

AMENDED IN SENATE APRIL 22, 2009

AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 700**

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**Introduced by Senator Negrete McLeod**

February 27, 2009

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An act to amend Sections 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 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.

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~~ *peer review body concludes, after formal investigation, that a person licensed by that board departed from the standard of care, as specified, suffered from mental illness or substance abuse, or engaged in sexual misconduct.* 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 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 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

1 that finding in the central file. For purposes of this paragraph, “peer  
2 review” has the same meaning as defined in Section 805.

3 (5) Information reported pursuant to Section 805.01.

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

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

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

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

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

39 Each board may permit any law enforcement or regulatory  
40 agency when required for an investigation of unlawful activity or

1 for licensing, certification, or regulatory purposes to inspect and  
2 have copies made of that licensee's file, unless the disclosure is  
3 otherwise prohibited by law.

4 These disclosures shall effect no change in the confidential status  
5 of these records.

6 SEC. 2. Section 803.1 of the Business and Professions Code  
7 is amended to read:

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

14 (1) Temporary restraining orders issued.

15 (2) Interim suspension orders issued.

16 (3) Revocations, suspensions, probations, or limitations on  
17 practice ordered by the board, including those made part of a  
18 probationary order or stipulated agreement.

19 (4) Public letters of reprimand issued.

20 (5) Infractions, citations, or fines imposed.

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

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

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

1 complaint that alleged class liability on behalf of the licensee also  
2 alleged a products liability class action cause of action. All  
3 settlements in the possession, custody, or control of the board shall  
4 be disclosed for a licensee in the high-risk category if there are  
5 four or more settlements for that licensee within the last 10 years  
6 except for settlements by a licensee regardless of the amount paid  
7 where (i) the settlement is made as a part of the settlement of a  
8 class claim, (ii) the licensee paid in settlement of the class claim  
9 the same amount as the other licensees in the same class or  
10 similarly situated licensees in the same class, and (iii) the  
11 settlement was paid in the context of a case where the complaint  
12 that alleged class liability on behalf of the licensee also alleged a  
13 products liability class action cause of action. Classification of a  
14 licensee in either a “high-risk category” or a “low-risk category”  
15 depends upon the specialty or subspecialty practiced by the licensee  
16 and the designation assigned to that specialty or subspecialty by  
17 the Medical Board of California, as described in subdivision (f).  
18 For the purposes of this paragraph, “settlement” means a settlement  
19 of an action described in paragraph (1) entered into by the licensee  
20 on or after January 1, 2003, in an amount of thirty thousand dollars  
21 (\$30,000) or more.

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

25 (i) Comparing the settlement amount to the experience of other  
26 licensees within the same specialty or subspecialty, indicating if  
27 it is below average, average, or above average for the most recent  
28 10-year period.

29 (ii) Reporting the number of years the licensee has been in  
30 practice.

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

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

39 (4) Approved postgraduate training.

1 (5) Status of the license of a licensee. By January 1, 2004, the  
2 Medical Board of California, the Osteopathic Medical Board of  
3 California, and the California Board of Podiatric Medicine shall  
4 adopt regulations defining the status of a licensee. The board shall  
5 employ this definition when disclosing the status of a licensee  
6 pursuant to Section 2027.

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

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

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

31  
32 “Some studies have shown that there is no significant correlation  
33 between malpractice history and a doctor’s competence. At the  
34 same time, the State of California believes that consumers should  
35 have access to malpractice information. In these profiles, the State  
36 of California has given you information about both the malpractice  
37 settlement history for the doctor’s specialty and the doctor’s history  
38 of settlement payments only if in the last 10 years, the doctor, if  
39 in a low-risk specialty, has three or more settlements or the doctor,  
40 if in a high-risk specialty, has four or more settlements. The State

1 of California has excluded some class action lawsuits because  
2 those cases are commonly related to systems issues such as product  
3 liability, rather than questions of individual professional  
4 competence and because they are brought on a class basis where  
5 the economic incentive for settlement is great. The State of  
6 California has placed payment amounts into three statistical  
7 categories: below average, average, and above average compared  
8 to others in the doctor's specialty. To make the best health care  
9 decisions, you should view this information in perspective. You  
10 could miss an opportunity for high-quality care by selecting a  
11 doctor based solely on malpractice history.

12 When considering malpractice data, please keep in mind:

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

18 This report reflects data only for settlements made on or after  
19 January 1, 2003. Moreover, it includes information concerning  
20 those settlements for a 10-year period only. Therefore, you should  
21 know that a doctor may have made settlements in the 10 years  
22 immediately preceding January 1, 2003, that are not included in  
23 this report. After January 1, 2013, for doctors practicing less than  
24 10 years, the data covers their total years of practice. You should  
25 take into account the effective date of settlement disclosure as well  
26 as how long the doctor has been in practice when considering  
27 malpractice averages.

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

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



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

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

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

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

38 (h) Pursuant to subparagraph (A) of paragraph (2) of subdivision  
39 (b), the specialty or subspecialty information required by this  
40 section shall group physicians by specialty board recognized

1 pursuant to paragraph (5) of subdivision (h) of Section 651 unless  
2 a different grouping would be more valid and the board, in its  
3 statement of reasons for its regulations, explains why the validity  
4 of the grouping would be more valid.

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

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

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

16 (B) “Peer review body” includes:

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

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

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

37 (2) “Licentiate” means a physician and surgeon, doctor of  
38 podiatric medicine, clinical psychologist, marriage and family  
39 therapist, clinical social worker, or dentist. “Licentiate” also

1 includes a person authorized to practice medicine pursuant to  
2 Section 2113.

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

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

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

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

22 (7) “805 report” means the written report required under  
23 subdivision (b).

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

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

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

36 (3) Restrictions are imposed, or voluntarily accepted, on staff  
37 privileges, membership, or employment for a cumulative total of  
38 30 days or more for any 12-month period, for a medical disciplinary  
39 cause or reason.

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

15 (1) Resigns or takes a leave of absence from membership, staff  
16 privileges, or employment.

17 (2) Withdraws or abandons his or her application for  
18 membership, staff privileges, or employment.

19 (3) Withdraws or abandons his or her request for renewal of  
20 membership, staff privileges, or employment.

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, regardless of whether  
29 a hearing has occurred pursuant to Section 809.2.

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

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

39 A supplemental report shall also be made within 30 days  
40 following the date the licentiate is deemed to have satisfied any

1 terms, conditions, or sanctions imposed as disciplinary action by  
2 the reporting peer review body. In performing its dissemination  
3 functions required by Section 805.5, the agency shall include a  
4 copy of a supplemental report, if any, whenever it furnishes a copy  
5 of the original 805 report.

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

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

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

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

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

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

1 unprofessional conduct by the licentiate. A person who is alleged  
2 to have violated this subdivision may assert any defense available  
3 at law. As used in this subdivision, “willful” means a voluntary  
4 and intentional violation of a known legal duty.

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

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

1 SEC. 4. Section 805.01 is added to the Business and Professions  
2 Code, to read:

3 805.01. (a) As used in this section, the following terms have  
4 the following definitions:

5 (1) “Agency” has the same meaning as defined in Section 805.

6 (2) “Formal investigation” means an investigation performed  
7 by a peer review body based on ~~any of the allegations~~ *an allegation*  
8 *that the licentiate committed any of the acts* listed in subdivision  
9 (b).

10 (3) “Licentiate” has the same meaning as defined in Section  
11 805.

12 (4) “Peer review body” has the same meaning as defined in  
13 Section 805.

14 (b) The chief of staff of a medical or professional staff or other  
15 chief executive officer, medical director, or administrator of any  
16 peer review body and the chief executive officer or administrator  
17 of any licensed health care facility or clinic shall file a report with  
18 the relevant agency within 15 days after ~~completion of a formal~~  
19 ~~investigation of a licentiate if the investigation resulted in any of~~  
20 ~~the following findings of fact:~~ *a peer review body concludes,*  
21 *following completion of a formal investigation of a licentiate, that*  
22 *any of the following occurred:*

23 (1) The licentiate departed from the standard of care *and there*  
24 *was patient harm, including, but not limited to, any of the adverse*  
25 *events described in paragraph (1) of subdivision (b) of Section*  
26 *1279.1 of the Health and Safety Code.*

27 (2) The licentiate suffered from mental illness or substance  
28 abuse.

29 (3) The licentiate engaged in sexual misconduct.

30 (c) The relevant agency shall, without subpoena, be entitled to  
31 inspect and copy the following unredacted documents in the record  
32 of any formal investigation required to be reported pursuant to  
33 subdivision (b):

34 (1) Any statement of charges.

35 (2) Any document, medical chart, or exhibit.

36 (3) Any opinions, findings, or conclusions.

37 (4) Any peer review minutes or reports.

38 (d) The information disclosed pursuant to subdivision (c) shall  
39 be kept confidential and shall not be subject to discovery, except  
40 that the information may be reviewed as provided in subdivision

1 (c) of Section 800 and may be disclosed in any subsequent  
2 disciplinary hearing conducted pursuant to the Administrative  
3 Procedure Act (Chapter 5 (commencing with Section 11500) of  
4 Part 1 of Division 3 of Title 2 of the Government Code).

5 (e) The report required under this section shall be in addition  
6 to any report required under Section 805.

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

9 805.1. (a) The Medical Board of California, the Osteopathic  
10 Medical Board of California, and the Dental Board of California  
11 shall, without subpoena, be entitled to inspect and copy the  
12 following unredacted documents in the record of any disciplinary  
13 proceeding resulting in action that is required to be reported  
14 pursuant to Section 805:

- 15 (1) Any statement of charges.
- 16 (2) Any document, medical chart, or exhibits in evidence.
- 17 (3) Any opinion, findings, or conclusions.
- 18 (4) Any peer review minutes or reports.

19 (b) The information so disclosed shall be kept confidential and  
20 not subject to discovery, in accordance with Section 800, except  
21 that it may be reviewed, as provided in subdivision (c) of Section  
22 800, and may be disclosed in any subsequent disciplinary hearing  
23 conducted pursuant to the Administrative Procedure Act (Chapter  
24 5 (commencing with Section 11500) of Part 1 of Division 3 of  
25 Title 2 of the Government Code).

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

28 805.5. (a) Prior to granting or renewing staff privileges for  
29 any physician and surgeon, psychologist, podiatrist, or dentist, any  
30 health facility licensed pursuant to Division 2 (commencing with  
31 Section 1200) of the Health and Safety Code, or any health care  
32 service plan or medical care foundation, or the medical staff of the  
33 institution shall request a report from the Medical Board of  
34 California, the Board of Psychology, the Osteopathic Medical  
35 Board of California, or the Dental Board of California to determine  
36 if any report has been made pursuant to Section 805 indicating  
37 that the applying physician and surgeon, psychologist, podiatrist,  
38 or dentist has been denied staff privileges, been removed from a  
39 medical staff, or had his or her staff privileges restricted as  
40 provided in Section 805. The request shall include the name and



1 California license number of the physician and surgeon,  
2 psychologist, podiatrist, or dentist. Furnishing of a copy of the 805  
3 report shall not cause the 805 report to be a public record.

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

23 If the board fails to advise the institution within 30 working days  
24 following its request for a report required by this section, the  
25 institution may grant or renew staff privileges for the physician  
26 and surgeon, psychologist, podiatrist, or dentist.

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

31 SEC. 7. Section 2027 of the Business and Professions Code is  
32 amended to read:

33 2027. (a) The board shall post on the Internet the following  
34 information in its possession, custody, or control regarding licensed  
35 physicians and surgeons:

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

- 1 (2) With regard to prior discipline, whether or not the licensee  
2 has been subject to discipline by the board or by the board of  
3 another state or jurisdiction, as described in Section 803.1.
- 4 (3) Any felony convictions reported to the board after January  
5 3, 1991.
- 6 (4) All current accusations filed by the Attorney General,  
7 including those accusations that are on appeal. For purposes of  
8 this paragraph, “current accusation” shall mean an accusation that  
9 has not been dismissed, withdrawn, or settled, and has not been  
10 finally decided upon by an administrative law judge and the  
11 Medical Board of California unless an appeal of that decision is  
12 pending.
- 13 (5) Any malpractice judgment or arbitration award reported to  
14 the board after January 1, 1993.
- 15 (6) Any hospital disciplinary actions that resulted in the  
16 termination or revocation of a licensee’s hospital staff privileges  
17 for a medical disciplinary cause or reason.
- 18 (7) Any misdemeanor conviction that results in a disciplinary  
19 action or an accusation that is not subsequently withdrawn or  
20 dismissed.
- 21 (8) Appropriate disclaimers and explanatory statements to  
22 accompany the above information, including an explanation of  
23 what types of information are not disclosed. These disclaimers and  
24 statements shall be developed by the board and shall be adopted  
25 by regulation.
- 26 (9) Any information required to be disclosed pursuant to Section  
27 803.1.
- 28 (b) (1) From January 1, 2003, the information described in  
29 paragraphs (1) (other than whether or not the licensee is in good  
30 standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain  
31 posted for a period of 10 years from the date the board obtains  
32 possession, custody, or control of the information, and after the  
33 end of that period shall be removed from being posted on the  
34 board’s Internet Web site. Information in the possession, custody,  
35 or control of the board prior to January 1, 2003, shall be posted  
36 for a period of 10 years from January 1, 2003. Settlement  
37 information shall be posted as described in paragraph (2) of  
38 subdivision (b) of Section 803.1.

1 (2) The information described in paragraphs (3) and (6) of  
2 subdivision (a) shall not be removed from being posted on the  
3 board's Internet Web site.

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

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

20 (c) The board shall also post on the Internet a factsheet that  
21 explains and provides information on the reporting requirements  
22 under Section 805.

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

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