

## Senate Bill No. 231

### CHAPTER 674

An act to amend Sections 125.3, 802, 802.1, 805.2, 2001, 2020, 2027, 2220.08, 2225, 2343, and 2435 of, to add Sections 473.16, 2026, 2334, 2435.2, and 2435.3 to, to add and repeal Sections 2006 and 2358 of, and to repeal Article 14 (commencing with Section 2340) of Chapter 5 of Division 2 of, the Business and Professions Code, to repeal Section 364.1 of the Code of Civil Procedure, and to amend Sections 11371, 11508, and 11523 of, to amend, repeal, and add Sections 12529 and 12529.5 to add Section 12529.7 to, and to add and repeal Section 12529.6 of, the Government Code, relating to healing arts, and making an appropriation therefor.

[Approved by Governor October 7, 2005. Filed with  
Secretary of State October 7, 2005.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 231, Figueroa. Healing arts: Medical Board of California.

(1) Existing law provides for the licensure and regulation of various healing arts practitioners by professional boards within the Department of Consumer Affairs. Existing law requires that specified settlements and any arbitration awards of malpractice claims or in malpractice actions against a licensee be reported to the appropriate licensing board by the licensee or claimant, or their counsel. Under existing law, a failure to comply with this requirement is a crime punishable by specified fines.

This bill would also require any judgment in a malpractice action against a licensee to be reported to the appropriate licensing board by the licensee or the claimant, or their counsel, and would make a failure to comply with this requirement a crime. Because the bill would create a new crime, it would impose a state-mandated local program. The bill would require, to the extent funding is available, the Little Hoover Commission to study the laws requiring public disclosure with regard to the public protection mandate of the Medical Board of California, and complete the study by July 1, 2008.

(2) Existing law authorizes an administrative law judge to order a licentiate in a disciplinary proceeding to pay, upon request of the licensing authority, the reasonable costs of investigating and prosecuting the case.

This bill would prohibit the Medical Board of California from requesting and obtaining reimbursement for these costs.

(3) The Medical Practice Act provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Under existing law, the provisions creating the board and providing for the appointment of an executive director become inoperative on July 1, 2006, and are repealed on January 1, 2007.

This bill would extend these provisions to July 1, 2010, and January 1, 2011, respectively. The bill would require the Joint Committee on Boards, Commissions, and Consumer Protection to examine the medical board's composition and its licensure fees and report its findings to the Governor and the Legislature no later than July 1, 2008.

(4) Existing law requires a physician and surgeon to report certain matters to the medical board in writing within 30 days, including the conviction of any felony, and including any verdict of guilty, or plea of guilty or no contest. A failure to make a report is a crime.

This bill would also require a physician and surgeon to report his or her conviction of a misdemeanor that is substantially related to the qualifications, functions, or duties of a physician and surgeon. Because the bill would expand the scope of an existing crime, the bill would impose a state-mandated local program.

(5) Existing law requires the medical board to post certain information regarding its licensees on the Internet, including whether a licensee has been subject to discipline by the board of another state or jurisdiction.

This bill would also require the posting of prior disciplinary action taken by the board. The bill would additionally require the posting of any misdemeanor conviction that is substantially related to the qualifications, functions, or duties of a physician and surgeon upon the enactment of legislation defining those convictions and would direct the medical board, in consultation with specified entities, to develop a proposal for the legislation and submit it to the Legislature.

(6) Existing law requires the medical board to contract with the Institute for Medical Quality for a comprehensive study of the existing peer review process for discipline of physicians and surgeons. Under these provisions, a written report was to be submitted to the medical board and the Legislature by November 1, 2003.

This bill instead would require the medical board to contract with an independent entity for this comprehensive study, to be completed by July 31, 2007, and would state that the completion of the study is to be among the highest priorities of the medical board.

(7) Existing law generally requires complaints received by the medical board that involve quality of care to be reviewed by one or more medical experts and to meet other criteria before they are referred to a field office of the board for investigation.

This bill would exempt new complaints relating to a physician and surgeon who is the subject of a pending accusation or investigation, or who is on probation, from these referral requirements.

(8) Existing law requires a licensee of the medical board to produce documents requested by the Attorney General or investigators of the board within 15 days.

This bill would authorize the board to impose fines for noncompliance with these requirements.

(9) Existing law provides for the medical board to oversee diversion programs for physicians and surgeons with alcohol and drug abuse problems.

This bill would require the program's manager to report specified financial information to the medical board quarterly and would make the diversion program provisions inoperative on July 1, 2008, and repeal them on January 1, 2009, unless the Legislature deletes or extends those dates. The bill would state the Legislature's intent that the Bureau of State Audits complete an audit of the diversion program by June 30, 2007.

(10) Existing law provides for the medical board to fix, pursuant to a specified formula, the amount of the initial and biennial licensure fees for physicians and surgeons at a sum not to exceed \$610. Fees are deposited into the Contingent Fund of the Medical Board, which is continuously appropriated to the board. Under existing law, the medical board is required to report to the Legislature when it proposes or approves a fee increase.

This bill would delete those reporting provisions and would require the Joint Legislative Audit Committee to select an independent entity by January 1, 2007, to study and report to the Legislature before January 1, 2008, on specified financial matters regarding the medical board. The bill would delete the formula provisions that the medical board is required to apply in fixing licensure fees and would increase the initial licensure fee and the biennial renewal fee to \$790, and would direct the adjustment of those fees for discontinuance of the diversion program, the loss of enforcement and prosecution cost reimbursements, and changes to the disciplinary proceedings. The bill would also delete certain provisions requiring the board to charge various examination fees. By providing for an increase in licensure fees deposited into a continuously appropriated fund, the bill would make an appropriation.

(11) Existing law provides that an action based upon the professional negligence of a physician and surgeon or doctor of podiatric medicine may not be commenced unless a specified 90-day notice is also sent to the medical board or the Board of Podiatric Medicine at the same time it is sent to the defendant. Existing law requires each board, as applicable, to maintain the notice as a confidential part of a potential investigation file.

This bill would repeal this provision.

(12) Existing law creates within the Office of Administrative Hearings a Medical Quality Hearing Panel consisting of administrative law judges with medical training, to hear administrative law matters involving physicians and surgeons. Existing law requires decisions of this panel and associated court decisions to be published in a quarterly "Medical Discipline Report," subject to funding being appropriated by the Legislature.

This bill would delete the requirement for publishing this report. The bill would also require in matters brought by the medical board, that the parties exchange written information concerning expert witness testimony before introducing that evidence and would authorize the Office of

Administrative Hearings to adopt regulations governing the exchange of this information.

(13) Existing law, under the Administrative Procedure Act, provides for administrative hearings involving certain state agencies including the medical board to be held in certain locations throughout the state based upon where a transaction occurred or whether the respondent resides with a certain district of the Court of Appeal. Under that act, an administrative hearing decision is subject to judicial review by a writ of mandate, and specified costs are assessed for preparation of the record.

This bill would require, subject to specified exceptions, that the hearing be held at the hearing facility maintained by the Office of Administrative Hearings that is closest to the location where the transaction occurred or the respondent resides. The bill would revise the process for assessing the cost to prepare the record of the administrative hearing for judicial review.

(14) Existing law creates the Health Quality Enforcement Section within the Department of Justice with the primary responsibility of prosecuting proceedings against licensees and applicants within the jurisdiction of the medical board and various other boards.

This bill would also make investigation of licensees and applicants a primary responsibility of the Health Quality Enforcement Section. The bill would require that attorneys staff the intake unit of specified regulatory boards to evaluate and screen complaints and develop uniform standards for their processing. The bill would make these provisions inoperative on July 1, 2008, and would repeal them on January 1, 2009, unless a later enacted statute deletes or extends those dates. The bill would also, effective January 1, 2006, simultaneously assign a complaint received by the medical board, to an investigator and a deputy attorney general in the Health Quality Enforcement Section. The bill would make this provision inoperative on July 1, 2008, and would repeal it on January 1, 2009, unless a later enacted statute deletes or extends those dates. The bill would require the medical board, in consultation with specified agencies, to report, by July 1, 2007, to the Governor and the Legislature on this prosecution model.

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

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

Appropriation: yes.

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

SECTION 1. It is the intent of the Legislature, through a request in 2006 to the Joint Legislative Audit Committee, that the Bureau of State Audits conduct a thorough performance audit of the diversion program of the Medical Board of California to evaluate the effectiveness and

efficiency of the program, and make recommendations regarding the continuation of the program and any changes or reforms required to assure that physicians and surgeons participating in the program are appropriately monitored, and the public is protected from physicians and surgeons who are impaired due to alcohol or drug abuse or mental or physical illness. The audit shall be completed by June 30, 2007. The board and its staff shall cooperate with the audit, and the Medical Board of California shall provide data, information, and case files as requested by the auditor to perform all of its duties. The provision of confidential data, information, and case files by the Medical Board of California to the auditor shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files.

SEC. 2. Section 125.3 of the Business and Professions Code, is amended to read:

125.3. (a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licentiate who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

(k) Notwithstanding the provisions of this section, the Medical Board of California shall not request nor obtain from a licentiate, investigation and prosecution costs for a disciplinary proceeding against the licentiate. The board shall ensure that this subdivision is revenue neutral with regard to it and that any loss of revenue or increase in costs resulting from this subdivision is offset by an increase in the amount of the initial license fee and the biennial renewal fee, as provided in subdivision (e) of Section 2435.

SEC. 3. Section 473.16 is added to the Business and Professions Code, to read:

473.16. The Joint Committee on Boards, Commissions, and Consumer Protection shall examine the composition of the Medical Board of California and its initial and biennial fees and report to the Governor and the Legislature its findings no later than July 1, 2008.

SEC. 4. Section 802 of the Business and Professions Code is amended to read:

802. (a) Every settlement, judgment, or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a person who holds a license, certificate, or other similar authority from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) of Division 2) or the Osteopathic Initiative Act who does not possess professional liability insurance as to that claim shall, within 30 days after the written settlement agreement has been reduced to

writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties, be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if the person is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the licensee or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance, is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(b) Every settlement over thirty thousand dollars (\$30,000), or judgment or arbitration award of any amount, of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2, or the Osteopathic Initiative Act, who does not possess professional liability insurance as to the claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties, be reported to the agency that issued the license, certificate, or similar authority. A settlement over thirty thousand dollars (\$30,000) shall also be reported if the settlement is based on the licensee's negligence, error, or omission in practice or his or her rendering of unauthorized professional services, and a party to the settlement is a corporation, medical group, partnership, or other corporate entity in which the licensee has an ownership interest or that employs or contracts with the licensee. A complete report including the name and license number of the physician and surgeon shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the physician and surgeon or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars

(\$500). Knowing and intentional failure to comply with this section or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance, is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(c) Every settlement, judgment, or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by negligence, error, or omission in practice, or by the unauthorized rendering of professional services, by a marriage and family therapist or clinical social worker licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) who does not possess professional liability insurance as to that claim shall within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if he or she is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make a complete report. Failure of the marriage and family therapist or clinical social worker or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section or to hinder or impede any other person in that compliance, is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

SEC. 5. Section 802.1 of the Business and Professions Code is amended to read:

802.1. (a) A physician and surgeon shall report either of the following to the Medical Board of California in writing within 30 days:

(1) The bringing of an indictment or information charging a felony against the physician and surgeon.

(2) The conviction of the physician and surgeon, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor. A physician and surgeon shall report only those misdemeanors that are substantially related to the qualifications, functions, or duties of a physician and surgeon defined or identified by the Legislature pursuant to subdivision (d) of Section 2027.

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars (\$5,000).



SEC. 6. Section 805.2 of the Business and Professions Code is amended to read:

805.2. (a) It is the intent of the Legislature to provide for a comprehensive study of the peer review process as it is conducted by peer review bodies defined in paragraph (1) of subdivision (a) of Section 805, in order to evaluate the continuing validity of Section 805 and Sections 809 to 809.8, inclusive, and their relevance to the conduct of peer review in California.

(b) The Medical Board of California shall contract with an independent entity to conduct this study that is fair, objective, and free from bias that is directly familiar with the peer review process and does not advocate regularly before the board on peer review matters or on physician and surgeon disciplinary matters.

(c) The study by the independent entity shall include, but not be limited to, the following components:

(1) A comprehensive description of the various steps of and decisionmakers in the peer review process as it is conducted by peer review bodies throughout the state, including the role of other related committees of acute care health facilities and clinics involved in the peer review process.

(2) A survey of peer review cases to determine the incidence of peer review by peer review bodies, and whether they are complying with the reporting requirement in Section 805.

(3) A description and evaluation of the roles and performance of various state agencies, including the State Department of Health Services and occupational licensing agencies that regulate healing arts professionals, in receiving, reviewing, investigating, and disclosing peer review actions, and in sanctioning peer review bodies for failure to comply with Section 805.

(4) An assessment of the cost of peer review to licentiates and the facilities which employ them.

(5) An assessment of the time consumed by the average peer review proceeding, including the hearing provided pursuant to Section 809.2, and a description of any difficulties encountered by either licentiates or facilities in assembling peer review bodies or panels to participate in peer review decisionmaking.

(6) An assessment of the need to amend Section 805 and Sections 809 to 809.8, inclusive, to ensure that they continue to be relevant to the actual conduct of peer review as described in paragraph (1), and to evaluate whether the current reporting requirement is yielding timely and accurate information to aid licensing boards in their responsibility to regulate and discipline healing arts practitioners when necessary, and to assure that peer review bodies function in the best interest of patient care.

(7) Recommendations of additional mechanisms to stimulate the appropriate reporting of peer review actions under Section 805.

(8) Recommendations regarding the Section 809 hearing process to improve its overall effectiveness and efficiency.

(9) An assessment of the role of medical professionals, using professionals who are experts and are actively practicing medicine in this state, to review and investigate for the protection of consumers, allegations of substandard practice or professional misconduct.

(10) An assessment of the process to identify and retain a medical professional with sufficient expertise to review allegations of substandard practice or professional misconduct by a physician and surgeon, if the peer review process is discontinued.

(d) The independent entity shall exercise no authority over the peer review processes of peer review bodies. However, peer review bodies, health care facilities, health care clinics, and health care service plans shall cooperate with the independent entity and provide data, information, and case files as requested in the timeframes specified by the independent entity.

(e) The independent entity shall work in cooperation with and under the general oversight of the Executive Director of the Medical Board of California and shall submit a written report with its findings and recommendations to the board and the Legislature no later than July 31, 2007.

(f) Completion of the peer review study pursuant to this section shall be among the highest priorities of the Medical Board of California, and the board shall ensure that it is completed no later than July 31, 2007.

SEC. 7. Section 2001 of the Business and Professions Code is amended to read:

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

The Governor shall appoint 19 members to the board, subject to confirmation by the Senate, seven of whom shall be public members. 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 that occur on or after January 1, 1983.

This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2011, 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. 8. Section 2006 is added to the Business and Professions Code, to read:

2006. (a) On and after January 1, 2006, any reference in this chapter to an investigation by the board, or one of its divisions, shall be deemed to refer to an investigation conducted by employees of the Department of Justice.

(b) This section shall become inoperative on July 1, 2008, and as of January 1, 2009, is repealed, unless a later enacted statute, that becomes

operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 9. Section 2020 of the Business and Professions Code is amended to read:

2020. The board may employ an executive director exempt from the provisions of the Civil Service Act and may also employ investigators, legal counsel, medical consultants, and other assistance as it may deem necessary to carry into effect this chapter. The board may fix the compensation to be paid for services subject to the provisions of applicable state laws and regulations and may incur other expenses as it may deem necessary. Investigators employed by the board shall be provided special training in investigating medical practice activities.

The Attorney General shall act as legal counsel for the board for any judicial and administrative proceedings and his or her services shall be a charge against it.

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

SEC. 10. Section 2026 is added to the Business and Professions Code, to read:

2026. To the extent funds are available to reimburse the Little Hoover Commission, that commission shall study and make recommendations on the role of public disclosure in the public protection mandate of the board. This study shall include, but not be limited to, whether the public is adequately informed about physician misconduct by the current laws and regulations providing for disclosure. This study shall be commenced as soon as possible and completed no later than July 1, 2008.

SEC. 11. Section 2027 of the Business and Professions Code is amended to read:

2027. (a) On or after July 1, 2001, the board shall post on the Internet the following information in its possession, custody, or control regarding licensed physicians and surgeons:

(1) With regard to the status of the license, whether or not the licensee is in good standing, subject to a temporary restraining order (TRO), subject to an interim suspension order (ISO), or subject to any of the enforcement actions set forth in Section 803.1.

(2) With regard to prior discipline, whether or not the licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(3) Any felony convictions reported to the board after January 3, 1991.

(4) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" shall mean an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the Medical Board of California unless an appeal of that decision is pending.

(5) Any malpractice judgment or arbitration award reported to the board after January 1, 1993.

(6) Any hospital disciplinary actions that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason.

(7) Any misdemeanor conviction that is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(8) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(9) Any information required to be disclosed pursuant to Section 803.1.

(b) (1) From January 1, 2003, the information described in paragraphs (1) (other than whether or not the licensee is in good standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain posted for a period of 10 years from the date the board obtains possession, custody, or control of the information, and after the end of that period shall be removed from being posted on the board's Internet Web site. Information in the possession, custody, or control of the board prior to January 1, 2003, shall be posted for a period of 10 years from January 1, 2003. Settlement information shall be posted as described in paragraph (2) of subdivision (b) of Section 803.1.

(2) The information described in paragraphs (3) and (6) of subdivision (a) shall not be removed from being posted on the board's Internet Web site. Notwithstanding the provisions of this paragraph, if a licensee's hospital staff privileges are restored and the licensee notifies the board of the restoration, the information pertaining to the termination or revocation of those privileges, as described in paragraph (6) of subdivision (a), shall remain posted for a period of 10 years from the restoration date of the privileges, and at the end of that period shall be removed from being posted on the board's Internet Web site.

(c) The board shall provide links to other Web sites on the Internet that provide information on board certifications that meet the requirements of subdivision (b) of Section 651. The board may provide links to other Web sites on the Internet that provide information on health care service plans, health insurers, hospitals, or other facilities. The board may also provide links to any other sites that would provide information on the affiliations of licensed physicians and surgeons.

(d) The disclosure requirement imposed by paragraph (7) of subdivision (a) shall not become operative unless and until the Legislature enacts legislation that defines or identifies those misdemeanor convictions that are substantially related to the qualifications, functions, or duties of a physician and surgeon. The board shall develop a proposal, in consultation with consumer groups, patient advocacy groups, the Attorney General, and the medical profession, for that legislation and submit it to the Legislature.

SEC. 12. Section 2220.08 of the Business and Professions Code is amended to read:

2220.08. (a) Except for reports received by the board pursuant to Section 805 that may be treated as complaints by the board and new complaints relating to a physician and surgeon who is the subject of a pending accusation or investigation or who is on probation, any complaint determined to involve quality of care, before referral to a field office for further investigation, shall meet the following criteria:

(1) It shall be reviewed by one or more medical experts with the pertinent education, training, and expertise to evaluate the specific standard of care issues raised by the complaint to determine if further field investigation is required.

(2) It shall include the review of the following, which shall be requested by the board:

(A) Relevant patient records.

(B) The statement or explanation of the care and treatment provided by the physician and surgeon.

(C) Any additional expert testimony or literature provided by the physician and surgeon.

(D) Any additional facts or information requested by the medical expert reviewers that may assist them in determining whether the care rendered constitutes a departure from the standard of care.

(b) If the board does not receive the information requested pursuant to paragraph (2) of subdivision (a) within 10 working days of requesting that information, the complaint may be reviewed by the medical experts and referred to a field office for investigation without the information.

(c) Nothing in this section shall impede the board's ability to seek and obtain an interim suspension order or other emergency relief.

SEC. 13. Section 2225 of the Business and Professions Code is amended to read:

2225. (a) Notwithstanding Section 2263 and any other provision of law making a communication between a physician and surgeon or a podiatrist and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted under this chapter. Members of the board, the Senior Assistant Attorney General of the Health Quality Enforcement Section, members of the California Board of Podiatric Medicine, and deputies, employees, agents, and representatives of the board or the Board of Podiatric Medicine and the Senior Assistant Attorney General of the Health Quality Enforcement Section shall keep in confidence during the course of investigations, the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority of the board or the Board of Podiatric Medicine and the Health Quality Enforcement Section to examine records of patients in the office of a physician and surgeon or a podiatrist is limited to records of patients who have complained to the board or the Board of Podiatric Medicine about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and investigators and representatives of the board or the Board of Podiatric Medicine, may inquire into any alleged violation of the Medical Practice Act or any other federal or state law, regulation, or rule relevant to the practice of medicine or podiatric medicine, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where patient consent is given.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of the board or the Board of Podiatric Medicine, they shall be provided within 15 business days of receipt of the request, unless the licensee is unable to provide the documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. The board may use its authority to cite and fine a physician and surgeon for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

SEC. 14. Section 2334 is added to the Business and Professions Code, to read:

2334. (a) Notwithstanding any other provision of law, with respect to the use of expert testimony in matters brought by the Medical Board of California, no expert testimony shall be permitted by any party unless the following information is exchanged in written form with counsel for the other party, as ordered by the Office of Administrative Hearings:

(1) A curriculum vitae setting forth the qualifications of the expert.

(2) A brief narrative statement of the general substance of the testimony that the expert is expected to give, including any opinion testimony and its basis.

(3) A representation that the expert has agreed to testify at the hearing.

(4) A statement of the expert's hourly and daily fee for providing testimony and for consulting with the party who retained his or her services.

(b) The exchange of the information described in subdivision (a) shall be completed at least 30 calendar days prior to the commencement date of the hearing.

(c) The Office of Administrative Hearings may adopt regulations governing the required exchange of the information described in this section.

SEC. 15. Section 2343 of the Business and Professions Code is amended to read:

2343. (a) Each member of a committee shall receive per diem and expenses as provided in Section 103.

(b) The program manager shall account for all expenses and revenues of the diversion program and separately report this information to the board on a quarterly basis.

SEC. 16. Section 2358 is added to the Business and Professions Code, to read:

2358. This article shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 17. Section 2435 of the Business and Professions Code is amended to read:

2435. The following fees apply to the licensure of physicians and surgeons:

(a) Each applicant for a certificate based upon a national board diplomate certificate, each applicant for a certificate based on reciprocity, and each applicant for a certificate based upon written examination, shall pay a nonrefundable application and processing fee, as set forth in subdivision (b), at the time the application is filed.

(b) The application and processing fee shall be fixed by the Division of Licensing by May 1 of each year, to become effective on July 1 of that year. The fee shall be fixed at an amount necessary to recover the actual costs of the licensing program as projected for the fiscal year commencing on the date the fees become effective.

(c) Each applicant who qualifies for a certificate, as a condition precedent to its issuance, in addition to other fees required herein, shall pay an initial license fee, if any. The initial license fee shall be seven hundred ninety dollars (\$790). An applicant enrolled in an approved postgraduate training program shall be required to pay only 50 percent of the initial license fee.

(d) The biennial renewal fee shall be seven hundred ninety dollars (\$790).

(e) Notwithstanding subdivisions (c) and (d) and to ensure that subdivision (k) of Section 125.3 is revenue neutral with regard to the board, the board may, by regulation, increase the amount of the initial license fee and the biennial renewal fee by an amount required to recover both of the following:

(1) The average amount received by the board during the three fiscal years immediately preceding July 1, 2006, as reimbursement for the reasonable costs of investigation and enforcement proceedings pursuant to Section 125.3.

(2) Any increase in the amount of investigation and enforcement costs incurred by the board after January 1, 2006, that exceeds the average costs expended for investigation and enforcement costs during the three fiscal years immediately preceding July 1, 2006. When calculating the amount of costs for services for which the board paid an hourly rate, the board shall use the average number of hours for which the board paid for those costs over these prior three fiscal years, multiplied by the hourly rate paid by the board for those costs as of July 1, 2005. Beginning January 1, 2009, the board shall instead use the average number of hours for which it paid for those costs over the three year period of fiscal years 2005-06, 2006-07, and 2007-08, multiplied by the hourly rate paid by the board for those costs as of July 1, 2005. In calculating the increase in the amount of investigation and enforcement costs, the board shall include only those costs for which it was eligible to obtain reimbursement under Section 125.3 and shall not include probation monitoring costs and disciplinary costs, including those associated with the citation and fine process and those required to implement subdivision (b) of Section 12529 of the Government Code.

(f) Notwithstanding Section 163.5, the delinquency fee shall be 10 percent of the biennial renewal fee.

(g) The duplicate certificate and endorsement fees shall each be fifty dollars (\$50), and the certification and letter of good standing fees shall each be ten dollars (\$10).

(h) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall maintain a reserve in the Contingent Fund of the Medical Board of California equal to approximately two months' operating expenditures.

(i) Not later than January 1, 2007, the Joint Legislative Audit Committee shall select an independent entity that is fair, objective, and free from bias and that does not regularly advocate before the board on licensure fee or on physician and surgeon disciplinary matters, to conduct a review of the board's financial status, its financial projections and historical projections, including, but not limited to, its projections related to expenses, revenues, and reserves. The independent entity shall, on the basis of the review, report to the Joint Legislative Audit Committee before January 1, 2008, on any adjustment to the amount of the licensure fee that is required to maintain the reserve amount in the Contingent Fund of the Medical Board of California pursuant to subdivision (h) of Section 2435, and whether a refund of any excess revenue should be made to licentiates.

SEC. 18. Section 2435.2 is added to the Business and Professions Code, to read:

2435.2. (a) Notwithstanding any other provision of law, if Article 14 (commencing with Section 2340) becomes inoperative or the diversion



program described in that article is discontinued, the board shall reduce the amount of the following fees:

(1) The initial license fee, as described in subdivision (c) of Section 2435.

(2) The biennial renewal fee, as described in subdivision (d) of Section 2435.

(3) An increase in the fees established pursuant to subdivision (e) of Section 2435.

(b) The amount of the reductions made pursuant to subdivision (a) shall equal the board's cost of operating the diversion program.

(c) The board shall not make the reductions described in subdivision (a) if a diversion program is established by statute and requires the board to fund it in whole or in part from licensure fees.

SEC. 19. Section 2435.3 is added to the Business and Professions Code, to read:

2435.3. Notwithstanding any other provision of law, if Section 12529.6 of the Government Code remains operative on or after July 1, 2008, and is not repealed, the board may, by regulation, beginning January 1, 2009, increase the amount of the initial licensure fee and the biennial licensure renewal fee by a maximum of twenty dollars (\$20) each, if an increase is required for the cost of transferring those employees.

SEC. 20. Section 364.1 of the Code of Civil Procedure is repealed.

SEC. 21. Section 11371 of the Government Code is amended to read:

11371. (a) There is within the Office of Administrative Hearings a Medical Quality Hearing Panel, consisting of no fewer than five full-time administrative law judges. The administrative law judges shall have medical training as recommended by the Division of Medical Quality of the Medical Board of California and approved by the Director of the Office of Administrative Hearings.

(b) The director shall determine the qualifications of panel members, supervise their training, and coordinate the publication of a reporter of decisions pursuant to this section. The panel shall include only those persons specifically qualified and shall at no time constitute more than 25 percent of the total number of administrative law judges within the Office of Administrative Hearings. If the members of the panel do not have a full workload, they may be assigned work by the Director of the Office of Administrative Hearings. When the medically related case workload exceeds the capacity of the members of the panel, additional judges shall be requested to be added to the panels as appropriate. When this workload overflow occurs on a temporary basis, the Director of the Office of Administrative Hearings shall supply judges from the Office of Administrative Hearings to adjudicate the cases.

(c) The administrative law judges of the panel shall have panels of experts available. The panels of experts shall be appointed by the Director of the Office of Administrative Hearings, with the advice of the Medical Board of California. These panels of experts may be called as witnesses by the administrative law judges of the panel to testify on the record about

any matter relevant to a proceeding and subject to cross-examination by all parties, and Section 11430.30 does not apply in a proceeding under this section. The administrative law judge may award reasonable expert witness fees to any person or persons serving on a panel of experts, which shall be paid from the Contingent Fund of the Medical Board of California upon appropriation by the Legislature.

SEC. 22. Section 11508 of the Government Code is amended to read:

11508. (a) The agency shall consult the office, and subject to the availability of its staff, shall determine the time and place of the hearing. The hearing shall be held at a hearing facility maintained by the office in Sacramento, Oakland, Los Angeles, or San Diego and shall be held at the facility that is closest to the location where the transaction occurred or the respondent resides.

(b) Notwithstanding subdivision (a), the hearing may be held at either of the following places:

(1) A place selected by the agency that is closer to the location where the transaction occurred or the respondent resides.

(2) A place within the state selected by agreement of the parties.

(c) The respondent may move for, and the administrative law judge has discretion to grant or deny, a change in the place of the hearing. A motion for a change in the place of the hearing shall be made within 10 days after service of the notice of hearing on the respondent.

Unless good cause is identified in writing by the administrative law judge, hearings shall be held in a facility maintained by the office.

SEC. 23. Section 11523 of the Government Code is amended to read:

11523. Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject, however, to the statutes relating to the particular agency. Except as otherwise provided in this section, the petition shall be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency. On request of the petitioner for a record of the proceedings, the complete record of the proceedings, or the parts thereof as are designated by the petitioner in the request, shall be prepared by the Office of Administrative Hearings or the agency and shall be delivered to the petitioner, within 30 days after the request, which time shall be extended for good cause shown, upon the payment of the cost for the preparation of the transcript, the cost for preparation of other portions of the record and for certification thereof. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. If the petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record, the time within which a petition may be filed shall be extended until 30 days after its delivery to him or her. The agency may file with the court the original of any document in the record

in lieu of a copy thereof. If the petitioner prevails in overturning the administrative decision following judicial review, the agency shall reimburse the petitioner for all costs of transcript preparation, compilation of the record, and certification.

SEC. 24. Section 12529 of the Government Code is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California including all committees under the jurisdiction of the board or a division of the board, including the Board of Podiatric Medicine, and the Board of Psychology.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, and the committees under the jurisdiction of the Medical Board of California or a division of the board, and the Board of Psychology, with the intent that the expenses be proportionally shared as to services rendered.

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

SEC. 25. Section 12529 is added to the Government Code, to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California including all committees under the jurisdiction of the board or a division of the board, including the Board of Podiatric Medicine, and the Board of Psychology, and to provide ongoing review of the investigative activities conducted in support of those prosecutions, as provided in subdivision (b) of Section 12529.5.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California,

experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, and the committees under the jurisdiction of the Medical Board of California or a division of the board, and the Board of Psychology, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become operative July 1, 2008.

SEC. 26. Section 12529.5 of the Government Code is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to work on location at the intake unit of the boards described in subdivision (d) of Section 12529 to assist in evaluating and screening complaints and to assist in developing uniform standards and procedures for processing complaints.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or allied health committees, including the Board of Podiatric Medicine, in designing and providing initial and in-service training programs for staff of the division, boards, or allied health committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, the board, or allied health committee, including the Board of Podiatric Medicine, or the Board of Psychology, as appropriate in consultation with the senior assistant.

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

SEC. 27. Section 12529.5 is added to the Government Code, to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to assist the division and the boards in intake and investigations and to direct discipline-related prosecutions. Attorneys shall be assigned to work closely with each major intake and investigatory unit of the boards, to assist in the evaluation and screening of complaints from receipt through disposition and to assist in developing uniform standards and procedures for the handling of complaints and investigations.

A deputy attorney general of the Health Quality Enforcement Section shall frequently be available on location at each of the working offices at the major investigation centers of the boards, to provide consultation and related services and engage in case review with the boards' investigative, medical advisory, and intake staff. The Senior Assistant Attorney General and deputy attorneys general working at his or her direction shall consult as appropriate with the investigators of the boards, medical advisors, and executive staff in the investigation and prosecution of disciplinary cases.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or allied health committees, including the Board of Podiatric Medicine, in designing and providing initial and in-service training programs for staff of the division, boards, or allied health committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, the board, or allied health committee, including the Board of Podiatric Medicine, or the Board of Psychology, as appropriate in consultation with the senior assistant.

(e) This section shall become operative July 1, 2008.

SEC. 28. Section 12529.6 is added to the Government Code, to read:

12529.6. (a) The Legislature finds and declares that the Medical Board of California, by ensuring the quality and safety of medical care, performs one of the most critical functions of state government. Because of the critical importance of the board's public health and safety function, the complexity of cases involving alleged misconduct by physicians and surgeons, and the evidentiary burden in the board's disciplinary cases, the Legislature finds and declares that using a vertical prosecution model for those investigations is in the best interests of the people of California.

(b) Notwithstanding any other provision of law, as of January 1, 2006, each complaint that is referred to a district office of the board for investigation, shall be simultaneously and jointly assigned to an investigator and to the deputy attorney general in the Health Quality Enforcement Section responsible for prosecuting the case if the investigation results in the filing of an accusation. The joint assignment of the investigator and the deputy attorney general shall exist for the duration of the disciplinary matter. During the assignment, the investigator so assigned shall, under the direction of the deputy attorney general, be responsible for obtaining the evidence required to permit the Attorney

General to advise the board on legal matters such as whether the board should file a formal accusation, dismiss the complaint for a lack of evidence required to meet the applicable burden of proof, or take other appropriate legal action.

(c) The Medical Board of California, the Department of Consumer Affairs, and the Office of the Attorney General shall, if necessary, enter into an interagency agreement to implement this section.

(d) This section does not effect the requirements of section 12529.5 as applied to the Medical Board of California where complaints that have not been assigned to a field office for investigation are concerned.

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

SEC. 29 Section 12529.7 is added to the Government Code, to read:

12529.7. By July 1, 2007, the Medical Board of California, in consultation with the Department of Justice, the Department of Consumer Affairs, the Department of Finance, and the Department of Personnel Administration, shall report and make recommendations to the Governor and the Legislature on the vertical prosecution model created under Section 12529.6.

SEC. 30. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.