

Senate Bill No. 1955

CHAPTER 1150

An act to amend Sections 800, 1648.20, 2460, 2475, 2486, 2496, 2499.5, 2602, 2607.5, 2620.7, 2660, 2684, 3010, 3013, 3014.5, 3710, 3716, 3717, 3718, 3735.3, 3740, 3750.5, 3753.1, 3758.6, 3761, 3770, 3774, 3777, 5061, 5108, 6710, 6714, 8710, and 22253 of, to add Sections 450.2, 453, 2660.2, 2661.6, 3010.1, 3014.6, 3025.6, 3751.1, 3766, 3767, 3768, and 22253.2 to, and to repeal Sections 3712.5, 3750.6, and 3775.1 of, the Business and Professions Code, and to amend Section 123105 of the Health and Safety Code, relating to professions and vocations, and making an appropriation therefor.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1955, Figueroa. Professions and vocations.

(1) Existing law prohibits a public member appointed to a board from, among other things, having within the previous 5 years of their appointment a specified business relationship with a licensee of that board or having been engaged in the business or industry being regulated by that board.

This bill would additionally prohibit a public member appointed to a board from being a current or past licensee of that board or from being a close family member of a licensee of that board. The bill would additionally require all newly appointed board members to complete a training and orientation program sponsored by the Department of Consumer Affairs regarding the functions, responsibilities, and obligations of board members. The bill would require the department to adopt regulations necessary to establish the training and orientation program, including its content.

(2) Existing law provides for the licensing and regulation of the practice of dentistry by the Dental Board of California. Existing law requires that a fact sheet be given to all patients prior to the performance of dental restoration work, except for any procedure where a patient does not have a structure or device placed in his or her mouth with the intent that it remain there indefinitely.

This bill would instead apply the exemption only to a surgical, endodontic, periodontic, or orthodontic dental procedure meeting that requirement.



(3) Existing law provides for the licensure and regulation of podiatric medicine by the Board of Podiatric Medicine. Existing law terminates the existence of the board on July 1, 2003.

This bill would extend the existence of the board to July 1, 2007.

Existing law requires, for certification as a podiatrist, that an applicant meet specified examination requirements. Existing law also requires the board to impose specified continuing education requirements, including an examination requirement.

The bill would revise these examination requirements.

Existing law provides for a biennial certificate renewal fee of \$900 until January 1, 2004, and reduces the fee to \$800 as of that date.

This bill would continue the \$900 biennial certification renewal fee until January 1, 2006, and would reduce it to \$800 as of that date.

Moneys from these fees are deposited into the Contingent Fund of the Medical Board of California, which is a continuously appropriated fund. Because this bill would increase the amount of money deposited into this fund, it would make an appropriation.

(4) Existing law provides for the licensing and regulation of the practice of optometry by the State Board of Optometry and provides for the employment of an executive officer, as specified. The existence of the board and the executive officer will be terminated on July 1, 2003.

This bill would instead terminate the existence of the board and the executive officer on January 1, 2003, and, as of that date, would provide for the formation of a new board and employment of a new executive officer both of which would be terminated on July 1, 2005. The bill would grant the new board certain authority parallel with the authority of the previous board. The bill would also provide for the appointment and staggering of terms of board members, as specified.

The bill would authorize the board to adopt regulations clarifying the level of training and level of supervision of assistants to optometrists.

(5) Existing law provides for the licensure and regulation of respiratory care practitioners by the Respiratory Care Board of California and provides for the employment of an executive officer, as specified. The existence of the board and the executive officer will be terminated July 1, 2003.

This bill would extend the existence of the board and the executive officer to July 1, 2007.

Existing law authorizes the board or appointees of the board to inspect specified reports and records regarding respiratory care, treatment, services, or staff, and requires an employer to report specified employee information to the board.

This bill would revise the inspection requirements to include, in certain instances, copying records, and would provide that the failure to



provide certain documents and records, as specified, is punishable by an administrative fine of up to \$10,000 per violation.

Moneys from these fines would be deposited into the Respiratory Care Fund, which is a continuously appropriated fund. Because this bill would increase the amount of money deposited into this fund, it would make an appropriation.

Existing law requires applicants for licensure to provide verification of, and to meet, specified education requirements, and requires respiratory therapy schools to meet certain requirements. Existing law prohibits certain fees imposed on respiratory therapy schools from exceeding specified limits.

This bill would revise the educational requirements. The bill would also revise the requirements for respiratory therapy schools, and would delete the maximum limit on the fees imposed on respiratory therapy schools.

Existing law authorizes the board to deny, suspend, or revoke the license of an applicant or licenseholder who has committed certain actions, including using alcoholic beverages in a dangerous or injurious manner, as specified.

This bill would require instead that, in order for the board to take this action with regard to alcohol use, the person have applied for employment or worked in any health care profession or environment while under the influence of alcohol.

Existing law authorizes a person whose license has been revoked or suspended, or who has been placed on probation to petition the board for reinstatement, modification, or termination of probation, if certain conditions are met.

This bill would authorize the holder of a conditional or probationary license issued prior to February 1, 2002, on specified grounds, to submit a petition to terminate probation prior to December 31, 2003.

Existing law authorizes an administrative disciplinary decision imposing terms of probation to require the licensee probationer pay the monetary costs associated with monitoring the probation.

This bill would prohibit the renewal or reinstatement of the license of a licensee who has failed to pay all of these costs once he or she has served the term of probation.

Existing law requires the board to punish a person representing himself as a respiratory care practitioner without a license by the issuance of a citation and the assessment of an administrative fine of \$1,000.

This bill would revise and expand this requirement. The board would authorize a person with a citation to appeal the board within a certain



time period of service of the citation, and would provide procedures whereby a person could contest the citation.

Moneys from the fines are deposited into the Respiratory Care Fund, which is a continuously appropriated fund. Because this bill would increase and expand money derived from fines that is deposited into this fund, it would make an appropriation.

The bill would also make nonsubstantive changes to the provisions governing respiratory care practitioners and would delete an obsolete reporting requirement imposed on the board.

(6) Existing law provides for the regulation, licensure, and discipline of public accountants by the California Board of Accountancy in the Department of Consumer Affairs. Among other things, on January 1, 2003, it defines “director” and “officer” and prohibits a person practicing public accountancy from performing services for a client, an officer or director of a client, or a client-sponsored retirement plan for a commission. On January 1, 2003, the board is authorized to issue subpoenas for the attendance of witnesses and the production of documents pertinent to any inquiry, investigation, hearing, proceeding, or action conducted by the board in any part of the state.

This bill would provide that a director and an officer does not include a director or an officer of a nonprofit corporation or a corporation that meets the certain small business workforce or annual receipts requirements. The bill would limit the subpoena authority to its investigations and proceedings.

(7) Existing law provides for the licensure and regulation of physical therapists and physical therapy assistants by the Physical Therapy Board of California. The existence of the board would terminate July 1, 2003.

This bill would extend the existence of the board to July 1, 2007.

Existing law requires that to renew a license for the practice of physical therapy a licensee apply for renewal and pay a renewal fee, as specified.

This bill would require a licensee to disclose on the license renewal application any misdemeanor or other criminal offense for which he or she has been found guilty or to which he or she has pleaded guilty or no contest.

Existing law authorizes the Physical Therapy Board of California to conduct disciplinary proceedings against a licensee, including imposing probationary conditions, for specified causes.

This bill would require the board to establish a probation monitoring program. The bill would authorize the program to employ nonpeace officer staff to perform its probation monitoring and would provide that the program be funded with moneys in the Physical Therapy Fund.



The Physical Therapy Fund is a continuously appropriated fund. Because funding this program would allow an existing appropriation to be made for a new purpose, it would make an appropriation.

This bill would authorize the board to refuse a license to an applicant guilty of specified unprofessional conduct or sexual activity, or issue the applicant a license subject to certain conditions. The bill would authorize the applicant to appeal the board's action.

Existing law provides for specified boards, not including the Physical Therapy Board of California, to keep certain records relating to unprofessional conduct, civil actions, and complaints against persons licensed or certified by the boards.

This bill would add the Physical Therapy Board of California to the list of boards to which these provisions apply.

Existing law requires a physical therapist to document specified patient information.

This bill would additionally require a physical therapist to document the care actually provided and to legibly sign the patient record.

Existing law requires certain health care professionals to provide patient record access to patients, as specified.

This bill would add physical therapists to the list of health care professionals subject to this requirement.

Existing law provides the authority for the board to take disciplinary action for specified actions by a licensee.

This bill would characterize these acts as unprofessional conduct, would expand the acts, and would make both physical therapists and physical therapy assistants subject to disciplinary action for all of the acts listed.

(8) Existing law provides for the regulation of tax preparers and makes a violation of the provisions regulating tax preparers a crime. Existing law specifies that each violation of the provisions regulating the practice of tax preparers constitutes a separate offense.

This bill would authorize the Franchise Tax Board to notify the California Tax Education Council when it identifies an individual who has violated specific provisions regulating tax preparers. The bill would authorize the board, in this regard, to cite a violating individual, levy a fine of up to \$1,000 per violation, and issue a cease and desist order. The bill would authorize the California Tax Education Council to enter into an agreement with the board that would reimburse the board for any expenses the board incurs for the purpose of enforcing those provisions.

(9) This bill would declare the intent of the Legislature, upon enactment of SB 2022 of the 2001–02 Regular Session, to pursue the creation of an independent board that would regulate the practice of dental hygienists.



(10) Existing law provides for the Board for Professional Engineers and Land Surveyors in the Department of Consumer Affairs, which is repealed on July 1, 2004. Existing law provides for the adoption by the board of rules and regulations of professional conduct, which is repealed on January 1, 2005. Existing law also provides for the appointment by the board of an executive officer, which is repealed on January 1, 2005.

The bill would extend the repeal dates for these provisions by one year.

(11) The bill would incorporate additional changes in Section 800 of the Business and Professions Code, proposed by SB 1950, to be operative only if SB 1950 and this bill are both chaptered and become effective on or before January 1, 2003, and this bill is chaptered last.

The bill also would incorporate additional changes in Section 123105 of the Health and Safety Code, proposed by SB 2026, to be operative only if SB 2026 and this bill are both chaptered and become effective on or before January 1, 2003, and this bill is chaptered last.

Appropriation: yes.

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

SECTION 1. It is the intent of the Legislature, upon the enactment of Senate Bill 2022 of the 2001–02 Regular Session, which will codify the scope of practice of dental hygienists, to pursue the creation of an independent board that would regulate the practice of dental hygienists.

SEC. 1.2. Section 450.2 is added to the Business and Professions Code, to read:

450.2. In order to avoid a potential for a conflict of interest, a public member of a board shall not:

- (a) Be a current or past licensee of that board.
- (b) Be a close family member of a licensee of that board.

SEC. 1.4. Section 453 is added to the Business and Professions Code, to read:

453. Every newly appointed board member shall, within one year of assuming office, complete a training and orientation program offered by the department regarding, among other things, his or her functions, responsibilities, and obligations as a member of a board. The department shall adopt regulations necessary to establish this training and orientation program and its content.

SEC. 2. Section 800 of the Business and Professions Code is amended to read:

800. (a) The Medical Board of California, the Board of Psychology, the Dental Board of California, the Osteopathic Medical Board of California, the Board of Chiropractic Examiners, the California Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric



Technicians, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, the Physical Therapy Board of California, and the State Board of Pharmacy shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to (1) any conviction of a crime in this or any other state that constitutes unprofessional conduct pursuant to the reporting requirements of Section 803; (2) any judgment or settlement requiring the licensee or his or her insurer, to pay any amount of damages in excess of three thousand dollars (\$3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802; (3) any public complaints for which provision is hereinafter made, pursuant to subdivision (b) of this section; (4) disciplinary information reported pursuant to Section 805.

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

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

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

(c) The contents of any central file which are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by



a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications.

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

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

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

SEC. 2.5. Section 800 of the Business and Professions Code is amended to read:

800. (a) The Medical Board of California, the Board of Psychology, the Dental Board of California, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, the Physical Therapy Board of California, and the California State Board of Pharmacy shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to the following information:

(1) Any conviction of a crime in this or any other state that constitutes unprofessional conduct pursuant to the reporting requirements of Section 803.

(2) Any judgment or settlement requiring the licensee or his or her insurer to pay any amount of damages in excess of three thousand dollars (\$3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802.

(3) Any public complaints for which provision is made pursuant to subdivision (b).

(4) Disciplinary information reported pursuant to Section 805.

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



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

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

(c) The contents of any central file that are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications. The information required to be disclosed pursuant to Section 803.1 shall not be considered among the contents of a central file for the purposes of this subdivision.

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

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

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

SEC. 3. Section 1648.20 of the Business and Professions Code is amended to read:

1648.20. (a) This article shall not apply to any surgical, endodontic, periodontic, or orthodontic dental procedure in which dental restorative materials are not used.

(b) For purposes of this article, "dental restorative materials" means any structure or device placed into a patient's mouth with the intent that it remain there for an indefinite period beyond the completion of the dental procedure, including material used for filling cavities in, or



rebuilding or repairing the organic structure of, a tooth or teeth, but excluding synthesized structures or devices intended to wholly replace an extracted tooth or teeth, such as implants.

SEC. 4. Section 2460 of the Business and Professions Code is amended to read:

2460. There is created within the jurisdiction of the Medical Board of California and its divisions the California Board of Podiatric Medicine.

This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the California Board of Podiatric Medicine subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 4.2. Section 2475 of the Business and Professions Code is amended to read:

2475. Unless otherwise provided by law, no postgraduate trainee, intern, resident postdoctoral fellow, or instructor may engage in the practice of podiatric medicine, or receive compensation therefor, or offer to engage in the practice of podiatric medicine unless he or she holds a valid, unrevoked, and unsuspended certificate to practice podiatric medicine issued by the division. However, a graduate of an approved college or school of podiatric medicine upon whom the degree doctor of podiatric medicine has been conferred, who is issued a resident's license, which may be renewed annually for up to four years for this purpose by the division upon recommendation of the board, and who is enrolled in a postgraduate training program approved by the board, may engage in the practice of podiatric medicine whenever and wherever required as a part of that program under the following conditions:

(a) A graduate with a resident's license in an approved internship, residency, or fellowship program may participate in training rotations outside the scope of podiatric medicine, under the supervision of a physician and surgeon who holds a medical doctor or doctor of osteopathy degree wherever and whenever required as a part of the training program, and may receive compensation for that practice. If the graduate fails to receive a license to practice podiatric medicine under this chapter within two years from the commencement of the postgraduate training, all privileges and exemptions under this section shall automatically cease.

(b) Podiatric hospitals functioning as a part of the teaching program of an approved college or school of podiatric medicine in this state may exchange instructors or resident or assistant resident podiatrists with another approved college or school of podiatric medicine not located in



this state, or those hospitals may appoint a graduate of an approved school as such a resident for purposes of postgraduate training. Those instructors and residents may practice and be compensated as provided in subdivision (a), but that practice and compensation shall be for a period not to exceed one year.

SEC. 5. Section 2486 of the Business and Professions Code is amended to read:

2486. The division shall issue, upon the recommendation of the board, a certificate to practice podiatric medicine if the applicant meets all of the following requirements:

(a) The applicant has graduated from an approved school or college of podiatric medicine and meets the requirements of Section 2483.

(b) The applicant, within the past 10 years, has passed parts I, II, and III of the examination administered by the National Board of Podiatric Medical Examiners of the United States or has passed a written examination that is recognized by the board to be the equivalent in content to the examination administered by the National Board of Podiatric Medical Examiners of the United States.

(c) The applicant has satisfactorily completed the postgraduate training required by Section 2484.

(d) The applicant has passed within the past 10 years any oral and practical examination that may be required of all applicants by the board to ascertain clinical competence.

(e) The applicant has committed no acts or crimes constituting grounds for denial of a certificate under Division 1.5 (commencing with Section 475).

(f) The board determines that no disciplinary action has been taken against the applicant by any podiatric licensing authority and that the applicant has not been the subject of adverse judgments or settlements resulting from the practice of podiatric medicine that the board determines constitutes evidence of a pattern of negligence or incompetence.

(g) A disciplinary databank report regarding the applicant has been directly presented to the board from the Federation of Podiatric Medical Boards.

SEC. 6. Section 2496 of the Business and Professions Code is amended to read:

2496. In order to ensure the continuing competence of persons licensed to practice podiatric medicine, the board shall adopt and administer regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) requiring continuing education of those licensees. The board shall require those licensees to demonstrate



satisfaction of the continuing education requirements and one of the following requirements at each license renewal:

(a) Passage of an examination administered by the board within the past 10 years.

(b) Passage of an examination administered by an approved specialty certifying board within the past 10 years.

(c) Current diplomate, board-eligible, or board-qualified status granted by an approved specialty certifying board within the past 10 years.

(d) Recertification of current status by an approved specialty certifying board within the past 10 years.

(e) Successful completion of an approved residency or fellowship program within the past 10 years.

(f) Granting or renewal of current staff privileges within the past five years by a health care facility that is licensed, certified, accredited, conducted, maintained, operated, or otherwise approved by an agency of the federal or state government or an organization approved by the Medical Board of California.

(g) Successful completion within the past five years of an extended course of study approved by the board.

(h) Passage within the past 10 years of Part III of the examination administered by the National Board of Podiatric Medical Examiners.

SEC. 7. Section 2499.5 of the Business and Professions Code is amended to read:

2499.5. The following fees apply to certificates to practice podiatric medicine. The amount of fees prescribed for doctors of podiatric medicine shall be those set forth in this section unless a lower fee is established by the board in accordance with Section 2499.6. Fees collected pursuant to this section shall be fixed by the board in amounts not to exceed the actual costs of providing the service for which the fee is collected.

(a) Each applicant for a certificate to practice podiatric medicine shall pay an application fee of twenty dollars (\$20) at the time the application is filed. If the applicant qualifies for a certificate, he or she shall pay a fee which shall be fixed by the board at an amount not to exceed one hundred dollars (\$100) nor less than five dollars (\$5) for the issuance of the certificate.

(b) The oral examination fee shall be seven hundred dollars (\$700), or the actual cost, whichever is lower, and shall be paid by each applicant. If the applicant's credentials are insufficient or if the applicant does not desire to take the examination, and has so notified the board 30 days prior to the examination date, only the examination fee is returnable



to the applicant. The board may charge an examination fee for any subsequent reexamination of the applicant.

(c) Each applicant who qualifies for a certificate, as a condition precedent to its issuance, in addition to other fees required by this section, shall pay an initial license fee. The initial license fee shall be eight hundred dollars (\$800). The initial license shall expire the second year after its issuance on the last day of the month of birth of the licensee. The board may reduce the initial license fee by up to 50 percent of the amount of the fee for any applicant who is enrolled in a postgraduate training program approved by the board or who has completed a postgraduate training program approved by the board within six months prior to the payment of the initial license fee.

(d) The biennial renewal fee shall be nine hundred dollars (\$900). This fee shall remain in effect only until January 1, 2006, and as of that date is reduced to eight hundred dollars (\$800), unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date. Any licensee enrolled in an approved residency program shall be required to pay only 50 percent of the biennial renewal fee at the time of his or her first renewal.

(e) The delinquency fee is one hundred fifty dollars (\$150).

(f) The duplicate wall certificate fee is forty dollars (\$40).

(g) The duplicate renewal receipt fee is forty dollars (\$40).

(h) The endorsement fee is thirty dollars (\$30).

(i) The letter of good standing fee or for loan deferment is thirty dollars (\$30).

(j) There shall be a fee of sixty dollars (\$60) for the issuance of a resident's license under Section 2475.

(k) The application fee for ankle certification under Section 2472 for persons licensed prior to January 1, 1984, shall be fifty dollars (\$50). The examination and reexamination fee for this certification shall be seven hundred dollars (\$700).

(l) The filing fee to appeal the failure of an oral examination shall be twenty-five dollars (\$25).

(m) The fee for approval of a continuing education course or program shall be one hundred dollars (\$100).

SEC. 8. Section 2602 of the Business and Professions Code is amended to read:

2602. The Physical Therapy Board of California, hereafter referred to as the board, shall enforce and administer this chapter.

This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.



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

SEC. 9. Section 2607.5 of the Business and Professions Code is amended to read:

2607.5. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

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

SEC. 10. Section 2620.7 of the Business and Professions Code is amended to read:

2620.7. (a) A physical therapist shall document his or her evaluation, goals, treatment plan, and summary of treatment in the patient record.

(b) A physical therapist shall document the care actually provided to a patient in the patient record.

(c) A physical therapist shall sign the patient record legibly.

(d) Patient records shall be maintained for a period of no less than seven years following the discharge of the patient, except that the records of unemancipated minors shall be maintained at least one year after the minor has reached the age of 18 years, and not in any case less than seven years.

SEC. 11. Section 2660 of the Business and Professions Code is amended to read:

2660. The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

(a) Advertising in violation of Section 17500.

(b) Fraud in the procurement of any license under this chapter.

(c) Procuring or aiding or offering to procure or aid in criminal abortion.

(d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapy assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.



(e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.

(f) Habitual intemperance.

(g) Addiction to the excessive use of any habit-forming drug.

(h) Gross negligence in his or her practice as a physical therapist or physical therapy assistant.

(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.

(j) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.

(k) The aiding or abetting of any person to engage in the unlawful practice of physical therapy.

(l) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a physical therapist or physical therapy assistant.

(m) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Board of Dental Examiners of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(n) The commission of verbal abuse or sexual harassment.

SEC. 12. Section 2660.2 is added to the Business and Professions Code, to read:



2660.2. (a) The board may refuse a license to any applicant guilty of unprofessional conduct or sexual activity referred to in Section 2660.1. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct but who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of the type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of physical therapy.

(b) The applicant shall have the right to appeal the denial, or the issuance with terms and conditions, of any license in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

SEC. 13. Section 2661.6 is added to the Business and Professions Code, to read:

2661.6. (a) The board shall establish a probation monitoring program to monitor probationary licenses.

(b) The program may employ nonpeace officer staff to perform its probation monitoring.

(c) The program shall be funded with moneys in the Physical Therapy Fund.

SEC. 14. Section 2684 of the Business and Professions Code is amended to read:

2684. (a) Notwithstanding Section 2422, any license or approval for the practice of physical therapy shall expire at 12 midnight on the last day of the birth month of the licensee or holder of the approval during the second year of a two-year term, if not renewed.

(b) To renew an unexpired license or approval, the licensee or the holder of the approval shall, on or before the dates on which it would otherwise expire, apply for renewal on a form prescribed by the board and pay the prescribed renewal fee. The licensee shall disclose on his or her license renewal application any misdemeanor or other criminal



offense for which he or she has been found guilty or to which he or she has pleaded guilty or no contest.

(c) A license that has expired may be renewed within five years upon payment of all accrued and unpaid renewal fees.

SEC. 15. Section 3010 of the Business and Professions Code is amended to read:

3010. There is in the Department of Consumer Affairs a State Board of Optometry in which the enforcement of this chapter is vested. The board consists of nine members, three of whom shall be public members.

Six members of the board shall constitute a quorum.

This section shall remain in effect only until January 1, 2003, and, as of that date, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2003, deletes or extends that date.

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

SEC. 16. Section 3010.1 is added to the Business and Professions Code, to read:

3010.1. (a) There is in the Department of Consumer Affairs a State Board of Optometry in which the enforcement of this chapter is vested. The board consists of 11 members, five of whom shall be public members.

Six members of the board shall constitute a quorum.

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

(c) This section shall remain in effect only until July 1, 2005, and, as of that date, is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 17. Section 3013 of the Business and Professions Code is amended to read:

3013. (a) Each member of the board shall hold office for a term of four years, and shall serve until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.

(b) Vacancies occurring shall be filled by appointment for the unexpired term.

(c) The Governor shall appoint three of the public members and the six members qualified as provided in Section 3011. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies which occur on or after January 1, 1983.



(d) No board member serving between January 1, 2000, and June 1, 2002, inclusive, shall be eligible for reappointment.

(e) For initial appointments made on or after January 1, 2003, one of the public members appointed by the Governor and two of the professional members shall serve terms of one year. One of the public members appointed by the Governor and two of the professional members shall serve terms of three years. The remaining public member appointed by the Governor and the remaining two professional members shall serve terms of four years. The public members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall each serve for a term of four years.

SEC. 18. Section 3014.5 of the Business and Professions Code is amended to read:

3014.5. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall remain in effect only until January 1, 2003, and, as of that date, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2003, deletes or extends that date.

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

SEC. 19. Section 3014.6 is added to the Business and Professions Code, to read:

3014.6. (a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 20. Section 3025.6 is added to the Business and Professions Code, to read:

3025.6. The board may adopt regulations clarifying the level of training and the level of supervision of assistants.

SEC. 21. Section 3710 of the Business and Professions Code is amended to read:

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

This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that becomes



operative on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

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

SEC. 22. Section 3712.5 of the Business and Professions Code is repealed.

SEC. 23. Section 3716 of the Business and Professions Code is amended to read:

3716. The board may employ an executive officer exempt from civil service and, subject to the provisions of law relating to civil service, clerical assistants and, except as provided in Section 159.5, other employees as it may deem necessary to carry out its powers and duties.

This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

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

SEC. 24. Section 3717 of the Business and Professions Code is amended to read:

3717. (a) The board, or any licensed respiratory care practitioner, enforcement staff, or investigative unit appointed by the board, may inspect, or require reports from, a general or specialized hospital or any other facility or corporation providing respiratory care, treatment, or services and the respiratory care staff thereof, with respect to the respiratory care, treatment, services, or facilities provided therein, or the employment of staff providing the respiratory care, treatment, or services, and may inspect and copy respiratory care patient records with respect to that care, treatment, services, or facilities. The authority to make inspections and to require reports as provided by this section is subject to the restrictions against disclosure contained in Section 2225. Those persons may also inspect and copy employment records relevant to an official investigation provided that the written request to inspect the records specifies the portion of the records to be inspected.

(b) The failure of an employer to provide documents as required by this section is punishable by an administrative fine not to exceed ten thousand dollars (\$10,000) per violation. This penalty shall be in addition to, and not in lieu of, any other civil or criminal remedies.

SEC. 25. Section 3718 of the Business and Professions Code is amended to read:

3718. The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.



SEC. 26. Section 3735.3 of the Business and Professions Code is amended to read:

3735.3. An applicant for a license as a respiratory care practitioner may not be scheduled to sit for the examination until verification from the program director, in a form acceptable to the board, declaring that the applicant has completed his or her respiratory training program and has met all the educational requirements for the awarding of an associate degree is received in the board's office. An official transcript from the educational institution's registrar's office shall be submitted to the board prior to the issuance of a license as a respiratory care practitioner.

SEC. 27. Section 3740 of the Business and Professions Code is amended to read:

3740. (a) Except as otherwise provided in this chapter, all applicants for licensure under this chapter shall have completed a board approved respiratory care program and been awarded a minimum of an associate degree.

(b) Notwithstanding subdivision (a), meeting the following qualifications shall be deemed equivalent to the required education:

- (1) Enrollment in an approved baccalaureate degree program.
- (2) Completion of science, general academic, and respiratory therapy course work commensurate with the requirements for an associate degree in subdivision (a).

(c) An applicant whose application is based on a diploma issued to the applicant by a foreign respiratory therapy school or a certificate or license issued by another state, district, or territory of the United States, shall furnish documentary evidence, satisfactory to the board, that he or she has completed a respiratory therapy school or a course of professional instruction equivalent to that required in subdivision (a), for a respiratory care practitioner applicant.

(d) Education programs for respiratory care that are accredited programs in public or private postsecondary education institutions or universities accredited by a regional accreditation agency or association recognized by the United States Department of Education and the Commission on Accreditation of Allied Health Education Programs, as verified by the board biannually, may be considered approved programs by the board unless the board determines otherwise.

(e) A school shall give the director of a respiratory care program adequate release time to perform his or her administrative duties consistent with the established policies of the educational institution.

(f) Satisfactory evidence as to educational qualifications shall take the form of certified transcripts of the applicant's college record mailed directly to the board from the educational institution. However, the



board may require an evaluation of educational credentials by an evaluation service approved by the board.

(g) At the board's discretion, it may waive its educational requirements if evidence is presented and the board deems it as meeting the current educational requirements that will ensure the safe and competent practice of respiratory care. This evidence may include, but is not limited to:

- (1) Work experience.
- (2) Good standing of licensure in another state.
- (3) Previous good standing of licensure in the State of California.

(h) Nothing contained in this section shall prohibit the board from disapproving any respiratory therapy school, nor from denying the applicant if the instruction received by the applicant or the courses were not equivalent to that required by the board.

SEC. 28. Section 3750.5 of the Business and Professions Code is amended to read:

3750.5. In addition to any other grounds specified in this chapter, the board may deny, suspend, or revoke the license of any applicant or licenseholder who has done any of the following:

(a) Obtained or possessed in violation of law, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished or administered to another, any controlled substances as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 7 (commencing with Section 4210) of Chapter 9 of this code.

(b) Used any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 7 (commencing with Section 4210) of Chapter 9 of this code.

(c) Applied for employment or worked in any health care profession or environment while under the influence of alcohol.

(d) Been convicted of a criminal offense involving the consumption or self-administration of any of the substances described in subdivisions (a) and (b), or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a), in which event the record of the conviction is conclusive evidence thereof.

(e) Been committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in subdivisions (a), (b), and (c), in which event the court order of commitment or confinement is prima facie evidence of that commitment or confinement.



(f) Falsified, or made grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a).

SEC. 29. Section 3750.6 of the Business and Professions Code, as added by Section 18 of Chapter 1274 of the Statutes of 1994, is repealed.

SEC. 30. Section 3751.1 is added to the Business and Professions Code, to read:

3751.1. (a) Notwithstanding the time periods set forth in subdivision (a) of Section 3751, the holder of a conditional or probationary license issued prior to February 1, 2002, on grounds that did not include a violation of subdivision (e), (f), (h), (i), (k), (l), (n), (o), or (p) of Section 3750, a violation of Section 3752.6, or a violation of Section 3755, may submit a petition to terminate probation prior to December 31, 2003.

(b) This section shall be repealed on January 1, 2004, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends that date.

SEC. 31. Section 3753.1 of the Business and Professions Code is amended to read:

3753.1. (a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation.

(b) The board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section once a licensee has served his or her term of probation.

SEC. 32. Section 3758.6 of the Business and Professions Code is amended to read:

3758.6. (a) In addition to the reporting required under Section 3758, an employer shall also report to the board the name, professional licensure type and number, and title of the person supervising the licensee who has been suspended or terminated for cause, as defined in subdivision (b) of Section 3758. If the supervisor is a licensee under this chapter, the board shall investigate whether due care was exercised by that supervisor in accordance with this chapter. If the supervisor is a health professional, licensed by another licensing board under this division, the employer shall report the name of that supervisor and any and all information pertaining to the suspension or termination for cause of the person licensed under this chapter to the appropriate licensing board.

(b) The failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars (\$10,000) per violation.



SEC. 33. Section 3761 of the Business and Professions Code is amended to read:

3761. (a) No person may represent himself or herself to be a respiratory care practitioner without a license granted under this chapter, except as otherwise provided in this chapter.

(b) No person or corporation shall knowingly employ a person who holds himself or herself out to be a respiratory care practitioner without a license granted under this chapter, except as otherwise provided in this chapter.

SEC. 34. Section 3766 is added to the Business and Professions Code, to read:

3766. (a) The board may issue a citation containing an order of abatement and civil penalties against a person who acts in the capacity of, or engages in the business of, a respiratory care practitioner in this state without having a license in good standing issued pursuant to this chapter.

(b) The board may issue a citation containing an order of abatement and civil penalties against a person employing or contracting with a person who acts in the capacity of, or engages in the business of, a respiratory care practitioner in this state without having a license in good standing issued pursuant to this chapter.

SEC. 35. Section 3767 is added to the Business and Professions Code, to read:

3767. (a) The board shall issue a citation to a person and to his or her employer or contractor, if, upon inspection or investigation, either upon complaint or otherwise, the following conditions are met:

(1) The board has probable cause to believe that the person is acting in the capacity of, or engaging in the practice of, a respiratory care practitioner in this state without having a license in good standing issued pursuant to this chapter.

(2) The person is not otherwise exempted from the provisions of this chapter.

(b) Each citation issued pursuant to subdivision (a) shall meet all of the following requirements:

(1) Be in writing and describe with particularity the basis of the citation.

(2) Contain an order of abatement and an assessment of a civil penalty in an amount not less than two hundred dollars (\$200) nor more than fifteen thousand dollars (\$15,000).

(c) A person served with a citation may appeal to the board within 15 calendar days after service of the citation with respect to any of the following:

(1) The violations alleged.



(2) The scope of the order of abatement.

(3) The amount of the civil penalty assessed.

(d) If, within 15 calendar days after service of the citation, the person cited fails to notify the board that he or she intends to appeal the citation, the citation shall be deemed a final order of the board and not subject to review by any court or agency. The board may extend the 15-day period for good cause.

(e) (1) If a person cited under this section notifies the board in a timely manner that he or she intends to contest the citation, the board shall afford an opportunity for a hearing.

(2) The board shall thereafter issue a decision, based on findings of fact, affirming, modifying, or vacating the citation, or directing other appropriate relief.

(f) With the approval of the board, the executive officer shall prescribe procedures for the issuance and appeal of a citation and procedures for a hearing under this section. The board shall adopt regulations covering the assessment of a civil penalty that shall give due consideration to the gravity of the violation, and any history of previous violations.

(g) The sanctions authorized under this section shall be separate from and in addition to, any other civil or criminal remedies.

SEC. 36. Section 3768 is added to the Business and Professions Code, to read:

3768. (a) After the exhaustion of the review procedures provided for in Section 3767, and as adopted by regulation, the board may apply to the appropriate superior court for both of the following:

(1) A judgment in the amount of the civil penalty.

(2) An order compelling the cited person to comply with the order of abatement.

(b) The application described in subdivision (a) shall include a certified copy of the final order of the board.

(c) The application described in subdivision (a) shall constitute a sufficient showing to warrant the issuance of the judgment and order.

(d) The board may employ collection agencies or other methods in order to collect civil penalties.

SEC. 37. Section 3770 of the Business and Professions Code is amended to read:

3770. The department shall keep a record of its proceedings under this chapter, and a register of all persons licensed under it. The register shall show the name of every living licensed respiratory care practitioner, his or her last known place of residence, or address of record, and the date and number of his or her certificate as a respiratory care practitioner. The department shall, once every two years, compile



a list of respiratory care practitioners authorized to practice respiratory care in the state. Any interested person is entitled to obtain a copy of that list upon application to the department and payment of an amount as may be fixed by the department, which amount shall not exceed the cost of the list so furnished.

SEC. 38. Section 3774 of the Business and Professions Code is amended to read:

3774. On or before the birthday of a licensed practitioner in every other year, following the initial licensure, the board shall mail to each practitioner licensed under this chapter, at the latest address furnished by the licensed practitioner to the executive officer of the board, a notice stating the amount of the renewal fee and the date on which it is due. The notice shall state that failure to pay the renewal fee on or before the due date and submit evidence of compliance with Sections 3719 and 3773 shall result in expiration of the license.

Each license not renewed in accordance with this section shall expire but may within a period of three years thereafter be reinstated upon payment of all accrued and unpaid renewal fees and penalty fees required by this chapter. The board may also require submission of proof of the applicant's qualifications, except that during the three-year period no examination shall be required as a condition for the reinstatement of any expired license that has lapsed solely by reason of nonpayment of the renewal fee.

SEC. 39. Section 3775.1 of the Business and Professions Code is repealed.

SEC. 40. Section 3777 of the Business and Professions Code is amended to read:

3777. Where an applicant is issued a license to practice respiratory care, and it is later discovered that all required fees have not been paid, the license shall not be renewed or reinstated unless all past and current required fees have been paid.

SEC. 41. Section 5061 of the Business and Professions Code, as amended by Assembly Bill 270 of the 2001–02 Regular Session, is amended to read:

5061. (a) Except as expressly permitted by this section, a person engaged in the practice of public accountancy shall not: (1) pay a fee or commission to obtain a client or (2) accept a fee or commission for referring a client to the products or services of a third party.

(b) A person engaged in the practice of public accountancy who is not performing any of the services set forth in subdivision (c) and who complies with the disclosure requirements of subdivision (d) may accept a fee or commission for providing a client with the products or services of a third party where the products or services of a third party are



provided in conjunction with professional services provided to the client by the person engaged in the practice of public accountancy. Nothing in this subdivision shall be construed to permit the solicitation or acceptance of any fee or commission solely for the referral of a client to a third party.

(c) A person engaged in the practice of public accountancy is prohibited from performing services for a client or an officer or director of a client, or a client-sponsored retirement plan, for a commission or from receiving a commission from a client or an officer or director of a client, or a client-sponsored retirement plan, during the period in which the person also performs for that client or officer or director of that client, or client-sponsored retirement plan, any of the services listed below and during the period covered by any historical financial statements involved in those listed services:

(1) An audit or review of a financial statement.

(2) A compilation of a financial statement when that person expects, or reasonably might expect, that a third party will use the financial statement and the compilation report does not disclose a lack of independence.

(3) An examination of prospective financial information.

For purposes of this subdivision, “director” means any person as defined under Section 164 of the Corporations Code and “officer” means any individual reported to a regulatory agency as an officer of a corporation. However, “director” and “officer” does not include a director or officer of a nonprofit corporation, or a corporation that meets the small business workforce or annual receipts requirements of Section 1896 of Title 2 of the California Code of Regulations.

(d) A person engaged in the practice of public accountancy who is not prohibited from performing services for a commission, or from receiving a commission, and who is paid or expects to be paid a commission, shall disclose that fact to any client or entity to whom the person engaged in the practice of public accountancy recommends or refers a product or service to which the commission relates.

(e) The board shall adopt regulations to implement, interpret, and make specific the provisions of this section including, but not limited to, regulations specifying the terms of any disclosure required by subdivision (d), the manner in which the disclosure shall be made, and other matters regarding the disclosure that the board deems appropriate. These regulations shall require, at a minimum, that a disclosure shall comply with all of the following:

(1) Be in writing and be clear and conspicuous.

(2) Be signed by the recipient of the product or service.



(3) State the amount of the commission or the basis on which it will be computed.

(4) Identify the source of the payment and the relationship between the source of the payment and the person receiving the payment.

(5) Be presented to the client at or prior to the time the recommendation of the product or service is made.

(f) For purposes of this section, “fee” includes, but is not limited to, a commission, rebate, preference, discount, or other consideration, whether in the form of money or otherwise.

(g) This section shall not prohibit payments for the purchase of any accounting practice or retirement payments to individuals presently or formerly engaged in the practice of public accountancy or payments to their heirs or estates.

SEC. 42. Section 5108 of the Business and Professions Code, as added by Assembly Bill 270 of the 2001–02 Regular Session, is amended to read:

5108. In connection with any investigation or action authorized by this chapter, the board may issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony pertinent or material to its inquiry, investigation, hearing, proceeding, or action conducted in any part of the state.

SEC. 43. Section 6710 of the Business and Professions Code is amended to read:

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

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

(c) This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 44. Section 6714 of the Business and Professions Code is amended to read:

6714. The board shall appoint an executive officer at a salary to be fixed and determined by the board with the approval of the Director of Finance.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes



effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 45. Section 8710 of the Business and Professions Code is amended to read:

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

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

(c) This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section shall render the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 46. Section 22253 of the Business and Professions Code is amended to read:

22253. (a) It is a violation of this chapter for a tax preparer to do any of the following:

(1) Fail to register as a tax preparer with the council.

(2) Make, or authorize the making of, any statement or representation, oral or written or recorded by any means, which is intended to induce persons to use the tax preparation service of the tax preparer, which statement or representation is fraudulent, untrue, or misleading.

(3) Obtain the signature of a customer to a tax return or authorizing document which contains blank spaces to be filled in after it has been signed.

(4) Fail or refuse to give a customer, for his or her own records, a copy of any document requiring the customer's signature, within a reasonable time after the customer signs the document.

(5) Fail to maintain a copy of any tax return prepared for a customer for four years from the date of completion or the due date of the return, whichever is later.

(6) Engage in advertising practices which are fraudulent, untrue, or misleading, including, but not limited to, assertions that the bond



required by Section 22250 in any way implies licensure or endorsement of a tax preparer by the State of California.

(7) Violate Section 17530.5 or 17530.6.

(8) Violate Section 7216 of Title 26 of the United States Code.

(9) Fail to sign a customer's tax return when payment for services rendered has been made.

(10) Fail to return, upon the demand by or on behalf of a customer, records or other data provided to the tax preparer by the customer.

(11) Knowingly give false or misleading information to the consumer pursuant to Section 22252, or give false or misleading information to the surety company pursuant to subdivision (a) of Section 22250, or give false or misleading information to the California Tax Education Council pursuant to Section 22255.

(b) Each violation of this section constitutes a separate offense.

SEC. 47. Section 22253.2 is added to the Business and Professions Code, to read:

22253.2. (a) The Franchise Tax Board may notify the California Tax Education Council when it identifies an individual who has violated paragraph (1) of subdivision (a) of Section 22253.

(b) The California Tax Education Council shall then notify the Attorney General, a district attorney, or a city attorney. Those entities may do any of the following:

(1) Cite individuals preparing tax returns in violation of subdivision (a) of Section 22253.

(2) Levy a fine up to one thousand dollars (\$1,000) per violation.

(3) Issue a cease and desist order, which shall remain in effect until the individual has come into compliance with the provisions of paragraph (1) of subdivision (a) of Section 22253.

(c) The California Tax Education Council may enter into an agreement with the Franchise Tax Board to provide reimbursement to the Franchise Tax Board for any expenses incurred by the Franchise Tax Board to implement this section.

SEC. 48. Section 123105 of the Health and Safety Code is amended to read:

123105. As used in this chapter:

(a) "Health care provider" means any of the following:

(1) A health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(2) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

(3) A home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2.



(4) A physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or pursuant to the Osteopathic Act.

(5) A podiatrist licensed pursuant to Article 22 (commencing with Section 2460) of Chapter 5 of Division 2 of the Business and Professions Code.

(6) A dentist licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code.

(7) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(8) An optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code.

(9) A chiropractor licensed pursuant to the Chiropractic Initiative Act.

(10) A marriage, family, and child counselor licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(11) A clinical social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code.

(12) A physical therapist licensed pursuant to Chapter 5.7 (commencing with Section 2600) of Division 2 of the Business and Professions Code.

(b) “Mental health records” means patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. “Mental health records” includes, but is not limited to, all alcohol and drug abuse records.

(c) “Patient” means a patient or former patient of a health care provider.

(d) “Patient records” means records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. “Patient records” includes only records pertaining to the patient requesting the records or whose representative requests the records. “Patient records” does not include information given in confidence to a health care provider by a person other than another health care provider or the patient, and that material may be removed from any records prior to inspection or copying under Section 123110 or 123115. “Patient records” does not include information contained in aggregate form, such as indices, registers, or logs.

(e) “Patient’s representative” or “representative” means a parent or the guardian of a minor who is a patient, or the guardian or conservator



of the person of an adult patient, or the beneficiary or personal representative of a deceased patient.

(f) “Alcohol and drug abuse records” means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

SEC. 49. Section 123105 of the Health and Safety Code is amended to read:

123105. As used in this chapter:

(a) “Health care provider” means any of the following:

(1) A health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(2) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

(3) A home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2.

(4) A physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or pursuant to the Osteopathic Act.

(5) A podiatrist licensed pursuant to Article 22 (commencing with Section 2460) of Chapter 5 of Division 2 of the Business and Professions Code.

(6) A dentist licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code.

(7) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(8) An optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code.

(9) A chiropractor licensed pursuant to the Chiropractic Initiative Act.

(10) A marriage and family therapist licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(11) A clinical social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code.

(12) A physical therapist licensed pursuant to Chapter 5.7 (commencing with Section 2600) of Division 2 of the Business and Professions Code.

(b) “Mental health records” means patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. “Mental health records” includes, but is not limited to, all alcohol and drug abuse records.



(c) “Patient” means a patient or former patient of a health care provider.

(d) “Patient records” means records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. “Patient records” includes only records pertaining to the patient requesting the records or whose representative requests the records. “Patient records” does not include information given in confidence to a health care provider by a person other than another health care provider or the patient, and that material may be removed from any records prior to inspection or copying under Section 123110 or 123115. “Patient records” does not include information contained in aggregate form, such as indices, registers, or logs.

(e) “Patient’s representative” or “representative” means a parent or the guardian of a minor who is a patient, or the guardian or conservator of the person of an adult patient, or the beneficiary or personal representative of a deceased patient.

(f) “Alcohol and drug abuse records” means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

SEC. 50. (a) Section 2.5 of this bill incorporates amendments to Section 800 of the Business and Professions Code proposed by both this bill and SB 1950. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 800 of the Business and Professions Code, and (3) this bill is enacted after SB 1950, in which case Section 2 of this bill shall not become operative.

(b) Section 46.5 of this bill incorporates amendments to Section 123105 of the Health and Safety Code proposed by both this bill and SB 2026. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 123105 of the Health and Safety Code, and (3) this bill is enacted after SB 2026, in which case Section 46 of this bill shall not become operative.

