

AMENDED IN SENATE MAY 2, 2001  
AMENDED IN SENATE APRIL 17, 2001

**SENATE BILL**

**No. 16**

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**Introduced by Senator Figueroa**

December 4, 2000

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An act to amend Sections 805, 805.1, 805.5, 806, and 2313 of, and to add Sections ~~805.6~~ 805.2, 805.6, and 805.7 to, the Business and Professions Code, relating to peer review.

LEGISLATIVE COUNSEL'S DIGEST

SB 16, as amended, Figueroa. Peer review.

Existing law provides a procedure for the professional review of specified healing arts licentiates by a peer review body, defined as including, among other entities, a nonprofit hospital service plan. Under existing law, a peer review body is required to file with the agency having regulatory jurisdiction over the licentiate a report, designated as an "805" report, if the peer review body takes one of several specified actions against the licentiate. Existing law makes the failure to file this report punishable by a fine of not more than \$5,000, or if the failure is intentional, by a fine of not more than \$10,000.

This bill would delete a nonprofit hospital service plan from those entities included within the definition of a peer review body and would specify that disability insurers that contract with licentiates to provide services at alternative rates of payment are subject to the professional peer review process.

This bill would add to the specified actions that a peer review body is required to report, within a specified timeframe, in an 805 report to the relevant licensing agency the licentiate's withdrawal or

abandonment of an initial or renewal application for staff privileges or membership after notice of an impending investigation or denial of the application for a medical disciplinary cause or reason. This bill would also increase the amount of the fine for the failure to file an 805 report to not more than \$50,000, and to not more than \$100,000 if the failure is intentional. The bill would specify that the intentional failure to file an 805 report by a licensed healing arts practitioner constitutes unprofessional conduct. This bill would authorize the Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California to audit, as specified, any peer review body to determine its compliance with its responsibilities to file 805 reports and to establish an electronic notification system, as specified, of the filing of 805 reports.

This bill would additionally encourage the Medical Board of California to establish a pilot program to provide specified health care professionals remedial training and education.

*The bill would state the intent of the Legislature to provide for a peer review monitor that would, among other things, review peer review bodies statewide in order to evaluate compliance with 805 reporting requirements.*

This bill would also require the Division of Medical Quality of the Medical Board of California to report annually to the Legislature the total number of reports received pursuant to Section 805.

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. The Legislature finds and declares the  
 2 following:  
 3 (a) Peer review is an essential component of the regulation by  
 4 certain licensing agencies of the quality of health care practice in  
 5 this state and of the health care community's responsibility to  
 6 engage in active self-regulation of the quality of health care  
 7 services provided to Californians. Because licensed health care  
 8 practitioners and the administrators of the facilities within which  
 9 these licentiates practice are in the best position to observe the  
 10 quality of health care services being provided to the public, it is  
 11 appropriate for licentiates to participate in early intervention and  
 12 quality improvement review of their peers. To this end, it is



1 important for a maximum level of cooperation to exist between the  
2 relevant licensing agencies and peer review bodies.

3 (b) To the extent possible, and consistent with the primary duty  
4 to protect the public, licensing agencies shall attempt to investigate  
5 information derived from reports filed pursuant to Section 805 of  
6 the Business and Professions Code in a manner that is not  
7 disruptive of a patient’s privacy or a licentiate’s practice.  
8 Specifically, unless an investigation warrants a greater intrusion  
9 into a particular identifiable patient’s medical information, a  
10 licensing agency shall attempt to conduct initial reviews by using  
11 redacted records and other sources of information. However,  
12 nothing in this act shall be construed to narrow, qualify, or overrule  
13 the authority of a licensing agency to obtain access to patient  
14 information if it is necessary in order to completely and accurately  
15 investigate a report concerning its licentiates.

16 (c) The procedures set forth in this act for the assessment and  
17 imposition of penalties for noncompliance with reporting  
18 requirements are intended to clarify existing law and do not  
19 represent a substantive change in the law.

20 SEC. 2. Section 805 of the Business and Professions Code is  
21 amended to read:

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

24 (1) “Peer review body” includes:

25 (A) A medical or professional staff of any health care facility  
26 or clinic licensed under Division 2 (commencing with Section  
27 1200) of the Health and Safety Code or of a facility certified to  
28 participate in the federal Medicare program as an ambulatory  
29 surgical center.

30 (B) A health care service plan registered under Chapter 2.2  
31 (commencing with Section 1340) of Division 2 of the Health and  
32 Safety Code or a disability insurer that contracts with licentiates  
33 to provide services at alternative rates of payment pursuant to  
34 Section 10133 of the Insurance Code.

35 (C) Any medical, psychological, marriage and family therapy,  
36 social work, dental, or podiatric professional society having as  
37 members at least 25 percent of the eligible licentiates in the area  
38 in which it functions (which must include at least one county),  
39 which is not organized for profit and which has been determined



1 to be exempt from taxes pursuant to Section 23701 of the Revenue  
2 and Taxation Code.

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

7 (2) “Licentiate” means a physician and surgeon, podiatrist,  
8 clinical psychologist, marriage and family therapist, clinical social  
9 worker, or dentist. “Licentiate” also includes a person authorized  
10 to practice medicine pursuant to Section 2113.

11 (3) “Agency” means the relevant state licensing agency  
12 having regulatory jurisdiction over the licentiates listed in  
13 paragraph (2).

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

23 (5) “Denial or termination of staff privileges, membership, or  
24 employment” includes failure or refusal to renew a contract or to  
25 renew, extend, or reestablish any staff privileges, if the action is  
26 based on medical disciplinary cause or reason.

27 (6) “Medical disciplinary cause or reason” means that aspect  
28 of a licentiate’s competence or professional conduct which is  
29 reasonably likely to be detrimental to patient safety or to the  
30 delivery of patient care.

31 (7) “805 report” means the written report required under  
32 subdivision (b).

33 (b) The chief of staff of a medical or professional staff or other  
34 chief executive officer, medical director, or administrator of any  
35 peer review body and the chief executive officer or administrator  
36 of any licensed health care facility or clinic shall file an 805 report  
37 with the relevant agency within 15 days after the effective date of  
38 any of the following which take place as a result of an action of a  
39 peer review body:



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

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

5 (3) Restrictions are imposed, or voluntarily accepted, on staff  
6 privileges, membership, or employment for a cumulative total of  
7 30 days or more for any 12-month period, for a medical  
8 disciplinary cause or reason.

9 (c) The chief of staff of a medical or professional staff or other  
10 chief executive officer, medical director, or administrator of any  
11 peer review body and the chief executive officer or administrator  
12 of any licensed health care facility or clinic shall file an 805 report  
13 with the relevant agency within 15 days after any of the following  
14 takes place as a result of a notice of either an investigation or the  
15 impending denial or rejection of the application for a medical  
16 disciplinary cause or reason:

17 (1) Resignation or leave of absence from membership, staff, or  
18 employment.

19 (2) The withdrawal or abandonment of a licentiate's  
20 application for staff privileges or membership.

21 (3) The request for renewal of those privileges or membership  
22 is withdrawn or abandoned.

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

27 (e) A copy of the 805 report, and a notice advising the licentiate  
28 of his or her right to submit additional statements or other  
29 information pursuant to Section 800, shall be sent by the peer  
30 review body to the licentiate named in the report.

31 The information to be reported in an 805 report shall include the  
32 name and license number of the licentiate involved, a description  
33 of the facts and circumstances of the medical disciplinary cause or  
34 reason, and any other relevant information deemed appropriate by  
35 the reporter.

36 A supplemental report shall also be made within 30 days  
37 following the date the licentiate is deemed to have satisfied any  
38 terms, conditions, or sanctions imposed as disciplinary action by  
39 the reporting peer review body. In performing its dissemination  
40 functions required by Section 805.5, the agency shall include a



1 copy of a supplemental report, if any, whenever it furnishes a copy  
2 of the original 805 report.

3 If another peer review body is required to file an 805 report, a  
4 health care service plan is not required to file a separate report with  
5 respect to action attributable to the same medical disciplinary  
6 cause or reason. If the Medical Board of California revokes or  
7 suspends, without a stay, the license of a physician, a peer review  
8 body is not required to file an 805 report when it takes an action  
9 as a result of the revocation or suspension.

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

18 (g) The Medical Board of California, the Osteopathic Medical  
19 Board of California, and the Dental Board of California shall  
20 disclose reports as required by Section 805.5.

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

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

25 (j) An intentional failure by any person who is designated or  
26 otherwise required by law to file an 805 report is punishable by a  
27 fine not to exceed one hundred thousand dollars (\$100,000) per  
28 violation. The fine may be imposed in any civil or administrative  
29 action or proceeding brought by or on behalf of any agency having  
30 regulatory jurisdiction over the licentiate charged with this  
31 violation and shall be paid to that agency but not expended until  
32 appropriated by the Legislature. The violation of this section shall  
33 constitute unprofessional conduct by the licentiate.

34 (k) A failure by the administrator of any peer review body, the  
35 chief executive officer or administrator of any health care facility,  
36 or any person who is designated or otherwise required by law to  
37 file an 805 report, whether or not the failure is intentional, is  
38 punishable by a fine not exceeding fifty thousand dollars  
39 (\$50,000) per violation. The fine may be imposed in any civil or  
40 administrative action or proceeding brought by or on behalf of any



1 agency having regulatory jurisdiction over the licentiate charged  
2 with this violation and shall be paid to that agency but not  
3 expended until appropriated by the Legislature.

4 (l) Notwithstanding any other provision of law, the State  
5 Department of Health Services may bring an action pursuant to  
6 subdivisions ~~(g) and (h)~~ (j) and (k) against any hospital, clinic, or  
7 other health facility under its jurisdiction if any officer, agent, or  
8 employee of the hospital, clinic, or other health care facility fails  
9 to comply with any duty imposed by this section.

10 (m) *Notwithstanding any other provision of law, the State*  
11 *Department of Managed Health Care may bring an action*  
12 *pursuant to subdivisions (j) and (k) against any health care service*  
13 *plan under its jurisdiction if any officer, agent, or employee of the*  
14 *health care service plan fails to comply with any duty imposed by*  
15 *this section.*

16 (n) A health care service plan registered under Chapter 2.2  
17 (commencing with Section 1340) of Division 2 of the Health and  
18 Safety Code or a disability insurer that negotiates and enters into  
19 a contract with licentiates to provide services at alternative rates  
20 of payment pursuant to Section 10133 of the Insurance Code,  
21 when determining participation with the plan or insurer, shall  
22 evaluate, on a case-by-case basis, licentiates who are the subject  
23 of an 805 report, and not automatically exclude or deselect these  
24 licentiates.

25 SEC. 3. Section 805.1 of the Business and Professions Code  
26 is amended to read:

27 805.1. (a) The Medical Board of California, the Osteopathic  
28 Medical Board of California, and the Dental Board of California  
29 shall be entitled to inspect and copy the following documents in the  
30 record of any disciplinary proceeding resulting in action that is  
31 required to be reported pursuant to Section 805:

- 32 (1) Any statement of charges.
- 33 (2) Any document, medical chart, or exhibits in evidence.
- 34 (3) Any opinion, findings, or conclusions.

35 (b) The information so disclosed shall be kept confidential and  
36 not subject to discovery, in accordance with Section 800, except  
37 that it may be reviewed, as provided in subdivision (c) of Section  
38 800, and may be disclosed in any subsequent disciplinary hearing  
39 conducted pursuant to the Administrative Procedure Act (Chapter



1 5 (commencing with Section 11500) of Part 1 of Division 3 of Title  
2 of the Government Code).

3 ~~(e) Each agency specified in subdivision (a) may audit the~~  
4 ~~records of any peer review body to determine whether the peer~~  
5 ~~review body is in compliance with, or has complied with, the~~  
6 ~~requirements of Section 805. The agency may conduct these audits~~  
7 ~~in conjunction with the State Department of Health Services.~~  
8 ~~Nothing in this subdivision shall require these agencies to establish~~  
9 ~~a comprehensive auditing program for all peer review bodies that~~  
10 ~~review the licentiates of the agency.~~

11 ~~(d) Each agency specified in subdivision (a) shall use redacted~~  
12 ~~records and other sources of information in conducting an initial~~  
13 ~~audit review unless an investigation warrants a greater intrusion~~  
14 ~~into particular identifiable patients' private medical information.~~

15 ~~(e) Nothing in this section shall be construed to narrow, qualify,~~  
16 ~~or overrule the authority of a licensing agency to obtain access to~~  
17 ~~patient information if it is necessary in order to completely and~~  
18 ~~accurately investigate a report concerning its licentiate.~~

19 SEC. 4. *Section 805.2 is added to the Business and*  
20 *Professions Code, to read:*

21 *805.2. It is the intent of the Legislature to provide for a peer*  
22 *review monitor to review peer review bodies throughout the state*  
23 *and across all required reporting entities in order to evaluate their*  
24 *compliance with 805 reporting requirements, and to recommend*  
25 *improvements regarding those peer review processes to the*  
26 *individual entities. The monitor shall review actions taken by the*  
27 *Medical Board of California pursuant to 805 reporting to assure*  
28 *appropriate investigation and prosecution of 805 actions. The*  
29 *monitor shall report its findings regarding compliance with 805*  
30 *reporting and actions taken pursuant to 805 filings with the*  
31 *Medical Board of California and shall make final*  
32 *recommendations for improvements to the 805 process to the*  
33 *Legislature by January 1, 2003.*

34 SEC. 5. *Section 805.5 of the Business and Professions Code*  
35 *is amended to read:*

36 *805.5. (a) Prior to granting or renewing staff privileges for*  
37 *any physician and surgeon, psychologist, podiatrist, or dentist, any*  
38 *health facility licensed pursuant to Division 2 (commencing with*  
39 *Section 1200) of the Health and Safety Code, or any health care*  
40 *service plan or medical care foundation, or the medical staff of the*



1 institution shall request a report from the Medical Board of  
2 California, the Board of Psychology, the Osteopathic Medical  
3 Board of California, or the Dental Board of California to determine  
4 if any report has been made pursuant to Section 805 indicating that  
5 the applying physician and surgeon, psychologist, podiatrist, or  
6 dentist has been denied staff privileges, been removed from a  
7 medical staff, or had his or her staff privileges restricted as  
8 provided in Section 805. The request shall include the name and  
9 California license number of the physician and surgeon,  
10 psychologist, podiatrist, or dentist. Furnishing of a copy of the 805  
11 report shall not cause the 805 report to be a public record.

12 (b) Upon a request made by, or on behalf of, an institution  
13 described in subdivision (a) or its medical staff, which is received  
14 on or after January 1, 1980, the board shall furnish a copy of any  
15 report made pursuant to Section 805. However, the board shall not  
16 send a copy of a report (1) if the denial, removal, or restriction was  
17 imposed solely because of the failure to complete medical records,  
18 (2) if the board has found the information reported is without  
19 merit, or (3) if a period of three years has elapsed since the report  
20 was submitted. This three-year period shall be tolled during any  
21 period the licentiate has obtained a judicial order precluding  
22 disclosure of the report, unless the board is finally and  
23 permanently precluded by judicial order from disclosing the  
24 report. In the event a request is received by the board while the  
25 board is subject to a judicial order limiting or precluding  
26 disclosure, the board shall provide a disclosure to any qualified  
27 requesting party as soon as practicable after the judicial order is no  
28 longer in force.

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

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

37 ~~SEC. 5.~~

38 *SEC. 6.* Section 805.6 is added to the Business and  
39 Professions Code, to read:



1 805.6. (a) The Medical Board of California, the Osteopathic  
2 Medical Board, and the Dental Board of California shall establish  
3 a system of electronic notification that is either initiated by the  
4 board or can be accessed by qualified subscribers, and that is  
5 designed to achieve early notification to qualified recipients of the  
6 existence of new reports that are filed pursuant to Section 805.

7 (b) The State Department of Health Services shall notify the  
8 appropriate licensing agency of any reporting violations pursuant  
9 to Section 805.

10 ~~SEC. 6.~~

11 *SEC. 7.* Section 805.7 is added to the Business and  
12 Professions Code, to read:

13 805.7. (a) The Medical Board of California shall work with  
14 interested parties in the pursuit of establishing a pilot program,  
15 similar to those proposed by the Citizens Advocacy Center, of  
16 early detection of potential quality problems and resolutions  
17 through informal educational interventions.

18 (b) The Medical Board of California shall report to the  
19 Legislature its findings and recommendations regarding the  
20 implementation of this pilot program before January 31, 2003.

21 ~~SEC. 7.~~

22 *SEC. 8.* Section 806 of the Business and Professions Code is  
23 amended to read:

24 806. Each agency in the department receiving reports  
25 pursuant to the preceding sections shall prepare a statistical report  
26 based upon these records for presentation to the Legislature not  
27 later than 30 days after the commencement of each regular session  
28 of the Legislature, including by the type of peer review body, and,  
29 where applicable, type of health care facility, the number of reports  
30 received and a summary of administrative and disciplinary action  
31 taken with respect to these reports and any recommendations for  
32 corrective legislation if the agency considers legislation to be  
33 necessary.

34 ~~SEC. 8.~~

35 *SEC. 9.* Section 2313 of the Business and Professions Code is  
36 amended to read:

37 2313. The Division of Medical Quality shall report annually  
38 to the Legislature, no later than October 1 of each year, the  
39 following information:



1 (a) The total number of temporary restraining orders or interim  
2 suspension orders sought by the board or the division to enjoin  
3 licensees pursuant to Sections 125.7, 125.8 and 2311, the  
4 circumstances in each case that prompted the board or division to  
5 seek that injunctive relief, and whether a restraining order or  
6 interim suspension order was actually issued.

7 (b) The total number and types of actions for unprofessional  
8 conduct taken by the board or a division against licensees, the  
9 number and types of actions taken against licensees for  
10 unprofessional conduct related to prescribing drugs, narcotics, or  
11 other controlled substances.

12 (c) Information relative to the performance of the division,  
13 including the following: number of consumer calls received;  
14 number of consumer calls or letters designated as  
15 discipline-related complaints; number of calls resulting in  
16 complaint forms being sent to complainants and number of forms  
17 returned; number of Section 805 reports by type; number of  
18 Section 801 and Section 803 reports; coroner reports received;  
19 number of convictions reported to the division; number of criminal  
20 filings reported to the division; number of complaints and referrals  
21 closed, referred out, or resolved without discipline, respectively,  
22 prior to accusation; number of accusations filed and final  
23 disposition of accusations through the division and court review,  
24 respectively; final physician discipline by category; number of  
25 citations issued with fines and without fines, and number of public  
26 reprimands issued; number of cases in process more than six  
27 months from receipt by the division of information concerning the  
28 relevant acts to the filing of an accusation; average and median  
29 time in processing complaints from original receipt of complaint  
30 by the division for all cases at each stage of discipline and court  
31 review, respectively; number of persons in diversion, and number  
32 successfully completing diversion programs and failing to do so,  
33 respectively; probation violation reports and probation revocation  
34 filings and dispositions; number of petitions for reinstatement and  
35 their dispositions; and caseloads of investigators for original cases  
36 and for probation cases, respectively.

37 “Action,” for purposes of this section, includes proceedings  
38 brought by, or on behalf of, the division against licensees for  
39 unprofessional conduct which have not been finally adjudicated,  
40 as well as disciplinary actions taken against licensees.



1 (d) The total number of reports received pursuant to Section  
2 805 by the type of peer review body reporting and, where  
3 applicable, the type of health care facility involved and the total  
4 number and type of administrative or disciplinary actions taken by  
5 the Medical Board of California with respect to the reports.

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