

Senate Bill No. 797

CHAPTER 33

An act to amend Sections 490, 1616.5, 2006, 2531.75, 2847, 3041.3, 4982, 4989.54, 4990.32, 4992.3, 5552.5, 7028, 7303, 8005, 22258, and 22259 of and to add and repeal Sections 101.2 and 7303.5 of, the Business and Professions Code, and to amend Sections 12529, 12529.5, 12529.6, and 12529.7 of the Government Code, relating to professions and vocations, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 23, 2008. Filed with
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LEGISLATIVE COUNSEL'S DIGEST

SB 797, Ridley-Thomas. Professions and vocations.

(1) Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to suspend or revoke a license on certain bases, including the licensee's conviction of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

This bill would specify that this authorization to suspend or revoke a license is in addition to any other action that a board is permitted to take against the licensee.

(2) Existing law establishes the Dental Board of California, the Speech-Language Pathology and Audiology Board, the Board of Vocational Nursing and Psychiatric Technicians, and the Board of Barbering and Cosmetology in the Department of Consumer Affairs. Existing law authorizes the Dental Board of California and the Speech-Language Pathology and Audiology Board to appoint executive officers, requires the Board of Vocational Nursing and Psychiatric Technicians to select an executive officer, and requires the Board of Barbering and Cosmetology to appoint an executive officer, as specified. Under existing law, the provisions establishing these boards and their authority to appoint or select executive officers will become inoperative on July 1, 2008, and be repealed on January 1, 2009.

This bill would extend the inoperative and repeal dates for the provisions relating to the boards' appointment of executive officers to January 1, 2012. The bill would delete the requirement that the Board of Vocational Nursing and Psychiatric Technicians and the Board of Barbering and Cosmetology appoint or select executive officers, and would instead authorize those boards to do so. The bill, until January 1, 2009, would provide that, if any of these boards becomes inoperative or is repealed, the Governor shall succeed to the authority of that board to appoint an executive officer and the executive

officer of that board shall have the same administrative duties with regard to the bureau replacing the board as it had with regard to the board, and would authorize the Department of Consumer Affairs to create an advisory committee with specified members to advise and direct the executive officer.

(3) Existing law, the Architects Practice Act, establishes the California Architects Board and provides for its licensure and regulation of architects. Under existing law, the board is authorized to implement an intern development program until July 1, 2009.

This bill would extend the authority of the board to implement this program to July 1, 2011.

(4) Existing law provides for the certification of optometrists to diagnose and treat certain conditions of the human eye or its appendages, and to use therapeutic pharmaceutical agents. It requires the board to decide all issues relating to the equivalency of an optometrist's education or training for certification, as specified.

This bill would delete an obsolete reference to the Therapeutic Pharmaceutical Agent Advisory Committee.

(5) Existing law, the Contractors' State License Law, creates the Contractors' State License Board within the Department of Consumer Affairs and provides for the licensure and regulation of contractors. Existing law makes it a misdemeanor for any person to engage in the business or act in the capacity of a contractor without having a license, and subjects a person who violates this prohibition to specified fines and imprisonment.

This bill would apply specified penalty provisions to a person named on a revoked license and held responsible for the act or omission resulting in the revocation.

(6) Existing law provides for the licensure or registration, and regulation of marriage and family therapists, licensed educational psychologists, and clinical social workers by the Board of Behavioral Sciences. Under existing law, the board may refuse to issue a registration or license, or may suspend or revoke a license or registration, if the applicant, registrant, or licensee has been guilty of unprofessional conduct, as specified. Existing law authorizes the board to file a specified accusation against these licensees or registrants within certain limitations periods for, among other things, an alleged act or omission involving a minor that is the basis for disciplinary action.

This bill would specify that unprofessional conduct includes engaging in specified acts with a minor regardless of whether the act occurred prior to or after the time the registration or license was issued by the board, and would apply this provision to acts that occurred prior to the effective date of the bill. The bill would also specify that, if after the limitations periods have expired, the board discovers a specified alleged act with a minor, and there is independent evidence corroborating the allegation, an accusation shall be filed within 3 years from the date the board discovers that alleged act.

(7) Existing law imposes specified requirements and prohibitions on tax preparers, as defined, and exempts specified persons from these requirements

and prohibitions. A violation of those provisions is a misdemeanor. Under existing law, those provisions will become inoperative on July 1, 2008, and will be repealed on January 1, 2009.

This bill would extend the inoperative and repeal dates for these provisions, making the provisions inoperative and repealing them on January 1, 2012. The bill would also expand the category of persons exempted from these provisions and revise the requirements for exemption, including imposing a requirement that specified tax returns are signed by a licensed accountant, attorney, or by a person who is enrolled to practice before the Internal Revenue Service. The bill would also specify that preparation of a tax return includes the inputting of tax data into a computer. Because this bill would impose additional qualifications on the exemption from tax preparer provisions, the violation of which would be a crime, and would extend the operation of existing crimes provisions, it would impose a state-mandated local program.

(8) Existing law authorizes the Court Reporters Board to, among other things, appoint an executive officer and employ other employees as may be necessary. These provisions will become inoperative on July 1, 2008, and be repealed on January 1, 2009.

This bill would extend those dates, making the provisions inoperative and repealing them on January 1, 2012.

(9) Existing law creates the Health Quality Enforcement Section within the Department of Justice with the primary responsibility of investigating and prosecuting proceedings against licensees and applicants within the jurisdiction of the Medical Board of California and various other boards. Existing law requires that attorneys staff the intake unit of specified regulatory boards to evaluate and screen complaints and develop uniform standards for their processing. Existing law also simultaneously assigns a complaint received by the medical board to an investigator and a deputy attorney general in the Health Quality Enforcement Section, and provides that, for the duration of the assignment, the investigator is under the direction of the deputy attorney general. Existing law makes these provisions inoperative on July 1, 2008, and repeals them on January 1, 2009, unless a later enacted statute deletes or extends those dates. Existing law also requires the medical board, in consultation with specified agencies, to report and make recommendations to the Governor and the Legislature on this prosecution model by July 1, 2007.

This bill would make those provisions inoperative on July 1, 2010, repeal them on January 1, 2011, and would make other related changes. The bill would specify that an investigator is not under the supervision of the deputy attorney general simultaneously assigned to a complaint. The bill would require the medical board to increase its computer capabilities and compatibilities with the Health Quality Enforcement Section and to establish and implement a plan to locate its enforcement staff and the staff of the Health Quality Enforcement Section in the same offices. The bill would also require the medical board, in consultation with specified agencies, to

report and make recommendations to the Governor and the Legislature on this enforcement and prosecution model by July 1, 2009.

(10) 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.

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

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

SECTION 1. Section 101.2 is added to the Business and Professions Code, to read:

101.2. (a) Notwithstanding paragraph (3) of subdivision (b) of Section 101.1, if the Dental Board of California, the Speech-Language Pathology and Audiology Board, the Board of Vocational Nursing and Psychiatric Technicians, or the Board of Barbering and Cosmetology becomes inoperative or is repealed, both of the following shall apply:

(1) The executive officer of the board shall have the same administrative duties with regard to any bureau replacing the board as he or she had with regard to the board, and shall operate under the direction of the Department of Consumer Affairs.

(2) The Governor shall succeed to the authority of the board to appoint an executive officer pursuant to Section 1616.5, 2531.75, 2847, or 7303.5, respectively.

(b) The Department of Consumer Affairs may create an advisory committee for each bureau described in subdivision (a) to advise and direct the bureau's executive officer. An advisory committee created under this subdivision shall consist of the prior members of the board, and the committee shall be subject to the per diem provisions related to the prior board and to all procedural requirements governing the actions of the prior board.

(c) An advisory committee created pursuant to subdivision (b) shall meet as often as is necessary, as determined by that committee.

(d) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 2. Section 490 of the Business and Professions Code is amended to read:

490. (a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007–08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

SEC. 3. Section 1616.5 of the Business and Professions Code is amended to read:

1616.5. (a) The board, by and with the approval of the director, 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 remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date..

SEC. 4. Section 2006 of the Business and Professions Code is amended 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 directed by employees of the Department of Justice.

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

SEC. 5. Section 2531.75 of the Business and Professions Code is amended to read:

2531.75. (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 remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 6. Section 2847 of the Business and Professions Code is amended to read:

2847. (a) The board may select an executive officer who shall perform duties as are delegated by the board and who shall be responsible to it for the accomplishment of those duties.

(b) The person selected to be the executive officer of the board shall be a duly licensed vocational nurse under this chapter, a duly licensed professional nurse as defined in Section 2725, or a duly licensed psychiatric technician. The executive officer shall not be a member of the board.

(c) With the approval of the Director of Finance, the board shall fix the salary of the executive officer.

(d) The executive officer shall be entitled to traveling and other necessary expenses in the performance of his or her duties. He or she shall make a statement, certified before a duly authorized person, that the expenses have been actually incurred.

(e) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 7. Section 3041.3 of the Business and Professions Code is amended to read:

3041.3. (a) In order to be certified to use therapeutic pharmaceutical agents and authorized to diagnose and treat the conditions listed in subdivisions (b), (d), and (e) of Section 3041, an optometrist shall apply for a certificate from the board and meet all requirements imposed by the board.

(b) The board shall grant a certificate to use therapeutic pharmaceutical agents to any applicant who graduated from a California accredited school of optometry prior to January 1, 1996, is licensed as an optometrist in California, and meets all of the following requirements:

(1) Satisfactorily completes a didactic course of no less than 80 classroom hours in the diagnosis, pharmacological, and other treatment and management of ocular disease provided by either an accredited school of optometry in California or a recognized residency review committee in ophthalmology in California.

(2) Completes a preceptorship of no less than 65 hours, during a period of not less than two months nor more than one year, in either an ophthalmologist's office or an optometric clinic. The training received during the preceptorship shall be on the diagnosis, treatment, and management of ocular, systemic disease. The preceptor shall certify completion of the preceptorship. Authorization for the ophthalmologist to serve as a preceptor shall be provided by an accredited school of optometry in California, or by a recognized residency review committee in ophthalmology, and the preceptor shall be licensed as an ophthalmologist in California, board-certified in ophthalmology, and in good standing with the Medical Board of California. The individual serving as the preceptor

shall schedule no more than three optometrist applicants for each of the required 65 hours of the preceptorship program. This paragraph shall not be construed to limit the total number of optometrist applicants for whom an individual may serve as a preceptor, and is intended only to ensure the quality of the preceptorship by requiring that the ophthalmologist preceptor schedule the training so that each applicant optometrist completes each of the 65 hours of the preceptorship while scheduled with no more than two other optometrist applicants.

(3) Successfully completes a minimum of 20 hours of self-directed education.

(4) Passes the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" examination or, in the event this examination is no longer offered, its equivalent, as determined by the State Board of Optometry.

(5) Passes the examination issued upon completion of the 80-hour didactic course required under paragraph (1) and provided by the accredited school of optometry or residency program in ophthalmology.

(6) When any or all of the requirements contained in paragraph (1), (4), or (5) have been satisfied on or after July 1, 1992, and before January 1, 1996, an optometrist shall not be required to fulfill the satisfied requirements in order to obtain certification to use therapeutic pharmaceutical agents. In order for this paragraph to apply to the requirement contained in paragraph (5), the didactic examination that the applicant successfully completed shall meet equivalency standards, as determined by the board.

(7) Any optometrist who graduated from an accredited school of optometry on or after January 1, 1992, and before January 1, 1996, shall not be required to fulfill the requirements contained in paragraphs (1), (4), and (5).

(c) The board shall grant a certificate to use therapeutic pharmaceutical agents to any applicant who graduated from a California accredited school of optometry on or after January 1, 1996, who is licensed as an optometrist in California, and who meets all of the following requirements:

(1) Passes the National Board of Examiners in Optometry's national board examination, or its equivalent, as determined by the State Board of Optometry.

(2) Of the total clinical training required by a school of optometry's curriculum, successfully completed at least 65 of those hours on the diagnosis, treatment, and management of ocular, systemic disease.

(3) Is certified by an accredited school of optometry as competent in the diagnosis, treatment, and management of ocular, systemic disease to the extent authorized by this section.

(4) Is certified by an accredited school of optometry as having completed at least 10 hours of experience with a board-certified ophthalmologist.

(d) The board shall grant a certificate to use therapeutic pharmaceutical agents to any applicant who is an optometrist who obtained his or her license outside of California if he or she meets all of the requirements for an

optometrist licensed in California to be certified to use therapeutic pharmaceutical agents.

(1) In order to obtain a certificate to use therapeutic pharmaceutical agents, any optometrist who obtained his or her license outside of California and graduated from an accredited school of optometry prior to January 1, 1996, shall be required to fulfill the requirements set forth in subdivision (b). In order for the applicant to be eligible for the certificate to use therapeutic pharmaceutical agents, the education he or she received at the accredited out-of-state school of optometry shall be equivalent to the education provided by any accredited school of optometry in California for persons who graduate before January 1, 1996. For those out-of-state applicants who request that any of the requirements contained in subdivision (b) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.

(2) In order to obtain a certificate to use therapeutic pharmaceutical agents, any optometrist who obtained his or her license outside of California and who graduated from an accredited school of optometry on or after January 1, 1996, shall be required to fulfill the requirements set forth in subdivision (c). In order for the applicant to be eligible for the certificate to use therapeutic pharmaceutical agents, the education he or she received by the accredited out-of-state school of optometry shall be equivalent to the education provided by any accredited school of optometry for persons who graduate on or after January 1, 1996. For those out-of-state applicants who request that any of the requirements contained in subdivision (c) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.

(3) The State Board of Optometry shall decide all issues relating to the equivalency of an optometrist's education or training under this subdivision.

SEC. 8. Section 4982 of the Business and Professions Code is amended to read:

4982. The board may deny a license or registration or may suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any

license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4022, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage and family therapy services.

(d) Gross negligence or incompetence in the performance of marriage and family therapy.

(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with

a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a marriage and family therapist.

(l) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any trainee or registered intern under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner that is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any registered intern or trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding oneself out as being able to perform professional services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a trainee or registered intern under one's supervision or control to perform, or permitting the trainee or registered intern to hold himself or herself out as competent to perform, professional services beyond the trainee's or registered intern's level of education, training, or experience.

(u) The violation of any statute or regulation governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(w) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(x) Failure to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(y) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(z) Failure to comply with Section 2290.5.

(aa) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

SEC. 9. Section 4989.54 of the Business and Professions Code is amended to read:

4989.54. The board may deny a license or may suspend or revoke the license of a licensee if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) Conviction of a crime substantially related to the qualifications, functions and duties of an educational psychologist.

(1) The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(2) The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee under this chapter.

(3) A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee under this chapter shall be deemed to be a conviction within the meaning of this section.

(4) The board may order a license suspended or revoked, or may decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty or setting aside the verdict of guilty or dismissing the accusation, information, or indictment.

(b) Securing a license by fraud, deceit, or misrepresentation on an application for licensure submitted to the board, whether engaged in by an applicant for a license or by a licensee in support of an application for licensure.

(c) Administering to himself or herself a controlled substance or using any of the dangerous drugs specified in Section 4022 or an alcoholic

beverage to the extent, or in a manner, as to be dangerous or injurious to himself or herself or to any other person or to the public or to the extent that the use impairs his or her ability to safely perform the functions authorized by the license.

(d) Conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in subdivision (c) or any combination thereof.

(e) Advertising in a manner that is false, misleading, or deceptive.

(f) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(g) Commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee.

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States or by any other governmental agency, on a license, certificate, or registration to practice educational psychology or any other healing art. A certified copy of the disciplinary action, decision, or judgment shall be conclusive evidence of that action.

(i) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a clinical social worker or marriage and family therapist.

(j) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(k) Gross negligence or incompetence in the practice of educational psychology.

(l) Misrepresentation as to the type or status of a license held by the licensee or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(m) Intentionally or recklessly causing physical or emotional harm to any client.

(n) Engaging in sexual relations with a client or a former client within two years following termination of professional services, soliciting sexual relations with a client, or committing an act of sexual abuse or sexual misconduct with a client or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a licensed educational psychologist.

(o) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services or the basis upon which that fee will be computed.

(p) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients.

(q) Failing to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(r) Performing, holding himself or herself out as being able to perform, or offering to perform any professional services beyond the scope of the license authorized by this chapter or beyond his or her field or fields of competence as established by his or her education, training, or experience.

(s) Reproducing or describing in public, or in any publication subject to general public distribution, any psychological test or other assessment device the value of which depends in whole or in part on the naivete of the subject in ways that might invalidate the test or device. An educational psychologist shall limit access to the test or device to persons with professional interests who can be expected to safeguard its use.

(t) Aiding or abetting an unlicensed person to engage in conduct requiring a license under this chapter.

(u) When employed by another person or agency, encouraging, either orally or in writing, the employer's or agency's clientele to utilize his or her private practice for further counseling without the approval of the employing agency or administration.

(v) Failing to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(w) Failing to comply with the elder and adult dependent abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(x) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(y) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

SEC. 10. Section 4990.32 of the Business and Professions Code is amended to read:

4990.32. (a) Except as otherwise provided in this section, an accusation filed pursuant to Section 11503 of the Government Code against a licensee or registrant under the chapters the board administers and enforces shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitations period provided by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) An accusation alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the grounds for disciplinary action or within 10 years after the act or omission alleged as the grounds for disciplinary action occurred, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(e) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (d) shall be tolled until the minor reaches the age of majority. However, if the board discovers an alleged act of sexual contact with a minor under Section 261, 286, 288, 288.5, 288a, or 289 of the Penal Code after the limitations periods described in this subdivision have otherwise expired, and there is independent evidence that corroborates the allegation, an accusation shall be filed within three years from the date the board discovers that alleged act.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

(g) For purposes of this section, “discovers” means the latest of the occurrence of any of the following with respect to each act or omission alleged as the basis for disciplinary action:

(1) The date the board received a complaint or report describing the act or omission.

(2) The date, subsequent to the original complaint or report, on which the board became aware of any additional acts or omissions alleged as the basis for disciplinary action against the same individual.

(3) The date the board receives from the complainant a written release of information pertaining to the complainant’s diagnosis and treatment.

SEC. 11. Section 4992.3 of the Business and Professions Code is amended to read:

4992.3. The board may deny a license or a registration, or may suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to

determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter is a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022 or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person who uses or offers to use drugs in the course of performing clinical social work. This provision does not apply to any person also licensed as a physician and surgeon under Chapter 5 (commencing with Section 2000) or the Osteopathic Act who lawfully prescribes drugs to a patient under his or her care.

(d) Gross negligence or incompetence in the performance of clinical social work.

(e) Violating, attempting to violate, or conspiring to violate this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity. For purposes of this subdivision, this misrepresentation includes, but is not limited to, misrepresentation of the person's qualifications as an adoption service provider pursuant to Section 8502 of the Family Code.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(h) Aiding or abetting any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client or with a former client within two years from the termination date of therapy with the client, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a clinical social worker.

(l) Performing, or holding one's self out as being able to perform, or offering to perform or permitting, any registered associate clinical social worker or intern under supervision to perform any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner that is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any registered associate clinical social worker or intern by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(t) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(u) Failure to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(v) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(w) Failure to comply with Section 2290.5.

(x) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

SEC. 12. Section 5552.5 of the Business and Professions Code is amended to read:

5552.5. The board may, by regulation, implement an intern development program until July 1, 2011.

SEC. 13. Section 7028 of the Business and Professions Code is amended to read:

7028. (a) It is a misdemeanor for any person to engage in the business or act in the capacity of a contractor within this state without having a license therefor, unless the person is particularly exempted from the provisions of this chapter.

(b) If a person has been previously convicted of the offense described in this section, unless the provisions of subdivision (c) are applicable, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed person performed contracting work, or four thousand five hundred dollars (\$4,500), whichever is greater, and, unless the sentence prescribed in subdivision (c) is imposed, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a jail sentence of less than 90 days for second or subsequent convictions under this section, the court shall state the reasons for its sentencing choice on the record.

(c) A third or subsequent conviction for the offense described in this section is punishable by a fine of not less than four thousand five hundred dollars (\$4,500) nor more than the greater amount of either ten thousand dollars (\$10,000) or 20 percent of the contract price under which the unlicensed person performed contracting work or by imprisonment in a county jail for not more than one year or less than 90 days, or by both that

fine and imprisonment. The penalty provided by this subdivision is cumulative to the penalties available under all other laws of this state.

(d) A person who violates this section is subject to the penalties prescribed in subdivision (c) if the person was named on a license that was previously revoked and, either in fact or under law, was held responsible for any act or omission resulting in the revocation.

(e) In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, “the price of the contract” for the purposes of this section means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

(f) Notwithstanding any other provision of law to the contrary, an indictment for any violation of this section by the unlicensed contractor shall be found or an information or complaint filed within four years from the date of the contract proposal, contract, completion, or abandonment of the work, whichever occurs last.

SEC. 14. Section 7303 of the Business and Professions Code is amended to read:

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

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

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

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

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

SEC. 15. Section 7303.5 is added to the Business and Professions Code, to read:

7303.5. (a) The board may appoint an executive officer who is exempt from civil service. The executive officer shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter. The appointment of the executive officer is subject to the approval of the director.

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

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

(d) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 16. Section 8005 of the Business and Professions Code is amended to read:

8005. The Court Reporters Board of California is charged with the executive functions necessary for effectuating the purposes of this chapter. It may appoint committees as it deems necessary or proper. The board may appoint, prescribe the duties, and fix the salary of an executive officer. Except as provided by Section 159.5, the board may also employ other employees as may be necessary, subject to civil service and other provisions of law.

This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 17. Section 22258 of the Business and Professions Code is amended to read:

22258. (a) The following persons are exempt from the requirements of this title, subject to the requirements of subdivision (b):

(1) A person with a current and valid license issued by the California Board of Accountancy.

(2) A person who is an active member of the State Bar of California.

(3) Any trust company or trust business as defined in Chapter 1 (commencing with Section 99) of Division 1 of the Financial Code.

(4) A financial institution regulated by the state or federal government, insofar as the activities of the financial institution with respect to tax preparation are subject to federal or state examination or oversight.

(5) A person who is enrolled to practice before the Internal Revenue Service pursuant to Subpart A (commencing with Section 10.1) of Part 10 of Title 31 of the Code of Federal Regulations.

(6) Any employee of any person described in paragraph (1), (2), (3), (4), or (5), while functioning within the scope of that employment.

(7) Any employee of any corporation, partnership, association, or any entity described in subparagraph (B) of paragraph (1) of subdivision (a) of Section 22251.

(b) (1) Except for employees of entities described in paragraph (3) or (4) of subdivision (a), paragraph (6) of subdivision (a) shall apply only if all tax returns prepared by that employee are signed by a person described in paragraph (1), (2), or (5) of subdivision (a).

(2) Paragraph (7) of subdivision (a) shall apply only if all tax returns prepared by that employee are signed by the person described in paragraph (7) of subdivision (a).

(3) No person described in this subdivision as an employee may sign a tax return, unless that employee is otherwise exempt under this section, is registered as a tax preparer with the council, or is an employee of either a trust company or trust business described in paragraph (3) of subdivision (a), or any employee of a financial institution described in paragraph (4) of subdivision (a).

(c) For purposes of this section, preparation of a tax return includes the inputting of tax data into a computer.

SEC. 18. Section 22259 of the Business and Professions Code is amended to read:

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

This chapter shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 19. Section 12529 of the Government Code, as amended by Section 90 of Chapter 588 of the Statutes of 2007, 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, the California Board of Podiatric Medicine, the Board of Psychology, or any committee under the jurisdiction of the Medical Board of California or a division of the board.

(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, the Board of Psychology, and the committees under the jurisdiction of the Medical Board of California or a division of the board, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes

operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 20. Section 12529 of the Government Code, as amended by Section 91 of Chapter 588 of the Statutes of 2007, 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 prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, or any committee under the jurisdiction of the Medical Board of California or a division of the board, 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, the Board of Psychology, and the committees under the jurisdiction of the Medical Board of California or a division of the board, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become operative July 1, 2010.

SEC. 21. Section 12529.5 of the Government Code, as amended by Section 92 of Chapter 588 of the Statutes of 2007, 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, the California Board of Podiatric Medicine, 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 committees in designing and providing initial and in-service training programs for staff of the division, boards, or 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, boards, or committees as appropriate in consultation with the senior assistant.

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

SEC. 22. Section 12529.5 of the Government Code, as amended by Section 93 of Chapter 588 of the Statutes of 2007, 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, the California Board of Podiatric Medicine, 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 committees in designing and providing initial and in-service training programs for staff of the division, boards, or 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, boards, or committees as appropriate in consultation with the senior assistant.

(e) This section shall become operative July 1, 2010.

SEC. 23. Section 12529.6 of the Government Code is amended 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 enforcement and 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 but not the supervision 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 affect 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) It is the intent of the Legislature to enhance the vertical enforcement and prosecution model as set forth in subdivision (a). The Medical Board of California shall do both of the following:

(1) Increase its computer capabilities and compatibilities with the Health Quality Enforcement Section in order to share case information.

(2) Establish and implement a plan to locate its enforcement staff and the staff of the Health Quality Enforcement Section in the same offices, as appropriate, in order to carry out the intent of the vertical enforcement and prosecution model.

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

SEC. 24. Section 12529.7 of the Government Code is amended to read: 12529.7. By July 1, 2009, 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 enforcement and prosecution model created under Section 12529.6.

SEC. 25. 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.

SEC. 26. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure that individuals engaging in certain professions and vocations are adequately regulated in order to protect and safeguard consumers and the public in this state, it is necessary that this act take effect immediately.