

AMENDED IN ASSEMBLY JULY 6, 2009
AMENDED IN ASSEMBLY JUNE 22, 2009
AMENDED IN SENATE APRIL 21, 2009

SENATE BILL

No. 820

Introduced by ~~Committee on Business, Professions and Economic Development (Negrete McLeod (chair), Aanestad, Corbett, Correa, Florez, Oropeza, Romero, Walters, Wyland, and Yee)~~
Senators Negrete McLeod and Aanestad

March 10, 2009

An act to amend Sections 139, 146, 1632.5, 1634.2, 2493, 4200.3, 4200.4, 4938, 5016, 5021, 5022, 5023, 5651, 7028.7, 7044, 7159, 7159.5, 7159.14, 7303.2, 7500.1, 7505.5, 7507.9, 7507.12, 7606, 7616, 7641, 7643, 7646, 7647, 7662, 7665, 7666, 7671, 7725.5, 7729, 9884.2, 9884.7, 9884.12, 9889.3, and 10146 of, to add Sections 5515.5, 7044.01 and 7507.115 to, and to to repeal Section 6763.1 of, repeal and add Section 7108.5 of, the Business and Professions Code, to amend Sections 44014.2, 44017.3, 44072.1, 44072.2, and 44095 of the Health and Safety Code, and to amend Sections 28, 5201, and 24603 of the Vehicle Code, relating to consumer affairs. *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 820, as amended, ~~Committee on Business, Professions and Economic Development~~ *Negrete McLeod*. Consumer affairs: professions and vocations. *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.”

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 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 engaged in various acts, including gross negligence, 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.

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 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 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.

The bill would also provide that it shall become operative only if AB 120 is also enacted and becomes operative.

~~Existing law provides for the licensure and regulation of various professions and vocations by boards and bureaus within the Department of Consumer Affairs. Existing law requires that certain examinations for licensure be developed by or in consultation with the Office of Examination Resources in the department, as specified.~~

~~This bill would rename that office the Office of Professional Examination Services.~~

~~Existing law prohibits a person from holding himself or herself out to the public as a professional fiduciary without a license. Existing law specifies that a violation of certain requirements to be registered, licensed, or certified to engage in certain businesses is punishable as an infraction subject to specified procedures and fines.~~

~~This bill would make a violation of the professional fiduciary licensure requirement punishable as an infraction, thereby imposing a state-mandated local program.~~

~~Existing law, the Bagley-Keene Open Meeting Act, requires a state body, as defined, to provide prescribed notice of its meetings to any person who requests that notice in writing. Existing law provides for the licensure and regulation of accountants by the California Board of Accountancy and requires the executive officer of the board to give at least 7 days' notice of board meetings. Existing law authorizes the board to appoint an administrative committee and an advisory committee for certain purposes and requires members of the administrative committee to hold office for one year.~~

~~This bill would designate the advisory committee as the qualifications committee and would require members of that committee and the administrative committee to hold office for 2 years. The bill would require notice of each meeting of the board to be given in accordance with the Bagley-Keene Open Meeting Act.~~

~~Existing law, the Architects Practice Act, provides for the licensure and regulation of architects by the California Architects Board. Under existing law, the board is composed of 5 architect members and 5 public members. Existing law requires that each appointment to the board expire on June 30 of the 4th year following the year in which the previous term expired.~~

~~This bill would modify the term length for certain members of the board.~~

~~Existing law provides for the licensure and regulation of landscape architects by the California Architects Board. Existing law requires the board to ascertain the qualifications of applicants for a license by means of written examination. Under existing law, the board may waive the written examination for a person licensed out of state, as specified, if the person has passed an equivalent examination and a supplemental examination, as specified.~~

~~This bill would also require an out-of-state licensee to submit proof of job experience equivalent to that required of California applicants in order to waive the written examination.~~

~~Existing law, the Professional Engineers Act, provides for the licensure and regulation of professional engineers by the Board for Professional Engineers and Land Surveyors within the department. Under existing law, in order to use the title "structural engineer," a person must successfully pass a written test incorporating a national~~

examination for structural engineering by a nationally recognized entity approved by the board, and a supplemental California specific examination.

This bill would eliminate the requirement to successfully pass a California specific examination, so that only one board-prescribed examination is required.

Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors by the Contractors' State License Board. Existing law imposes specified requirements on home improvement contracts and service and repair contracts and requires contractors to pay subcontractors within a specified period of time. Existing law makes it a misdemeanor for a person to engage in the business or act in the capacity of a contractor without a license and provides certain exemptions from that licensure requirement, including exemptions for owner-builders, as specified. Existing law authorizes the Registrar of Contractors to issue citations for violations of that licensure requirement, as specified.

This bill would make various technical, nonsubstantive changes to those provisions:

Under existing law, a person who violates the law by engaging in work as an owner-builder without a contractor's license or an exemption from licensure is prohibited from obtaining a contractor's license for a period of one year following the violation.

This bill would delete that prohibition.

Existing law, the Collateral Recovery Act, provides for the licensure and regulation of repossession agencies by the Bureau of Security and Investigative Services under the supervision and control of the Director of Consumer Affairs. The act defines "collateral" as any vehicle, boat, recreational vehicle, motor home, appliance, or other property that is subject to a security agreement. Under the act, a person may be actively in charge of only one repossession office at a time. A violation of the act is a misdemeanor.

This bill would specify that the act also applies to trailers and would authorize a person to be actively in charge of 2 repossession offices at a time. The bill would prohibit a licensee from appraising the value of any collateral. Because a violation of that prohibition would be a crime, the bill would impose a state-mandated local program.

Existing law sets forth a procedure for the removal, inventory, and storage of personal effects from repossessed collateral. Existing law allows a debtor to waive the preparation and presentation of an inventory

~~in certain circumstances and authorizes a repossession agency to release those personal effects to someone other than the debtor when authorized by the debtor or legal owner. Existing law requires specified special interest license plates that remain the personal effects of the debtor to be removed from the collateral and inventoried and requires the destruction of those plates and notification to the Department of Motor Vehicles if the plates are not claimed by the debtor within 60 days.~~

~~This bill would authorize a debtor to make that waiver only with the consent of the licensee and would authorize the release of personal effects to someone other than the debtor only when authorized by the debtor. The bill would also authorize a licensee to retain those special interest license plates indefinitely for return to the debtor, as specified.~~

~~Existing law provides that whenever possession is taken of any vehicle by or on behalf of any legal owner under the terms of a security agreement or lease agreement, the person taking possession is required to notify specified law enforcement agencies within one hour after taking possession of the vehicle and by the most expeditious means available. Failure to provide that notice is an infraction.~~

~~This bill would require separate notifications for multiple vehicle repossessions. By changing the definition of a crime, the bill would impose a state-mandated local program.~~

~~Existing law, the Funeral Directors and Embalmers Law, provides for the licensure and regulation of embalmers and funeral directors by the Cemetery and Funeral Bureau. Existing law requires an applicant for an embalmer's license to, among other things, have successfully completed a course of instruction in a specified embalming school and to either furnish proof of completion of a high school course or evidence of licensure and practice for a certain period of time prior to application.~~

~~This bill would instead require the applicant to have graduated from a specified mortuary science program and to furnish official transcripts from that program. The bill would make other conforming changes.~~

~~Existing law requires the applicant to pass an examination including specified subjects and requires the bureau to examine applicants at least once annually.~~

~~This bill would require the applicant to pass the sciences section of a specified national examination and an examination on the state's laws and the rules and regulations of the bureau and would delete the requirement that the board examine applicants at least once annually. The bill would, until June 30, 2010, authorize an applicant who failed~~

~~the examination previously administered by the bureau to retake that examination:~~

~~Existing law, the Real Estate Law, provides for the licensure and regulation of real estate brokers and salespersons by the Real Estate Commissioner. Existing law authorizes the commissioner to issue rules and regulations he or she deems necessary to regulate the method of accounting and to accomplish certain purposes related to advance fees, as specified:~~

~~This bill would make certain nonsubstantive, technical changes to those provisions:~~

~~Existing law, the Automotive Repair Act, provides for the registration, licensure, and regulation of automotive repair dealers, lamp and brake adjusting stations, and smog check stations and technicians by the Bureau of Automotive Repair in the Department of Consumer Affairs and requires the Director of Consumer Affairs to validate an automotive repair dealer registration upon receipt of a specified form and fee. Existing law authorizes the director to refuse to validate or invalidate that registration for, among other things, a conviction for providing consideration to insurance agents for referrals. Under existing law, the director may deny, suspend, revoke, or take other disciplinary action against lamp and brake adjusting station or smog check station and technician applicants and licensees for, among other things, the conviction of a crime substantially related to the qualifications, functions, and duties of the licensee.~~

~~This bill would require the director to issue an automotive repair dealer registration upon receipt of a specified form and fee and would authorize the director to deny, suspend, revoke, or place on probation a registration for, among other things, conviction of a crime that is substantially related to the qualifications, functions, or duties of an automotive repair dealer. The bill would also authorize the director to deny, suspend, revoke, or take other disciplinary action against lamp and brake adjusting station and smog check station and technician applicants and licensees for the conviction of a crime substantially related to the qualifications, functions, or duties of that licensee.~~

~~Existing law establishes the vehicle inspection and maintenance (smog check) program, administered by the Department of Consumer Affairs and prescribes certain cost limits for repairs under the program. Existing law requires a smog check station where smog check inspections are performed to post a sign advising customers of those cost limits.~~

~~This bill would instead require the department to provide licensed smog check stations with a sign informing customers about their options when a vehicle fails a smog check inspection, as specified.~~

~~The bill would revise provisions relating to repair assistance agreements and would make other technical, nonsubstantive changes.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 800 of the Business and Professions Code
2 is amended to read:

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

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

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

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

3 (4) Disciplinary information reported pursuant to Section 805,
4 *including any additional exculpatory or explanatory statements*
5 *submitted by the licensee pursuant to subdivision (f) of Section*
6 *805. If a court finds that the peer review resulting in the 805 report*
7 *was conducted in bad faith and the licensee who is the subject of*
8 *the report notifies the board of that finding, the board shall include*
9 *that finding in the central file. For purposes of this paragraph,*
10 *“peer review” has the same meaning as defined in Section 805.*

11 (5) *Information reported pursuant to Section 805.01, including*
12 *any explanatory or exculpatory information submitted by the*
13 *licensee pursuant to subdivision (b) of Section 805.01.*

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

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

23 Notwithstanding this subdivision, the Board of Psychology, the
24 Board of Behavioral Sciences, and the Respiratory Care Board of
25 California shall maintain complaints or reports as long as each
26 board deems necessary.

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

1 or be used by a board to make a determination that would affect
2 a licensee's rights, benefits, privileges, or qualifications. The
3 information required to be disclosed pursuant to Section 803.1
4 shall not be considered among the contents of a central file for the
5 purposes of this subdivision.

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

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

14 These disclosures shall effect no change in the confidential status
15 of these records.

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

18 803.1. (a) Notwithstanding any other provision of law, the
19 Medical Board of California, the Osteopathic Medical Board of
20 California, and the California Board of Podiatric Medicine shall
21 disclose to an inquiring member of the public information regarding
22 any enforcement actions taken against a licensee ~~by either~~ ,
23 *including a former licensee, by the board or by another state or*
24 *jurisdiction, including all of the following:*

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

32 (b) Notwithstanding any other provision of law, in addition to
33 the information provided in subdivision (a), the Medical Board of
34 California, the Osteopathic Medical Board of California, and the
35 California Board of Podiatric Medicine shall disclose to an
36 inquiring member of the public all of the following:

- 37 (1) Civil judgments in any amount, whether or not vacated by
38 a settlement after entry of the judgment, that were not reversed on
39 appeal and arbitration awards in any amount of a claim or action
40 for damages for death or personal injury caused by the physician

1 and surgeon’s negligence, error, or omission in practice, or by his
2 or her rendering of unauthorized professional services.

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

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

36 (i) Comparing the settlement amount to the experience of other
37 licensees within the same specialty or subspecialty, indicating if
38 it is below average, average, or above average for the most recent
39 10-year period.

1 (ii) Reporting the number of years the licensee has been in
2 practice.

3 (iii) Reporting the total number of licensees in that specialty or
4 subspecialty, the number of those who have entered into a
5 settlement agreement, and the percentage that number represents
6 of the total number of licensees in the specialty or subspecialty.

7 (3) Current American Board of Medical Specialty certification
8 or board equivalent as certified by the Medical Board of California,
9 the Osteopathic Medical Board of California, or the California
10 Board of Podiatric Medicine.

11 (4) Approved postgraduate training.

12 (5) Status of the license of a licensee. By January 1, 2004, the
13 Medical Board of California, the Osteopathic Medical Board of
14 California, and the California Board of Podiatric Medicine shall
15 adopt regulations defining the status of a licensee. The board shall
16 employ this definition when disclosing the status of a licensee
17 pursuant to Section 2027.

18 (6) Any summaries of hospital disciplinary actions that result
19 in the termination or revocation of a licensee's staff privileges for
20 medical disciplinary cause or reason, *unless a court finds that the*
21 *peer review resulting in the disciplinary action was conducted in*
22 *bad faith and the licensee notifies the board of that finding. For*
23 *purposes of this paragraph, "peer review" has the same meaning*
24 *as defined in Section 805. In addition, any exculpatory or*
25 *explanatory statements submitted by the licentiate electronically*
26 *pursuant to subdivision (f) of Section 805 shall be disclosed.*

27 (c) Notwithstanding any other provision of law, the Medical
28 Board of California, the Osteopathic Medical Board of California,
29 and the California Board of Podiatric Medicine shall disclose to
30 an inquiring member of the public information received regarding
31 felony convictions of a physician and surgeon or doctor of podiatric
32 medicine.

33 (d) The Medical Board of California, the Osteopathic Medical
34 Board of California, and the California Board of Podiatric Medicine
35 may formulate appropriate disclaimers or explanatory statements
36 to be included with any information released, and may by
37 regulation establish categories of information that need not be
38 disclosed to an inquiring member of the public because that
39 information is unreliable or not sufficiently related to the licensee's
40 professional practice. The Medical Board of California, the

1 Osteopathic Medical Board of California, and the California Board
2 of Podiatric Medicine shall include the following statement when
3 disclosing information concerning a settlement:

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

24 When considering malpractice data, please keep in mind:

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

30 This report reflects data only for settlements made on or after
31 January 1, 2003. Moreover, it includes information concerning
32 those settlements for a 10-year period only. Therefore, you should
33 know that a doctor may have made settlements in the 10 years
34 immediately preceding January 1, 2003, that are not included in
35 this report. After January 1, 2013, for doctors practicing less than
36 10 years, the data covers their total years of practice. You should
37 take into account the effective date of settlement disclosure as well
38 as how long the doctor has been in practice when considering
39 malpractice averages.

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

8 Settlement of a claim may occur for a variety of reasons that do
9 not necessarily reflect negatively on the professional competence
10 or conduct of the doctor. A payment in settlement of a medical
11 malpractice action or claim should not be construed as creating a
12 presumption that medical malpractice has occurred.

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

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

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

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

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

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

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

22 (1) (A) *“Peer review” means a process in which a peer review*
23 *body reviews the basic qualifications, staff privileges, employment,*
24 *medical outcomes, or professional conduct of licentiates to make*
25 *recommendations for quality improvement and education, if*
26 *necessary, to determine whether the licentiate may practice or*
27 *continue to practice in a health care facility, clinic, or other setting*
28 *providing medical services, and, if so, to determine the parameters*
29 *of that practice.*

30 ~~(1)~~

31 (B) “Peer review body” includes:

32 ~~(A)~~

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

37 ~~(B)~~

38 (ii) A health care service plan registered under Chapter 2.2
39 (commencing with Section 1340) of Division 2 of the Health and
40 Safety Code or a disability insurer that contracts with licentiates

1 to provide services at alternative rates of payment pursuant to
2 Section 10133 of the Insurance Code.

3 ~~(C)~~

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 ~~(D)~~

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

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

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

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

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

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

1 (7) “805 report” means the written report required under
2 subdivision (b).

3 (b) The chief of staff of a medical or professional staff or other
4 chief executive officer, medical director, or administrator of any
5 peer review body and the chief executive officer or administrator
6 of any licensed health care facility or clinic shall file an 805 report
7 with the relevant agency within 15 days after the effective date of
8 *on which any of the following that occur are imposed on a*
9 *licentiate as a result of an action of a peer 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) ~~The~~ *If a licentiate undertakes any action listed in paragraph*
19 *(1), (2), or (3) after receiving notice of a pending investigation*
20 *initiated for a medical disciplinary cause or reason or after*
21 *receiving notice that his or her application for membership, staff*
22 *privileges, or employment is denied or will be denied for a medical*
23 *disciplinary cause or reason, the chief of staff of a medical or*
24 *professional staff or other chief executive officer, medical director,*
25 *or administrator of any peer review body and the chief executive*
26 *officer or administrator of any licensed health care facility or clinic*
27 *shall file an 805 report with the relevant agency within 15 days*
28 *after any of the following occur after notice of either an impending*
29 *investigation or the denial or rejection of the application for a*
30 *medical disciplinary cause or reason where the licentiate is*
31 *employed or has staff privileges or membership or where the*
32 *licentiate applied for staff privileges, membership, or employment,*
33 *or sought the renewal thereof, shall file an 805 report with the*
34 *relevant agency within 15 days after the licentiate undertakes the*
35 *action:*

36 (1) ~~Resignation or~~ *Resigns or takes a leave of absence from*
37 *membership, staff privileges, or employment.*

38 (2) ~~The withdrawal or abandonment of a licentiate’s application~~
39 *for staff privileges or membership* ~~Withdraws or abandons his or~~
40 *her application for membership, staff privileges, or employment.*

1 (3) ~~The~~ *Withdraws or abandons his or her* request for renewal
2 ~~of those privileges or membership is withdrawn or abandoned~~
3 *membership, staff privileges, or employment.*

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

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

12 (f) A copy of the 805 report, and a notice advising the licentiate
13 of his or her right to submit additional statements or other
14 information, *electronically or otherwise*, pursuant to Section 800,
15 shall be sent by the peer review body to the licentiate named in
16 ~~the report.~~

17 ~~The report.~~ notice shall also advise the licentiate that information
18 submitted electronically will be publicly disclosed to those who
19 request the information. The information to be reported in an 805
20 report shall include the name and license number of the licentiate
21 involved, a description of the facts and circumstances of the
22 medical disciplinary cause or reason, and any other relevant
23 information deemed appropriate by the reporter.

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

31 If another peer review body is required to file an 805 report, a
32 health care service plan is not required to file a separate report
33 with respect to action attributable to the same medical disciplinary
34 cause or reason. If the Medical Board of California or a licensing
35 agency of another state revokes or suspends, without a stay, the
36 license of a physician and surgeon, a peer review body is not
37 required to file an 805 report when it takes an action as a result of
38 the revocation or suspension.

39 (g) The reporting required by this section shall not act as a
40 waiver of confidentiality of medical records and committee reports.

1 The information reported or disclosed shall be kept confidential
2 except as provided in subdivision (c) of Section 800 and Sections
3 803.1 and 2027, provided that a copy of the report containing the
4 information required by this section may be disclosed as required
5 by Section 805.5 with respect to reports received on or after
6 January 1, 1976.

7 (h) The Medical Board of California, the Osteopathic Medical
8 Board of California, and the Dental Board of California shall
9 disclose reports as required by Section 805.5.

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

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

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

30 (l) Except as otherwise provided in subdivision (k), any failure
31 by the administrator of any peer review body, the chief executive
32 officer or administrator of any health care facility, or any person
33 who is designated or otherwise required by law to file an 805
34 report, shall be punishable by a fine that under no circumstances
35 shall exceed fifty thousand dollars (\$50,000) per violation. The
36 fine may be imposed in any civil or administrative action or
37 proceeding brought by or on behalf of any agency having
38 regulatory jurisdiction over the person regarding whom the report
39 was or should have been filed. If the person who is designated or
40 otherwise required to file an 805 report is a licensed physician and

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

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

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

28 *805.01. (a) As used in this section, the following terms have*
29 *the following definitions:*

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

31 *(2) "Formal investigation" means an investigation performed*
32 *by a peer review body based on an allegation that any of the acts*
33 *listed in paragraphs (1) to (4), inclusive, of subdivision (b)*
34 *occurred.*

35 *(3) "Licentiate" has the same meaning as defined in Section*
36 *805.*

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

39 *(b) The chief of staff of a medical or professional staff or other*
40 *chief executive officer, medical director, or administrator of any*

1 *peer review body and the chief executive officer or administrator*
2 *of any licensed health care facility or clinic shall file a report with*
3 *the relevant agency within 15 days after a peer review body makes*
4 *a final decision or recommendation regarding the disciplinary*
5 *action, as specified in subdivision (b) of Section 805, resulting in*
6 *a final proposed action to be taken against a licentiate based on*
7 *the peer review body's determination, following formal*
8 *investigation of the licentiate, that any of the acts listed in*
9 *paragraphs (1) to (4), inclusive, may have occurred, regardless*
10 *of whether a hearing is held pursuant to Section 809.2. The*
11 *licentiate shall receive a notice of the proposed action as set forth*
12 *in Section 809.1, which shall also include a notice advising the*
13 *licentiate of the right to submit additional explanatory or*
14 *exculpatory statements electronically or otherwise.*

15 *(1) Gross negligence, incompetence, or repeated negligent acts*
16 *that involve death or serious bodily injury to one or more patients,*
17 *such that the physician and surgeon represent a danger to the*
18 *public.*

19 *(2) Drug or alcohol abuse by a physician and surgeon involving*
20 *death or serious bodily injury to a patient.*

21 *(3) Repeated acts of clearly excessive prescribing, furnishing,*
22 *or administering of controlled substances or repeated acts of*
23 *prescribing, dispensing, or furnishing of controlled substances*
24 *without good faith effort prior examination of the patient and*
25 *medical reason therefor. However, in no event shall a physician*
26 *and surgeon prescribing, furnishing, or administering controlled*
27 *substances for intractable pain, consistent with lawful prescribing,*
28 *be reported for excessive prescribing and prompt review of the*
29 *applicability of these provisions shall be made in any complaint*
30 *that may implicate these provisions.*

31 *(4) Sexual misconduct with one or more patients during a course*
32 *of treatment or an examination.*

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

36 *(1) Any statement of charges.*

37 *(2) Any document, medical chart, or exhibit.*

38 *(3) Any opinions, findings, or conclusions.*

39 *(4) Certified medical records.*

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

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

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

13 805.1. (a) The Medical Board of California, the Osteopathic
14 Medical Board of California, and the Dental Board of California
15 shall be entitled to inspect and copy the following documents in
16 the record of any disciplinary proceeding resulting in action that
17 is required to be reported pursuant to Section 805:

- 18 (1) Any statement of charges.
- 19 (2) Any document, medical chart, or exhibits in evidence.
- 20 (3) Any opinion, findings, or conclusions.
- 21 (4) *Certified copy of medical records.*

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

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

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

1 or dentist has been denied staff privileges, been removed from a
2 medical staff, or had his or her staff privileges restricted as
3 provided in Section 805. The request shall include the name and
4 California license number of the physician and surgeon,
5 psychologist, podiatrist, or dentist. Furnishing of a copy of the 805
6 report shall not cause the 805 report to be a public record.

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

28 ~~In the event~~

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

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

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

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

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

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

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

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

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

22 (6) Any hospital disciplinary actions that resulted in the
23 termination or revocation of a licensee’s hospital staff privileges
24 for a medical disciplinary cause or reason. *The posting shall also*
25 *provide a link to any additional explanatory or exculpatory*
26 *information submitted electronically by the licensee.*

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

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

35 (9) Any information required to be disclosed pursuant to Section
36 803.1.

37 (b) (1) From January 1, 2003, the information described in
38 paragraphs (1) (other than whether or not the licensee is in good
39 standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain
40 posted for a period of 10 years from the date the board obtains

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

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

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

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

28 (c) *The board shall also post on the Internet a fact sheet that*
29 *explains and provides information on the reporting requirements*
30 *under Section 805.*

31 (e)

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

1 *SEC. 8. This act shall only become operative if Assembly Bill*
2 *120 of the 2009–10 Regular Session is also enacted and becomes*
3 *operative.*

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Assembly, June 22, 2009. (JR11)**

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