

**Introduced by Senator Ridley-Thomas**February 21, 2008

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An act to amend Sections 651, 680, and 2023.5 of, and to add Section 2218 to, the Business and Professions Code, and to add Section 1249 to the Health and Safety Code, relating to healing arts.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1454, as introduced, Ridley-Thomas. Healing arts.

Existing law provides that it is unlawful for healing arts licensees to disseminate or cause to be disseminated any form of public communication, as defined, containing a false, fraudulent, misleading, or deceptive statement, or image to induce the provision of services or the rendering of products relating to a professional practice or business for which he or she is licensed. Existing law authorizes advertising by these healing arts licensees to include certain general information. A violation of these provisions is a misdemeanor.

This bill would impose specific advertising requirements on certain healing arts licensees. By changing the definition of a crime, this bill would impose a state-mandated local program.

Existing law requires a health care practitioner to disclose, while working, his or her name and license status, on a specified name tag. However, existing law exempts from this requirement a health care practitioner whose license is prominently displayed in a practice or office.

This bill would delete that exemption.

Existing law requires the Medical Board of California, in conjunction with the Board of Registered Nursing, and in consultation with the Physician Assistant Committee and professionals in the field, to review issues and problems relating to the use of laser or intense light pulse

devices for elective cosmetic procedures by physicians and surgeons, nurses, and physician assistants.

This bill would require the Medical Board of California to establish, as a priority, the investigation of unlicensed activity or other specified violations in clinics using laser or intense pulse light devices.

Existing law prohibits physicians and surgeons from performing procedures in an outpatient setting using anesthesia, except as specified, and existing law imposes other personnel and security requirements for the performance of these procedures. Existing law also requires outpatient settings to meet certain standards.

This bill would require physicians and surgeons performing procedures in an outpatient setting and outpatient settings to establish standardized procedures and protocols to be followed in the event of serious complications or side effects from cosmetic surgery that would place a patient at high risk for injury or harm and to govern emergency and urgent care situations. By changing the definition of a crime, this bill would impose a state-mandated local program.

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

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

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

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

1 SECTION 1. Section 651 of the Business and Professions Code  
2 is amended to read:  
3 651. (a) It is unlawful for any person licensed under this  
4 division or under any initiative act referred to in this division to  
5 disseminate or cause to be disseminated any form of public  
6 communication containing a false, fraudulent, misleading, or  
7 deceptive statement, claim, or image for the purpose of or likely  
8 to induce, directly or indirectly, the rendering of professional  
9 services or furnishing of products in connection with the  
10 professional practice or business for which he or she is licensed.  
11 A “public communication” as used in this section includes, but is  
12 not limited to, communication by means of mail, television, radio,

1 motion picture, newspaper, book, list or directory of healing arts  
2 practitioners, Internet, or other electronic communication.

3 (b) A false, fraudulent, misleading, or deceptive statement,  
4 claim, or image includes a statement or claim that does any of the  
5 following:

6 (1) Contains a misrepresentation of fact.

7 (2) Is likely to mislead or deceive because of a failure to disclose  
8 material facts.

9 (3) (A) Is intended or is likely to create false or unjustified  
10 expectations of favorable results, including the use of any  
11 photograph or other image that does not accurately depict the  
12 results of the procedure being advertised or that has been altered  
13 in any manner from the image of the actual subject depicted in the  
14 photograph or image.

15 (B) Use of any photograph or other image of a model without  
16 clearly stating in a prominent location in easily readable type the  
17 fact that the photograph or image is of a model is a violation of  
18 subdivision (a). For purposes of this paragraph, a model is anyone  
19 other than an actual patient, who has undergone the procedure  
20 being advertised, of the licensee who is advertising for his or her  
21 services.

22 (C) Use of any photograph or other image of an actual patient  
23 that depicts or purports to depict the results of any procedure, or  
24 presents “before” and “after” views of a patient, without specifying  
25 in a prominent location in easily readable type size what procedures  
26 were performed on that patient is a violation of subdivision (a).  
27 Any “before” and “after” views (i) shall be comparable in  
28 presentation so that the results are not distorted by favorable poses,  
29 lighting, or other features of presentation, and (ii) shall contain a  
30 statement that the same “before” and “after” results may not occur  
31 for all patients.

32 (4) Relates to fees, other than a standard consultation fee or a  
33 range of fees for specific types of services, without fully and  
34 specifically disclosing all variables and other material factors.

35 (5) Contains other representations or implications that in  
36 reasonable probability will cause an ordinarily prudent person to  
37 misunderstand or be deceived.

38 (6) Makes a claim either of professional superiority or of  
39 performing services in a superior manner, unless that claim is

1 relevant to the service being performed and can be substantiated  
2 with objective scientific evidence.

3 (7) Makes a scientific claim that cannot be substantiated by  
4 reliable, peer reviewed, published scientific studies.

5 (8) Includes any statement, endorsement, or testimonial that is  
6 likely to mislead or deceive because of a failure to disclose material  
7 facts.

8 (c) Any price advertisement shall be exact, without the use of  
9 phrases, including, but not limited to, “as low as,” “and up,”  
10 “lowest prices,” or words or phrases of similar import. Any  
11 advertisement that refers to services, or costs for services, and that  
12 uses words of comparison shall be based on verifiable data  
13 substantiating the comparison. Any person so advertising shall be  
14 prepared to provide information sufficient to establish the accuracy  
15 of that comparison. Price advertising shall not be fraudulent,  
16 deceitful, or misleading, including statements or advertisements  
17 of bait, discount, premiums, gifts, or any statements of a similar  
18 nature. In connection with price advertising, the price for each  
19 product or service shall be clearly identifiable. The price advertised  
20 for products shall include charges for any related professional  
21 services, including dispensing and fitting services, unless the  
22 advertisement specifically and clearly indicates otherwise.

23 (d) Any person so licensed shall not compensate or give anything  
24 of value to a representative of the press, radio, television, or other  
25 communication medium in anticipation of, or in return for,  
26 professional publicity unless the fact of compensation is made  
27 known in that publicity.

28 (e) Any person so licensed may not use any professional card,  
29 professional announcement card, office sign, letterhead, telephone  
30 directory listing, medical list, medical directory listing, or a similar  
31 professional notice or device if it includes a statement or claim  
32 that is false, fraudulent, misleading, or deceptive within the  
33 meaning of subdivision (b).

34 (f) Any person so licensed who violates this section is guilty of  
35 a misdemeanor. A bona fide mistake of fact shall be a defense to  
36 this subdivision, but only to this subdivision.

37 (g) Any violation of this section by a person so licensed shall  
38 constitute good cause for revocation or suspension of his or her  
39 license or other disciplinary action.

1 (h) Advertising by any person so licensed may include the  
2 following:

3 (1) A statement of the name of the practitioner.

4 (2) A statement of addresses and telephone numbers of the  
5 offices maintained by the practitioner.

6 (3) A statement of office hours regularly maintained by the  
7 practitioner.

8 (4) A statement of languages, other than English, fluently spoken  
9 by the practitioner or a person in the practitioner's office.

10 (5) (A) A statement that the practitioner is certified by a private  
11 or public board or agency or a statement that the practitioner limits  
12 his or her practice to specific fields.

13 (i) For the purposes of this section, a dentist licensed under  
14 Chapter 4 (commencing with Section 1600) may not hold himself  
15 or herself out as a specialist, or advertise membership in or  
16 specialty recognition by an accrediting organization, unless the  
17 practitioner has completed a specialty education program approved  
18 by the American Dental Association and the Commission on Dental  
19 Accreditation, is eligible for examination by a national specialty  
20 board recognized by the American Dental Association, or is a  
21 diplomate of a national specialty board recognized by the American  
22 Dental Association.

23 (ii) A dentist licensed under Chapter 4 (commencing with  
24 Section 1600) shall not represent to the public or advertise  
25 accreditation either in a specialty area of practice or by a board  
26 not meeting the requirements of clause (i) unless the dentist has  
27 attained membership in or otherwise been credentialed by an  
28 accrediting organization that is recognized by the board as a bona  
29 fide organization for that area of dental practice. In order to be  
30 recognized by the board as a bona fide accrediting organization  
31 for a specific area of dental practice other than a specialty area of  
32 dentistry authorized under clause (i), the organization shall  
33 condition membership or credentialing of its members upon all of  
34 the following:

35 (I) Successful completion of a formal, full-time advanced  
36 education program that is affiliated with or sponsored by a  
37 university based dental school and is beyond the dental degree at  
38 a graduate or postgraduate level.

39 (II) Prior didactic training and clinical experience in the specific  
40 area of dentistry that is greater than that of other dentists.

1 (III) Successful completion of oral and written examinations  
2 based on psychometric principles.

3 (iii) Notwithstanding the requirements of clauses (i) and (ii), a  
4 dentist who lacks membership in or certification, diplomate status,  
5 other similar credentials, or completed advanced training approved  
6 as bona fide either by an American Dental Association recognized  
7 accrediting organization or by the board, may announce a practice  
8 emphasis in any other area of dental practice only if the dentist  
9 incorporates in capital letters or some other manner clearly  
10 distinguishable from the rest of the announcement, solicitation, or  
11 advertisement that he or she is a general dentist.

12 (iv) A statement of certification by a practitioner licensed under  
13 Chapter 7 (commencing with Section 3000) shall only include a  
14 statement that he or she is certified or eligible for certification by  
15 a private or public board or parent association recognized by that  
16 practitioner's licensing board.

17 (B) A physician and surgeon licensed under Chapter 5  
18 (commencing with Section 2000) by the Medical Board of  
19 California may include a statement that he or she limits his or her  
20 practice to specific fields, but shall not include a statement that he  
21 or she is certified or eligible for certification by a private or public  
22 board or parent association, including, but not limited to, a  
23 multidisciplinary board or association, unless that board or  
24 association is (i) an American Board of Medical Specialties  
25 member board, (ii) a board or association with equivalent  
26 requirements approved by that physician and surgeon's licensing  
27 board, or (iii) a board or association with an Accreditation Council  
28 for Graduate Medical Education approved postgraduate training  
29 program that provides complete training in that specialty or  
30 subspecialty. A physician and surgeon licensed under Chapter 5  
31 (commencing with Section 2000) by the Medical Board of  
32 California who is certified by an organization other than a board  
33 or association referred to in clause (i), (ii), or (iii) shall not use the  
34 term "board certified" in reference to that certification, unless the  
35 physician and surgeon is also licensed under Chapter 4  
36 (commencing with Section 1600) and the use of the term "board  
37 certified" in reference to that certification is in accordance with  
38 subparagraph (A). A physician and surgeon licensed under Chapter  
39 5 (commencing with Section 2000) by the Medical Board of  
40 California who is certified by a board or association referred to in

1 clause (i), (ii), or (iii) shall not use the term “board certified” unless  
2 the full name of the certifying board is also used and given  
3 comparable prominence with the term “board certified” in the  
4 statement.

5 For purposes of this subparagraph, a “multidisciplinary board  
6 or association” means an educational certifying body that has a  
7 psychometrically valid testing process, as determined by the  
8 Medical Board of California, for certifying medical doctors and  
9 other health care professionals that is based on the applicant’s  
10 education, training, and experience.

11 For purposes of the term “board certified,” as used in this  
12 subparagraph, the terms “board” and “association” mean an  
13 organization that is an American Board of Medical Specialties  
14 member board, an organization with equivalent requirements  
15 approved by a physician and surgeon’s licensing board, or an  
16 organization with an Accreditation Council for Graduate Medical  
17 Education approved postgraduate training program that provides  
18 complete training in a specialty or subspecialty.

19 The Medical Board of California shall adopt regulations to  
20 establish and collect a reasonable fee from each board or  
21 association applying for recognition pursuant to this subparagraph.  
22 The fee shall not exceed the cost of administering this  
23 subparagraph. Notwithstanding Section 2 of Chapter 1660 of the  
24 Statutes of 1990, this subparagraph shall become operative July  
25 1, 1993. However, an administrative agency or accrediting  
26 organization may take any action contemplated by this  
27 subparagraph relating to the establishment or approval of specialist  
28 requirements on and after January 1, 1991.

29 (C) A doctor of podiatric medicine licensed under Chapter 5  
30 (commencing with Section 2000) by the Medical Board of  
31 California may include a statement that he or she is certified or  
32 eligible or qualified for certification by a private or public board  
33 or parent association, including, but not limited to, a  
34 multidisciplinary board or association, if that board or association  
35 meets one of the following requirements: (i) is approved by the  
36 Council on Podiatric Medical Education, (ii) is a board or  
37 association with equivalent requirements approved by the  
38 California Board of Podiatric Medicine, or (iii) is a board or  
39 association with the Council on Podiatric Medical Education  
40 approved postgraduate training programs that provide training in

1 podiatric medicine and podiatric surgery. A doctor of podiatric  
2 medicine licensed under Chapter 5 (commencing with Section  
3 2000) by the Medical Board of California who is certified by a  
4 board or association referred to in clause (i), (ii), or (iii) shall not  
5 use the term “board certified” unless the full name of the certifying  
6 board is also used and given comparable prominence with the term  
7 “board certified” in the statement. A doctor of podiatric medicine  
8 licensed under Chapter 5 (commencing with Section 2000) by the  
9 Medical Board of California who is certified by an organization  
10 other than a board or association referred to in clause (i), (ii), or  
11 (iii) shall not use the term “board certified” in reference to that  
12 certification.

13 For purposes of this subparagraph, a “multidisciplinary board  
14 or association” means an educational certifying body that has a  
15 psychometrically valid testing process, as determined by the  
16 California Board of Podiatric Medicine, for certifying doctors of  
17 podiatric medicine that is based on the applicant’s education,  
18 training, and experience. For purposes of the term “board certified,”  
19 as used in this subparagraph, the terms “board” and “association”  
20 mean an organization that is a Council on Podiatric Medical  
21 Education approved board, an organization with equivalent  
22 requirements approved by the California Board of Podiatric  
23 Medicine, or an organization with a Council on Podiatric Medical  
24 Education approved postgraduate training program that provides  
25 training in podiatric medicine and podiatric surgery.

26 The California Board of Podiatric Medicine shall adopt  
27 regulations to establish and collect a reasonable fee from each  
28 board or association applying for recognition pursuant to this  
29 subparagraph, to be deposited in the State Treasury in the Podiatry  
30 Fund, pursuant to Section 2499. The fee shall not exceed the cost  
31 of administering this subparagraph.

32 (6) A statement that the practitioner provides services under a  
33 specified private or public insurance plan or health care plan.

34 (7) A statement of names of schools and postgraduate clinical  
35 training programs from which the practitioner has graduated,  
36 together with the degrees received.

37 (8) A statement of publications authored by the practitioner.

38 (9) A statement of teaching positions currently or formerly held  
39 by the practitioner, together with pertinent dates.

1 (10) A statement of his or her affiliations with hospitals or  
2 clinics.

3 (11) A statement of the charges or fees for services or  
4 commodities offered by the practitioner.

5 (12) A statement that the practitioner regularly accepts  
6 installment payments of fees.

7 (13) Otherwise lawful images of a practitioner, his or her  
8 physical facilities, or of a commodity to be advertised.

9 (14) A statement of the manufacturer, designer, style, make,  
10 trade name, brand name, color, size, or type of commodities  
11 advertised.

12 (15) An advertisement of a registered dispensing optician may  
13 include statements in addition to those specified in paragraphs (1)  
14 to (14), inclusive, provided that any statement shall not violate  
15 subdivision (a), (b), (c), or (e) or any other section of this code.

16 (16) A statement, or statements, providing public health  
17 information encouraging preventative or corrective care.

18 (17) Any other item of factual information that is not false,  
19 fraudulent, misleading, or likely to deceive.

20 *(i) Advertising by any person licensed under Chapter 2*  
21 *(commencing with Section 1000), Chapter 4 (commencing with*  
22 *Section 1600), Chapter 5 (commencing with Section 2000), Chapter*  
23 *6 (commencing with Section 2700), Chapter 6.5 (commencing with*  
24 *Section 2840), Chapter 6.6 (commencing with Section 2900),*  
25 *Chapter 7 (commencing with Section 3000), Chapter 7.7*  
26 *(commencing with Section 3500), and Chapter 8 (commencing*  
27 *with Section 3600) shall include all of the following information:*

28 *(1) The type of license under which the licensee is practicing.*

29 *(2) The type of degree received upon graduation from*  
30 *professional training.*

31 *(†)*

32 *(j) Each of the healing arts boards and examining committees*  
33 *within Division 2 shall adopt appropriate regulations to enforce*  
34 *this section in accordance with Chapter 3.5 (commencing with*  
35 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*  
36 *Code.*

37 Each of the healing arts boards and committees and examining  
38 committees within Division 2 shall, by regulation, define those  
39 efficacious services to be advertised by businesses or professions  
40 under their jurisdiction for the purpose of determining whether

1 advertisements are false or misleading. Until a definition for that  
2 service has been issued, no advertisement for that service shall be  
3 disseminated. However, if a definition of a service has not been  
4 issued by a board or committee within 120 days of receipt of a  
5 request from a licensee, all those holding the license may advertise  
6 the service. Those boards and committees shall adopt or modify  
7 regulations defining what services may be advertised, the manner  
8 in which defined services may be advertised, and restricting  
9 advertising that would promote the inappropriate or excessive use  
10 of health services or commodities. A board or committee shall not,  
11 by regulation, unreasonably prevent truthful, nondeceptive price  
12 or otherwise lawful forms of advertising of services or  
13 commodities, by either outright prohibition or imposition of  
14 onerous disclosure requirements. However, any member of a board  
15 or committee acting in good faith in the adoption or enforcement  
16 of any regulation shall be deemed to be acting as an agent of the  
17 state.

18 ~~(j)~~

19 (k) The Attorney General shall commence legal proceedings in  
20 the appropriate forum to enjoin advertisements disseminated or  
21 about to be disseminated in violation of this section and seek other  
22 appropriate relief to enforce this section. Notwithstanding any  
23 other provision of law, the costs of enforcing this section to the  
24 respective licensing boards or committees may be awarded against  
25 any licensee found to be in violation of any provision of this  
26 section. This shall not diminish the power of district attorneys,  
27 county counsels, or city attorneys pursuant to existing law to seek  
28 appropriate relief.

29 ~~(k)~~

30 (l) A physician and surgeon or doctor of podiatric medicine  
31 licensed pursuant to Chapter 5 (commencing with Section 2000)  
32 by the Medical Board of California who knowingly and  
33 intentionally violates this section may be cited and assessed an  
34 administrative fine not to exceed ten thousand dollars (\$10,000)  
35 per event. Section 125.9 shall govern the issuance of this citation  
36 and fine except that the fine limitations prescribed in paragraph  
37 (3) of subdivision (b) of Section 125.9 shall not apply to a fine  
38 under this subdivision.

39 SEC. 2. Section 680 of the Business and Professions Code is  
40 amended to read:

1 680. (a) Except as otherwise provided in this section, a health  
2 care practitioner shall disclose, while working, his or her name  
3 and practitioner’s license status, as granted by this state, on a name  
4 tag in at least 18-point type. ~~A health care practitioner in a practice  
5 or an office, whose license is prominently displayed, may opt to  
6 not wear a name tag.~~ If a health care practitioner or a licensed  
7 clinical social worker is working in a psychiatric setting or in a  
8 setting that is not licensed by the state, the employing entity or  
9 agency shall have the discretion to make an exception from the  
10 name tag requirement for individual safety or therapeutic concerns.  
11 In the interest of public safety and consumer awareness, it shall  
12 be unlawful for any person to use the title “nurse” in reference to  
13 himself or herself and in any capacity, except for an individual  
14 who is a registered nurse or a licensed vocational nurse, or as  
15 otherwise provided in Section 2800. Nothing in this section shall  
16 prohibit a certified nurse assistant from using his or her title.

17 (b) Facilities licensed by the State Department of Social  
18 Services, the State Department of Mental Health, or the State  
19 Department of Health *Care* Services shall develop and implement  
20 policies to ensure that health care practitioners providing care in  
21 those facilities are in compliance with subdivision (a). The State  
22 Department of Social Services, the State Department of Mental  
23 Health, and the State Department of Health *Care* Services shall  
24 verify through periodic inspections that the policies required  
25 pursuant to subdivision (a) have been developed and implemented  
26 by the respective licensed facilities.

27 (c) For purposes of this article, “health care practitioner” means  
28 any person who engages in acts that are the subject of licensure  
29 or regulation under this division or under any initiative act referred  
30 to in this division.

31 SEC. 3. Section 2023.5 of the Business and Professions Code  
32 is amended to read:

33 2023.5. (a) The board, in conjunction with the Board of  
34 Registered Nursing, and in consultation with the Physician  
35 Assistant Committee and professionals in the field, shall review  
36 issues and problems surrounding the use of laser or intense light  
37 pulse devices for elective cosmetic procedures by physicians and  
38 surgeons, nurses, and physician assistants. The review shall include,  
39 but need not be limited to, all of the following:

40 (1) The appropriate level of physician supervision needed.

- 1 (2) The appropriate level of training to ensure competency.  
2 (3) Guidelines for standardized procedures and protocols that  
3 address, at a minimum, all of the following:  
4 (A) Patient selection.  
5 (B) Patient education, instruction, and informed consent.  
6 (C) Use of topical agents.  
7 (D) Procedures to be followed in the event of complications or  
8 side effects from the treatment.  
9 (E) Procedures governing emergency and urgent care situations.

10 (b) On or before January 1, 2009, the board and the Board of  
11 Registered Nursing shall promulgate regulations to implement  
12 changes determined to be necessary with regard to the use of laser  
13 or intense pulse light devices for elective cosmetic procedures by  
14 physicians and surgeons, nurses, and physician assistants.

15 *(c) The board shall establish, as one of its priorities, the*  
16 *investigation of unlicensed activity or corporate practice of*  
17 *medicine violations in clinics using laser or intense pulse light*  
18 *devices.*

19 SEC. 4. Section 2218 is added to the Business and Professions  
20 Code, to read:

21 2218. Physicians and surgeons performing procedures in an  
22 outpatient setting shall establish standardized procedures and  
23 protocols to be followed in the event of serious complications or  
24 side effects from cosmetic surgery that would place a patient at  
25 high risk for injury or harm and to govern emergency and urgent  
26 care situations.

27 SEC. 5. Section 1249 is added to the Health and Safety Code,  
28 to read:

29 1249. Outpatient settings shall establish standardized  
30 procedures and protocols to be followed in the event of serious  
31 complications or side effects from cosmetic surgery that would  
32 place a patient at high risk for injury or harm and to govern  
33 emergency and urgent care situations.

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

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

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