

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 700

Introduced by Senator Negrete McLeod

February 27, 2009

An act to amend Sections ~~805 and 805.1~~ of 800, 803.1, 805, 805.1, 805.5, and 2027 of, and to add Section 805.01 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 700, as amended, 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~~ *within 15 days after a specified action is taken* against a person licensed by that board. *Existing law provides various due process rights for licentiates who are the subject of a final proposed disciplinary action of a peer review body, including authorizing a licentiate to request a hearing concerning that action.*

~~Existing~~
This bill would require the filing of the 805 report with the licensing board within 15 days of the imposition of a specified action on a licentiate regardless of whether a hearing has occurred.

This bill would also require specified persons to file a report with a licensing board if a formal investigation of a person licensed by that board results in a specified finding of fact. The bill would authorize the board to inspect and copy certain documents in the record of that investigation.

Existing law requires the board to maintain ~~the~~ an 805 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 specify that the boards have the authority to inspect those documents in unredacted form and without a subpoena and would authorize those boards to also inspect any peer review minutes or reports in ~~those records~~ the record of the disciplinary proceeding.

Existing law requires specified healing arts boards to maintain a central file of their licensees containing, among other things, disciplinary information reported through 805 reports.

Under this bill, if a court finds that the peer review resulting in the 805 report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, the board would be required to include that finding in the licensee's central file.

Existing law requires the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine to disclose an 805 report to specified health care entities and to disclose certain hospital disciplinary actions to inquiring members of the public. Existing law also requires the Medical Board of California to post hospital disciplinary actions regarding its licensees on the Internet.

This bill would prohibit those disclosures and would require the Medical Board of California to remove certain information posted on the Internet if a court finds that the peer review resulting in the 805 report or the hospital disciplinary action was conducted in bad faith and the licensee notifies the board of that finding. The bill would also require the Medical Board of California to post on the Internet a factsheet that explains and provides information on the 805 reporting requirements.

The bill would make related nonsubstantive changes.

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 800 of the Business and Professions Code*
2 *is amended to read:*

3 800. (a) The Medical Board of California, the Board of
4 Psychology, the Dental Board of California, the Osteopathic
5 Medical Board of California, the State Board of Chiropractic
6 Examiners, the Board of Registered Nursing, the Board of
7 Vocational Nursing and Psychiatric Technicians, the State Board
8 of Optometry, the Veterinary Medical Board, the Board of
9 Behavioral Sciences, the Physical Therapy Board of California,
10 the California State Board of Pharmacy, and the Speech-Language
11 Pathology and Audiology Board shall each separately create and
12 maintain a central file of the names of all persons who hold a
13 license, certificate, or similar authority from that board. Each
14 central file shall be created and maintained to provide an individual
15 historical record for each licensee with respect to the following
16 information:

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

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

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

28 (4) Disciplinary information reported pursuant to Section 805.
29 *If a court finds that the peer review resulting in the 805 report was*
30 *conducted in bad faith and the licensee who is the subject of the*
31 *report notifies the board of that finding, the board shall include*
32 *that finding in the central file. For purposes of this paragraph,*
33 *"peer review" has the same meaning as defined in Section 805.*

34 (5) *Information reported pursuant to Section 805.01.*

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

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

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

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

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

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

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

3 *SEC. 2. Section 803.1 of the Business and Professions Code*
4 *is amended to read:*

5 803.1. (a) Notwithstanding any other provision of law, the
6 Medical Board of California, the Osteopathic Medical Board of
7 California, and the California Board of Podiatric Medicine shall
8 disclose to an inquiring member of the public information regarding
9 any enforcement actions taken against a licensee by either board
10 or by another state or jurisdiction, including all of the following:

- 11 (1) Temporary restraining orders issued.
- 12 (2) Interim suspension orders issued.
- 13 (3) Revocations, suspensions, probations, or limitations on
14 practice ordered by the board, including those made part of a
15 probationary order or stipulated agreement.
- 16 (4) Public letters of reprimand issued.
- 17 (5) Infractions, citations, or fines imposed.

18 (b) Notwithstanding any other provision of law, in addition to
19 the information provided in subdivision (a), the Medical Board of
20 California, the Osteopathic Medical Board of California, and the
21 California Board of Podiatric Medicine shall disclose to an
22 inquiring member of the public all of the following:

23 (1) Civil judgments in any amount, whether or not vacated by
24 a settlement after entry of the judgment, that were not reversed on
25 appeal and arbitration awards in any amount of a claim or action
26 for damages for death or personal injury caused by the physician
27 and surgeon's negligence, error, or omission in practice, or by his
28 or her rendering of unauthorized professional services.

29 (2) (A) All settlements in the possession, custody, or control
30 of the board shall be disclosed for a licensee in the low-risk
31 category if there are three or more settlements for that licensee
32 within the last 10 years, except for settlements by a licensee
33 regardless of the amount paid where (i) the settlement is made as
34 a part of the settlement of a class claim, (ii) the licensee paid in
35 settlement of the class claim the same amount as the other licensees
36 in the same class or similarly situated licensees in the same class,
37 and (iii) the settlement was paid in the context of a case where the
38 complaint that alleged class liability on behalf of the licensee also
39 alleged a products liability class action cause of action. All
40 settlements in the possession, custody, or control of the board shall

1 be disclosed for a licensee in the high-risk category if there are
2 four or more settlements for that licensee within the last 10 years
3 except for settlements by a licensee regardless of the amount paid
4 where (i) the settlement is made as a part of the settlement of a
5 class claim, (ii) the licensee paid in settlement of the class claim
6 the same amount as the other licensees in the same class or
7 similarly situated licensees in the same class, and (iii) the
8 settlement was paid in the context of a case where the complaint
9 that alleged class liability on behalf of the licensee also alleged a
10 products liability class action cause of action. Classification of a
11 licensee in either a “high-risk category” or a “low-risk category”
12 depends upon the specialty or subspecialty practiced by the licensee
13 and the designation assigned to that specialty or subspecialty by
14 the Medical Board of California, as described in subdivision (f).
15 For the purposes of this paragraph, “settlement” means a settlement
16 of an action described in paragraph (1) entered into by the licensee
17 on or after January 1, 2003, in an amount of thirty thousand dollars
18 (\$30,000) or more.

19 (B) The board shall not disclose the actual dollar amount of a
20 settlement but shall put the number and amount of the settlement
21 in context by doing the following:

22 (i) Comparing the settlement amount to the experience of other
23 licensees within the same specialty or subspecialty, indicating if
24 it is below average, average, or above average for the most recent
25 10-year period.

26 (ii) Reporting the number of years the licensee has been in
27 practice.

28 (iii) Reporting the total number of licensees in that specialty or
29 subspecialty, the number of those who have entered into a
30 settlement agreement, and the percentage that number represents
31 of the total number of licensees in the specialty or subspecialty.

32 (3) Current American Board of Medical Specialty certification
33 or board equivalent as certified by the Medical Board of California,
34 the Osteopathic Medical Board of California, or the California
35 Board of Podiatric Medicine.

36 (4) Approved postgraduate training.

37 (5) Status of the license of a licensee. By January 1, 2004, the
38 Medical Board of California, the Osteopathic Medical Board of
39 California, and the California Board of Podiatric Medicine shall
40 adopt regulations defining the status of a licensee. The board shall

1 employ this definition when disclosing the status of a licensee
2 pursuant to Section 2027.

3 (6) Any summaries of hospital disciplinary actions that result
4 in the termination or revocation of a licensee’s staff privileges for
5 medical disciplinary cause or reason, *unless a court finds that the*
6 *peer review resulting in the disciplinary action was conducted in*
7 *bad faith and the licensee notifies the board of that finding. For*
8 *purposes of this paragraph, “peer review” has the same meaning*
9 *as defined in Section 805.*

10 (c) Notwithstanding any other provision of law, the Medical
11 Board of California, the Osteopathic Medical Board of California,
12 and the California Board of Podiatric Medicine shall disclose to
13 an inquiring member of the public information received regarding
14 felony convictions of a physician and surgeon or doctor of podiatric
15 medicine.

16 (d) The Medical Board of California, the Osteopathic Medical
17 Board of California, and the California Board of Podiatric Medicine
18 may formulate appropriate disclaimers or explanatory statements
19 to be included with any information released, and may by
20 regulation establish categories of information that need not be
21 disclosed to an inquiring member of the public because that
22 information is unreliable or not sufficiently related to the licensee’s
23 professional practice. The Medical Board of California, the
24 Osteopathic Medical Board of California, and the California Board
25 of Podiatric Medicine shall include the following statement when
26 disclosing information concerning a settlement:

27
28 “Some studies have shown that there is no significant correlation
29 between malpractice history and a doctor’s competence. At the
30 same time, the State of California believes that consumers should
31 have access to malpractice information. In these profiles, the State
32 of California has given you information about both the malpractice
33 settlement history for the doctor’s specialty and the doctor’s history
34 of settlement payments only if in the last 10 years, the doctor, if
35 in a low-risk specialty, has three or more settlements or the doctor,
36 if in a high-risk specialty, has four or more settlements. The State
37 of California has excluded some class action lawsuits because
38 those cases are commonly related to systems issues such as product
39 liability, rather than questions of individual professional
40 competence and because they are brought on a class basis where

1 the economic incentive for settlement is great. The State of
2 California has placed payment amounts into three statistical
3 categories: below average, average, and above average compared
4 to others in the doctor’s specialty. To make the best health care
5 decisions, you should view this information in perspective. You
6 could miss an opportunity for high-quality care by selecting a
7 doctor based solely on malpractice history.

8 When considering malpractice data, please keep in mind:

9 Malpractice histories tend to vary by specialty. Some specialties
10 are more likely than others to be the subject of litigation. This
11 report compares doctors only to the members of their specialty,
12 not to all doctors, in order to make an individual doctor’s history
13 more meaningful.

14 This report reflects data only for settlements made on or after
15 January 1, 2003. Moreover, it includes information concerning
16 those settlements for a 10-year period only. Therefore, you should
17 know that a doctor may have made settlements in the 10 years
18 immediately preceding January 1, 2003, that are not included in
19 this report. After January 1, 2013, for doctors practicing less than
20 10 years, the data covers their total years of practice. You should
21 take into account the effective date of settlement disclosure as well
22 as how long the doctor has been in practice when considering
23 malpractice averages.

24 The incident causing the malpractice claim may have happened
25 years before a payment is finally made. Sometimes, it takes a long
26 time for a malpractice lawsuit to settle. Some doctors work
27 primarily with high-risk patients. These doctors may have
28 malpractice settlement histories that are higher than average
29 because they specialize in cases or patients who are at very high
30 risk for problems.

31 Settlement of a claim may occur for a variety of reasons that do
32 not necessarily reflect negatively on the professional competence
33 or conduct of the doctor. A payment in settlement of a medical
34 malpractice action or claim should not be construed as creating a
35 presumption that medical malpractice has occurred.

36 You may wish to discuss information in this report and the
37 general issue of malpractice with your doctor.”

38
39 (e) The Medical Board of California, the Osteopathic Medical
40 Board of California, and the California Board of Podiatric Medicine

1 shall, by regulation, develop standard terminology that accurately
2 describes the different types of disciplinary filings and actions to
3 take against a licensee as described in paragraphs (1) to (5),
4 inclusive, of subdivision (a). In providing the public with
5 information about a licensee via the Internet pursuant to Section
6 2027, the Medical Board of California, the Osteopathic Medical
7 Board of California, and the California Board of Podiatric Medicine
8 shall not use the terms “enforcement,” “discipline,” or similar
9 language implying a sanction unless the physician and surgeon
10 has been the subject of one of the actions described in paragraphs
11 (1) to (5), inclusive, of subdivision (a).

12 (f) The Medical Board of California shall adopt regulations no
13 later than July 1, 2003, designating each specialty and subspecialty
14 practice area as either high risk or low risk. In promulgating these
15 regulations, the board shall consult with commercial underwriters
16 of medical malpractice insurance companies, health care systems
17 that self-insure physicians and surgeons, and representatives of
18 the California medical specialty societies. The board shall utilize
19 the carriers’ statewide data to establish the two risk categories and
20 the averages required by subparagraph (B) of paragraph (2) of
21 subdivision (b). Prior to issuing regulations, the board shall
22 convene public meetings with the medical malpractice carriers,
23 self-insurers, and specialty representatives.

24 (g) The Medical Board of California, the Osteopathic Medical
25 Board of California, and the California Board of Podiatric Medicine
26 shall provide each licensee with a copy of the text of any proposed
27 public disclosure authorized by this section prior to release of the
28 disclosure to the public. The licensee shall have 10 working days
29 from the date the board provides the copy of the proposed public
30 disclosure to propose corrections of factual inaccuracies. Nothing
31 in this section shall prevent the board from disclosing information
32 to the public prior to the expiration of the 10-day period.

33 (h) Pursuant to subparagraph (A) of paragraph (2) of subdivision
34 (b), the specialty or subspecialty information required by this
35 section shall group physicians by specialty board recognized
36 pursuant to paragraph (5) of subdivision (h) of Section 651 unless
37 a different grouping would be more valid and the board, in its
38 statement of reasons for its regulations, explains why the validity
39 of the grouping would be more valid.

1 SECTION 1.

2 SEC. 3. Section 805 of the Business and Professions Code is
3 amended to read:

4 805. (a) As used in this section, the following terms have the
5 following definitions:

6 (1) (A) "Peer review" means a process in which a peer review
7 body reviews the basic qualifications, staff privileges, employment,
8 medical outcomes, and professional conduct of licentiates to
9 determine whether the licentiate may practice or continue to
10 practice in a health care facility, clinic, or other setting providing
11 medical services and, if so, to determine the parameters of that
12 practice.

13 (B) "Peer review body" includes:

14 (i) A medical or professional staff of any health care facility or
15 clinic specified under Division 2 (commencing with Section 1200)
16 of the Health and Safety Code or of a facility certified to participate
17 in the federal Medicare Program as an ambulatory surgical center.

18 (ii) A health care service plan registered under Chapter 2.2
19 (commencing with Section 1340) of Division 2 of the Health and
20 Safety Code or a disability insurer that contracts with licentiates
21 to provide services at alternative rates of payment pursuant to
22 Section 10133 of the Insurance Code.

23 (iii) Any medical, psychological, marriage and family therapy,
24 social work, dental, or podiatric professional society having as
25 members at least 25 percent of the eligible licentiates in the area
26 in which it functions (which must include at least one county),
27 which is not organized for profit and which has been determined
28 to be exempt from taxes pursuant to Section 23701 of the Revenue
29 and Taxation Code.

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

34 (2) "Licentiate" means a physician and surgeon, doctor of
35 podiatric medicine, clinical psychologist, marriage and family
36 therapist, clinical social worker, or dentist. "Licentiate" also
37 includes a person authorized to practice medicine pursuant to
38 Section 2113.

39 (3) "Agency" means the relevant state licensing agency having
40 regulatory jurisdiction over the licentiates listed in paragraph (2).

1 (4) “Staff privileges” means any arrangement under which a
2 licentiate is allowed to practice in or provide care for patients in
3 a health facility. Those arrangements shall include, but are not
4 limited to, full staff privileges, active staff privileges, limited staff
5 privileges, auxiliary staff privileges, provisional staff privileges,
6 temporary staff privileges, courtesy staff privileges, locum tenens
7 arrangements, and contractual arrangements to provide professional
8 services, including, but not limited to, arrangements to provide
9 outpatient services.

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

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

18 (7) “805 report” means the written report required under
19 subdivision (b).

20 (b) The chief of staff of a medical or professional staff or other
21 chief executive officer, medical director, or administrator of any
22 peer review body and the chief executive officer or administrator
23 of any licensed health care facility or clinic shall file an 805 report
24 with the relevant agency within 15 days after the effective date of
25 any of the following that occur as a result of an action of a peer
26 review body: *on which any of the following are imposed on a*
27 *licentiate as a result of an action of a peer review body, regardless*
28 *of whether a hearing has occurred pursuant to Section 809.2:*

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

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

33 (3) Restrictions are imposed, or voluntarily accepted, on staff
34 privileges, membership, or employment for a cumulative total of
35 30 days or more for any 12-month period, for a medical disciplinary
36 cause or reason.

37 ~~(e) The chief of staff of a medical or professional staff or other~~
38 ~~chief executive officer, medical director, or administrator of any~~
39 ~~peer review body and the chief executive officer or administrator~~
40 ~~of any licensed health care facility or clinic shall file an 805 report~~

1 with the relevant agency within 15 days after any of the following
2 occur after notice of either an impending investigation or the denial
3 or rejection of the application for a medical disciplinary cause or
4 reason:

5 (1) Resignation or leave of absence from membership, staff, or
6 employment.

7 (2) The withdrawal or abandonment of a licentiate's application
8 for staff privileges or membership.

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

11 (c) *If a licentiate undertakes any action listed in paragraph (1),
12 (2), or (3) after receiving notice of a pending investigation initiated
13 for a medical disciplinary cause or reason or after receiving notice
14 that his or her application for membership, staff privileges, or
15 employment is denied or will be denied for a medical disciplinary
16 cause or reason, the chief of staff of a medical or professional staff
17 or other chief executive officer, medical director, or administrator
18 of any peer review body and the chief executive officer or
19 administrator of any licensed health care facility or clinic where
20 the licentiate is employed or has staff privileges or membership
21 or where the licentiate applied for staff privileges, membership,
22 or employment, or sought the renewal thereof, shall file an 805
23 report with the relevant agency within 15 days after the licentiate
24 undertakes the action.*

25 (1) *Resigns or takes a leave of absence from membership, staff
26 privileges, or employment.*

27 (2) *Withdraws or abandons his or her application for
28 membership, staff privileges, or employment.*

29 (3) *Withdraws or abandons his or her request for renewal of
30 membership, staff privileges, or employment.*

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

35 (e) An 805 report shall also be filed within 15 days following
36 the imposition of summary suspension of staff privileges,
37 membership, or employment, if the summary suspension remains
38 in effect for a period in excess of 14 days, *regardless of whether
39 a hearing has occurred pursuant to Section 809.2.*

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

5 The information to be reported in an 805 report shall include the
6 name and license number of the licentiate involved, a description
7 of the facts and circumstances of the medical disciplinary cause
8 or reason, and any other relevant information deemed appropriate
9 by the reporter.

10 A supplemental report shall also be made within 30 days
11 following the date the licentiate is deemed to have satisfied any
12 terms, conditions, or sanctions imposed as disciplinary action by
13 the reporting peer review body. In performing its dissemination
14 functions required by Section 805.5, the agency shall include a
15 copy of a supplemental report, if any, whenever it furnishes a copy
16 of the original 805 report.

17 If another peer review body is required to file an 805 report, a
18 health care service plan is not required to file a separate report
19 with respect to action attributable to the same medical disciplinary
20 cause or reason. If the Medical Board of California or a licensing
21 agency of another state revokes or suspends, without a stay, the
22 license of a physician and surgeon, a peer review body is not
23 required to file an 805 report when it takes an action as a result of
24 the revocation or suspension.

25 (g) The reporting required by this section shall not act as a
26 waiver of confidentiality of medical records and committee reports.
27 The information reported or disclosed shall be kept confidential
28 except as provided in subdivision (c) of Section 800 and Sections
29 803.1 and 2027, provided that a copy of the report containing the
30 information required by this section may be disclosed as required
31 by Section 805.5 with respect to reports received on or after
32 January 1, 1976.

33 (h) The Medical Board of California, the Osteopathic Medical
34 Board of California, and the Dental Board of California shall
35 disclose reports as required by Section 805.5.

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

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

1 (k) A willful failure to file an 805 report by any person who is
2 designated or otherwise required by law to file an 805 report is
3 punishable by a fine not to exceed one hundred thousand dollars
4 (\$100,000) per violation. The fine may be imposed in any civil or
5 administrative action or proceeding brought by or on behalf of any
6 agency having regulatory jurisdiction over the person regarding
7 whom the report was or should have been filed. If the person who
8 is designated or otherwise required to file an 805 report is a
9 licensed physician and surgeon, the action or proceeding shall be
10 brought by the Medical Board of California. The fine shall be paid
11 to that agency but not expended until appropriated by the
12 Legislature. A violation of this subdivision may constitute
13 unprofessional conduct by the licentiate. A person who is alleged
14 to have violated this subdivision may assert any defense available
15 at law. As used in this subdivision, “willful” means a voluntary
16 and intentional violation of a known legal duty.

17 (l) Except as otherwise provided in subdivision (k), any failure
18 by the administrator of any peer review body, the chief executive
19 officer or administrator of any health care facility, or any person
20 who is designated or otherwise required by law to file an 805
21 report, shall be punishable by a fine that under no circumstances
22 shall exceed fifty thousand dollars (\$50,000) per violation. The
23 fine may be imposed in any civil or administrative action or
24 proceeding brought by or on behalf of any agency having
25 regulatory jurisdiction over the person regarding whom the report
26 was or should have been filed. If the person who is designated or
27 otherwise required to file an 805 report is a licensed physician and
28 surgeon, the action or proceeding shall be brought by the Medical
29 Board of California. The fine shall be paid to that agency but not
30 expended until appropriated by the Legislature. The amount of the
31 fine imposed, not exceeding fifty thousand dollars (\$50,000) per
32 violation, shall be proportional to the severity of the failure to
33 report and shall differ based upon written findings, including
34 whether the failure to file caused harm to a patient or created a
35 risk to patient safety; whether the administrator of any peer review
36 body, the chief executive officer or administrator of any health
37 care facility, or any person who is designated or otherwise required
38 by law to file an 805 report exercised due diligence despite the
39 failure to file or whether they knew or should have known that an
40 805 report would not be filed; and whether there has been a prior

1 failure to file an 805 report. The amount of the fine imposed may
2 also differ based on whether a health care facility is a small or
3 rural hospital as defined in Section 124840 of the Health and Safety
4 Code.

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

13 *SEC. 4. Section 805.01 is added to the Business and Professions*
14 *Code, to read:*

15 *805.01. (a) As used in this section, the following terms have*
16 *the following definitions:*

17 *(1) "Agency" has the same meaning as defined in Section 805.*

18 *(2) "Formal investigation" means an investigation performed*
19 *by a peer review body based on any of the allegations listed in*
20 *subdivision (b).*

21 *(3) "Licentiate" has the same meaning as defined in Section*
22 *805.*

23 *(4) "Peer review body" has the same meaning as defined in*
24 *Section 805.*

25 *(b) The chief of staff of a medical or professional staff or other*
26 *chief executive officer, medical director, or administrator of any*
27 *peer review body and the chief executive officer or administrator*
28 *of any licensed health care facility or clinic shall file a report with*
29 *the relevant agency within 15 days after completion of a formal*
30 *investigation of a licentiate if the investigation resulted in any of*
31 *the following findings of fact:*

32 *(1) The licentiate departed from the standard of care.*

33 *(2) The licentiate suffered from mental illness or substance*
34 *abuse.*

35 *(3) The licentiate engaged in sexual misconduct.*

36 *(c) The relevant agency shall, without subpoena, be entitled to*
37 *inspect and copy the following unredacted documents in the record*
38 *of any formal investigation required to be reported pursuant to*
39 *subdivision (b):*

40 *(1) Any statement of charges.*

- 1 (2) Any document, medical chart, or exhibit.
- 2 (3) Any opinions, findings, or conclusions.
- 3 (4) Any peer review minutes or reports.
- 4 (d) The information disclosed pursuant to subdivision (c) shall
- 5 be kept confidential and shall not be subject to discovery, except
- 6 that the information may be reviewed as provided in subdivision
- 7 (c) of Section 800 and may be disclosed in any subsequent
- 8 disciplinary hearing conducted pursuant to the Administrative
- 9 Procedure Act (Chapter 5 (commencing with Section 11500) of
- 10 Part 1 of Division 3 of Title 2 of the Government Code).
- 11 (e) The report required under this section shall be in addition
- 12 to any report required under Section 805.

13 ~~SEC. 2.~~

14 SEC. 5. Section 805.1 of the Business and Professions Code
 15 is amended to read:

16 805.1. (a) The Medical Board of California, the Osteopathic
 17 Medical Board of California, and the Dental Board of California
 18 shall shall, without subpoena, be entitled to inspect and copy the
 19 following *unredacted* documents in the record of any disciplinary
 20 proceeding resulting in action that is required to be reported
 21 pursuant to Section 805:

- 22 (1) Any statement of charges.
- 23 (2) Any document, medical chart, or exhibits in evidence.
- 24 (3) Any opinion, findings, or conclusions.
- 25 (4) Any peer review minutes or reports.
- 26 (b) The information so disclosed shall be kept confidential and
- 27 not subject to discovery, in accordance with Section 800, except
- 28 that it may be reviewed, as provided in subdivision (c) of Section
- 29 800, and may be disclosed in any subsequent disciplinary hearing
- 30 conducted pursuant to the Administrative Procedure Act (Chapter
- 31 5 (commencing with Section 11500) of Part 1 of Division 3 of
- 32 Title 2 of the Government Code).

33 SEC. 6. Section 805.5 of the Business and Professions Code
 34 is amended to read:

35 805.5. (a) Prior to granting or renewing staff privileges for
 36 any physician and surgeon, psychologist, podiatrist, or dentist, any
 37 health facility licensed pursuant to Division 2 (commencing with
 38 Section 1200) of the Health and Safety Code, or any health care
 39 service plan or medical care foundation, or the medical staff of the
 40 institution shall request a report from the Medical Board of

1 California, the Board of Psychology, the Osteopathic Medical
2 Board of California, or the Dental Board of California to determine
3 if any report has been made pursuant to Section 805 indicating
4 that the applying physician and surgeon, psychologist, podiatrist,
5 or dentist has been denied staff privileges, been removed from a
6 medical staff, or had his or her staff privileges restricted as
7 provided in Section 805. The request shall include the name and
8 California license number of the physician and surgeon,
9 psychologist, podiatrist, or dentist. Furnishing of a copy of the 805
10 report shall not cause the 805 report to be a public record.

11 (b) Upon a request made by, or on behalf of, an institution
12 described in subdivision (a) or its medical staff, which is received
13 on or after January 1, 1980, the board shall furnish a copy of any
14 report made pursuant to Section 805. However, the board shall not
15 send a copy of a report (1) if the denial, removal, or restriction
16 was imposed solely because of the failure to complete medical
17 records, (2) if the board has found the information reported is
18 without merit, (3) *if a court finds that the peer review, as defined*
19 *in Section 805, resulting in the report was conducted in bad faith*
20 *and the licensee who is the subject of the report notifies the board*
21 *of that finding, or* ~~(3)~~ (4) if a period of three years has elapsed since
22 the report was submitted. This three-year period shall be tolled
23 during any period the licentiate has obtained a judicial order
24 precluding disclosure of the report, unless the board is finally and
25 permanently precluded by judicial order from disclosing the report.
26 ~~In the event~~ *If* a request is received by the board while the board
27 is subject to a judicial order limiting or precluding disclosure, the
28 board shall provide a disclosure to any qualified requesting party
29 as soon as practicable after the judicial order is no longer in force.

30 ~~In the event that~~

31 *If* the board fails to advise the institution within 30 working days
32 following its request for a report required by this section, the
33 institution may grant or renew staff privileges for the physician
34 and surgeon, psychologist, podiatrist, or dentist.

35 (c) Any institution described in subdivision (a) or its medical
36 staff that violates subdivision (a) is guilty of a misdemeanor and
37 shall be punished by a fine of not less than two hundred dollars
38 (\$200) nor more than one thousand two hundred dollars (\$1,200).

39 *SEC. 7. Section 2027 of the Business and Professions Code is*
40 *amended to read:*

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

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

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

11 (3) Any felony convictions reported to the board after January
12 3, 1991.

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

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

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

25 (7) Any misdemeanor conviction that results in a disciplinary
26 action or an accusation that is not subsequently withdrawn or
27 dismissed.

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

33 (9) Any information required to be disclosed pursuant to Section
34 803.1.

35 (b) (1) From January 1, 2003, the information described in
36 paragraphs (1) (other than whether or not the licensee is in good
37 standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain
38 posted for a period of 10 years from the date the board obtains
39 possession, custody, or control of the information, and after the
40 end of that period shall be removed from being posted on the

1 board's Internet Web site. Information in the possession, custody,
2 or control of the board prior to January 1, 2003, shall be posted
3 for a period of 10 years from January 1, 2003. Settlement
4 information shall be posted as described in paragraph (2) of
5 subdivision (b) of Section 803.1.

6 (2) The information described in paragraphs (3) and (6) of
7 subdivision (a) shall not be removed from being posted on the
8 board's Internet Web site. ~~Notwithstanding the provisions of this~~
9 ~~paragraph,~~

10 (3) *Notwithstanding paragraph (2) and except as provided in*
11 *paragraph (4), if a licensee's hospital staff privileges are restored*
12 *and the licensee notifies the board of the restoration, the*
13 *information pertaining to the termination or revocation of those*
14 *privileges, as described in paragraph (6) of subdivision (a), shall*
15 *remain posted for a period of 10 years from the restoration date*
16 *of the privileges, and at the end of that period shall be removed*
17 *from being posted on the board's Internet Web site.*

18 (4) *Notwithstanding paragraph (2), if a court finds that peer*
19 *review resulting in a hospital disciplinary action was conducted*
20 *in bad faith and the licensee notifies the board of that finding, the*
21 *information concerning that hospital disciplinary action posted*
22 *pursuant to paragraph (6) of subdivision (a) shall be immediately*
23 *removed from the board's Internet Web site. For purposes of this*
24 *paragraph, "peer review" has the same meaning as defined in*
25 *Section 805.*

26 (c) *The board shall also post on the Internet a factsheet that*
27 *explains and provides information on the reporting requirements*
28 *under Section 805.*

29 (e)

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

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