

AMENDED IN SENATE MAY 11, 2009
AMENDED IN SENATE APRIL 22, 2009
AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 700

Introduced by Senator Negrete McLeod

February 27, 2009

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~~ *within 15 days after* a peer review body ~~concludes,~~ *after makes a decision or recommendation regarding the disciplinary action to be taken against a licentiate of that board based on the peer review body's determination, following formal investigation, that a person licensed by that board the licentiate departed from the standard of care, as specified, committed or was responsible for a specified adverse event, 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).

1 (4) Disciplinary information reported pursuant to Section 805.
2 If a court finds that the peer review resulting in the 805 report was
3 conducted in bad faith and the licensee who is the subject of the
4 report notifies the board of that finding, the board shall include
5 that finding in the central file. For purposes of this paragraph, “peer
6 review” has the same meaning as defined in Section 805.

7 (5) Information reported pursuant to Section 805.01.

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

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

17 Notwithstanding this subdivision, the Board of Psychology, the
18 Board of Behavioral Sciences, and the Respiratory Care Board of
19 California shall maintain complaints or reports as long as each
20 board deems necessary.

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

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

4 Each board may permit any law enforcement or regulatory
5 agency when required for an investigation of unlawful activity or
6 for licensing, certification, or regulatory purposes to inspect and
7 have copies made of that licensee’s file, unless the disclosure is
8 otherwise prohibited by law.

9 These disclosures shall effect no change in the confidential status
10 of these records.

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

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

- 19 (1) Temporary restraining orders issued.
- 20 (2) Interim suspension orders issued.
- 21 (3) Revocations, suspensions, probations, or limitations on
22 practice ordered by the board, including those made part of a
23 probationary order or stipulated agreement.
- 24 (4) Public letters of reprimand issued.
- 25 (5) Infractions, citations, or fines imposed.

26 (b) Notwithstanding any other provision of law, in addition to
27 the information provided in subdivision (a), the Medical Board of
28 California, the Osteopathic Medical Board of California, and the
29 California Board of Podiatric Medicine shall disclose to an
30 inquiring member of the public all of the following:

- 31 (1) Civil judgments in any amount, whether or not vacated by
32 a settlement after entry of the judgment, that were not reversed on
33 appeal and arbitration awards in any amount of a claim or action
34 for damages for death or personal injury caused by the physician
35 and surgeon’s negligence, error, or omission in practice, or by his
36 or her rendering of unauthorized professional services.
- 37 (2) (A) All settlements in the possession, custody, or control
38 of the board shall be disclosed for a licensee in the low-risk
39 category if there are three or more settlements for that licensee
40 within the last 10 years, except for settlements by a licensee

1 regardless of the amount paid where (i) the settlement is made as
2 a part of the settlement of a class claim, (ii) the licensee paid in
3 settlement of the class claim the same amount as the other licensees
4 in the same class or similarly situated licensees in the same class,
5 and (iii) the settlement was paid in the context of a case where the
6 complaint that alleged class liability on behalf of the licensee also
7 alleged a products liability class action cause of action. All
8 settlements in the possession, custody, or control of the board shall
9 be disclosed for a licensee in the high-risk category if there are
10 four or more settlements for that licensee within the last 10 years
11 except for settlements by a licensee regardless of the amount paid
12 where (i) the settlement is made as a part of the settlement of a
13 class claim, (ii) the licensee paid in settlement of the class claim
14 the same amount as the other licensees in the same class or
15 similarly situated licensees in the same class, and (iii) the
16 settlement was paid in the context of a case where the complaint
17 that alleged class liability on behalf of the licensee also alleged a
18 products liability class action cause of action. Classification of a
19 licensee in either a “high-risk category” or a “low-risk category”
20 depends upon the specialty or subspecialty practiced by the licensee
21 and the designation assigned to that specialty or subspecialty by
22 the Medical Board of California, as described in subdivision (f).
23 For the purposes of this paragraph, “settlement” means a settlement
24 of an action described in paragraph (1) entered into by the licensee
25 on or after January 1, 2003, in an amount of thirty thousand dollars
26 (\$30,000) or more.

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

30 (i) Comparing the settlement amount to the experience of other
31 licensees within the same specialty or subspecialty, indicating if
32 it is below average, average, or above average for the most recent
33 10-year period.

34 (ii) Reporting the number of years the licensee has been in
35 practice.

36 (iii) Reporting the total number of licensees in that specialty or
37 subspecialty, the number of those who have entered into a
38 settlement agreement, and the percentage that number represents
39 of the total number of licensees in the specialty or subspecialty.

1 (3) Current American Board of Medical Specialty certification
2 or board equivalent as certified by the Medical Board of California,
3 the Osteopathic Medical Board of California, or the California
4 Board of Podiatric Medicine.

5 (4) Approved postgraduate training.

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

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

19 (c) Notwithstanding any other provision of law, the Medical
20 Board of California, the Osteopathic Medical Board of California,
21 and the California Board of Podiatric Medicine shall disclose to
22 an inquiring member of the public information received regarding
23 felony convictions of a physician and surgeon or doctor of podiatric
24 medicine.

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

36
37 “Some studies have shown that there is no significant correlation
38 between malpractice history and a doctor’s competence. At the
39 same time, the State of California believes that consumers should
40 have access to malpractice information. In these profiles, the State

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

17 When considering malpractice data, please keep in mind:

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

23 This report reflects data only for settlements made on or after
24 January 1, 2003. Moreover, it includes information concerning
25 those settlements for a 10-year period only. Therefore, you should
26 know that a doctor may have made settlements in the 10 years
27 immediately preceding January 1, 2003, that are not included in
28 this report. After January 1, 2013, for doctors practicing less than
29 10 years, the data covers their total years of practice. You should
30 take into account the effective date of settlement disclosure as well
31 as how long the doctor has been in practice when considering
32 malpractice averages.

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

1 Settlement of a claim may occur for a variety of reasons that do
2 not necessarily reflect negatively on the professional competence
3 or conduct of the doctor. A payment in settlement of a medical
4 malpractice action or claim should not be construed as creating a
5 presumption that medical malpractice has occurred.

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

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

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

34 (g) The Medical Board of California, the Osteopathic Medical
35 Board of California, and the California Board of Podiatric Medicine
36 shall provide each licensee with a copy of the text of any proposed
37 public disclosure authorized by this section prior to release of the
38 disclosure to the public. The licensee shall have 10 working days
39 from the date the board provides the copy of the proposed public
40 disclosure to propose corrections of factual inaccuracies. Nothing

1 in this section shall prevent the board from disclosing information
2 to the public prior to the expiration of the 10-day period.

3 (h) Pursuant to subparagraph (A) of paragraph (2) of subdivision
4 (b), the specialty or subspecialty information required by this
5 section shall group physicians by specialty board recognized
6 pursuant to paragraph (5) of subdivision (h) of Section 651 unless
7 a different grouping would be more valid and the board, in its
8 statement of reasons for its regulations, explains why the validity
9 of the grouping would be more valid.

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

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

14 (1) (A) "Peer review" means a process in which a peer review
15 body reviews the basic qualifications, staff privileges, employment,
16 medical outcomes, and professional conduct of licentiates to
17 determine whether the licentiate may practice or continue to
18 practice in a health care facility, clinic, or other setting providing
19 medical services and, if so, to determine the parameters of that
20 practice.

21 (B) "Peer review body" includes:

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

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

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

38 (iv) A committee organized by any entity consisting of or
39 employing more than 25 licentiates of the same class that functions

1 for the purpose of reviewing the quality of professional care
2 provided by members or employees of that entity.

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

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

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

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

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

27 (7) “805 report” means the written report required under
28 subdivision (b).

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

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

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

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

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

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

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

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

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

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

34 (f) A copy of the 805 report, and a notice advising the licentiate
35 of his or her right to submit additional statements or other
36 information pursuant to Section 800, shall be sent by the peer
37 review body to the licentiate named in the report. The information
38 to be reported in an 805 report shall include the name and license
39 number of the licentiate involved, a description of the facts and

1 circumstances of the medical disciplinary cause or reason, and any
2 other relevant information deemed appropriate by the reporter.

3 A supplemental report shall also be made within 30 days
4 following the date the licentiate is deemed to have satisfied any
5 terms, conditions, or sanctions imposed as disciplinary action by
6 the reporting peer review body. In performing its dissemination
7 functions required by Section 805.5, the agency shall include a
8 copy of a supplemental report, if any, whenever it furnishes a copy
9 of the original 805 report.

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

18 (g) The reporting required by this section shall not act as a
19 waiver of confidentiality of medical records and committee reports.
20 The information reported or disclosed shall be kept confidential
21 except as provided in subdivision (c) of Section 800 and Sections
22 803.1 and 2027, provided that a copy of the report containing the
23 information required by this section may be disclosed as required
24 by Section 805.5 with respect to reports received on or after
25 January 1, 1976.

26 (h) The Medical Board of California, the Osteopathic Medical
27 Board of California, and the Dental Board of California shall
28 disclose reports as required by Section 805.5.

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

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

33 (k) A willful failure to file an 805 report by any person who is
34 designated or otherwise required by law to file an 805 report is
35 punishable by a fine not to exceed one hundred thousand dollars
36 (\$100,000) per violation. The fine may be imposed in any civil or
37 administrative action or proceeding brought by or on behalf of any
38 agency having regulatory jurisdiction over the person regarding
39 whom the report was or should have been filed. If the person who
40 is designated or otherwise required to file an 805 report is a

1 licensed physician and surgeon, the action or proceeding shall be
2 brought by the Medical Board of California. The fine shall be paid
3 to that agency but not expended until appropriated by the
4 Legislature. A violation of this subdivision may constitute
5 unprofessional conduct by the licentiate. A person who is alleged
6 to have violated this subdivision may assert any defense available
7 at law. As used in this subdivision, “willful” means a voluntary
8 and intentional violation of a known legal duty.

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

37 (m) A health care service plan registered under Chapter 2.2
38 (commencing with Section 1340) of Division 2 of the Health and
39 Safety Code or a disability insurer that negotiates and enters into
40 a contract with licentiates to provide services at alternative rates

1 of payment pursuant to Section 10133 of the Insurance Code, when
2 determining participation with the plan or insurer, shall evaluate,
3 on a case-by-case basis, licentiates who are the subject of an 805
4 report, and not automatically exclude or deselect these licentiates.

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

7 805.01. (a) As used in this section, the following terms have
8 the following definitions:

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

10 (2) “Formal investigation” means an investigation performed
11 by a peer review body based on an allegation ~~that the licentiate~~
12 ~~committed any of the acts listed in subdivision (b):~~ *that any of the*
13 *acts listed in paragraphs (1) to (4), inclusive, of subdivision (b)*
14 *occurred.*

15 (3) “Licentiate” has the same meaning as defined in Section
16 805.

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

19 (b) The chief of staff of a medical or professional staff or other
20 chief executive officer, medical director, or administrator of any
21 peer review body and the chief executive officer or administrator
22 of any licensed health care facility or clinic shall file a report with
23 the relevant agency within 15 days after a peer review body
24 ~~concludes, following completion of a formal investigation of a~~
25 ~~licentiate, that any of the following occurred:~~ *makes a decision or*
26 *recommendation regarding the disciplinary action to be taken*
27 *against a licentiate based on the peer review body’s determination,*
28 *following formal investigation of the licentiate, that any of the acts*
29 *listed in paragraphs (1) to (4), inclusive, occurred. A peer review*
30 *body shall not await a final proposed action, as defined in Section*
31 *809.1, for purposes of filing this report.*

32 (1) The licentiate departed from the standard of care and there
33 ~~was patient harm, including, but not limited to, any of the adverse~~
34 ~~events was patient harm.~~

35 (2) *The licentiate committed or was responsible for the*
36 *occurrence of an adverse event described in paragraph (1) of*
37 *subdivision (b) of Section 1279.1 of the Health and Safety Code.*

38 (2)

39 (3) The licentiate suffered from mental illness or substance
40 abuse.

1 ~~(3)~~

2 (4) The licentiate engaged in sexual misconduct.

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

7 (1) Any statement of charges.

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

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

10 (4) Any peer review minutes or reports.

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

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

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

22 805.1. (a) The Medical Board of California, the Osteopathic
23 Medical Board of California, and the Dental Board of California
24 shall, without subpoena, be entitled to inspect and copy the
25 following unredacted documents in the record of any disciplinary
26 proceeding resulting in action that is required to be reported
27 pursuant to Section 805:

28 (1) Any statement of charges.

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

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

31 (4) Any peer review minutes or reports.

32 (b) The information so disclosed shall be kept confidential and
33 not subject to discovery, in accordance with Section 800, except
34 that it may be reviewed, as provided in subdivision (c) of Section
35 800, and may be disclosed in any subsequent disciplinary hearing
36 conducted pursuant to the Administrative Procedure Act (Chapter
37 5 (commencing with Section 11500) of Part 1 of Division 3 of
38 Title 2 of the Government Code).

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

1 805.5. (a) Prior to granting or renewing staff privileges for
2 any physician and surgeon, psychologist, podiatrist, or dentist, any
3 health facility licensed pursuant to Division 2 (commencing with
4 Section 1200) of the Health and Safety Code, or any health care
5 service plan or medical care foundation, or the medical staff of the
6 institution shall request a report from the Medical Board of
7 California, the Board of Psychology, the Osteopathic Medical
8 Board of California, or the Dental Board of California to determine
9 if any report has been made pursuant to Section 805 indicating
10 that the applying physician and surgeon, psychologist, podiatrist,
11 or dentist has been denied staff privileges, been removed from a
12 medical staff, or had his or her staff privileges restricted as
13 provided in Section 805. The request shall include the name and
14 California license number of the physician and surgeon,
15 psychologist, podiatrist, or dentist. Furnishing of a copy of the 805
16 report shall not cause the 805 report to be a public record.

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

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

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

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

7 2027. (a) The board shall post on the Internet the following
8 information in its possession, custody, or control regarding licensed
9 physicians and surgeons:

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

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

17 (3) Any felony convictions reported to the board after January
18 3, 1991.

19 (4) All current accusations filed by the Attorney General,
20 including those accusations that are on appeal. For purposes of
21 this paragraph, "current accusation" shall mean an accusation that
22 has not been dismissed, withdrawn, or settled, and has not been
23 finally decided upon by an administrative law judge and the
24 Medical Board of California unless an appeal of that decision is
25 pending.

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

28 (6) Any hospital disciplinary actions that resulted in the
29 termination or revocation of a licensee's hospital staff privileges
30 for a medical disciplinary cause or reason.

31 (7) Any misdemeanor conviction that results in a disciplinary
32 action or an accusation that is not subsequently withdrawn or
33 dismissed.

34 (8) Appropriate disclaimers and explanatory statements to
35 accompany the above information, including an explanation of
36 what types of information are not disclosed. These disclaimers and
37 statements shall be developed by the board and shall be adopted
38 by regulation.

39 (9) Any information required to be disclosed pursuant to Section
40 803.1.

1 (b) (1) From January 1, 2003, the information described in
2 paragraphs (1) (other than whether or not the licensee is in good
3 standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain
4 posted for a period of 10 years from the date the board obtains
5 possession, custody, or control of the information, and after the
6 end of that period shall be removed from being posted on the
7 board's Internet Web site. Information in the possession, custody,
8 or control of the board prior to January 1, 2003, shall be posted
9 for a period of 10 years from January 1, 2003. Settlement
10 information shall be posted as described in paragraph (2) of
11 subdivision (b) of Section 803.1.

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

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

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

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

34 (d) The board shall provide links to other Web sites on the
35 Internet that provide information on board certifications that meet
36 the requirements of subdivision (b) of Section 651. The board may
37 provide links to other Web sites on the Internet that provide
38 information on health care service plans, health insurers, hospitals,
39 or other facilities. The board may also provide links to any other

- 1 sites that would provide information on the affiliations of licensed
- 2 physicians and surgeons.

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