

Introduced by Senator Negrete McLeodFebruary 27, 2009

An act to amend Sections 805 and 805.1 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 700, as introduced, Negrete McLeod. Healing arts: peer review.

Existing law provides for the professional review of specified healing arts licentiates through a peer review process. Existing law defines the term "peer review body" as including a medical or professional staff of any health care facility or clinic licensed by the State Department of Public Health.

This bill would define the term "peer review" and would revise the definition of the term "peer review body" to include a medical or professional staff of other specified health care facilities or clinics.

Under existing law, specified persons are required to file a report, designated as an "805 report," with a licensing board if a peer review body takes one of several specified actions against a person licensed by that board. Existing law requires the board to maintain the report for a period of 3 years after receipt.

This bill would require the board to maintain the report electronically.

Existing law authorizes the Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California to inspect and copy certain documents in the record of any disciplinary proceeding resulting in action that is required to be reported in an 805 report.

This bill would authorize those boards to also inspect any peer review minutes or reports in those records.

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

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

1 SECTION 1. Section 805 of the Business and Professions Code
2 is amended to read:
3 805. (a) As used in this section, the following terms have the
4 following definitions:
5 (1) (A) *“Peer review” means a process in which a peer review*
6 *body reviews the basic qualifications, staff privileges, employment,*
7 *medical outcomes, and professional conduct of licentiates to*
8 *determine whether the licentiate may practice or continue to*
9 *practice in a health care facility, clinic, or other setting providing*
10 *medical services and, if so, to determine the parameters of that*
11 *practice.*
12 ~~(1)~~
13 (B) *“Peer review body” includes:*
14 ~~(A)~~
15 (i) A medical or professional staff of any health care facility or
16 clinic ~~licensed~~ *specified* under Division 2 (commencing with
17 Section 1200) of the Health and Safety Code or of a facility
18 certified to participate in the federal Medicare Program as an
19 ambulatory surgical center.
20 ~~(B)~~
21 (ii) A health care service plan registered under Chapter 2.2
22 (commencing with Section 1340) of Division 2 of the Health and
23 Safety Code or a disability insurer that contracts with licentiates
24 to provide services at alternative rates of payment pursuant to
25 Section 10133 of the Insurance Code.
26 ~~(C)~~
27 (iii) Any medical, psychological, marriage and family therapy,
28 social work, dental, or podiatric professional society having as
29 members at least 25 percent of the eligible licentiates in the area
30 in which it functions (which must include at least one county),
31 which is not organized for profit and which has been determined
32 to be exempt from taxes pursuant to Section 23701 of the Revenue
33 and Taxation Code.
34 ~~(D)~~

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

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

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

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

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

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

29 (7) “805 report” means the written report required under
30 subdivision (b).

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

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

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

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

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

15 (1) Resignation or leave of absence from membership, staff, or
16 employment.

17 (2) The withdrawal or abandonment of a licentiate’s application
18 for staff privileges or membership.

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

21 (d) For purposes of filing an 805 report, the signature of at least
22 one of the individuals indicated in subdivision (b) or (c) on the
23 completed form shall constitute compliance with the requirement
24 to file the report.

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

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

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

38 A supplemental report shall also be made within 30 days
39 following the date the licentiate is deemed to have satisfied any
40 terms, conditions, or sanctions imposed as disciplinary action by

1 the reporting peer review body. In performing its dissemination
2 functions required by Section 805.5, the agency shall include a
3 copy of a supplemental report, if any, whenever it furnishes a copy
4 of the original 805 report.

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

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

21 (h) The Medical Board of California, the Osteopathic Medical
22 Board of California, and the Dental Board of California shall
23 disclose reports as required by Section 805.5.

24 (i) An 805 report shall be maintained *electronically* by an agency
25 for dissemination purposes for a period of three years after receipt.

26 (j) No person shall incur any civil or criminal liability as the
27 result of making any report required by this section.

28 (k) A willful failure to file an 805 report by any person who is
29 designated or otherwise required by law to file an 805 report is
30 punishable by a fine not to exceed one hundred thousand dollars
31 (\$100,000) per violation. The fine may be imposed in any civil or
32 administrative action or proceeding brought by or on behalf of any
33 agency having regulatory jurisdiction over the person regarding
34 whom the report was or should have been filed. If the person who
35 is designated or otherwise required to file an 805 report is a
36 licensed physician and surgeon, the action or proceeding shall be
37 brought by the Medical Board of California. The fine shall be paid
38 to that agency but not expended until appropriated by the
39 Legislature. A violation of this subdivision may constitute
40 unprofessional conduct by the licentiate. A person who is alleged

1 to have violated this subdivision may assert any defense available
2 at law. As used in this subdivision, “willful” means a voluntary
3 and intentional violation of a known legal duty.

4 (l) Except as otherwise provided in subdivision (k), any failure
5 by the administrator of any peer review body, the chief executive
6 officer or administrator of any health care facility, or any person
7 who is designated or otherwise required by law to file an 805
8 report, shall be punishable by a fine that under no circumstances
9 shall exceed fifty thousand dollars (\$50,000) per violation. The
10 fine may be imposed in any civil or administrative action or
11 proceeding brought by or on behalf of any agency having
12 regulatory jurisdiction over the person regarding whom the report
13 was or should have been filed. If the person who is designated or
14 otherwise required to file an 805 report is a licensed physician and
15 surgeon, the action or proceeding shall be brought by the Medical
16 Board of California. The fine shall be paid to that agency but not
17 expended until appropriated by the Legislature. The amount of the
18 fine imposed, not exceeding fifty thousand dollars (\$50,000) per
19 violation, shall be proportional to the severity of the failure to
20 report and shall differ based upon written findings, including
21 whether the failure to file caused harm to a patient or created a
22 risk to patient safety; whether the administrator of any peer review
23 body, the chief executive officer or administrator of any health
24 care facility, or any person who is designated or otherwise required
25 by law to file an 805 report exercised due diligence despite the
26 failure to file or whether they knew or should have known that an
27 805 report would not be filed; and whether there has been a prior
28 failure to file an 805 report. The amount of the fine imposed may
29 also differ based on whether a health care facility is a small or
30 rural hospital as defined in Section 124840 of the Health and Safety
31 Code.

32 (m) A health care service plan registered under Chapter 2.2
33 (commencing with Section 1340) of Division 2 of the Health and
34 Safety Code or a disability insurer that negotiates and enters into
35 a contract with licentiates to provide services at alternative rates
36 of payment pursuant to Section 10133 of the Insurance Code, when
37 determining participation with the plan or insurer, shall evaluate,
38 on a case-by-case basis, licentiates who are the subject of an 805
39 report, and not automatically exclude or deselect these licentiates.

1 SEC. 2. Section 805.1 of the Business and Professions Code
2 is amended to read:

3 805.1. (a) The Medical Board of California, the Osteopathic
4 Medical Board of California, and the Dental Board of California
5 shall be entitled to inspect and copy the following documents in
6 the record of any disciplinary proceeding resulting in action that
7 is required to be reported pursuant to Section 805:

8 (1) Any statement of charges.

9 (2) Any document, medical chart, or exhibits in evidence.

10 (3) Any opinion, findings, or conclusions.

11 (4) *Any peer review minutes or reports.*

12 (b) The information so disclosed shall be kept confidential and
13 not subject to discovery, in accordance with Section 800, except
14 that it may be reviewed, as provided in subdivision (c) of Section
15 800, and may be disclosed in any subsequent disciplinary hearing
16 conducted pursuant to the Administrative Procedure Act (Chapter
17 5 (commencing with Section 11500) of Part 1 of Division 3 of
18 Title 2 of the Government Code).