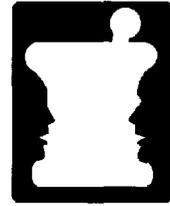
## COMMENTS:

The board did not take a position on this legislation previously; however, earlier discussions by the board about this legislation included concern about the potential increase in prescription errors by nurse practitioners. As amended, the scope of practice issues has been removed.

## HISTORY:

<b>Dates</b>	<b>Actions</b>
01/15/08	Jan. 15 From committee: Do pass, and re-refer to Com. on APPR. with recommendation: To Consent Calendar. Re-referred. (Ayes 10. Noes 0.) (January 15).
01/08/08	Jan. 8 Re-referred to Com. on B. & P.
01/07/08	Jan. 7 From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.
05/31/07	May 31 Re-referred to Com. on B. & P.
05/30/07	May 30 From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.
04/24/07	Apr. 24 In committee: Set, first hearing. Hearing canceled at the request of author.
04/23/07	Apr. 23 Joint Rule 62(a), file notice waived. (Page 1106.)
04/18/07	Apr. 18 Re-referred to Com. on B. & P.
04/17/07	Apr. 17 From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.
04/10/07	Apr. 10 Re-referred to Com. on B. & P.
04/09/07	Apr. 9 Referred to Coms. on B. & P. and HEALTH. From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.
02/26/07	Feb. 26 Read first time.
02/25/07	Feb. 25 From printer. May be heard in committee March 27.
02/23/07	Feb. 23 Introduced. To print.

**CALIFORNIA STATE BOARD OF PHARMACY  
BILL ANALYSIS**



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**BILL NUMBER: AB 1587**

**VERSION: As Amended August 20, 2007**

**AUTHOR: De La Torre**

**SPONSOR: Congress of California Seniors**

**BOARD POSITION: None**

**SUBJECT: Personal information: pharmacy.**

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**EXISTING LAW:**

1. Defines "marketing" as a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.
2. Details exemptions to the definition to include:
  - Communications made orally or in writing for which the communicator does not receive direct or indirect remuneration
  - Communications made to current enrollees solely for the purpose of describing a provider's participation in an existing health care provider network.
  - Communications that are tailored to the circumstances of a particular individual to educate or advise the individual about, among other things, treatment options. Such communications may result in direct or indirect remuneration if the individual receiving the communication is notified of such, in a typeface no smaller than 14-point font.

**THIS BILL WOULD:**

1. Also exempt a written communication or message provided to a pharmacy patient during a face-to-face interaction with a pharmacist or pharmacy personnel, if all of the following apply:
  - The communication does not involve the sale or transfer of individually identifiable patient information
  - The communication assists the pharmacist or pharmacy personnel in the transmittal of use information regarding a prescription drug dispensed to the patient
  - The content of the communication provides information about the dispensed drug, another treatment or therapy for a disease or health condition for which the drug is dispensed or a drug dispensed within the last three years, general information about a health condition for which the patient's disease may put the patient at risk, or general information about a health condition for which the patient may be at risk given the age or gender of the patient.

- The pharmacist is available upon request of the patient to answer questions regarding the communication
- If the communication is paid for, the communication must also include, among other things, the source of the sponsorship in typeface no smaller than 14-point type.
- The communication contains instruction in typeface no smaller than 14-point font, describing how the patient can opt out of the portion of the communication that is an advertisement paid for.
- The communication does not involve the sale or transfer to medical information by or to the pharmacy by another entity and the communication is based only on medical information that has already been provided to and maintained by the pharmacist.

### **AUTHOR'S INTENT**

This bill is intended to clarify the existing statute and would exempt drug information from the definition of "marketing communications."

### **FISCAL IMPACT:**

The board does not anticipate any major fiscal impact to the board. Any minor impact could most likely be absorbed with existing resources.

### **SUPPORT and OPPOSITION:**

#### Support

National Association of Chain Drug Stores  
 National Council on Patient Information and Education  
 National Consumers League  
 CA Retailers Association  
 Coalition for Healthcare Communication  
 Embracing Wellness  
 AIDS Legal Referral Panel  
 STOP AIDS Project  
 Marin AIDS Project  
 Pacific Center for Human Growth  
 Greenlining Institute  
 AIDS Emergency Fund & Breast Cancer Emergency Fund  
 Mission Neighborhood Health Center

#### Opposition

Consumers Union  
 Southern CA HIV Advocacy Coalition  
 Pfizer, Inc.  
 World Privacy Forum

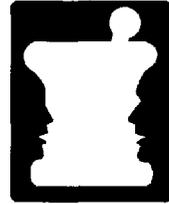
## COMMENTS:

The intent of this legislation is to provide additional information to consumers. However the board may want to consider if is appropriate for a pharmacist to provide a patient with drug information on a medication that is not being dispensed by the pharmacist and if this undermines the value of patient consultation. Also, it is unclear who is responsible for the enforcement of these provisions.

## HISTORY:

<b>Dates</b>	<b>Actions</b>
11/28/07	Nov. 28 Withdrawn from committee. Re-referred to Com. on RLS.
08/20/07	Aug. 20 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on E., R. & C.A.
07/20/07	July 20 In committee: Hearing postponed by committee. Joint Rule 62(a), file notice waived. (Page 1917.)
07/19/07	July 19 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on E., R. & C.A. In committee: Hearing postponed by committee.
07/17/07	July 17 Withdrawn from committee. Re-referred to Com. on RLS. Re-referred to Com. on E., R. & C.A.
07/16/07	July 16 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
07/10/07	July 10 In committee: Set first hearing. Failed passage. Reconsideration granted.
06/27/07	June 27 Read second time, amended, and re-referred to Com. on JUD.
06/26/07	June 26 From committee: Amend, do pass as amended, and re-refer to Com. on JUD. (Ayes 6. Noes 2.) .
06/07/07	June 7 Referred to Coms. on HEALTH and JUD.
05/24/07	May 24 In Senate. Read first time. To Com. on RLS. for assignment.
05/24/07	May 24 Read third time, passed, and to Senate. (Ayes 70. Noes 6. Page 1615.)
05/21/07	May 21 Read third time, amended, and returned to third reading. (Page 1565.).
05/09/07	May 9 Read second time. To third reading.
05/08/07	May 8 Read second time and amended. Ordered returned to second reading.
05/07/07	May 7 From committee: Amend, and do pass as amended. (Ayes 15. Noes 0.) (May 1).
03/29/07	Mar. 29 Referred to Com. on HEALTH.
02/26/07	Feb. 26 Read first time.
02/25/07	Feb. 25 From printer. May be heard in committee March 27.
02/23/07	Feb. 23 Introduced. To print.

**CALIFORNIA STATE BOARD OF PHARMACY  
BILL ANALYSIS**



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

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

**RECOMMENDED POSITION: None**

**SUBJECT: Regulatory boards: Operations**

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**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:

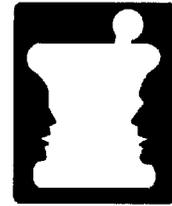
1. A legislative mandate to replace the board's very outdated computer system.
2. A legislative mandate to adopt by regulation the personnel needed to complete all investigatory and disciplinary functions. The ratio included in the legislation is one staff per 1,000 persons regulated.

## **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.

**CALIFORNIA STATE BOARD OF PHARMACY  
BILL ANALYSIS**



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**BILL NUMBER:** ABX1 1

**VERSION:** As amended December 17, 2007

**AUTHOR:** Nunez

**SPONSOR:**

**RECOMMENDED POSITION:**

**SUBJECT:** Health Care Reform

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**EXISTING LAW:**

1. Creates the California Health and Human Services Agency
2. Defines an electronic transmission prescription and sets forth the requirements for those types of prescriptions.

**THIS BILL WOULD:**

1. Specify that electronic prescribing shall not interfere with a patient's existing freedom to choose a pharmacy and shall not interfere with the prescribing decision at the point of care.
2. Define electronic prescribing as a prescription or prescription-related information transmitted between the point of care and the pharmacy using electronic media.
3. Require every licensed prescriber, prescriber's agent or pharmacy operating in California to have the ability to transmit and receive prescriptions by electronic data transmission.
4. Specify that the Medical Board of California, the State Board of Optometry, the Bureau of Naturopathic Medicine, The Dental Board of California, the Board of Registered Nursing, and the Physician Assistant Committee shall have authority with our board to ensure compliance with this section.
5. Specify that this section shall not be construed to diminish or modify any requirements or protections provided for controlled substances.
6. Specify the requirements that every electronic prescription system shall meet, including:
  - a. Compliance with nationally recognized or certified standards for data exchange or be accredited by a recognized accreditation organization.
  - b. Allow real-time verification of an individual's eligibility for benefits whether the prescribed medication is a covered benefit.
  - c. Comply with all state and federal confidentiality and data security requirements and state records retention and reporting requirements.

7. Require the prescriber or prescriber's authorized agent using the system to offer patients a written receipt of the information transmitted electronically to the pharmacy to include the patient's name, dosage and drug prescribed, name of the pharmacy and indicate that the receipt cannot be used as a duplicate order for the same medicine.
8. Other comprehensive changes to health care requirements in California outside of the board's jurisdiction.

**AUTHOR'S INTENT:**

This legislation is part of the health care reform initiative.

**FISCAL IMPACT:**

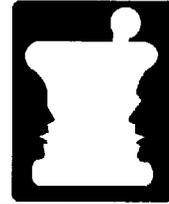
The board estimates approximately \$150,000 - \$200,000 one-time additional budget augment. This is based upon the anticipated need for the board to complete a significant amount of education and outreach to its licensees. We anticipate the need of a limited-term board inspector to complete the outreach as an inspector understands both pharmacy law and pharmacy practice. In addition the board will need a limited term analyst to assist with the development of outreach materials.

The board will need to pursue a Budget Change Proposal to augment our budget should this legislation be enacted in its current form.

**HISTORY:**

<b>Dates</b>	<b>Actions</b>
01/15/08	Jan. 15 In committee: Hearing postponed by committee.
01/10/08	Jan. 10 Referred to Com. on HEALTH.
01/07/08	Jan. 7 In Senate. Read first time. To Com. on RLS. for assignment.
12/17/07	Dec. 17 Re-referred to Com. on APPR. From committee: Amend, and do pass as amended. (Ayes 12. Noes 5. Page 36.) (December 17). Read second time and amended. Ordered to third reading. Read third time, passed, and to Senate. (Ayes 46. Noes 31. Page 39.)
12/13/07	Dec. 13 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 12. Noes 5.) (November 14). From committee chair, with author's amendments: Amend, and re-refer to Com. on APPR. Read second time and amended.
11/08/07	Nov. 8 Re-referred to Com. on HEALTH.
11/08/07	Nov. 8 Referred to Com. on HEALTH. From committee chair, with author's amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.
09/12/07	Sept. 12 From printer.
09/11/07	Sept. 11 Read first time. To print.

**CALIFORNIA STATE BOARD OF PHARMACY  
BILL ANALYSIS**



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**BILL NUMBER: AB 1394**

**VERSION: As amended January 9, 2008**

**AUTHOR: Krekorian**

**SPONSOR: California Chamber of  
Commerce**

**POSITION:**

**SUBJECT: Counterfeit Trademarks**

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**EXISTING LAW:**

1. Prohibits the manufacture, sale and possession for sale of counterfeit products as specified in Penal Code §350.
2. Establishes the penalties for an offense and sets fine amounts of \$250,000 for individuals and \$500,000 for corporations for an offense that involves 1,000 or articles.
3. Requires as part of a conviction or a plea of nolo contendere, the forfeiture and destruction of all of those marks and of all goods, articles and other matter being marks used in connection with, or were part of any violation.
4. Defines counterfeit mark.

**THIS BILL WOULD:**

1. Also prohibit transport, offers for sale, distribution of counterfeit products.
2. Will enhance the penalties for violation by a person to include a fine not to exceed \$250,000 or three times the total retail or fair market value of the articles described and will enhance the penalties for violation by a corporation to include a fine not to exceed \$500,000 or three times the total retail or fair Market value of the articles described in this subdivision.
3. Require as part of a conviction or a plea of nolo contendere, the forfeiture of all proceeds of the crime.
4. Expand the definition of a counterfeit mark to also include not only those marks used, but also those intended to be used. Clarify that when counterfeited but unassembled components of any articles are recovered, the number of articles shall be equivalent to the

- number of completed articles that could have been made from those components.
5. Expand the unassembled components of articles to be included then determining the value that could have been made from the components.
  6. Require the court to order a convicted person of an offense to pay restitution to the trademark owner or other victim of the offense including restitution for any economic loss as well as expenses incurred by the owner in the investigation and prosecution of the offense.

## **AUTHOR'S INTENT**

According to the Sponsor, current law is unclear and lacks consistency with federal law. Several unclear provisions create loopholes that undermine enforcement efforts. In addition, current state law caps the monetary penalties. This proposal will require consideration of the potential profits of the counterfeit operation.

## **COMMENT**

This proposal would strengthen the criminal penalties against counterfeit operations and meshes with our public protection mandate and e-pedigree requirements.

## **FISCAL IMPACT**

The board does not anticipate any substantial fiscal impact on its operations. Any minor impact could be absorbed within existing resources.

## **HISTORY:**

<b>Dates</b>	<b>Actions</b>
01/16/08	Jan. 16 From committee: Do pass, and re-refer to Com. on APPR. with recommendation: To Consent Calendar. Re-referred. (Ayes 7. Noes 0.) (January 15).
01/10/08	Jan. 10 Re-referred to Com. on PUB. S.
01/09/08	Jan. 9 From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.
01/08/08	Jan. 8 Re-referred to Com. on PUB. S.
01/07/08	Jan. 7 From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.
03/22/07	Mar. 22 Referred to Com. on PUB. S.
02/26/07	Feb. 26 Read first time.

02/25/07 Feb. 25 From printer. May be heard in committee March 27.

02/23/07 Feb. 23 Introduced. To print.

Revised April 10, 2007

**CALIFORNIA STATE BOARD OF PHARMACY  
BILL ANALYSIS**



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**BILL NUMBER: SB 1096**

**VERSION: As introduced January 14, 2008**

**AUTHOR: Calderon**

**SPONSOR: Adheris, Inc.**

**BOARD POSITION:**

**SUBJECT: Medical Information**

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**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 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:**

<b>Dates</b>	<b>Actions</b>
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.

# LEGISLATION AND REGULATION COMMITTEE

**Goal 3:** Advocate legislation and promulgate regulations that advance the vision and mission of the Board of Pharmacy.

**Outcome:** Improve the health and safety of Californians.

<p><b>Objective 3.1</b></p> <p><b>Measure:</b></p>	<p>Annually identify and respond with legislative changes to keep pharmacy laws current and consistent with the board's mission.</p> <p>100 percent successful enactment of promoted legislative changes.</p>
<p><b>Tasks:</b></p>	<ol style="list-style-type: none"> <li>1. Secure extension of board's sunset date.             <ul style="list-style-type: none"> <li><i>Sept. 30, 2006: Governor signs SB 1476 which delays the board's sunset date two years (until 2010), and requires the board's sunset report in 2008.</i></li> <li><i>June 2007: SB 963 (Ridley-Thomas) is amended to alter the sunset review process.</i></li> </ul> </li> <li>2. Sponsor legislation to update pharmacy law.             <ul style="list-style-type: none"> <li><i>Sept. 30, 2006: Governor signs SB 1475 containing provisions that:</i> <ol style="list-style-type: none"> <li>(a) <i>Allow a check-off box on electronic prescriptions that if marked by a prescriber, would prevent generic substitution at a pharmacist's discretion (B&amp;P 4073).</i></li> <li>(b) <i>Clarify requirements for reporting to the board when a licensee is impaired to the extent it affects the licensee's safe practice or who has stolen or diverted drugs (B&amp;P 4104).</i></li> <li>(c) <i>Establish the authority to issue a temporary sterile injectable compounding license following a change in ownership (B&amp;P 4127.8).</i></li> <li>(d) <i>Exempt government-owned wholesalers from having to post a \$100,000 bond (B&amp;P 4162).</i></li> <li>(e) <i>Exempt drug manufacturers who hold a biologics license application from the FDA from having to post a \$100,000 bond otherwise required for nonresident wholesalers (B&amp;P 4162.5).</i></li> <li>(f) <i>Make technical changes in the licensure requirements for clinics (B&amp;P 4180 - 4182, 4190 - 4192).</i></li> </ol> </li> <li><i>June 2007: Senate Business and Professions Committee omnibus bill (SB 1048) is amended to include board provisions that:</i> <ol style="list-style-type: none"> <li>(a) <i>Revise section to include schedule IV controlled substances to the CURES reporting requirements for hospitals. (B&amp;P 4068)</i></li> <li>(b) <i>Allow board inspectors to embargo a prescription drug when the inspector has probable cause that it is misbranded. (B&amp;P 4084)</i></li> <li>(c) <i>Change the term "exemptee" to "designated representative." (B&amp;P) 4101</i></li> <li>(d) <i>Revise section to specify temporary license fee of \$550. Current law does not specify the temporary fee. (B&amp;P 4160 (f) &amp; 4161 (k))</i></li> <li>(e) <i>Extend bonding requirements for wholesalers from 2011 to 2015 to match the extension given to implement the e-pedigree requirements, restoring provisions in SB 1476 chaptered out by SB 1475. (B&amp;P 4162 &amp; 4162.5)</i></li> <li>(f) <i>Change in the name of the exam to more accurately reflect the requirements described in B&amp;P 4200.2. The new name will be the "California Practice Standards and Jurisprudence Examination for Pharmacists" (CPJE). (B &amp; P 4200, 4200.1 &amp; 4200.2)</i></li> <li>(g) <i>Revise requirements for intern licenses to allow the board the discretion to extend the duration of an intern license. (B&amp;P 4208)</i></li> </ol> </li> </ul> </li> </ol>

(h) Allow the board to cite and fine licensees for violations of Health and Safety Code sections 150200-150206 which authorize a county to establish by local ordinance, a repository and distribution program for specified unused medications from skilled nursing homes to medically indigent patients served by government-owned pharmacies. (B&P 4314 & 4315)

Oct. 2007: Governor signs SB 1048 (Chapter 588, Statutes of 2007) containing board omnibus provisions.

Oct. 2007: Legislation and Regulation Committee considers omnibus provisions for introduction in 2008. Four types of changes are discussed.

(1) Omnibus changes specific to the PIC and DRC requirements

- Section 4022.5 – Designated Representative; Designated Representative-in-Charge
- Section 4036.5 – Pharmacist-in-Charge
- Section 4101 – Pharmacist-in-Charge; Designation Representative-in-Charge; Termination of Status; Duty to Notify the Board.
- Section 4113 – Pharmacist-in-Charge; Approval; Responsibilities; Notifications
- Section 4160 – Wholesaler Licenses
- Section 4196 – Veterinary Food-Animal Drug Retailer Licenses; Persons Allowed in Areas Where Drugs are Stored, Possessed, or Repacked
- Section 4305 – Pharmacist-in-Charge; Notice to Board; Disciplinary Action
- Section 4329 – Nonpharmacists; Prohibited Acts
- Section 4330 – Proprietors; Prohibited Acts

(2) Omnibus changes to allow for the use of mobile pharmacies

- Section 4062 Furnishing Dangerous Drugs During an Emergency.
- Section 4110 License Required, Temporary Permit Upon Transfer of Ownership.

(3) General omnibus changes

- Section 4059.5 Who May order Dangerous Drugs or Devices, Exceptions.
- Section 4081 - Records of Dangerous Drugs and Devices Kept Open for Inspection; Maintenance of Records, Current Inventory
- Section 4126.5 – Furnishing Dangerous Drugs by Pharmacy.
- Section 4231 – Requirements for Renewal of Pharmacist License: Clock Hours; Exemption for New Licensee.
- Section 4362 – Entry Into Pharmacists Recovery Program.  
H&SC 11165 – Controlled Substance Utilization Review and Evaluation System; Establishment; Operation; Funding; Reporting to Legislature.

(4) Omnibus changes based on recodification of Business and Professions Code section 4052

- Section 733 – Dispensing Prescription Drugs and Devices
- Section 4027 – Skilled Nursing Facility – Intermediate Care Facility – Other Health Care Facilities
- Section 4040 – Prescription; Content Requirements
- Section 4051 – Conduct Limited to Pharmacist; Conduct Authorized by Pharmacist
- Section 4060 – Controlled Substance – Prescription Required, Exceptions
- Section 4076 – Prescription Container – Requirements for Labeling
- Section 4111 – Restrictions on Prescriber Ownership
- Section 4174 – Dispensing by Pharmacist Upon Order of Nurse Practitioner
- H&SC 11150 – Persons Authorized to Write or Issue a Prescription

*Jan. 2007: Staff provides language to Senate Business and Professions Committee for inclusion in omnibus bill.*

3. Advocate the board's role and its positions regarding pharmacists' care and dispensing of dangerous drugs and devices (AB 2408).

*Sept. 30, 2006: Governor signs AB 2408. Amendments taken in August remove provisions that would have described the professional services provided by pharmacists, and authorized pharmacists outside California to provide pharmacists' care services to patients in California if licensed here or working within the framework of a nonresident pharmacy. Remaining provisions restructure pharmacist protocol provisions and several other changes.*

4. Secure statutory standards for pharmacies that compound medications (AB 595).

*Aug. 2006: Amendments made to remove opposition of DHS regarding pharmacy contracting with another pharmacy for compounded drugs triggers opposition from pharmacy organizations. Board drops AB 595, but will advance regulations developed for compounding pharmacies in the future.*

5. Secure implementation of e-pedigrees on prescription drugs dispensed in California (SB 1476).

*Sept. 30, 2006: Governor signs SB 1476 which contains board amendments to delay implementation of the e-pedigree requirements until 2009, or upon board action, until 2011. Amendments also require interoperability, serialization, returned drug products to retain the initiating pedigree, require notice to the board of suspected or actual counterfeiting, and continuation of the pedigree through repackaging operations.*

6. Advocate the board's position on pending legislation affecting pharmacy practice and/or the board's jurisdiction.
- AB 110 (Laird) Drug Paraphernalia: Clean Needle and Syringe Exchange Projects.*
- AB 249 (Eng) Healing Arts: Settlement Agreements.*
- AB 543 (Plescia) Ambulatory Surgical Centers: Licensure.*
- AB 1025 (Bass) Professions and Vocations: Denial of Licensure.*
- SB 472 (Corbett) Prescription Drugs: Labeling Requirements.*
- SB 615 (Oropeza) Pharmacy Technicians: Scholarship Fund.*
- SB 606 (Scott) Pharmaceutical Information: Clinical Data Trial.*
- SB 963 (Ridely-Thomas) Regulatory Boards: Operations.*
- SB 966 (Simitian) Pharmaceutical Drug Disposal.*
- Oct. 2007:** Governor signs the following:
- AB 110 (Chapter 707, Statutes of 2007) Drug Paraphernalia: Clean Needle and Syringe Exchange Projects.*
- SB 472 (Chapter 470, Statutes of 2007) Prescription Drugs: Labeling Requirements.*
- SB 966 (Chapter 542, Statutes of 2007) Pharmaceutical Drug Disposal.*
- Oct. 2007:** Governor vetoes the following:
- AB 249 (Eng) Healing Arts: Settlement Agreements.*
- AB 543 (Plescia) Ambulatory Surgical Centers: Licensure.*
- AB 1025 (Bass) Professions and Vocations: Denial of Licensure.*
- SB 615 (Oropeza) Pharmacy Technicians: Scholarship Fund.*
7. Expand the conditions under which a pharmacist may administer an immunization independent of physician protocol.
- March 2007:** *Licensing Committee considers and approves concept. More work is required.*
- June 2007:** *Licensing Committee considers draft language and requests additional refinements to proposal for consideration at September 2007 committee meeting.*
- Sept. 2007:** *Licensing Committee forwards to full board legislative proposal.*
- Oct. 2007:** *Board approved draft legislation*
- Nov. 2007:** *Staff meeting with stakeholders to elicit support for the proposal.*
- Dec. 2007:** *Staff develop fact sheets and work with experts in immunizations.*
8. Advocate the board's role as an advocate for consumers by redesigning prescription label for all medicines dispensed to California patients.
- Oct. 2007:** *Governor signs SB 472 (Chapter 470, Statutes of 2007) Prescription Drugs: Labeling Requirements.*
- Oct. 2007:** *Subcommittee of the board is created to facilitate changes to regulation. Members include: Dr. Schell, Chair; Dr. Ravnan; Dr. Conroy; Dr. Swart; and President Powers.*

Objective 3.2	Annually identify and respond with regulatory changes to keep pharmacy regulations current and consistent with the board's mission.
Measure:	Percentage successful enactment of promoted regulatory changes.
Tasks:	<ol style="list-style-type: none"> <li>1. Authorize technicians to check technicians in inpatient pharmacies with clinical pharmacist programs (sections 1793.7-1793.8).  <i>Aug. 2006: Rulemaking file compiled and undergoing review by the Department of Consumer Affairs.</i>  <i>Nov. 2006: Rulemaking file submitted to the Office of Administrative Law .</i>  <i>Jan. 2007: Office of Administrative Law approves rulemaking. Regulation takes effect.</i> </li> <li>2. Authorize the use of prescription drop boxes and automated delivery machines for outpatient pharmacies (sections 1713 and 1717(e)).  <i>Aug. 2006: Rulemaking file compiled and undergoing review by the Department of Consumer Affairs.</i>  <i>Jan. 2007: Regulation takes effect following approval by the Office of Administrative Law.</i> </li> <li>3. Make technical changes in pharmacy regulations to keep the code updated.  <i>Dec. 2006: Board notices regulation for 45 days of public comment.</i>  Section 1775.4 contested citations  Section 1706.2 criteria for abandonment of files  <i>Jan. 2007: Board adopts regulations.</i>  Section 1775.4 contested citations  Section 1706.2 criteria for abandonment of files  <i>Feb. 2007: Rulemaking file compiled and undergoing review by the Department of Consumer Affairs.</i>  Section 1775.4 contested citations  Section 1706.2 criteria for abandonment of files  <i>April 2007: Section 1775.4 contested citations. DCA determines no regulation is needed to accomplish the requirement to allow 1 rescheduling of an office conference. This regulation is withdrawn.</i>  <i>June 2007: Changes to 1706.2 take effect following approval by the Office of Administrative Law.</i> </li> <li>4. Repeal the requirement to post a notice regarding electronic files (section 1717.2).  <i>July 2006: Regulation released for 45 days of public comment. Action to be taken at the October Board Meeting.</i>  <i>Oct. 2006: Board approves regulation and compiles rulemaking file. File submitted to the Department of Consumer Affairs to initiate Administration review.</i>  <i>March 2007: Office of Administrative Law approves rulemaking. Regulation takes effect.</i> </li> <li>5. Revise and update Disciplinary Guidelines revision and update (section 1760).  <i>Aug. 2006: Final changes to Disciplinary Guidelines being compiled by staff.</i>  <i>Dec. 2006: Disciplinary Guidelines is being reformatted into strikeout and underscore version for eventual release for public comment.</i>  <i>June 2007: Enforcement Committee reviews Disciplinary Guidelines and requests additional time to review before being submitted to the board.</i>  <i>Sept. 2007: Enforcement Committee approves Disciplinary Guidelines and recommends board approval.</i>  <i>Oct. 2007: Board approves Disciplinary Guidelines for 45-day comment period.</i> </li> </ol>

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|  | <p>6. Self-assessment of a wholesaler by the designated representative (section 1784).<br/> <i>July 2006: Regulation released for 45 days of public comment. Action to be taken at the October Board Meeting.</i></p> <p><i>Oct. 2006: Board approves regulation and compiles rulemaking file. File submitted to the Department of Consumer Affairs to initiate Administration review.</i></p> <p><i>April 2007: Office of Administrative Law approves rulemaking. Regulation takes effect.</i></p> <p><i>May 2007: Wholesalers are notified of this requirement.</i></p> <p>7. Exempt the address of records of interns from display on the board's Web site (section 1727.1).<br/> <i>Sept. 2006: Office of Administrative Law approves rulemaking. Regulation takes effect October 2006.</i></p> <p>8. Modification of building standards for pharmacies – rulemaking by the California Building Standards Commission.<br/> <i>July 2006: Board notified that a new procedure now exists for adopting building standards. Staff will pursue these procedures in 2007.</i></p> <p><i>June 2007: Board staff submit rulemaking file to the California Building Standards Commission.</i></p> <p>9. Update Notice to Consumers Poster in conformance with AB 2583 (Chapter 487, Statutes 2006)(Section 1707.2).<br/> <i>Feb. 2007: Board notices regulation for 45 days comment period.</i></p> <p><i>April 2007: Board considers comments submitted during public comment period and modifies text regulation to reflect comments.</i></p> <p><i>May 2007: New section 1707.2 released for 45 days of public comment.</i></p> <p><i>July 2007: Board adopts regulation and compiles rulemaking file. File submitted to the Department of Consumer Affairs to initiate Administration Review.</i></p> <p><i>Sept. 2007: File submitted to the Office of Administrative Law for review.</i></p> <p><i>Oct. 2007: Office of Administrative Law approves rulemaking.</i></p> <p><i>Nov. 2007: Regulation changes takes effect.</i></p> <p><i>Nov. 2007: Staff solicits design submissions from graphic designers.</i></p> <p><i>Jan. 2008: Communication and Public Education Committee make recommendations on design submissions.</i></p><br><p><i>Aug. 2007: Staff withdraw Section 100 Changes.</i></p> <p><i>Nov. 2007: Staff resubmit Section 100 Changes</i></p> <p><i>Dec. 2007: Office of Administrative Law approves Section 100 Changes.</i></p> |
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10. Secure changes without regulatory effect (Section 100 changes) to pharmacy regulations to keep them accurate and current.
- June 2007:* Submitted the following Section 100 changes:  
 Section 1707 – Waiver Requirements for Off-Site Storage of Records.  
 Section 1709.1 – Replace the term “Exemptee-in-Charge” with “Designated Representative-in-Charge”.  
 Section 1715 – Self-Assessment of a Pharmacy by the Pharmacist-in-Charge to Update for Changes in Pharmacy Law.  
 Section 1719 – Pharmacy Practice.  
 Sections 1780.1 and 1781 – Replace the term “Exemptee” with “Designated Representative”.  
 Section 1786 – Return of Exemptee Certificate.  
 Section 1787 – Authorization to Distribute Dialysis Drugs and Devices.  
 Section 1790 – Assembling and Packaging.  
 1793.8 – Update regulation reference to recodified Business and Professions Code section 4052.
11. Increase fees to keep the board's contingency fund solvent and maintain operations.
- March 2007:* Organization Development Committee reviews proposals and recommends approval.
- April 2007:* Board approves the proposal.
- May 2007:* Board releases language for the 45-day public comment period.
- July 2007:* Board adopts proposed changes for a 15-day comment period and if no negative comments are received board adopts regulations.
- Aug. 2007:* File submitted to the Department of Consumer Affairs to initiate Administration Review.
- Oct. 2007:* File submitted to the Office of Administrative Law for review.
- Nov. 2007:* Office of Administrative Law approves rulemaking.
- Nov. 2007:* Staff complete necessary programming changes and begin advising licensees of the change.
- Jan. 1, 2008:* New fees take effect.
12. Secure regulatory standards for pharmacies that compound.
- Dec. 2006:* Licensing Committee evaluates proposed compounding regulations developed in 2004. Some modifications may be needed.
- March 2007:* Licensing Committee convenes discussion of amendments to compounding regulations. More work is required.
- May 2007:* Licensing Committee holds detailed discussion on compounding regulations.
- Sept. 2007:* Licensing Committee forwards regulation proposal to the board for review.
- Nov. 2007:* Board releases language for the 45-day comment period.

Objective 3.3	Review 5 areas of pharmacy law for relevancy, currency and value for consumer protection by June 30, 2011.
Measure:	Number of areas of pharmacy law reviewed.
Tasks:	<p>1. Initiate review of the pharmacist-in-charge requirement.</p> <p><i>Aug. 2007: Staff and counsel review pharmacist-in-charge and designated representative-in-charge statutes and regulations for reporting requirements and make recommendations to amend various statutes and regulations.</i></p> <p><i>Oct. 2007: Legislation and Regulation Committee reviews draft language to be incorporated into omnibus bill.</i></p>