

AMENDED IN ASSEMBLY AUGUST 20, 2010

AMENDED IN SENATE JANUARY 26, 2010

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**

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**Introduced by Senator Negrete McLeod  
(Coauthor: Senator Aanestad)**

February 27, 2009

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An act to amend Sections 800, 803.1, 805, 805.1, 805.5, ~~and 2027~~  
~~2027, and 2220~~ of, and to add ~~Sections 805.01 and 821.4~~ *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.

This bill would define the term "peer review" for purposes of those provisions.

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.

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 may have engaged in various acts, including incompetence, substance abuse, excessive prescribing or furnishing of controlled substances, or sexual misconduct, among other things. The bill would authorize the board to inspect and copy certain documents in the record of that investigation.

~~The bill would also require a peer review body that reviews physicians and surgeons to, under specified circumstances, report certain information to the executive director of the Medical Board of California, as specified.~~

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 also inspect, as permitted by other applicable law, any certified copy of medical records 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, in a final judgment, 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, in a final judgment, 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 include certain exculpatory or explanatory statements in those disclosures or postings and would require the board 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 *technical and* 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, the Speech-Language  
11 Pathology and Audiology and Hearing Aid Dispensers Board, the  
12 California Board of Occupational Therapy, and the Acupuncture  
13 Board shall each separately create and maintain a central file of  
14 the names of all persons who hold a license, certificate, or similar  
15 authority from that board. Each central file shall be created and  
16 maintained to provide an individual historical record for each  
17 licensee with respect to the following information:

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

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

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

9 (4) Disciplinary information reported pursuant to Section 805,  
10 including any additional exculpatory or explanatory statements  
11 submitted by the licensee pursuant to subdivision (f) of Section  
12 805. If a court finds, in a final judgment, that the peer review  
13 resulting in the 805 report was conducted in bad faith and the  
14 licensee who is the subject of the report notifies the board of that  
15 finding, the board shall include that finding in the central file. For  
16 purposes of this paragraph, "peer review" has the same meaning  
17 as defined in Section 805.

18 (5) Information reported pursuant to Section 805.01, including  
19 any explanatory or exculpatory information submitted by the  
20 licensee pursuant to subdivision (b) of that section.

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

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

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

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

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

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

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

21 These disclosures shall effect no change in the confidential status  
22 of these records.

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

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

- 32 (1) Temporary restraining orders issued.
  - 33 (2) Interim suspension orders issued.
  - 34 (3) Revocations, suspensions, probations, or limitations on  
35 practice ordered by the board, including those made part of a  
36 probationary order or stipulated agreement.
  - 37 (4) Public letters of reprimand issued.
  - 38 (5) Infractions, citations, or fines imposed.
- 39 (b) Notwithstanding any other provision of law, in addition to  
40 the information provided in subdivision (a), the Medical Board of

1 California, the Osteopathic Medical Board of California, and the  
2 California Board of Podiatric Medicine shall disclose to an  
3 inquiring member of the public all of the following:

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

10 (2) (A) All settlements in the possession, custody, or control  
11 of the board shall be disclosed for a licensee in the low-risk  
12 category if there are three or more settlements for that licensee  
13 within the last 10 years, except for settlements by a licensee  
14 regardless of the amount paid where (i) the settlement is made as  
15 a part of the settlement of a class claim, (ii) the licensee paid in  
16 settlement of the class claim the same amount as the other licensees  
17 in the same class or similarly situated licensees in the same class,  
18 and (iii) the settlement was paid in the context of a case where the  
19 complaint that alleged class liability on behalf of the licensee also  
20 alleged a products liability class action cause of action. All  
21 settlements in the possession, custody, or control of the board shall  
22 be disclosed for a licensee in the high-risk category if there are  
23 four or more settlements for that licensee within the last 10 years  
24 except for settlements by a licensee regardless of the amount paid  
25 where (i) the settlement is made as a part of the settlement of a  
26 class claim, (ii) the licensee paid in settlement of the class claim  
27 the same amount as the other licensees in the same class or  
28 similarly situated licensees in the same class, and (iii) the  
29 settlement was paid in the context of a case where the complaint  
30 that alleged class liability on behalf of the licensee also alleged a  
31 products liability class action cause of action. Classification of a  
32 licensee in either a "high-risk category" or a "low-risk category"  
33 depends upon the specialty or subspecialty practiced by the licensee  
34 and the designation assigned to that specialty or subspecialty by  
35 the Medical Board of California, as described in subdivision (f).  
36 For the purposes of this paragraph, "settlement" means a settlement  
37 of an action described in paragraph (1) entered into by the licensee  
38 on or after January 1, 2003, in an amount of thirty thousand dollars  
39 (\$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, in a final  
28 judgment, that the peer review resulting in the disciplinary action  
29 was conducted in bad faith and the licensee notifies the board of  
30 that finding. ~~For purposes of this paragraph, "peer review" has the~~  
31 ~~same meaning as defined in Section 805.~~ In addition, any  
32 exculpatory or explanatory statements submitted by the licentiate  
33 electronically pursuant to subdivision (f) of that section shall be  
34 disclosed. *For purposes of this paragraph, "peer review" has the*  
35 *same meaning as defined in Section 805.*

36 (c) Notwithstanding any other provision of law, the Medical  
37 Board of California, the Osteopathic Medical Board of California,  
38 and the California Board of Podiatric Medicine shall disclose to  
39 an inquiring member of the public information received regarding

1 felony convictions of a physician and surgeon or doctor of podiatric  
2 medicine.

3 (d) The Medical Board of California, the Osteopathic Medical  
4 Board of California, and the California Board of Podiatric Medicine  
5 may formulate appropriate disclaimers or explanatory statements  
6 to be included with any information released, and may by  
7 regulation establish categories of information that need not be  
8 disclosed to an inquiring member of the public because that  
9 information is unreliable or not sufficiently related to the licensee's  
10 professional practice. The Medical Board of California, the  
11 Osteopathic Medical Board of California, and the California Board  
12 of Podiatric Medicine shall include the following statement when  
13 disclosing information concerning a settlement:  
14

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

35 When considering malpractice data, please keep in mind:

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



1 This report reflects data only for settlements made on or after  
2 January 1, 2003. Moreover, it includes information concerning  
3 those settlements for a 10-year period only. Therefore, you should  
4 know that a doctor may have made settlements in the 10 years  
5 immediately preceding January 1, 2003, that are not included in  
6 this report. After January 1, 2013, for doctors practicing less than  
7 10 years, the data covers their total years of practice. You should  
8 take into account the effective date of settlement disclosure as well  
9 as how long the doctor has been in practice when considering  
10 malpractice averages.

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

18 Settlement of a claim may occur for a variety of reasons that do  
19 not necessarily reflect negatively on the professional competence  
20 or conduct of the doctor. A payment in settlement of a medical  
21 malpractice action or claim should not be construed as creating a  
22 presumption that medical malpractice has occurred.

23 You may wish to discuss information in this report and the  
24 general issue of malpractice with your doctor.”  
25

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

39 (f) The Medical Board of California shall adopt regulations no  
40 later than July 1, 2003, designating each specialty and subspecialty

1 practice area as either high risk or low risk. In promulgating these  
2 regulations, the board shall consult with commercial underwriters  
3 of medical malpractice insurance companies, health care systems  
4 that self-insure physicians and surgeons, and representatives of  
5 the California medical specialty societies. The board shall utilize  
6 the carriers' statewide data to establish the two risk categories and  
7 the averages required by subparagraph (B) of paragraph (2) of  
8 subdivision (b). Prior to issuing regulations, the board shall  
9 convene public meetings with the medical malpractice carriers,  
10 self-insurers, and specialty representatives.

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

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

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

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

32 (1) (A) "Peer review" means both of the following:

33 (i) A process in which a peer review body reviews the basic  
34 qualifications, staff privileges, employment, medical outcomes,  
35 or professional conduct of licentiates to make recommendations  
36 for quality improvement and education, if necessary, in order to  
37 do either or both of the following:

38 (I) Determine whether a licentiate may practice or continue to  
39 practice in a health care facility, clinic, or other setting providing

1 medical services, and, if so, to determine the parameters of that  
2 practice.

3 (II) Assess and improve the quality of care rendered in a health  
4 care facility, clinic, or other setting providing medical services.

5 (ii) Any other activities of a peer review body as specified in  
6 subparagraph (B).

7 (B) “Peer review body” includes:

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

12 (ii) A health care service plan licensed under Chapter 2.2  
13 (commencing with Section 1340) of Division 2 of the Health and  
14 Safety Code or a disability insurer that contracts with licentiates  
15 to provide services at alternative rates of payment pursuant to  
16 Section 10133 of the Insurance Code.

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

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

28 (2) “Licentiate” means a physician and surgeon, doctor of  
29 podiatric medicine, clinical psychologist, marriage and family  
30 therapist, clinical social worker, or dentist. “Licentiate” also  
31 includes a person authorized to practice medicine pursuant to  
32 Section 2113 or 2168.

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

35 (4) “Staff privileges” means any arrangement under which a  
36 licentiate is allowed to practice in or provide care for patients in  
37 a health facility. Those arrangements shall include, but are not  
38 limited to, full staff privileges, active staff privileges, limited staff  
39 privileges, auxiliary staff privileges, provisional staff privileges,  
40 temporary staff privileges, courtesy staff privileges, locum tenens

1 arrangements, and contractual arrangements to provide professional  
2 services, including, but not limited to, arrangements to provide  
3 outpatient services.

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

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

12 (7) “805 report” means the written report required under  
13 subdivision (b).

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 an 805 report  
18 with the relevant agency within 15 days after the effective date on  
19 which any of the following occur as a result of an action of a peer  
20 review body:

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

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

25 (3) Restrictions are imposed, or voluntarily accepted, on staff  
26 privileges, membership, or employment for a cumulative total of  
27 30 days or more for any 12-month period, for a medical disciplinary  
28 cause or reason.

29 (c) If a licentiate takes any action listed in paragraph (1), (2),  
30 or (3) after receiving notice of a pending investigation initiated  
31 for a medical disciplinary cause or reason or after receiving notice  
32 that his or her application for membership or staff privileges is  
33 denied or will be denied for a medical disciplinary cause or reason,  
34 the chief of staff of a medical or professional staff or other chief  
35 executive officer, medical director, or administrator of any peer  
36 review body and the chief executive officer or administrator of  
37 any licensed health care facility or clinic where the licentiate is  
38 employed or has staff privileges or membership or where the  
39 licentiate applied for staff privileges or membership, or sought the

1 renewal thereof, shall file an 805 report with the relevant agency  
2 within 15 days after the licentiate takes the action.

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

5 (2) Withdraws or abandons his or her application for staff  
6 privileges or membership.

7 (3) Withdraws or abandons his or her request for renewal of  
8 staff privileges or membership.

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

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

17 (f) A copy of the 805 report, and a notice advising the licentiate  
18 of his or her right to submit additional statements or other  
19 information, electronically or otherwise, pursuant to Section 800,  
20 shall be sent by the peer review body to the licentiate named in  
21 the report. The notice shall also advise the licentiate that  
22 information submitted electronically will be publicly disclosed to  
23 those who request the information.

24 The information to be reported in an 805 report shall include the  
25 name and license number of the licentiate involved, a description  
26 of the facts and circumstances of the medical disciplinary cause  
27 or reason, and any other relevant information deemed appropriate  
28 by the reporter.

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

36 If another peer review body is required to file an 805 report, a  
37 health care service plan is not required to file a separate report  
38 with respect to action attributable to the same medical disciplinary  
39 cause or reason. If the Medical Board of California or a licensing  
40 agency of another state revokes or suspends, without a stay, the

1 license of a physician and surgeon, a peer review body is not  
2 required to file an 805 report when it takes an action as a result of  
3 the revocation or suspension.

4 (g) The reporting required by this section shall not act as a  
5 waiver of confidentiality of medical records and committee reports.  
6 The information reported or disclosed shall be kept confidential  
7 except as provided in subdivision (c) of Section 800 and Sections  
8 803.1 and 2027, provided that a copy of the report containing the  
9 information required by this section may be disclosed as required  
10 by Section 805.5 with respect to reports received on or after  
11 January 1, 1976.

12 (h) The Medical Board of California, the Osteopathic Medical  
13 Board of California, and the Dental Board of California shall  
14 disclose reports as required by Section 805.5.

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

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

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

35 (l) Except as otherwise provided in subdivision (k), any failure  
36 by the administrator of any peer review body, the chief executive  
37 officer or administrator of any health care facility, or any person  
38 who is designated or otherwise required by law to file an 805  
39 report, shall be punishable by a fine that under no circumstances  
40 shall exceed fifty thousand dollars (\$50,000) per violation. The

1 fine may be imposed in any civil or administrative action or  
2 proceeding brought by or on behalf of any agency having  
3 regulatory jurisdiction over the person regarding whom the report  
4 was or should have been filed. If the person who is designated or  
5 otherwise required to file an 805 report is a licensed physician and  
6 surgeon, the action or proceeding shall be brought by the Medical  
7 Board of California. The fine shall be paid to that agency but not  
8 expended until appropriated by the Legislature. The amount of the  
9 fine imposed, not exceeding fifty thousand dollars (\$50,000) per  
10 violation, shall be proportional to the severity of the failure to  
11 report and shall differ based upon written findings, including  
12 whether the failure to file caused harm to a patient or created a  
13 risk to patient safety; whether the administrator of any peer review  
14 body, the chief executive officer or administrator of any health  
15 care facility, or any person who is designated or otherwise required  
16 by law to file an 805 report exercised due diligence despite the  
17 failure to file or whether they knew or should have known that an  
18 805 report would not be filed; and whether there has been a prior  
19 failure to file an 805 report. The amount of the fine imposed may  
20 also differ based on whether a health care facility is a small or  
21 rural hospital as defined in Section 124840 of the Health and Safety  
22 Code.

23 (m) A health care service plan licensed under Chapter 2.2  
24 (commencing with Section 1340) of Division 2 of the Health and  
25 Safety Code or a disability insurer that negotiates and enters into  
26 a contract with licentiates to provide services at alternative rates  
27 of payment pursuant to Section 10133 of the Insurance Code, when  
28 determining participation with the plan or insurer, shall evaluate,  
29 on a case-by-case basis, licentiates who are the subject of an 805  
30 report, and not automatically exclude or deselect these licentiates.

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

33 805.01. (a) As used in this section, the following terms have  
34 the following definitions:

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

36 (2) "Formal investigation" means an investigation performed  
37 by a peer review body based on an allegation that any of the acts  
38 listed in paragraphs (1) to (4), inclusive, of subdivision (b)  
39 occurred.

1 (3) “Licentiate” has the same meaning as defined in Section  
2 805.

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

5 (b) The chief of staff of a medical or professional staff or other  
6 chief executive officer, medical director, or administrator of any  
7 peer review body and the chief executive officer or administrator  
8 of any licensed health care facility or clinic shall file a report with  
9 the relevant agency within 15 days after a peer review body makes  
10 a final decision or recommendation regarding the disciplinary  
11 action, as specified in subdivision (b) of Section 805, resulting in  
12 a final proposed action to be taken against a licentiate based on  
13 the peer review body’s determination, following formal  
14 investigation of the licentiate, that any of the acts listed in  
15 paragraphs (1) to (4), inclusive,

16 may have occurred, regardless of whether a hearing is held  
17 pursuant to Section 809.2. The licentiate shall receive a notice of  
18 the proposed action as set forth in Section 809.1, which shall also  
19 include a notice advising the licentiate of the right to submit  
20 additional explanatory or exculpatory statements electronically or  
21 otherwise.

22 (1) Incompetence, or gross or repeated deviation from the  
23 standard of care involving death or serious bodily injury to one or  
24 more patients, ~~such that the physician and surgeon poses a risk to~~  
25 ~~patient safety to the extent or in such a manner as to be dangerous~~  
26 ~~or injurious to any person or to the public.~~ This paragraph shall  
27 not be construed to affect or require the imposition of immediate  
28 suspension pursuant to Section 809.5.

29 ~~(2) Drug or alcohol abuse by a physician and surgeon involving~~  
30 ~~death or serious bodily injury to a patient.~~

31 (2) *The use of, or prescribing for or administering to himself*  
32 *or herself, any controlled substance; or the use of any dangerous*  
33 *drug, as defined in Section 4022, or of alcoholic beverages, to the*  
34 *extent or in such a manner as to be dangerous or injurious to the*  
35 *licentiate, any other person, or the public, or to the extent that*  
36 *such use impairs the ability of the licentiate to practice safely.*

37 (3) Repeated acts of clearly excessive prescribing, furnishing,  
38 or administering of controlled substances or repeated acts of  
39 prescribing, dispensing, or furnishing of controlled substances  
40 without a good faith effort prior examination of the patient and



1 medical reason therefor. However, in no event shall a physician  
2 and surgeon prescribing, furnishing, or administering controlled  
3 substances for intractable pain, consistent with lawful prescribing,  
4 be reported for excessive prescribing and prompt review of the  
5 applicability of these provisions shall be made in any complaint  
6 that may implicate these provisions.

7 (4) Sexual misconduct with one or more patients during a course  
8 of treatment or an examination.

9 (c) The relevant agency shall be entitled to inspect and copy the  
10 following documents in the record of any formal investigation  
11 required to be reported pursuant to subdivision (b):

12 (1) Any statement of charges.

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

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

15 (4) Any certified copy of medical records, as permitted by other  
16 applicable law.

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

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

27 (f) A peer review body shall not be required to make a report  
28 pursuant to this section if that body does not make a final decision  
29 or recommendation regarding the disciplinary action to be taken  
30 against a licentiate based on the body's determination that any of  
31 the acts listed in paragraphs (1) to (4), inclusive, of subdivision  
32 (b) may have occurred.

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

35 805.1. (a) The Medical Board of California, the Osteopathic  
36 Medical Board of California, and the Dental Board of California  
37 shall be entitled to inspect and copy the following documents in  
38 the record of any disciplinary proceeding resulting in action that  
39 is required to be reported pursuant to Section 805:

40 (1) Any statement of charges.

- 1 (2) Any document, medical chart, or exhibits in evidence.  
2 (3) Any opinion, findings, or conclusions.  
3 (4) Any certified copy of medical records, as permitted by other  
4 applicable law.

5 (b) The information so disclosed shall be kept confidential and  
6 not subject to discovery, in accordance with Section 800, except  
7 that it may be reviewed, as provided in subdivision (c) of Section  
8 800, and may be disclosed in any subsequent disciplinary hearing  
9 conducted pursuant to the Administrative Procedure Act (Chapter  
10 5 (commencing with Section 11500) of Part 1 of Division 3 of  
11 Title 2 of the Government Code).

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

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

30 (b) Upon a request made by, or on behalf of, an institution  
31 described in subdivision (a) or its medical staff the board shall  
32 furnish a copy of any report made pursuant to Section 805 as well  
33 as any additional exculpatory or explanatory information submitted  
34 electronically to the board by the licensee pursuant to subdivision  
35 (f) of that section. However, the board shall not send a copy of a  
36 report (1) if the denial, removal, or restriction was imposed solely  
37 because of the failure to complete medical records, (2) if the board  
38 has found the information reported is without merit, (3) if a court  
39 finds, in a final judgment, that the peer review, as defined in  
40 Section 805, resulting in the report was conducted in bad faith and

1 the licensee who is the subject of the report notifies the board of  
2 that finding, or (4) if a period of three years has elapsed since the  
3 report was submitted. This three-year period shall be tolled during  
4 any period the licensee has obtained a judicial order precluding  
5 disclosure of the report, unless the board is finally and permanently  
6 precluded by judicial order from disclosing the report. If a request  
7 is received by the board while the board is subject to a judicial  
8 order limiting or precluding disclosure, the board shall provide a  
9 disclosure to any qualified requesting party as soon as practicable  
10 after the judicial order is no longer in force.

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

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

19 ~~SEC. 7. Section 821.4 is added to the Business and Professions~~  
20 ~~Code, to read:~~

21 ~~821.4. (a) A peer review body, as defined in Section 805, that~~  
22 ~~reviews physicians and surgeons shall, within 15 days of initiating~~  
23 ~~a formal investigation of a physician and surgeon's ability to~~  
24 ~~practice medicine safely based upon information indicating that~~  
25 ~~the physician and surgeon may be suffering from a disabling mental~~  
26 ~~or physical condition that poses a threat to patient care, report to~~  
27 ~~the executive director of the board the name of the physician and~~  
28 ~~surgeon under investigation and the general nature of the~~  
29 ~~investigation. A peer review body that has made a report to the~~  
30 ~~executive director of the board under this section shall also notify~~  
31 ~~the executive director of the board when it has completed or closed~~  
32 ~~an investigation.~~

33 ~~(b) The executive director of the board, upon receipt of a report~~  
34 ~~pursuant to subdivision (a), shall contact the peer review body that~~  
35 ~~made the report within 60 days in order to determine the status of~~  
36 ~~the peer review body's investigation. The executive director of the~~  
37 ~~board shall contact the peer review body periodically thereafter to~~  
38 ~~monitor the progress of the investigation. At any time, if the~~  
39 ~~executive director of the board determines that the progress of the~~  
40 ~~investigation is not adequate to protect the public, the executive~~

1 director shall notify the chief of enforcement of the board, who  
2 shall promptly conduct an investigation of the matter. Concurrently  
3 with notifying the chief of enforcement, the executive director of  
4 the board shall notify the reporting peer review body and the chief  
5 executive officer or an equivalent officer of the hospital of its  
6 decision to refer the case for investigation by the chief of  
7 enforcement.

8 (e) For purposes of this section, “board” means the Medical  
9 Board of California.

10 (d) For purposes of this section, “formal investigation” means  
11 an investigation ordered by the peer review body’s medical  
12 executive committee or its equivalent, based upon information  
13 indicating that the physician and surgeon may be suffering from  
14 a disabling mental or physical condition that poses a threat to  
15 patient care. “Formal investigation” does not include the usual  
16 activities of the well-being or assistance committee or the usual  
17 quality assessment and improvement activities undertaken by the  
18 medical staff of a health facility in compliance with the licensing  
19 and certification requirements for health facilities set forth in Title  
20 22 of the California Code of Regulations, or preliminary  
21 deliberations or inquiries of the executive committee to determine  
22 whether to order a formal investigation.

23 (e) For purposes of this section, “usual activities” of the  
24 well-being or assistance committee are activities to assist medical  
25 staff members who may be impaired by chemical dependency or  
26 mental illness to obtain necessary evaluation and rehabilitation  
27 services that do not result in referral to the medical executive  
28 committee.

29 (f) Information received by the executive director of the board  
30 pursuant to this section shall be governed by, and shall be deemed  
31 confidential to the same extent as records under, subdivision (d)  
32 of Section 805.01. The records shall not be further disclosed by  
33 the executive director of the board, except as provided in  
34 subdivision (b).

35 (g) Upon receipt of notice from a peer review body that an  
36 investigation has been closed and that the peer review body has  
37 determined that there is no need for further action to protect the  
38 public, the executive director of the board shall purge and destroy  
39 all records in his or her possession pertaining to the investigation

1 unless the executive director has referred the matter to the chief  
2 of enforcement pursuant to subdivision (b):

3 ~~(h) A peer review body that has made a report under subdivision~~  
4 ~~(a) shall not be deemed to have waived the protections of Section~~  
5 ~~1157 of the Evidence Code. It is not the intent of the Legislature~~  
6 ~~in enacting this subdivision to affect pending litigation concerning~~  
7 ~~Section 1157 or to create any new confidentiality protection except~~  
8 ~~as specified in subdivision (f):~~

9 (i) The report required by this section shall be submitted on a  
10 short form developed by the board. The contents of the short form  
11 shall reflect the requirements of this section:

12 ~~(j) Nothing in this section shall exempt a peer review body from~~  
13 ~~submitting a report required under Section 805 or 805.01.~~

14 ~~SEC. 8:~~

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

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

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

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

27 (3) Any felony convictions reported to the board after January  
28 3, 1991.

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

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

38 (6) Any hospital disciplinary actions that resulted in the  
39 termination or revocation of a licensee’s hospital staff privileges  
40 for a medical disciplinary cause or reason. The posting shall also

1 provide a link to any additional explanatory or exculpatory  
2 information submitted electronically by the licensee pursuant to  
3 subdivision (f) of Section 805.

4 (7) Any misdemeanor conviction that results in a disciplinary  
5 action or an accusation that is not subsequently withdrawn or  
6 dismissed.

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

12 (9) Any information required to be disclosed pursuant to Section  
13 803.1.

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

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

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

36 (4) Notwithstanding paragraph (2), if a court finds, in a final  
37 judgment, that peer review resulting in a hospital disciplinary  
38 action was conducted in bad faith and the licensee notifies the  
39 board of that finding, the information concerning that hospital  
40 disciplinary action posted pursuant to paragraph (6) of subdivision

1 (a) shall be immediately removed from the board’s Internet Web  
2 site. For purposes of this paragraph, “peer review” has the same  
3 meaning as defined in Section 805.

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

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

15 *SEC. 8. Section 2220 of the Business and Professions Code is*  
16 *amended to read:*

17 2220. Except as otherwise provided by law, the ~~Division of~~  
18 ~~Medical Quality~~ *board* may take action against all persons guilty  
19 of violating this chapter. The ~~division~~ *board* shall enforce and  
20 administer this article as to physician and surgeon certificate  
21 holders, and the ~~division~~ *board* shall have all the powers granted  
22 in this chapter for these purposes including, but not limited to:

23 (a) Investigating complaints from the public, from other  
24 licensees, from health care facilities, or from ~~a division~~ of the board  
25 that a physician and surgeon may be guilty of unprofessional  
26 conduct. The board shall investigate the circumstances underlying  
27 ~~any a~~ report received pursuant to Section 805 *or 805.01* within 30  
28 days to determine if an interim suspension order or temporary  
29 restraining order should be issued. The board shall otherwise  
30 provide timely disposition of the reports received pursuant to  
31 Section 805 *and Section 805.01*.

32 (b) Investigating the circumstances of practice of any physician  
33 and surgeon where there have been any judgments, settlements,  
34 or arbitration awards requiring the physician and surgeon or his  
35 or her professional liability insurer to pay an amount in damages  
36 in excess of a cumulative total of thirty thousand dollars (\$30,000)  
37 with respect to any claim that injury or damage was proximately  
38 caused by the physician’s and surgeon’s error, negligence, or  
39 omission.

- 1 (c) Investigating the nature and causes of injuries from cases
- 2 which shall be reported of a high number of judgments, settlements,
- 3 or arbitration awards against a physician and surgeon.

O