

AMENDED IN SENATE MAY 20, 2009
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, *including imposition of a summary suspension of staff privileges, membership, or employment if the summary suspension stays in effect for a period in excess of 14 days*. 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~~ *specify that the 805 report must be filed* within 15 days of the imposition of a ~~specified action on a licentiate~~ *the summary suspension* regardless of whether a hearing has occurred.

This bill would also require specified persons to file a report with a licensing board within 15 days after a peer review body 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 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.

Existing law also requires the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine to disclose to an inquiring member of the public information regarding enforcement actions taken against a licensee by the board or by another state or jurisdiction.

This bill would also require those boards to make those disclosures regarding enforcement actions taken against former licensees.

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:

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

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

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

12 (4) Disciplinary information reported pursuant to Section 805.
13 If a court finds that the peer review resulting in the 805 report was
14 conducted in bad faith and the licensee who is the subject of the
15 report notifies the board of that finding, the board shall include
16 that finding in the central file. For purposes of this paragraph, "peer
17 review" has the same meaning as defined in Section 805.

18 (5) Information reported pursuant to Section 805.01.

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

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

28 Notwithstanding this subdivision, the Board of Psychology, the
29 Board of Behavioral Sciences, and the Respiratory Care Board of
30 California shall maintain complaints or reports as long as each
31 board deems necessary.

32 (c) The contents of any central file that are not public records
33 under any other provision of law shall be confidential except that
34 the licensee involved, or his or her counsel or representative, shall
35 have the right to inspect and have copies made of his or her
36 complete file except for the provision that may disclose the identity
37 of an information source. For the purposes of this section, a board
38 may protect an information source by providing a copy of the
39 material with only those deletions necessary to protect the identity
40 of the source or by providing a comprehensive summary of the

1 substance of the material. Whichever method is used, the board
2 shall ensure that full disclosure is made to the subject of any
3 personal information that could reasonably in any way reflect or
4 convey anything detrimental, disparaging, or threatening to a
5 licensee's reputation, rights, benefits, privileges, or qualifications,
6 or be used by a board to make a determination that would affect
7 a licensee's rights, benefits, privileges, or qualifications. The
8 information required to be disclosed pursuant to Section 803.1
9 shall not be considered among the contents of a central file for the
10 purposes of this subdivision.

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

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

19 These disclosures shall effect no change in the confidential status
20 of these records.

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

23 803.1. (a) Notwithstanding any other provision of law, the
24 Medical Board of California, the Osteopathic Medical Board of
25 California, and the California Board of Podiatric Medicine shall
26 disclose to an inquiring member of the public information regarding
27 any enforcement actions taken against a licensee ~~by either,~~
28 *including a former licensee, by the board or by another state or*
29 *jurisdiction, including all of the following:*

- 30 (1) Temporary restraining orders issued.
- 31 (2) Interim suspension orders issued.
- 32 (3) Revocations, suspensions, probations, or limitations on
33 practice ordered by the board, including those made part of a
34 probationary order or stipulated agreement.
- 35 (4) Public letters of reprimand issued.
- 36 (5) Infractions, citations, or fines imposed.

37 (b) Notwithstanding any other provision of law, in addition to
38 the information provided in subdivision (a), the Medical Board of
39 California, the Osteopathic Medical Board of California, and the

1 California Board of Podiatric Medicine shall disclose to an
2 inquiring member of the public all of the following:

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

9 (2) (A) All settlements in the possession, custody, or control
10 of the board shall be disclosed for a licensee in the low-risk
11 category if there are three or more settlements for that licensee
12 within the last 10 years, except for settlements by a licensee
13 regardless of the amount paid where (i) the settlement is made as
14 a part of the settlement of a class claim, (ii) the licensee paid in
15 settlement of the class claim the same amount as the other licensees
16 in the same class or similarly situated licensees in the same class,
17 and (iii) the settlement was paid in the context of a case where the
18 complaint that alleged class liability on behalf of the licensee also
19 alleged a products liability class action cause of action. All
20 settlements in the possession, custody, or control of the board shall
21 be disclosed for a licensee in the high-risk category if there are
22 four or more settlements for that licensee within the last 10 years
23 except for settlements by a licensee regardless of the amount paid
24 where (i) the settlement is made as a part of the settlement of a
25 class claim, (ii) the licensee paid in settlement of the class claim
26 the same amount as the other licensees in the same class or
27 similarly situated licensees in the same class, and (iii) the
28 settlement was paid in the context of a case where the complaint
29 that alleged class liability on behalf of the licensee also alleged a
30 products liability class action cause of action. Classification of a
31 licensee in either a "high-risk category" or a "low-risk category"
32 depends upon the specialty or subspecialty practiced by the licensee
33 and the designation assigned to that specialty or subspecialty by
34 the Medical Board of California, as described in subdivision (f).
35 For the purposes of this paragraph, "settlement" means a settlement
36 of an action described in paragraph (1) entered into by the licensee
37 on or after January 1, 2003, in an amount of thirty thousand dollars
38 (\$30,000) or more.

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

4 (i) Comparing the settlement amount to the experience of other
5 licensees within the same specialty or subspecialty, indicating if
6 it is below average, average, or above average for the most recent
7 10-year period.

8 (ii) Reporting the number of years the licensee has been in
9 practice.

10 (iii) Reporting the total number of licensees in that specialty or
11 subspecialty, the number of those who have entered into a
12 settlement agreement, and the percentage that number represents
13 of the total number of licensees in the specialty or subspecialty.

14 (3) Current American Board of Medical Specialty certification
15 or board equivalent as certified by the Medical Board of California,
16 the Osteopathic Medical Board of California, or the California
17 Board of Podiatric Medicine.

18 (4) Approved postgraduate training.

19 (5) Status of the license of a licensee. By January 1, 2004, the
20 Medical Board of California, the Osteopathic Medical Board of
21 California, and the California Board of Podiatric Medicine shall
22 adopt regulations defining the status of a licensee. The board shall
23 employ this definition when disclosing the status of a licensee
24 pursuant to Section 2027.

25 (6) Any summaries of hospital disciplinary actions that result
26 in the termination or revocation of a licensee's staff privileges for
27 medical disciplinary cause or reason, unless a court finds that the
28 peer review resulting in the disciplinary action was conducted in
29 bad faith and the licensee notifies the board of that finding. For
30 purposes of this paragraph, "peer review" has the same meaning
31 as defined in Section 805.

32 (c) Notwithstanding any other provision of law, the Medical
33 Board of California, the Osteopathic Medical Board of California,
34 and the California Board of Podiatric Medicine shall disclose to
35 an inquiring member of the public information received regarding
36 felony convictions of a physician and surgeon or doctor of podiatric
37 medicine.

38 (d) The Medical Board of California, the Osteopathic Medical
39 Board of California, and the California Board of Podiatric Medicine
40 may formulate appropriate disclaimers or explanatory statements

1 to be included with any information released, and may by
2 regulation establish categories of information that need not be
3 disclosed to an inquiring member of the public because that
4 information is unreliable or not sufficiently related to the licensee's
5 professional practice. The Medical Board of California, the
6 Osteopathic Medical Board of California, and the California Board
7 of Podiatric Medicine shall include the following statement when
8 disclosing information concerning a settlement:
9

10 “Some studies have shown that there is no significant correlation
11 between malpractice history and a doctor's competence. At the
12 same time, the State of California believes that consumers should
13 have access to malpractice information. In these profiles, the State
14 of California has given you information about both the malpractice
15 settlement history for the doctor's specialty and the doctor's history
16 of settlement payments only if in the last 10 years, the doctor, if
17 in a low-risk specialty, has three or more settlements or the doctor,
18 if in a high-risk specialty, has four or more settlements. The State
19 of California has excluded some class action lawsuits because
20 those cases are commonly related to systems issues such as product
21 liability, rather than questions of individual professional
22 competence and because they are brought on a class basis where
23 the economic incentive for settlement is great. The State of
24 California has placed payment amounts into three statistical
25 categories: below average, average, and above average compared
26 to others in the doctor's specialty. To make the best health care
27 decisions, you should view this information in perspective. You
28 could miss an opportunity for high-quality care by selecting a
29 doctor based solely on malpractice history.

30 When considering malpractice data, please keep in mind:

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

36 This report reflects data only for settlements made on or after
37 January 1, 2003. Moreover, it includes information concerning
38 those settlements for a 10-year period only. Therefore, you should
39 know that a doctor may have made settlements in the 10 years
40 immediately preceding January 1, 2003, that are not included in

1 this report. After January 1, 2013, for doctors practicing less than
2 10 years, the data covers their total years of practice. You should
3 take into account the effective date of settlement disclosure as well
4 as how long the doctor has been in practice when considering
5 malpractice averages.

6 The incident causing the malpractice claim may have happened
7 years before a payment is finally made. Sometimes, it takes a long
8 time for a malpractice lawsuit to settle. Some doctors work
9 primarily with high-risk patients. These doctors may have
10 malpractice settlement histories that are higher than average
11 because they specialize in cases or patients who are at very high
12 risk for problems.

13 Settlement of a claim may occur for a variety of reasons that do
14 not necessarily reflect negatively on the professional competence
15 or conduct of the doctor. A payment in settlement of a medical
16 malpractice action or claim should not be construed as creating a
17 presumption that medical malpractice has occurred.

18 You may wish to discuss information in this report and the
19 general issue of malpractice with your doctor.”
20

21 (e) The Medical Board of California, the Osteopathic Medical
22 Board of California, and the California Board of Podiatric Medicine
23 shall, by regulation, develop standard terminology that accurately
24 describes the different types of disciplinary filings and actions to
25 take against a licensee as described in paragraphs (1) to (5),
26 inclusive, of subdivision (a). In providing the public with
27 information about a licensee via the Internet pursuant to Section
28 2027, the Medical Board of California, the Osteopathic Medical
29 Board of California, and the California Board of Podiatric Medicine
30 shall not use the terms “enforcement,” “discipline,” or similar
31 language implying a sanction unless the physician and surgeon
32 has been the subject of one of the actions described in paragraphs
33 (1) to (5), inclusive, of subdivision (a).

34 (f) The Medical Board of California shall adopt regulations no
35 later than July 1, 2003, designating each specialty and subspecialty
36 practice area as either high risk or low risk. In promulgating these
37 regulations, the board shall consult with commercial underwriters
38 of medical malpractice insurance companies, health care systems
39 that self-insure physicians and surgeons, and representatives of
40 the California medical specialty societies. The board shall utilize

1 the carriers' statewide data to establish the two risk categories and
2 the averages required by subparagraph (B) of paragraph (2) of
3 subdivision (b). Prior to issuing regulations, the board shall
4 convene public meetings with the medical malpractice carriers,
5 self-insurers, and specialty representatives.

6 (g) The Medical Board of California, the Osteopathic Medical
7 Board of California, and the California Board of Podiatric Medicine
8 shall provide each licensee, *including a former licensee under*
9 *subdivision (a)*, with a copy of the text of any proposed public
10 disclosure authorized by this section prior to release of the
11 disclosure to the public. The licensee shall have 10 working days
12 from the date the board provides the copy of the proposed public
13 disclosure to propose corrections of factual inaccuracies. Nothing
14 in this section shall prevent the board from disclosing information
15 to the public prior to the expiration of the 10-day period.

16 (h) Pursuant to subparagraph (A) of paragraph (2) of subdivision
17 (b), the specialty or subspecialty information required by this
18 section shall group physicians by specialty board recognized
19 pursuant to paragraph (5) of subdivision (h) of Section 651 unless
20 a different grouping would be more valid and the board, in its
21 statement of reasons for its regulations, explains why the validity
22 of the grouping would be more valid.

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

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

27 (1) (A) "Peer review" means a process in which a peer review
28 body reviews the basic qualifications, staff privileges, employment,
29 medical outcomes, and professional conduct of licentiates to
30 determine whether the licentiate may practice or continue to
31 practice in a health care facility, clinic, or other setting providing
32 medical services and, if so, to determine the parameters of that
33 practice.

34 (B) "Peer review body" includes:

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

39 (ii) A health care service plan registered under Chapter 2.2
40 (commencing with Section 1340) of Division 2 of the Health and

1 Safety Code or a disability insurer that contracts with licentiates
2 to provide services at alternative rates of payment pursuant to
3 Section 10133 of the Insurance Code.

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

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

15 (2) “Licentiate” means a physician and surgeon, doctor of
16 podiatric medicine, clinical psychologist, marriage and family
17 therapist, clinical social worker, or dentist. “Licentiate” also
18 includes a person authorized to practice medicine pursuant to
19 Section 2113.

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

22 (4) “Staff privileges” means any arrangement under which a
23 licentiate is allowed to practice in or provide care for patients in
24 a health facility. Those arrangements shall include, but are not
25 limited to, full staff privileges, active staff privileges, limited staff
26 privileges, auxiliary staff privileges, provisional staff privileges,
27 temporary staff privileges, courtesy staff privileges, locum tenens
28 arrangements, and contractual arrangements to provide professional
29 services, including, but not limited to, arrangements to provide
30 outpatient services.

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

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

39 (7) “805 report” means the written report required under
40 subdivision (b).

1 (b) The chief of staff of a medical or professional staff or other
2 chief executive officer, medical director, or administrator of any
3 peer review body and the chief executive officer or administrator
4 of any licensed health care facility or clinic shall file an 805 report
5 with the relevant agency within 15 days after the effective date on
6 which any of the following are imposed on a licentiate as a result
7 ~~of an action of a peer review body, regardless of whether a hearing~~
8 ~~has occurred pursuant to Section 809.2:~~ *of an action of a peer*
9 *review body:*

10 (1) A licentiate's application for staff privileges or membership
11 is denied or rejected for a medical disciplinary cause or reason.

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

14 (3) Restrictions are imposed, or voluntarily accepted, on staff
15 privileges, membership, or employment for a cumulative total of
16 30 days or more for any 12-month period, for a medical disciplinary
17 cause or reason.

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

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

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

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

38 (d) For purposes of filing an 805 report, the signature of at least
39 one of the individuals indicated in subdivision (b) or (c) on the

1 completed form shall constitute compliance with the requirement
2 to file the report.

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

8 (f) A copy of the 805 report, and a notice advising the licentiate
9 of his or her right to submit additional statements or other
10 information pursuant to Section 800, shall be sent by the peer
11 review body to the licentiate named in the report. The information
12 to be reported in an 805 report shall include the name and license
13 number of the licentiate involved, a description of the facts and
14 circumstances of the medical disciplinary cause or reason, and any
15 other relevant information deemed appropriate by the reporter.

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

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

31 (g) The reporting required by this section shall not act as a
32 waiver of confidentiality of medical records and committee reports.
33 The information reported or disclosed shall be kept confidential
34 except as provided in subdivision (c) of Section 800 and Sections
35 803.1 and 2027, provided that a copy of the report containing the
36 information required by this section may be disclosed as required
37 by Section 805.5 with respect to reports received on or after
38 January 1, 1976.

1 (h) The Medical Board of California, the Osteopathic Medical
2 Board of California, and the Dental Board of California shall
3 disclose reports as required by Section 805.5.

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

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

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

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

1 whether the failure to file caused harm to a patient or created a
2 risk to patient safety; whether the administrator of any peer review
3 body, the chief executive officer or administrator of any health
4 care facility, or any person who is designated or otherwise required
5 by law to file an 805 report exercised due diligence despite the
6 failure to file or whether they knew or should have known that an
7 805 report would not be filed; and whether there has been a prior
8 failure to file an 805 report. The amount of the fine imposed may
9 also differ based on whether a health care facility is a small or
10 rural hospital as defined in Section 124840 of the Health and Safety
11 Code.

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

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

22 805.01. (a) As used in this section, the following terms have
23 the following definitions:

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

25 (2) “Formal investigation” means an investigation performed
26 by a peer review body based on an allegation that any of the acts
27 listed in paragraphs (1) to (4), inclusive, of subdivision (b)
28 occurred.

29 (3) “Licentiate” has the same meaning as defined in Section
30 805.

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

33 (b) The chief of staff of a medical or professional staff or other
34 chief executive officer, medical director, or administrator of any
35 peer review body and the chief executive officer or administrator
36 of any licensed health care facility or clinic shall file a report with
37 the relevant agency within 15 days after a peer review body makes
38 a decision or recommendation regarding the disciplinary action to
39 be taken against a licentiate based on the peer review body’s
40 determination, following formal investigation of the licentiate, that

1 any of the acts listed in paragraphs (1) to (4), inclusive, occurred.
 2 A peer review body shall not await a final proposed action, as
 3 defined in Section 809.1, for purposes of filing this report.

4 (1) The licentiate departed from the standard of care and there
 5 was patient harm.

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

9 (3) The licentiate suffered from mental illness or substance
 10 abuse.

11 (4) The licentiate engaged in sexual misconduct.

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

16 (1) Any statement of charges.

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

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

19 ~~(4) Any peer review minutes or reports.~~

20 (d) *The report provided pursuant to subdivision (b) and the*
 21 *information disclosed pursuant to subdivision (c) shall be kept*
 22 *confidential and shall not be subject to discovery, except that the*
 23 *information may be reviewed as provided in subdivision (c) of*
 24 *Section 800 and may be disclosed in any subsequent disciplinary*
 25 *hearing conducted pursuant to the Administrative Procedure Act*
 26 *(Chapter 5 (commencing with Section 11500) of Part 1 of Division*
 27 *3 of Title 2 of the Government Code).*

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

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

32 805.1. (a) The Medical Board of California, the Osteopathic
 33 Medical Board of California, and the Dental Board of California
 34 shall, without subpoena, be entitled to inspect and copy the
 35 following unredacted documents in the record of any disciplinary
 36 proceeding resulting in action that is required to be reported
 37 pursuant to Section 805:

38 (1) Any statement of charges.

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

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

1 (4) Any peer review minutes or reports.

2 (b) The information so disclosed shall be kept confidential and
3 not subject to discovery, in accordance with Section 800, except
4 that it may be reviewed, as provided in subdivision (c) of Section
5 800, and may be disclosed in any subsequent disciplinary hearing
6 conducted pursuant to the Administrative Procedure Act (Chapter
7 5 (commencing with Section 11500) of Part 1 of Division 3 of
8 Title 2 of the Government Code).

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

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

27 (b) Upon a request made by, or on behalf of, an institution
28 described in subdivision (a) or its medical staff, which is received
29 on or after January 1, 1980, the board shall furnish a copy of any
30 report made pursuant to Section 805. However, the board shall not
31 send a copy of a report (1) if the denial, removal, or restriction
32 was imposed solely because of the failure to complete medical
33 records, (2) if the board has found the information reported is
34 without merit, (3) if a court finds that the peer review, as defined
35 in Section 805, resulting in the report was conducted in bad faith
36 and the licensee who is the subject of the report notifies the board
37 of that finding, or (4) if a period of three years has elapsed since
38 the report was submitted. This three-year period shall be tolled
39 during any period the licentiate has obtained a judicial order
40 precluding disclosure of the report, unless the board is finally and

1 permanently precluded by judicial order from disclosing the report.
2 If a request is received by the board while the board is subject to
3 a judicial order limiting or precluding disclosure, the board shall
4 provide a disclosure to any qualified requesting party as soon as
5 practicable after the judicial order is no longer in force.

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

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

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

16 2027. (a) The board shall post on the Internet the following
17 information in its possession, custody, or control regarding licensed
18 physicians and surgeons:

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

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

26 (3) Any felony convictions reported to the board after January
27 3, 1991.

28 (4) All current accusations filed by the Attorney General,
29 including those accusations that are on appeal. For purposes of
30 this paragraph, "current accusation" shall mean an accusation that
31 has not been dismissed, withdrawn, or settled, and has not been
32 finally decided upon by an administrative law judge and the
33 Medical Board of California unless an appeal of that decision is
34 pending.

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

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

1 (7) Any misdemeanor conviction that results in a disciplinary
2 action or an accusation that is not subsequently withdrawn or
3 dismissed.

4 (8) Appropriate disclaimers and explanatory statements to
5 accompany the above information, including an explanation of
6 what types of information are not disclosed. These disclaimers and
7 statements shall be developed by the board and shall be adopted
8 by regulation.

9 (9) Any information required to be disclosed pursuant to Section
10 803.1.

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

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

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

33 (4) Notwithstanding paragraph (2), if a court finds that peer
34 review resulting in a hospital disciplinary action was conducted
35 in bad faith and the licensee notifies the board of that finding, the
36 information concerning that hospital disciplinary action posted
37 pursuant to paragraph (6) of subdivision (a) shall be immediately
38 removed from the board's Internet Web site. For purposes of this
39 paragraph, "peer review" has the same meaning as defined in
40 Section 805.

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

4 (d) The board shall provide links to other Web sites on the
5 Internet that provide information on board certifications that meet
6 the requirements of subdivision (b) of Section 651. The board may
7 provide links to other Web sites on the Internet that provide
8 information on health care service plans, health insurers, hospitals,
9 or other facilities. The board may also provide links to any other
10 sites that would provide information on the affiliations of licensed
11 physicians and surgeons.

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