AMENDED IN ASSEMBLY JUNE 15, 2009

AMENDED IN SENATE MAY 20, 2009

AMENDED IN SENATE APRIL 30, 2009

AMENDED IN SENATE APRIL 16, 2009

SENATE BILL No. 821

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

March 10, 2009

An act to amend Sections 805, 2530.2, 2532.2, 2532.7, 2570.2, 2570.3, 2570.4, 2570.5, 2570.6, 2570.7, 2570.9, 2570.10, 2570.13, 2570.16, 2570.18, 2570.20, 2570.26, 2570.28, 2571, 2872.2, 3357, 3362, 3366, 3456, 3740, 3750.5, 3773, 4101, 4112, 4113, 4160, 4196, 4510.1, 4933, 4980.45, 4980.48, 4982, 4982.2, 4989.22, 4989.54, 4992.1, 4992.3, 4996.23, 4996.28, 4996.5, and 4999.2 of, to add Sections 2532.25, 2570.17, 4013, 4146, 4989.49, 4992.2, and 4996.24 to, and to repeal Sections 821.5 and 821.6 of, the Business and Professions Code, to amend Section 123105 of the Health and Safety Code, and to amend Section 3 of Chapter 294 of the Statutes of 2004, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 821, as amended, Committee on Business, Professions and Economic Development. Healing arts: licensees.

(1) Existing law provides for the professional review of specified healing arts licentiates through a peer review process, and requires the peer review body to report to the relevant agency upon certain

circumstances, including circumstances related to an obsolete diversion program.

This bill would include within the definition of “licentiate” a holder of a special faculty permit to practice medicine within a medical school. The bill would also delete the peer review provisions related to the obsolete diversion program.

(2) Existing law provides for the licensure and regulation of speech-language pathologists and audiologists by the Speech-Language Pathology and Audiology Board. Existing law provides that an audiology aide is any person who meets the minimum requirements of the board and who works directly under the supervision of an audiologist.

This bill would prohibit an audiology aide from performing any function that constitutes the practice of audiology unless he or she is under the supervision of an audiologist, except if the board exempts certain functions performed by an industrial audiology aide and if the employer establishes a set of procedures or protocols.

Existing law requires an applicant for licensure as an audiologist to meet specified educational and curriculum standards, including possession of at least a master’s degree in audiology.

This bill would revise the educational and curriculum standards for licensure as an audiologist, as specified, and instead require possession of a doctorate in audiology. The bill would apply those requirements to applicants who graduate from an approved educational institution on or after January 1, 2008. The bill would make conforming changes to provisions related to the issuance of a required professional experience (RPE) temporary license, as specified.

(3) The Occupational Therapy Practice Act provides for the licensure and regulation of occupational therapists and occupational therapist assistants. Existing law prohibits an occupational therapy assistant from supervising an aide engaged in client-related tasks. Existing law also provides for minimizing the risk of transmission of blood-borne infectious diseases.

This bill would authorize occupational therapy assistants to supervise aides engaged in client-related tasks, and make conforming changes. The bill would delete obsolete certification terms and replace them with licensure references. The bill would provide for minimizing the risk of transmission of infectious diseases.

Under the Occupational Therapy Practice Act, occupational therapists and occupational therapy assistants are subject to licensure and regulation by the California Board of Occupational Therapy and specified licensure fees, which are deposited into the Occupational Therapy Fund.

This bill would require the board to issue retired licenses to certain occupational therapists or occupational therapy assistants, as specified, subject to a $25 fee.

Existing law regulates telephone medical advice services, and requires all staff who provide medical advice services to be appropriately licensed, certified, or registered professionals, as specified.

This bill would add occupational therapists to the enumerated professionals authorized to provide telephone medical advice.

Existing law imposes specified recordkeeping and disclosure requirements on health care providers, as defined.

This bill would impose those requirements on occupational therapists.

(4) Existing law provides for the licensure and regulation of vocational nurses and psychiatric technicians by the Board of Vocational Nursing and Psychiatric Technicians of the State of California. Existing law provides, upon application, for the issuance of an interim permit authorizing an applicant to practice vocational nursing or, in the case of a psychiatric technician, all skills in his or her basic course of study, pending the results of a licensing examination.

This bill would require the application for an interim permit to be submitted no later than 4 months after completion of a board-accredited program, and would limit the use of the permit to 9 months, as specified.

(5) Existing law provides for the licensure and regulation of hearing aid dispensers by the Hearing Aid Dispensers Bureau, and a person who violates that law is guilty of a misdemeanor. Existing law provides for the issuance of a temporary license to an applicant who has made application for licensure and who proves that he or she will be supervised and trained by a hearing aid dispenser, pending approval by the board. A temporary license is effective and valid for 6 months, and may be renewed twice for an additional period of 6 months.

This bill would allow for the issuance of a new temporary license if more than 3 years have lapsed from the expiration or cancellation date of a previous temporary license.

Existing law requires a person engaging in the practice of fitting or selling hearing aids to notify the bureau in writing of his or her business address or addresses or changes in that address or addresses. Existing law requires a licensee to keep and maintain his or her business records for a 7-year period.

This bill would require the written notification to be given to the bureau within a 30-day period. The bill would also require a licensee to allow his or her business records, as specified, to be inspected by the bureau upon reasonable notice. Because a violation of those provisions would be a crime, the bill would impose a state-mandated local program.

Existing law allows the bureau to impose upon licensees specified licensure fees and penalties, including a fee for a continuing education course transcript and for a license confirmation letter.

This bill would delete those transcript and letter fee provisions.

(6) The Respiratory Care Practice Act provides for the licensure and regulation of respiratory care practitioners by the Respiratory Care Board of California. The act authorizes the board to deny, suspend, or revoke the license of any applicant or licensee who has committed a specified violation, including obtaining or possessing in violation of law or, except as directed by a licensed physician and surgeon, dentist, or podiatrist, furnishing or administering to himself or herself or another a controlled substance, as defined.

This bill would clarify that the licensee is prohibited from obtaining, possessing, using, or administering to himself or herself in violation of law, or furnishing or administering to another, any controlled substance, as defined, except as directed by a licensed physician and surgeon, dentist, podiatrist, or other authorized health care provider. The bill would also subject to disciplinary action a licensee who uses alcoholic beverages to an extent that is injurious to self or others or if it impairs his or her ability to conduct with safety the practice of respiratory care. For a violation thereof, the bill would specify that the board is authorized to place the license of an applicant or licensee on probation. The bill would also require a renewing applicant for licensure to provide additional information requested by the board and, if the applicant fails to provide that information within 30 days of the request, his or her license would be made inactive until the information is received.

(7) The Pharmacy Law provides for the licensure and regulation of pharmacists and pharmacy establishments by the California State Board of Pharmacy, and makes a knowing violation of the law a misdemeanor.

On and after July 1, 2010, this bill would require any facility licensed by the board to join the board's e-mail notification list and make specified e-mail address updates. The bill would also require nonresident pharmacies to obtain licensure from the board, and would make certain changes with regard to pharmacists-in-charge of a pharmacy, representatives-in-charge of the wholesale of any dangerous drug or device, and representatives-in-charge of veterinary food-animal drug retailers, and respective notification requirements. The bill would also allow a pharmacy to accept the return of needles and syringes from the public if contained in a sharps container, as defined. Because a knowing violation of those provisions would be a crime, the bill would impose a state-mandated local program.

(8) Existing law provides for the licensure and regulation of acupuncturists by the Acupuncture Board. Existing law provides that 5 members of the board shall constitute a quorum.

This bill would provide that 4 members, including at least one acupuncturist, shall constitute a quorum.

(9) Existing law provides for the licensure and regulation of marriage and family therapists by the Board of Behavioral Sciences, and makes a violation of the law a misdemeanor.

This bill would delete references to the employment of unlicensed interns and instead refer to marriage and family therapy interns or associate clinical social workers, and would apply specified disciplinary and probationary provisions to registered marriage and family therapy interns and associate clinical social workers. The bill would require any person that advertises services performed by a trainee, as defined, to include the trainee's name and supervisor information. Because a violation of this requirement would be a crime, the bill would impose a state-mandated local program. The bill would additionally modify the disciplinary provisions that apply to marriage and family therapists, as specified, and the licensure provisions that apply to an applicant pending investigation of a complaint.

(10) Existing law provides for the regulation of educational psychologists by the Board of Behavioral Sciences, and makes a violation of the law a misdemeanor. Existing law sets forth certain prohibited acts that subject a licensee to disciplinary action.

This bill would add to those prohibited acts provisions related to drug use, telemedicine consent, subversion of an examination, *impersonation, incompetence,* and fraudulent advertising. The bill would define the term "advertising" for purposes of those provisions.

(11) Existing law provides for the regulation of clinical social workers by the Board of Behavioral Sciences. Existing law sets forth certain prohibited acts that subject a licensee to disciplinary action.

This bill would add to those prohibited acts provisions related to the subversion of an examination, *access to certain psychological tests,* and advertising. The bill would define the term "advertising" for purposes of those provisions. The bill would additionally modify the licensure provisions that apply to an applicant pending investigation of a complaint. The bill would modify provisions related to the supervision and employment of clinical social workers or associate clinical social workers*, as specified*.

(12) Existing law appropriates specified sums from the State Dental Auxiliary Fund to the Committee on Dental Auxiliaries for operating expenses necessary to manage the dental hygiene licensing examination. Existing law requires the Dental Hygiene Committee of California to administer the dental hygiene licensing examination. Existing law also provides that on and after July 1, 2009, specified moneys are to be transferred from the State Dental Auxiliary Fund to the State Dental Hygiene Fund for purposes of carrying out certain provisions of the Dental Practice Act, including the payment of any encumbrances, related to dental hygienists, dental hygienists in alternative practice, and dental hygienists in extended functions.

This bill would specify that the moneys for operating the dental hygiene licensing examination are to be transferred to the Dental Hygiene Committee of California from the State Dental Hygiene Fund.

(13) 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.

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

SECTION 1. Section 805 of the Business and Professions Code is amended to read:

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

(1) “Peer review body” includes:

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

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

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

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

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

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

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

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

(6) "Medical disciplinary cause or reason" means that aspect of a licentiate's competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) "805 report" means the written report required under subdivision (b).

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after the effective date of any of the following that occur as a result of an action of a peer review body:

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

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

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

(c) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after any of the following occur after notice of either an impending investigation or the denial or rejection of the application for a medical disciplinary cause or reason:

(1) Resignation or leave of absence from membership, staff, or employment.

(2) The withdrawal or abandonment of a licentiate's application for staff privileges or membership.

(3) The request for renewal of those privileges or membership is withdrawn or abandoned.

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 2. Section 821.5 of the Business and Professions Code is repealed.

SEC. 3. Section 821.6 of the Business and Professions Code is repealed.

SEC. 4. Section 2530.2 of the Business and Professions Code is amended to read:

2530.2. As used in this chapter, unless the context otherwise requires:

(a) "Board" means the Speech-Language Pathology and Audiology Board or any successor.

(b) "Person" means any individual, partnership, corporation, limited liability company, or other organization or combination thereof, except that only individuals can be licensed under this chapter.

(c) A "speech-language pathologist" is a person who practices speech-language pathology.

(d) The practice of speech-language pathology means all of the following:

(1) The application of principles, methods, instrumental procedures, and noninstrumental procedures for measurement, testing, screening, evaluation, identification, prediction, and counseling related to the development and disorders of speech, voice, language, or swallowing.

(2) The application of principles and methods for preventing, planning, directing, conducting, and supervising programs for habilitating, rehabilitating, ameliorating, managing, or modifying disorders of speech, voice, language, or swallowing in individuals or groups of individuals.

(3) Conducting hearing screenings.

(4) Performing suctioning in connection with the scope of practice described in paragraphs (1) and (2), after compliance with a medical facility's training protocols on suctioning procedures.

(e) (1) Instrumental procedures referred to in subdivision (d) are the use of rigid and flexible endoscopes to observe the pharyngeal and laryngeal areas of the throat in order to observe, collect data, and measure the parameters of communication and swallowing as well as to guide communication and swallowing assessment and therapy.

(2) Nothing in this subdivision shall be construed as a diagnosis. Any observation of an abnormality shall be referred to a physician and surgeon.

(f) A licensed speech-language pathologist shall not perform a flexible fiberoptic nasendoscopic procedure unless he or she has received written verification from an otolaryngologist certified by the American Board of Otolaryngology that the speech-language pathologist has performed a minimum of 25 flexible fiberoptic nasendoscopic procedures and is competent to perform these procedures. The speech-language pathologist shall have this written verification on file and readily available for inspection upon request by the board. A speech-language pathologist shall pass a flexible fiberoptic nasendoscopic instrument only under the direct authorization of an otolaryngologist certified by the American Board of Otolaryngology and the supervision of a physician and surgeon.

(g) A licensed speech-language pathologist shall only perform flexible endoscopic procedures described in subdivision (e) in a setting that requires the facility to have protocols for emergency medical backup procedures, including a physician and surgeon or other appropriate medical professionals being readily available.

(h) "Speech-language pathology aide" means any person meeting the minimum requirements established by the board, who works directly under the supervision of a speech-language pathologist.

(i) (1) "Speech-language pathology assistant" means a person who meets the academic and supervised training requirements set forth by the board and who is approved by the board to assist in the provision of speech-language pathology under the direction and supervision of a speech-language pathologist who shall be responsible for the extent, kind, and quality of the services provided by the speech-language pathology assistant.

(2) The supervising speech-language pathologist employed or contracted for by a public school may hold a valid and current license issued by the board, a valid, current, and professional clear clinical or rehabilitative services credential in language, speech, and hearing issued by the Commission on Teacher Credentialing, or other credential authorizing service in language, speech, and hearing issued by the Commission on Teacher Credentialing that is not issued on the basis of an emergency permit or waiver of requirements. For purposes of this paragraph, a "clear" credential is a credential that is not issued pursuant to a waiver or emergency permit and is as otherwise defined by the Commission on Teacher Credentialing. Nothing in this section referring to credentialed supervising speech-language pathologists expands existing exemptions from licensing pursuant to Section 2530.5.

(j) An "audiologist" is one who practices audiology.

(k) "The practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, instruction related to auditory, vestibular, and related functions and the modification of communicative disorders involving speech, language, auditory behavior or other aberrant behavior resulting from auditory dysfunction; and the planning, directing, conducting, supervising, or participating in programs of identification of auditory disorders, hearing conservation, cerumen removal, aural habilitation, and rehabilitation, including, hearing aid recommendation and evaluation procedures including, but not limited to, specifying amplification requirements and evaluation of the results thereof, auditory training, and speech reading.

(*l*) "Audiology aide" means any person, meeting the minimum requirements established by the board. An audiology aide may not perform any function that constitutes the practice of audiology unless he or she is under the supervision of an audiologist. The board may by regulation exempt certain functions performed by an industrial audiology aide from supervision provided that his or her employer has established a set of procedures or protocols that the aide shall follow in performing those functions.

(m) "Medical board" means the Medical Board of California.

(n) A "hearing screening" performed by a speech-language pathologist means a binary puretone screening at a preset intensity level for the purpose of determining if the screened individuals are in need of further medical or audiological evaluation.

(o) "Cerumen removal" means the nonroutine removal of cerumen within the cartilaginous ear canal necessary for access in performance of audiological procedures that shall occur under physician and surgeon supervision. Cerumen removal, as provided by this section, shall only be performed by a licensed audiologist. Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but shall include all of the following:

(1) Collaboration on the development of written standardized protocols. The protocols shall include a requirement that the supervised audiologist immediately refer to an appropriate physician any trauma, including skin tears, bleeding, or other pathology of the ear discovered in the process of cerumen removal as defined in this subdivision.

(2) Approval by the supervising physician of the written standardized protocol.

(3) The supervising physician shall be within the general vicinity, as provided by the physician-audiologist protocol, of the supervised audiologist and available by telephone contact at the time of cerumen removal.

(4) A licensed physician and surgeon may not simultaneously supervise more than two audiologists for purposes of cerumen removal.

SEC. 5. Section 2532.2 of the Business and Professions Code is amended to read:

2532.2. Except as required by Section 2532.25, to be eligible for licensure by the board as a speech-language pathologist or audiologist, the applicant shall possess all of the following qualifications:

(a) Possess at least a master's degree in speech-language pathology or audiology from an educational institution approved by the board or qualifications deemed equivalent by the board.

(b) Submit transcripts from an educational institution approved by the board evidencing the successful completion of at least 60 semester units of courses related to the normal development, function, and use of speech, hearing, and language; and courses that provide information about, and training in, the management of speech, hearing, and language disorders. At least 24 of the required 60 semester units shall be related to disorders of speech, voice, or language for speech-language pathology applicants or to disorders of hearing and the modification of communication disorders involving speech and language resulting from hearing disorders for audiology applicants. These 60 units do not include credit for thesis, dissertation, or clinical practice.

(c) Submit evidence of the satisfactory completion of supervised clinical practice with individuals representative of a wide spectrum of ages and communication disorders. The board shall establish by regulation the required number of clock hours, not to exceed 300 clock hours, of supervised clinical practice necessary for the applicant.

The clinical practice shall be under the direction of an educational institution approved by the board.

(d) Submit evidence of no less than 36 weeks of satisfactorily completed supervised professional full-time experience or 72 weeks of professional part-time experience obtained under the supervision of a licensed speech-language pathologist or audiologist or a speech-language pathologist or audiologist having qualifications deemed equivalent by the board. This experience shall be evaluated and approved by the board. The required professional experience shall follow completion of the requirements listed in subdivisions (a), (b), and (c). Full time is defined as at least 36 weeks in a calendar year and a minimum of 30 hours per week. Part time is defined as a minimum of 72 weeks and a minimum of 15 hours per week.

(e) Pass an examination or examinations approved by the board. The board shall determine the subject matter and scope of the examinations and may waive the examination upon evidence that the applicant has successfully completed an examination approved by the board. Written examinations may be supplemented by oral examinations as the board shall determine. An applicant who fails his or her examination may be reexamined at a subsequent examination upon payment of the reexamination fee required by this chapter.

A speech-language pathologist or audiologist who holds a license from another state or territory of the United States or who holds equivalent qualifications as determined by the board and who has completed no less than one year of full-time continuous employment as a speech-language pathologist or audiologist within the past three years is exempt from the supervised professional experience in subdivision (d).

(f) As applied to licensure as an audiologist, this section shall apply to applicants who graduated from an approved educational institution on or before December 31, 2007.

SEC. 6. Section 2532.25 is added to the Business and Professions Code, to read:

2532.25. (a) An applicant seeking licensure as an audiologist shall possess a doctorate in audiology earned from an educational institution approved by the board. The board may, in its discretion, accept qualifications it deems to be equivalent to a doctoral degree in audiology. The board shall not, however, accept as equivalent qualifications graduation from a master's program that the applicant was enrolled in on or after January 1, 2008.

(b) In addition to meeting the qualifications specified in subdivision (a), an applicant seeking licensure as an audiologist shall do all of the following:

(1) Submit evidence of the satisfactory completion of supervised clinical practice with individuals representative of a wide spectrum of ages and audiological disorders. The board shall establish by regulation the required number of clock hours of supervised clinical practice necessary for the applicant. The clinical practice shall be under the direction of an educational institution approved by the board.

(2) Submit evidence of no less than 12 months of satisfactorily completed supervised professional full-time experience or its part-time equivalent obtained under the supervision of a licensed audiologist or an audiologist having qualifications deemed equivalent by the board. This experience shall be completed under the direction of a board-approved audiology doctoral program. The required professional experience shall follow completion of the didactic and clinical rotation requirements of the audiology doctoral program.

(3) Pass an examination or examinations approved by the board. The board shall determine the subject matter and scope of the examination or examinations and may waive an examination upon evidence that the applicant has successfully completed an examination approved by the board. Written examinations may be

supplemented by oral examinations as the board shall determine. An applicant who fails an examination may be reexamined at a subsequent examination upon payment of the reexamination fee required by this chapter.

(c) This section shall apply to applicants who graduate from an approved educational institution on and after January 1, 2008.

SEC. 7. Section 2532.7 of the Business and Professions Code is amended to read:

2532.7. (a) Upon approval of an application filed pursuant to Section 2532.1, and upon payment of the fee prescribed by Section 2534.2, the board may issue a required professional experience (RPE) temporary license for a period to be determined by the board to an applicant who is obtaining the required professional experience specified in subdivision (d) of Section 2532.2 or paragraph (2) of subdivision (b) of Section 2532.25.

(b) Effective July 1, 2003, no person shall obtain the required professional experience for licensure in either an exempt or nonexempt setting, as defined in Section 2530.5, unless he or she is licensed in accordance with this section or is completing the final clinical externship of a board-approved audiology doctoral training program in accordance with paragraph (2) of subdivision (b) of Section 2532.25 in another state.

(c) A person who obtains an RPE temporary license outside the State of California shall not be required to hold a temporary license issued pursuant to subdivision (a) if the person is completing the final clinical externship of an audiology doctoral training program in accordance with paragraph (2) of subdivision (b) of Section 2532.25.

(d) Any experience obtained in violation of this act shall not be approved by the board.

(e) An RPE temporary license shall terminate upon notice thereof by certified mail, return receipt requested, if it is issued by mistake or if the application for permanent licensure is denied.

(f) Upon written application, the board may reissue an RPE temporary license for a period to be determined by the board to an applicant who is obtaining the required professional experience specified in subdivision (d) of Section 2532.2 or paragraph (2) of subdivision (b) of Section 2532.25.

SEC. 8. Section 2570.2 of the Business and Professions Code is amended to read:

2570.2. As used in this chapter, unless the context requires otherwise:

(a) “Appropriate supervision of an aide” means that the responsible occupational therapist or occupational therapy assistant shall provide direct in-sight supervision when the aide is providing delegated client-related tasks and shall be readily available at all times to provide advice or instruction to the aide. The occupational therapist or occupational therapy assistant is responsible for documenting the client’s record concerning the delegated client-related tasks performed by the aide.

(b) “Aide” means an individual who provides supportive services to an occupational therapist and who is trained by an occupational therapist to perform, under appropriate supervision, delegated, selected client and nonclient-related tasks for which the aide has demonstrated competency. An occupational therapist licensed pursuant to this chapter may utilize the services of one aide engaged in patient-related tasks to assist the occupational therapist in his or her practice of occupational therapy.

(c) “Association” means the Occupational Therapy Association of California or a similarly constituted organization representing occupational therapists in this state.

(d) “Board” means the California Board of Occupational Therapy.

(e) “Examination” means an entry level certification examination for occupational therapists and occupational therapy assistants administered by the National Board for Certification in Occupational Therapy or by another nationally recognized credentialing body.

(f) “Good standing” means that the person has a current, valid license to practice occupational therapy or assist in the practice of occupational therapy and has not been disciplined by the recognized professional certifying or standard-setting body within five years prior to application or renewal of the person’s license.

(g) “Occupational therapist” means an individual who meets the minimum education requirements specified in Section 2570.6 and is licensed pursuant to the provisions of this chapter and whose license is in good standing as determined by the board to practice occupational therapy under this chapter. Only the occupational therapist is responsible for the occupational therapy assessment of a client, and the development of an occupational therapy plan of treatment.

(h) "Occupational therapy assistant" means an individual who is licensed pursuant to the provisions of this chapter, who is in good standing as determined by the board, and based thereon, who is qualified to assist in the practice of occupational therapy under this chapter, and who works under the appropriate supervision of a licensed occupational therapist.

(i) "Occupational therapy services" means the services of an occupational therapist or the services of an occupational therapy assistant under the appropriate supervision of an occupational therapist.

(j) "Person" means an individual, partnership, unincorporated organization, or corporation.

(k) "Practice of occupational therapy" means the therapeutic use of purposeful and meaningful goal-directed activities (occupations) which engage the individual's body and mind in meaningful, organized, and self-directed actions that maximize independence, prevent or minimize disability, and maintain health. Occupational therapy services encompass occupational therapy assessment, treatment, education of, and consultation with, individuals who have been referred for occupational therapy services subsequent to diagnosis of disease or disorder (or who are receiving occupational therapy services as part of an Individualized Education Plan (IEP) pursuant to the federal Individuals with Disabilities Education Act (IDEA)). Occupational therapy assessment identifies performance abilities and limitations that are necessary for self-maintenance, learning, work, and other similar meaningful activities. Occupational therapy treatment is focused on developing, improving, or restoring functional daily living skills, compensating for and preventing dysfunction, or minimizing disability. Occupational therapy techniques that are used for treatment involve teaching activities of daily living (excluding speech-language skills); designing or fabricating selective temporary orthotic devices, and applying or training in the use of assistive technology or orthotic and prosthetic devices (excluding gait training). Occupational therapy consultation provides expert advice to enhance function and quality of life. Consultation or treatment may involve modification of tasks or environments to allow an individual to achieve maximum independence. Services are provided individually, in groups, or through social groups.

(*l*) "Hand therapy" is the art and science of rehabilitation of the hand, wrist, and forearm requiring comprehensive knowledge of the upper extremity and specialized skills in assessment and treatment to prevent dysfunction, restore function, or reverse the advancement of pathology. This definition is not intended to prevent an occupational therapist practicing hand therapy from providing other occupational therapy services authorized under this act in conjunction with hand therapy.

(m) "Physical agent modalities" means techniques that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. These techniques are used as adjunctive methods in conjunction with, or in immediate preparation for, occupational therapy services.

SEC. 9. Section 2570.3 of the Business and Professions Code is amended to read:

2570.3. (a) No person shall practice occupational therapy or hold himself or herself out as an occupational therapist or as being able to practice occupational therapy, or to render occupational therapy services in this state unless he or she is licensed as an occupational therapist under the provisions of this chapter. No person shall hold himself or herself out as an occupational therapy assistant or work as an occupational therapy assistant under the supervision of an occupational therapist unless he or she is licensed as an occupational therapy assistant under the provisions of this chapter.

(b) Only an individual may be licensed under this chapter.

(c) Nothing in this chapter shall be construed as authorizing an occupational therapist to practice physical therapy, as defined in Section 2620; speech-language pathology or audiology, as defined in Section 2530.2; nursing, as defined in Section 2725; psychology, as defined in Section 2903; or spinal manipulation or other forms of healing, except as authorized by this section.

(d) An occupational therapist may provide advanced practices if the therapist has the knowledge, skill, and ability to do so and has demonstrated to the satisfaction of the board that he or she has met educational training and competency requirements. These advanced practices include the following:

(1) Hand therapy.

(2) The use of physical agent modalities.

(3) Swallowing assessment, evaluation, or intervention.

(e) An occupational therapist providing hand therapy services shall demonstrate to the satisfaction of the board that he or she has completed post professional education and training in all of the following areas:

(1) Anatomy of the upper extremity and how it is altered by pathology.

(2) Histology as it relates to tissue healing and the effects of immobilization and mobilization on connective tissue.

(3) Muscle, sensory, vascular, and connective tissue physiology.

(4) Kinesiology of the upper extremity, such as biomechanical principles of pulleys, intrinsic and extrinsic muscle function, internal forces of muscles, and the effects of external forces.

(5) The effects of temperature and electrical currents on nerve and connective tissue.

(6) Surgical procedures of the upper extremity and their postoperative course.

(f) An occupational therapist using physical agent modalities shall demonstrate to the satisfaction of the board that he or she has completed post professional education and training in all of the following areas:

(1) Anatomy and physiology of muscle, sensory, vascular, and connective tissue in response to the application of physical agent modalities.

(2) Principles of chemistry and physics related to the selected modality.

(3) Physiological, neurophysiological, and electrophysiological changes that occur as a result of the application of a modality.

(4) Guidelines for the preparation of the patient, including education about the process and possible outcomes of treatment.

(5) Safety rules and precautions related to the selected modality.

(6) Methods for documenting immediate and long-term effects of treatment.

(7) Characteristics of the equipment, including safe operation, adjustment, indications of malfunction, and care.

(g) An occupational therapist in the process of achieving the education, training, and competency requirements established by the board for providing hand therapy or using physical agent modalities may practice these techniques under the supervision of an occupational therapist who has already met the requirements established by the board, a physical therapist, or a physician and surgeon.

(h) The board shall develop and adopt regulations regarding the educational training and competency requirements for advanced practices in collaboration with the Speech-Language Pathology and Audiology Board, the Board of Registered Nursing, and the Physical Therapy Board of California.

(i) Nothing in this chapter shall be construed as authorizing an occupational therapist to seek reimbursement for services other than for the practice of occupational therapy as defined in this chapter.

(j) "Supervision of an occupational therapy assistant" means that the responsible occupational therapist shall at all times be responsible for all occupational therapy services provided to the client. The occupational therapist who is responsible for appropriate supervision shall formulate and document in each client's record, with his or her signature, the goals and plan for that client, and shall make sure that the occupational therapy assistant assigned to that client functions under appropriate supervision. As part of the responsible occupational therapist's appropriate supervision, he or she shall conduct at least weekly review and inspection of all aspects of occupational therapy services by the occupational therapy assistant.

(1) The supervising occupational therapist has the continuing responsibility to follow the progress of each patient, provide direct care to the patient, and to assure that the occupational therapy assistant does not function autonomously.

(2) An occupational therapist shall not supervise more occupational therapy assistants, at any one time, than can be appropriately supervised in the opinion of the board. Two occupational therapy assistants shall be the maximum number of occupational therapy assistants supervised by an occupational therapist at any one time, but the board may permit the supervision of a greater number by an occupational therapist if, in the opinion of the board, there would be adequate supervision and the public's health and safety would be served. In no case shall the total number of occupational therapy assistants exceed twice the number of occupational therapists regularly employed by a facility at any one time.

(k) The amendments to subdivisions (d), (e), (f), and (g) relating to advanced practices, that are made by the act adding this subdivision, shall become operative no later than January 1, 2004, or on the date the board adopts regulations pursuant to subdivision (h), whichever first occurs.

SEC. 10. Section 2570.4 of the Business and Professions Code is amended to read:

2570.4. Nothing in this chapter shall be construed as preventing or restricting the practice, services, or activities of any of the following persons:

(a) Any person licensed or otherwise recognized in this state by any other law or regulation when that person is engaged in the profession or occupation for which he or she is licensed or otherwise recognized.

(b) Any person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited educational program, if the person is designated by a title that clearly indicates his or her status as a student or trainee.

(c) Any person fulfilling the supervised fieldwork experience requirements of subdivision (c) of Section 2570.6, if the experience constitutes a part of the experience necessary to meet the requirement of that provision.

(d) Any person performing occupational therapy services in the state if all of the following apply:

(1) An application for licensure as an occupational therapist or an occupational therapy assistant has been filed with the board pursuant to Section 2570.6 and an application for a license in this state has not been previously denied.

(2) The person possesses a current, active, and nonrestricted license to practice occupational therapy under the laws of another state that the board determines has licensure requirements at least as stringent as the requirements of this chapter.

(3) Occupational therapy services are performed in association with an occupational therapist licensed under this chapter, and for no more than 60 days from the date on which the application for licensure was filed with the board.

(e) Any person employed as an aide subject to the supervision requirements of this section.

SEC. 11. Section 2570.5 of the Business and Professions Code is amended to read:

2570.5. (a) A limited permit may be granted to any person who has completed the education and experience requirements of this chapter.

(b) A person who meets the qualifications to be admitted to the examination for licensure under this chapter and is waiting to take the first available examination or awaiting the announcement of the results of the examination, according to the application requirements for a limited permit, may practice as an occupational therapist or as an occupational therapy assistant under the direction and appropriate supervision of an occupational therapist duly licensed under this chapter. If that person fails to qualify for or pass the first announced examination, all privileges under this section shall automatically cease upon due notice to the applicant of that failure and may not be renewed.

(c) A limited permit shall be subject to other requirements set forth in rules adopted by the board.

SEC. 12. Section 2570.6 of the Business and Professions Code is amended to read:

2570.6. An applicant applying for a license as an occupational therapist or as an occupational therapy assistant shall file with the board a written application provided by the board, showing to the satisfaction of the board that he or she meets all of the following requirements:

(a) That the applicant is in good standing and has not committed acts or crimes constituting grounds for denial of a license under Section 480.

(b) (1) That the applicant has successfully completed the academic requirements of an educational program for occupational therapists or occupational therapy assistants that is approved by the board and accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education (ACOTE).

(2) The curriculum of an education program for occupational therapists shall contain the content specifically required in the ACOTE accreditation standards, including all of the following subjects:

(A) Biological, behavioral, and health sciences.

(B) Structure and function of the human body, including anatomy, kinesiology, physiology, and the neurosciences.

(C) Human development throughout the life span.

(D) Human behavior in the context of sociocultural systems.

(E) Etiology, clinical course, management, and prognosis of disease processes and traumatic injuries, and the effects of those conditions on human functioning.

(F) Occupational therapy theory, practice, and process that shall include the following:

(i) Human performance, that shall include occupational performance throughout the life cycle, human interaction, roles, values, and the influences of the nonhuman environment.

(ii) Activity processes that shall include the following:

(I) Theories underlying the use of purposeful activity and the meaning and dynamics of activity.

(II) Performance of selected life tasks and activities.

(III) Analysis, adaptation, and application of purposeful activity as therapeutic intervention.

(IV) Use of self, dyadic, and group interaction.

(iii) Theoretical approaches, including those related to purposeful activity, human performance, and adaptation.

(iv) Application of occupational therapy theory to practice, that shall include the following:

(I) Assessment and interpretation, observation, interviews, history, and standardized and nonstandardized tests.

(II) Directing, planning, and implementation, that shall include: therapeutic intervention related to daily living skills and occupational components; therapeutic adaptation, including methods of accomplishing daily life tasks, environmental adjustments, orthotics, and assistive devices and equipment; health maintenance, including energy conservation, joint protection, body mechanics, and positioning; and prevention programs to foster age-appropriate recommendations to maximize treatment gains.

(III) Program termination including reevaluation, determination of discharge, summary of occupational therapy outcome, and appropriate recommendations to maximize treatment gains.

(IV) Documentation.

(v) Development and implementation of quality assurance.

(vi) Management of occupational therapy service, that shall include:

(I) Planning services for client groups.

(II) Personnel management, including occupational therapy assistants, aides, volunteers, and level I students.

(III) Departmental operations, including budgeting, scheduling, recordkeeping, safety, and maintenance of supplies and equipment.

(3) The curriculum of an education program for occupational therapy assistants shall contain the content specifically required in the ACOTE accreditation standards, including all of the following subjects:

(A) Biological, behavioral, and health sciences.

(B) Structure and function of the normal human body.

(C) Human development.

(D) Conditions commonly referred to occupational therapists.

(E) Occupational therapy principles and skills, that shall include the following:

(i) Human performance, including life tasks and roles as related to the developmental process from birth to death.

(ii) Activity processes and skills, that shall include the following:

(I) Performance of selected life tasks and activities.

(II) Analysis and adaptation of activities.

(III) Instruction of individuals and groups in selected life tasks and activities.

(iii) Concepts related to occupational therapy practice, that shall include the following:

(I) The importance of human occupation as a health determinant.

(II) The use of self, interpersonal, and communication skills.

(iv) Use of occupational therapy concepts and skills, that shall include the following:

(I) Data collection, that shall include structured observation and interviews, history, and structured tests.

(II) Participation in planning and implementation, that shall include: therapeutic intervention related to daily living skills and occupational components; therapeutic adaptation, including methods of accomplishing daily life tasks, environmental adjustments, orthotics, and assistive devices and equipment; health maintenance, including mental health techniques, energy conservation, joint protection, body mechanics, and positioning; and prevention programs to foster age-appropriate balance of self-care and work.

(III) Program termination, including assisting in reevaluation, summary of occupational therapy outcome, and appropriate recommendations to maximize treatment gains.

(IV) Documentation.

(c) That the applicant has successfully completed a period of supervised fieldwork experience approved by the board and arranged by a recognized educational institution where he or she met the academic requirements of subdivision (b) or arranged by a nationally recognized professional association. The fieldwork requirements shall be as follows:

(1) For an occupational therapist, a minimum of 960 hours of supervised fieldwork experience shall be completed within 24 months of the completion of didactic coursework.

(2) For an occupational therapy assistant, a minimum of 640 hours of supervised fieldwork experience shall be completed within 20 months of the completion of didactic coursework.

(d) That the applicant has passed an examination as provided in Section 2570.7.

(e) That the applicant, at the time of application, is a person over 18 years of age, is not addicted to alcohol or any controlled substance, and has not committed acts or crimes constituting grounds for denial of licensure under Section 480.

SEC. 13. Section 2570.7 of the Business and Professions Code is amended to read:

2570.7. (a) An applicant who has satisfied the requirements of Section 2570.6 may apply for examination for licensure in a manner prescribed by the board. Subject to the provisions of this chapter, an applicant who fails an examination may apply for reexamination.

(b) Each applicant for licensure shall successfully complete the entry level certification examination for occupational therapists or occupational therapy assistants, such as the examination administered by the National Board for Certification in Occupational Therapy or by another nationally recognized credentialing body. The examination shall be appropriately validated. Each applicant shall be examined by written examination to test his or her knowledge of the basic and clinical sciences relating to occupational therapy, occupational therapy techniques and methods, and any other subjects that the board may require to determine the applicant's fitness to practice under this chapter.

(c) Applicants for licensure shall be examined at a time and place and under that supervision as the board may require.

SEC. 14. Section 2570.9 of the Business and Professions Code is amended to read:

2570.9. The board shall issue a license to any applicant who meets the requirements of this chapter, including the payment of the prescribed licensure or renewal fee, and who meets any other requirement in accordance with applicable state law.

SEC. 15. Section 2570.10 of the Business and Professions Code is amended to read:

2570.10. (a) Any license issued under this chapter shall be subject to renewal as prescribed by the board and shall expire unless renewed in that manner. The board may provide for the late renewal of a license as provided for in Section 163.5.

(b) In addition to any other qualifications and requirements for licensure renewal, the board may by rule establish and require the satisfactory completion of continuing competency requirements as a condition of renewal of a license.

SEC. 16. Section 2570.13 of the Business and Professions Code is amended to read:

2570.13. (a) Consistent with this section, subdivisions (a), (b), and (c) of Section 2570.2, and accepted professional standards, the board shall adopt rules necessary to assure appropriate supervision of occupational therapy assistants and aides.

(b) An occupational therapy assistant may practice only under the supervision of an occupational therapist who is authorized to practice occupational therapy in this state.

(c) An aide providing delegated, client-related supportive services shall require continuous and direct supervision by an occupational therapist.

SEC. 17. Section 2570.16 of the Business and Professions Code is amended to read:

2570.16. Initial license and renewal fees shall be established by the board in an amount that does not exceed a ceiling of one hundred fifty dollars ($150) per year. The board shall establish the following additional fees:

(a) An application fee not to exceed fifty dollars ($50).

(b) A late renewal fee as provided for in Section 2570.10.

(c) A limited permit fee.

(d) A fee to collect fingerprints for criminal history record checks.

SEC. 18. Section 2570.17 is added to the Business and Professions Code, to read:

2570.17. (a) The board shall issue, upon application and payment of a twenty-five dollar ($25) fee, a retired license to an occupational therapist or an occupational therapy assistant who holds a license that is current and active, or capable of being renewed pursuant to Section 2570.10, and whose license is not suspended, revoked, or otherwise restricted by the board or subject to discipline under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active license is required. An occupational therapist holding a retired license shall be permitted to use the title “occupational therapist, retired” or “retired occupational therapist.” An occupational therapy assistant holding a retired license shall be permitted to use the title “occupational therapy assistant, retired” or “retired occupational therapy assistant.” The designation of retired shall not be abbreviated in any way.

(c) The holder of a retired license shall not be required to renew that license.

(d) In order for the holder of a retired license issued pursuant to this section to restore his or her license, he or she shall comply with Section 2570.14.

SEC. 19. Section 2570.18 of the Business and Professions Code is amended to read:

2570.18. (a) A person shall not represent to the public by title, by description of services, methods, or procedures, or otherwise, that the person is authorized to practice occupational therapy in this state, unless authorized to practice occupational therapy under this chapter.

(b) Unless licensed to practice as an occupational therapist under this chapter, a person may not use the professional abbreviations “O.T.,” “O.T.R.,” or “O.T.R./L.,” or “Occupational Therapist,” or “Occupational Therapist Registered,” or any other words, letters, or symbols with the intent to represent that the person practices or is authorized to practice occupational therapy.

(c) Unless licensed to assist in the practice of occupational therapy as an occupational therapy assistant under this chapter, a person may not use the professional abbreviations “O.T.A.,” “O.T.A/L.,” “C.O.T.A.,” “C.O.T.A./L.,” or “Occupational Therapy Assistant,” “Licensed Occupational Therapy Assistant,” or any other words, letters, or symbols, with the intent to represent that the person assists in, or is authorized to assist in, the practice of occupational therapy as an occupational therapy assistant.

(d) The unauthorized practice or representation as an occupational therapist or as an occupational therapy assistant constitutes an unfair business practice under Section 17200 and false and misleading advertising under Section 17500.

SEC. 20. Section 2570.20 of the Business and Professions Code is amended to read:

2570.20. (a) The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate the qualifications, and approve the examinations for licensure under this chapter.

(b) The board shall adopt rules in accordance with the Administrative Procedure Act relating to professional conduct to carry out the purpose of this chapter, including, but not limited to, rules relating to professional licensure and to the establishment of ethical standards of practice for persons holding a license to practice occupational therapy or to assist in the practice of occupational therapy in this state.

(c) Proceedings under this chapter shall be conducted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 21. Section 2570.26 of the Business and Professions Code is amended to read:

2570.26. (a) The board may, after a hearing, deny, suspend, revoke, or place on probation a license, inactive license, or limited permit.

(b) As used in this chapter, “license” includes a license, limited permit, or any other authorization to engage in practice regulated by this chapter.

(c) The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

SEC. 22. Section 2570.28 of the Business and Professions Code is amended to read:

2570.28. The board may deny or discipline a licensee for any of the following:

(a) Unprofessional conduct, including, but not limited to, the following:

(1) Incompetence or gross negligence in carrying out usual occupational therapy functions.

(2) Repeated similar negligent acts in carrying out usual occupational therapy functions.

(3) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000), in which event a certified copy of the record of conviction shall be conclusive evidence thereof.

(4) The use of advertising relating to occupational therapy which violates Section 17500.

(5) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a licensee by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision, order, or judgment shall be conclusive evidence thereof.

(b) Procuring a license by fraud, misrepresentation, or mistake.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or any regulation adopted pursuant to this chapter.

(d) Making or giving any false statement or information in connection with the application for issuance or renewal of a license.

(e) Conviction of a crime or of any offense substantially related to the qualifications, functions, or duties of a licensee, in which event the record of the conviction shall be conclusive evidence thereof.

(f) Impersonating an applicant or acting as proxy for an applicant in any examination required under this chapter for the issuance of a license.

(g) Impersonating a licensed practitioner, or permitting or allowing another unlicensed person to use a license.

(h) Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a licensee.

(i) Committing any act punishable as a sexually related crime, if that act is substantially related to the qualifications, functions, or duties of a licensee, in which event a certified copy of the record of conviction shall be conclusive evidence thereof.

(j) Using excessive force upon or mistreating or abusing any patient. For the purposes of this subdivision, "excessive force" means force clearly in excess of that which would normally be applied in similar clinical circumstances.

(k) Falsifying or making grossly incorrect, grossly inconsistent, or unintelligible entries in a patient or hospital record or any other record.

(*l*) Changing the prescription of a physician and surgeon or falsifying verbal or written orders for treatment or a diagnostic regime received, whether or not that action resulted in actual patient harm.

(m) Failing to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law.

(n) Delegating to an unlicensed employee or person a service that requires the knowledge, skills, abilities, or judgment of a licensee.

(o) Committing any act that would be grounds for denial of a license under Section 480.

(p) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of infectious diseases from licensee to patient, from patient to patient, or from patient to licensee.

(1) In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 63001) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary to encourage appropriate consistency in the implementation of this subdivision, the board shall consult with the Medical Board of California, the Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians.

(2) The board shall seek to ensure that licensees are informed of their responsibility to minimize the risk of transmission of infectious diseases from health care provider to patient, from

patient to patient, and from patient to health care provider, and are informed of the most recent scientifically recognized safeguards for minimizing the risks of transmission.

SEC. 23. Section 2571 of the Business and Professions Code is amended to read:

2571. (a) An occupational therapist licensed pursuant to this chapter and approved by the board in the use of physical agent modalities may apply topical medications prescribed by the patient's physician and surgeon, certified nurse-midwife pursuant to Section 2746.51, nurse practitioner pursuant to Section 2836.1, or physician assistant pursuant to Section 3502.1, if the licensee complies with regulations adopted by the board pursuant to this section.

(b) The board shall adopt regulations implementing this section, after meeting and conferring with the Medical Board of California, the California State Board of Pharmacy, and the Physical Therapy Board of California, specifying those topical medications applicable to the practice of occupational therapy and protocols for their use.

(c) Nothing in this section shall be construed to authorize an occupational therapist to prescribe medications.

SEC. 24. Section 2872.2 of the Business and Professions Code is amended to read:

2872.2. An applicant for license by examination shall submit a written application in the form prescribed by the board.

Provided that the application for licensure by examination is received by the board no later than four months after completion of a board accredited nursing program and approval of the application, the board may issue an interim permit authorizing the applicant to practice vocational nursing pending the results of the first licensing examination, or for a period of nine months, whichever occurs first.

If the applicant passes the examination, the interim permit shall remain in effect until an initial license is issued by the board or for a maximum period of six months after passing the examination, whichever occurs first. If the applicant fails the examination, the interim permit shall terminate upon notice by certified mail, return receipt requested, or if the applicant fails to receive the notice, upon the date specified in the interim permit, whichever occurs first.

A permittee shall function under the supervision of a licensed vocational nurse or a registered nurse, who shall be present and available on the premises during the time the permittee is rendering professional services. The supervising licensed vocational nurse or registered nurse may delegate to the permittee any function taught in the permittee's basic nursing program.

An interim permittee shall not use any title or designation other than vocational nurse interim permittee or "V.N.I.P."

SEC. 25. Section 3357 of the Business and Professions Code is amended to read:

3357. (a) An applicant who has fulfilled the requirements of Section 3352, and has made application therefor, and who proves to the satisfaction of the bureau that he or she will be supervised and trained by a hearing aid dispenser who is approved by the bureau may have a temporary license issued to him or her. The temporary license shall entitle the temporary licensee to fit or sell hearing aids as set forth in regulations of the bureau. The supervising dispenser shall be responsible for any acts or omissions committed by a temporary licensee under his or her supervision that may constitute a violation of this chapter.

(b) The bureau shall adopt regulations setting forth criteria for its refusal to approve a hearing aid dispenser to supervise a temporary licensee, including procedures to appeal that decision.

(c) A temporary license issued pursuant to this section is effective and valid for six months from date of issue. The bureau may renew the temporary license for an additional period of six months. Except as provided in subdivision (d), the bureau shall not issue more than two renewals of a temporary license to any applicant. Notwithstanding subdivision (d), if a temporary licensee who is entitled to renew a temporary license does not renew the temporary license and applies for a new temporary license at a later time, the new temporary license shall only be issued and renewed subject to the limitations set forth in this subdivision.

(d) A new temporary license may be issued pursuant to this section if a temporary license issued pursuant to subdivision (c) has lapsed for a minimum of three years from the expiration or cancellation date of the previous temporary license. The bureau may issue only one new temporary license under this subdivision.

SEC. 26. Section 3362 of the Business and Professions Code is amended to read:

3362. (a) Before engaging in the practice of fitting or selling hearing aids, each licensee shall notify the bureau in writing of the address or addresses where he or she is to engage, or intends to engage, in the fitting or selling of hearing aids, and of any changes in his or her place of business within 30 days of engaging in that practice.

(b) If a street address is not the address at which the licensee receives mail, the licensee shall also notify the bureau in writing of the mailing address for each location where the licensee is to engage, or intends to engage, in the fitting or selling of hearing aids, and of any change in the mailing address of his or her place or places of business.

SEC. 27. Section 3366 of the Business and Professions Code is amended to read:

3366. A licensee shall, upon the consummation of a sale of a hearing aid, keep and maintain records in his or her office or place of business at all times and each record shall be kept and maintained for a seven-year period. All records related to the sale and fitting of hearing aids shall be open to inspection by the bureau or its authorized representatives upon reasonable notice. The records kept shall include:

(a) Results of test techniques as they pertain to fitting of the hearing aid.

(b) A copy of the written receipt required by Section 3365 and the written recommendation and receipt required by Section 3365.5 when applicable.

(c) Records of maintenance or calibration of equipment used in the practice of fitting or selling hearing aids.

SEC. 28. Section 3456 of the Business and Professions Code is amended to read:

3456. The amount of fees and penalties prescribed by this chapter shall be those set forth in this section unless a lower fee is fixed by the bureau:

(a) The fee for applicants applying for the first time for a license is seventy-five dollars ($75), which shall not be refunded, except to applicants who are found to be ineligible to take an examination for a license. Those applicants are entitled to a refund of fifty dollars ($50).

(b) The fees for taking or retaking the written and practical examinations shall be amounts fixed by the bureau, which shall be equal to the actual cost of preparing, grading, analyzing, and administering the examinations.

(c) The initial temporary license fee is one hundred dollars ($100). The fee for renewal of a temporary license is one hundred dollars ($100) for each renewal.

(d) The initial permanent license fee is two hundred eighty dollars ($280). The fee for renewal of a permanent license is not more than two hundred eighty dollars ($280) for each renewal.

(e) The initial branch office license fee is twenty-five dollars ($25). The fee for renewal of a branch office license is twenty-five dollars ($25) for each renewal.

(f) The delinquency fee is twenty-five dollars ($25).

(g) The fee for issuance of a replacement license is twenty-five dollars ($25).

(h) The continuing education course approval application fee is fifty dollars ($50).

(i) The fee for official certification of licensure is fifteen dollars ($15).

SEC. 29. Section 3740 of the Business and Professions Code is amended to read:

3740. (a) Except as otherwise provided in this chapter, all applicants for licensure under this chapter shall have completed an education program for respiratory care that is accredited by the Commission on Accreditation for Respiratory Care or its successor and been awarded a minimum of an associate degree from an institution or university accredited by a regional accreditation agency or association recognized by the United States Department of Education.

(b) Notwithstanding subdivision (a), meeting the following qualifications shall be deemed equivalent to the required education:

(1) Enrollment in a baccalaureate degree program in an institution or university accredited by a regional accreditation agency or association recognized by the United States Department of Education.

(2) Completion of science, general academic, and respiratory therapy coursework commensurate with the requirements for an associate degree in subdivision (a).

(c) An applicant whose application is based on a diploma issued to the applicant by a foreign respiratory therapy school or a certificate or license issued by another state, district, or territory of the United States that does not meet the requirements in subdivision (a) or (b), shall enroll in an advanced standing and approved respiratory educational program for evaluation of his or her education and training and furnish documentary evidence, satisfactory to the board, that he or she satisfies all of the following requirements:

(1) Holds an associate degree or higher level degree equivalent to that required in subdivision (a) or (b).

(2) Completion of a respiratory therapy educational program equivalent to that required in subdivision (a) or (b).

(3) Possession of knowledge and skills to competently and safely practice respiratory care in accordance with national standards.

(d) Notwithstanding subdivision (c), an applicant whose application is based on education provided by a Canadian institution or university that does not meet the requirements in subdivision (a) or (b) shall furnish documentary evidence, satisfactory to the board, that he or she satisfies both of the following requirements:

(1) Holds a degree equivalent to that required in subdivision (a) or (b).

(2) Completion of a respiratory therapy educational program recognized by the Canadian Board of Respiratory Care.

(e) A school shall give the director of a respiratory care program adequate release time to perform his or her administrative duties consistent with the established policies of the educational institution.

(f) Satisfactory evidence as to educational qualifications shall take the form of certified transcripts of the applicant's college record mailed directly to the board from the educational institution. However, the board may require an evaluation of educational credentials by an evaluation service approved by the board.

(g) At the board's discretion, it may waive its educational requirements if evidence is presented and the board deems it as meeting the current educational requirements that will ensure the safe and competent practice of respiratory care. This evidence may include, but is not limited to:

(1) Work experience.

(2) Good standing of licensure in another state.

(3) Previous good standing of licensure in the State of California.

(h) Nothing contained in this section shall prohibit the board from disapproving any respiratory therapy school, nor from denying the applicant if the instruction, including modalities and advancements in technology, received by the applicant or the courses were not equivalent to that required by the board.

SEC. 30. Section 3750.5 of the Business and Professions Code is amended to read:

3750.5. In addition to any other grounds specified in this chapter, the board may deny, suspend, place on probation, or revoke the license of any applicant or licenseholder who has done any of the following:

(a) Obtained, possessed, used, or administered to himself or herself in violation of law, or furnished or administered to another, any controlled substances as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2 (commencing with Section 4015) of Chapter 9, except as directed by a licensed physician and surgeon, dentist, podiatrist, or other authorized health care provider.

(b) Used any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2 (commencing with Section 4015) of Chapter 9 of this code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, or to others, or that impaired his or her ability to conduct with safety the practice authorized by his or her license.

(c) Applied for employment or worked in any health care profession or environment while under the influence of alcohol.

(d) Been convicted of a criminal offense involving the consumption or self-administration of any of the substances described in subdivisions (a) and (b), or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a), in which event the record of the conviction is conclusive evidence thereof.

(e) Been committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in subdivisions (a), (b), and (c), in which event the court order of commitment or confinement is prima facie evidence of that commitment or confinement.

(f) Falsified, or made grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a).

SEC. 31. Section 3773 of the Business and Professions Code is amended to read:

3773. (a) At the time of application for renewal of a respiratory care practitioner license, the licensee shall notify the board of all of the following:

(1) Whether he or she has been convicted of any crime subsequent to the licensee's previous renewal.

(2) The name and address of the licensee's current employer or employers.

(b) The licensee shall cooperate in furnishing additional information as requested by the board. If the licensee fails to provide the requested information within 30 days, the license shall be made inactive until the information is received.

SEC. 32. Section 4013 is added to the Business and Professions Code, to read:

4013. (a) Any facility licensed by the board shall join the board's e-mail notification list within 60 days of obtaining a license or at the time of license renewal.

(b) Any facility licensed by the board shall update its e-mail address with the board's e-mail notification list within 30 days of a change in the facility's e-mail address.

(c) This section shall become operative on July 1, 2010.

SEC. 33. Section 4101 of the Business and Professions Code is amended to read:

4101. (a) A pharmacist may take charge of and act as the pharmacist-in-charge of a pharmacy upon application by the pharmacy and approval by the board. Any pharmacist-in-charge who ceases to act as the pharmacist-in-charge of the pharmacy shall notify the board in writing within 30 days of the date of that change in status.

(b) A designated representative or a pharmacist may take charge of, and act as, the designated representative-in-charge of a wholesaler or veterinary food drug-animal retailer upon application by the wholesaler or veterinary food drug-animal retailer and approval by the board. Any designated representative-in-charge who ceases to act as the designated representative-in-charge at that entity shall notify the board in writing within 30 days of the date of that change in status.

SEC. 34. Section 4112 of the Business and Professions Code is amended to read:

4112. (a) Any pharmacy located outside this state that ships, mails, or delivers, in any manner, controlled substances, dangerous drugs, or dangerous devices into this state shall be considered a nonresident pharmacy.

(b) A person may not act as a nonresident pharmacy unless he or she has obtained a license from the board. The board may register a nonresident pharmacy that is organized as a limited liability company in the state in which it is licensed.

(c) A nonresident pharmacy shall disclose to the board the location, names, and titles of (1) its agent for service of process in this state, (2) all principal corporate officers, if any, (3) all general partners, if any, and (4) all pharmacists who are dispensing controlled substances, dangerous drugs, or dangerous devices to residents of this state. A report containing this information shall be made on an annual basis and within 30 days after any change of office, corporate officer, partner, or pharmacist.

(d) All nonresident pharmacies shall comply with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board pursuant to this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite to registering with the board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.

(e) All nonresident pharmacies shall maintain records of controlled substances, dangerous drugs, or dangerous devices dispensed to patients in this state so that the records are readily retrievable from the records of other drugs dispensed.

(f) Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of 40 hours per week, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient’s records. This toll-free telephone number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

(g) The board shall adopt regulations that apply the same requirements or standards for oral consultation to a nonresident pharmacy that operates pursuant to this section and ships, mails, or delivers any controlled substances, dangerous drugs, or dangerous devices to residents of this state, as are applied to an in-state pharmacy that operates pursuant to Section 4037 when the pharmacy ships, mails, or delivers any controlled substances, dangerous drugs, or dangerous devices to residents of this state. The board shall not adopt any regulations that require face-to-face consultation for a prescription that is shipped, mailed, or delivered to the patient. The regulations adopted pursuant to this subdivision shall not result in any unnecessary delay in patients receiving their medication.

(h) The registration fee shall be the fee specified in subdivision (a) of Section 4400.

(i) The registration requirements of this section shall apply only to a nonresident pharmacy that ships, mails, or delivers controlled substances, dangerous drugs, and dangerous devices into this state pursuant to a prescription.

(j) Nothing in this section shall be construed to authorize the dispensing of contact lenses by nonresident pharmacists except as provided by Section 4124.

SEC. 35. Section 4113 of the Business and Professions Code is amended to read:

4113. (a) Every pharmacy shall designate a pharmacist-in-charge and, within 30 days thereof, shall notify the board in writing of the identity and license number of that pharmacist and the date he or she was designated.

(b) The proposed pharmacist-in-charge shall be subject to approval by the board. The board shall not issue or renew a pharmacy license without identification of an approved pharmacist-in-charge for the pharmacy.

(c) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

(d) Every pharmacy shall notify the board in writing, on a form designed by the board, within 30 days of the date when a pharmacist-in-charge ceases to act as the pharmacist-in-charge, and shall on the same form propose another pharmacist to take over as the pharmacist-in-charge. The proposed replacement pharmacist-in-charge shall be subject to approval by the board. If disapproved, the pharmacy shall propose another replacement within 15 days of the date of disapproval and shall continue to name proposed replacements until a pharmacist-in-charge is approved by the board.

(e) If a pharmacy is unable, in the exercise of reasonable diligence, to identify within 30 days a permanent replacement pharmacist-in-charge to propose to the board on the notification form, the pharmacy may instead provide on that form the name of any pharmacist who is an employee, officer, or administrator of the pharmacy or the entity that owns the pharmacy and who is actively involved in the management of the pharmacy on a daily basis, to act as the interim pharmacist-in-charge for a period not to exceed 120 days. The pharmacy, or the entity that owns the pharmacy, shall be prepared during normal business hours to provide a representative of the board with the name of the interim pharmacist-in-charge with documentation of the active involvement of the interim pharmacist-in-charge in the daily management of the pharmacy, and with documentation of the pharmacy's good faith efforts prior to naming the interim pharmacist-in-charge to obtain a permanent pharmacist-in-charge. By no later than 120 days following the identification of the interim pharmacist-in-charge, the pharmacy shall propose to the board the name of a pharmacist to serve as the permanent pharmacist-in-charge. The proposed permanent pharmacist-in-charge shall be subject to approval by the board. If disapproved, the pharmacy shall propose another replacement within 15 days of the date of disapproval, and shall continue to name proposed replacements until a pharmacist-in-charge is approved by the board.

SEC. 36. Section 4146 is added to the Business and Professions Code, to read:

4146. A pharmacy may accept the return of needles and syringes from the public if contained in a sharps container, as defined in Section 117750 of the Health and Safety Code.

SEC. 37. Section 4160 of the Business and Professions Code is amended to read:

4160. (a) A person may not act as a wholesaler of any dangerous drug or dangerous device unless he or she has obtained a license from the board.

(b) Upon approval by the board and the payment of the required fee, the board shall issue a license to the applicant.

(c) A separate license shall be required for each place of business owned or operated by a wholesaler. Each license shall be renewed annually and shall not be transferable.

(d) Every wholesaler shall be supervised or managed by a designated representative-in-charge. The designated representative-in-charge shall be responsible for the wholesaler's compliance with state and federal laws governing wholesalers. As part of its initial application for a license, and for each renewal, each wholesaler shall, on a form designed by the board, provide identifying information and the California license number for a designated representative or pharmacist proposed to serve as the designated representative-in-charge. The proposed designated representative-in-charge shall be subject to approval by the board. The board shall not issue or renew a wholesaler license without identification of an approved designated representative-in-charge for the wholesaler.

(e) Every wholesaler shall notify the board in writing, on a form designed by the board, within 30 days of the date when a designated representative-in-charge ceases to act as the designated representative-in-charge, and shall on the same form propose another designated representative or pharmacist to take over as the designated representative-in-charge. The proposed replacement designated representative-in-charge shall be subject to approval by the board. If disapproved, the wholesaler shall propose another replacement within 15 days of the date of disapproval, and shall continue to name proposed replacements until a designated representative-in-charge is approved by the board.

(f) A drug manufacturer premises licensed by the Food and Drug Administration or licensed pursuant to Section 111615 of the Health and Safety Code that only distributes dangerous drugs and dangerous devices of its own manufacture is exempt from this section and Section 4161.

(g) The board may issue a temporary license, upon conditions and for periods of time as the board determines to be in the public interest. A temporary license fee shall be five hundred fifty dollars

($550) or another amount established by the board not to exceed the annual fee for renewal of a license to compound injectable sterile drug products. When needed to protect public safety, a temporary license may be issued for a period not to exceed 180 days, subject to terms and conditions that the board deems necessary. If the board determines that a temporary license was issued by mistake or denies the application for a permanent license, the temporary license shall terminate upon either personal service of the notice of termination upon the licenseholder or service by certified mail, return receipt requested, at the licenseholder's address of record with the board, whichever occurs first. Neither for purposes of retaining a temporary license, nor for purposes of any disciplinary or license denial proceeding before the board, shall the temporary licenseholder be deemed to have a vested property right or interest in the license.

SEC. 38. Section 4196 of the Business and Professions Code is amended to read:

4196. (a) No person shall conduct a veterinary food-animal drug retailer in the State of California unless he or she has obtained a license from the board. A license shall be required for each veterinary food-animal drug retailer owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a veterinary food-animal drug retailer in more than one location. The license shall be renewed annually and shall not be transferable.

(b) The board may issue a temporary license, upon conditions and for periods of time as the board determines to be in the public interest. A temporary license fee shall be fixed by the board at an amount not to exceed the annual fee for renewal of a license to conduct a veterinary food-animal drug retailer.

(c) No person other than a pharmacist, an intern pharmacist, a designated representative, an authorized officer of the law, or a person authorized to prescribe, shall be permitted in that area, place, or premises described in the permit issued by the board pursuant to Section 4041, wherein veterinary food-animal drugs are stored, possessed, or repacked. A pharmacist or designated representative shall be responsible for any individual who enters the veterinary food-animal drug retailer for the purpose of performing clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to the veterinary food-animal drug retailer.

(d) Every veterinary food-animal drug retailer shall be supervised or managed by a designated representative-in-charge. The designated representative-in-charge shall be responsible for the veterinary food-animal drug retailer's compliance with state and federal laws governing veterinary food-animal drug retailers. As part of its initial application for a license, and for each renewal, each veterinary food-animal drug retailer shall, on a form designed by the board, provide identifying information and the California license number for a designated representative or pharmacist proposed to serve as the designated representative-in-charge. The proposed designated representative-in-charge shall be subject to approval by the board. The board shall not issue or renew a veterinary food-animal drug retailer license without identification of an approved designated representative-in-charge for the veterinary food-animal drug retailer.

(e) Every veterinary food-animal drug retailer shall notify the board in writing, on a form designed by the board, within 30 days of the date when a designated representative-in-charge who ceases to act as the designated representative or pharmacist to take over as the designated representative-in-charge. The proposed replacement designated representative-in-charge shall be subject to approval by the board. If disapproved, the veterinary food-animal drug retailer shall propose another replacement within 15 days of the date of disapproval, and shall continue to name proposed replacements until a designated representative-in-charge is approved by the board.

(f) For purposes of this section, designated representative-in-charge means a person granted a designated representative license pursuant to Section 4053, or a registered pharmacist, who is the supervisor or manager of the facility.

SEC. 39. Section 4510.1 of the Business and Professions Code is amended to read:

4510.1. An applicant for license by examination shall submit a written application in the form prescribed by the board. Provided that the application for licensure is received by the board no later than four months after completion of a board accredited psychiatric technician program and approval of the application, the board may issue an interim permit authorizing the applicant to practice all skills included in the permittee's basic course of study, pending the results of the first licensing examination, or for a period of nine months, whichever occurs first.

A permittee shall function under the supervision of a licensed psychiatric technician or a registered nurse, who shall be present and available on the premises during the time the permittee is rendering professional services. The permittee may perform any function taught in the permittee's basic psychiatric technician program.

If the applicant passes the examination, the interim permit shall remain in effect until an initial license is issued by the board or for a maximum period of six months after passing the examination, whichever occurs first. If the applicant fails the examination, the interim permit shall terminate upon notice by certified mail, return receipt requested, or if the applicant fails to receive the notice, upon the date specified in the interim permit, whichever occurs first. An interim permittee shall not use any title or designation other than psychiatric technician interim permittee or "P.T.I.P."

SEC. 40. Section 4933 of the Business and Professions Code is amended to read:

4933. (a) The board shall administer this chapter.

(b) The board may adopt, amend, or repeal, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), regulations as may be necessary to enable it to carry into effect the provisions of law relating to the practice of acupuncture.

(c) Four members of the board, including at least one acupuncturist, shall constitute a quorum to conduct business.

(d) It shall require an affirmative vote of a majority of those present at a meeting of the board to take any action or pass any motion.

SEC. 41. Section 4980.45 of the Business and Professions Code is amended to read:

4980.45. (a) A licensed professional in private practice who has satisfied the requirements of subdivision (g) of Section 4980.03 may supervise or employ, at any one time, no more than a total of two individuals registered as either a marriage and family therapist intern or associate clinical social worker in that private practice.

(b) A marriage and family therapy corporation may employ, at any one time, no more than a total of two individuals registered as either a marriage and family therapist intern or associate clinical social worker for each employee or shareholder who has satisfied the requirements of subdivision (g) of Section 4980.03. In no event shall any corporation employ, at any one time, more than a total of 10 individuals registered as either a marriage and family therapist intern or associate clinical social worker. In no event shall any supervisor supervise, at any one time, more than a total of two individuals registered as either a marriage and family therapist intern or associate clinical social worker. Persons who supervise individuals registered as either a marriage and family therapist intern or associate clinical social worker shall be employed full time by the professional corporation and shall be actively engaged in performing professional services at and for the professional corporation. Employment and supervision within a marriage and family therapy corporation shall be subject to all laws and regulations governing experience and supervision gained in a private practice setting.

SEC. 42. Section 4980.48 of the Business and Professions Code is amended to read:

4980.48. (a) A trainee shall inform each client or patient, prior to performing any professional services, that he or she is unlicensed and under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology.

(b) Any person that advertises services performed by a trainee shall include the trainee's name, the supervisor's license designation or abbreviation, and the supervisor's license number.

SEC. 43. Section 4982 of the Business and Professions Code is amended to read:

4982. The board may deny a license or registration or may suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4022, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage and family therapy services.

(d) Gross negligence or incompetence in the performance of marriage and family therapy.

(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a marriage and family therapist.

(*l*) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any trainee or registered intern under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any registered intern, associate clinical social worker, or trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding oneself out as being able to perform professional services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a trainee or registered intern under one's supervision or control to perform, or permitting the trainee or registered intern to hold himself or herself out as competent to perform, professional services beyond the trainee's or registered intern's level of education, training, or experience.

(u) The violation of any statute or regulation governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(w) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(x) Failure to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(y) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(z) Failure to comply with Section 2290.5.

(aa) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in

Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

(ab) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of an examination as described in Section 123.

SEC. 44. Section 4982.2 of the Business and Professions Code is amended to read:

4982.2. (a) A licensed marriage and family therapist, marriage and family therapist intern, licensed clinical social worker, associate clinical social worker, or licensed educational psychologist whose license or registration has been revoked or suspended or who has been placed on probation may petition the board for reinstatement or modification of the penalty, including modification or termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the decision ordering the disciplinary action, or if the order of the board, or any portion of it, is stayed by the board itself, or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) At least three years for reinstatement of a license or registration that was revoked for unprofessional conduct, except that the board may, in its sole discretion at the time of adoption, specify in its order that a petition for reinstatement may be filed after two years.

(2) At least two years for early termination of any probation period of three years, or more.

(3) At least one year for modification of a condition, or reinstatement of a license or registration revoked for mental or physical illness, or termination of probation of less than three years.

(b) The petition may be heard by the board itself, or the board may assign the petition to an administrative law judge pursuant to Section 11512 of the Government Code. The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of production and proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition. The board, when it is hearing the petition itself, or an administrative law judge sitting for the board, may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time his or her license was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.

(c) The hearing may be continued from time to time as the board or the administrative law judge deems appropriate.

(d) The board itself, or the administrative law judge if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision. In a decision granting a petition reinstating a license or modifying a penalty, the board itself, or the administrative law judge may impose any terms and conditions that the agency deems reasonably appropriate, including those set forth in Sections 823 and 4982.15. Where a petition is heard by an administrative law judge sitting alone, the administrative law judge shall prepare a proposed decision and submit it to the board.

(e) The board may take action with respect to the proposed decision and petition as it deems appropriate.

(f) The petition shall be on a form provided by the board, and shall state any facts and information as may be required by the board including, but not limited to, proof of compliance with the terms and conditions of the underlying disciplinary order.

(g) The petitioner shall pay a fingerprinting fee and provide a current set of his or her fingerprints to the board. The petitioner shall execute a form authorizing release to the board or its designee, of all information concerning the petitioner's current physical and mental condition. Information provided to the board pursuant to the release shall be confidential and shall not be subject to discovery or subpoena in any other proceeding, and shall not be admissible in any action, other than before the board, to determine the petitioner's fitness to practice as required by Section 822.

(h) The petition shall be verified by the petitioner, who shall file an original and sufficient copies of the petition, together with any supporting documents, for the members of the board, the administrative law judge, and the Attorney General.

(i) The board may delegate to its executive officer authority to order investigation of the contents of the petition, but in no case, may the hearing on the petition be delayed more than 180 days from its filing without the consent of the petitioner.

(j) The petitioner may request that the board schedule the hearing on the petition for a board meeting at a specific city where the board regularly meets.

(k) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole, or the petitioner is required to register pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(*l*) Except in those cases where the petitioner has been disciplined for violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

SEC. 45. Section 4989.22 of the Business and Professions Code is amended to read:

4989.22. (a) Only persons who satisfy the requirements of Section 4989.20 are eligible to take the licensure examination.

(b) An applicant who fails the written examination may, within one year from the notification date of failure, retake the examination as regularly scheduled without further application. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all current requirements, and pays all fees required.

(c) Notwithstanding any other provision of law, the board may destroy all examination materials two years after the date of an examination.

(d) The board shall not deny any applicant, whose application for licensure is complete, admission to the standard written examination, nor shall the board postpone or delay any applicant's standard written examination or delay informing the candidate of the results of the standard written examination, solely upon the receipt by the board of a complaint alleging acts or conduct that would constitute grounds to deny licensure.

(e) If an applicant for examination who has passed the standard written examination is the subject of a complaint or is under board investigation for acts or conduct that, if proven to be true, would constitute grounds for the board to deny licensure, the board shall permit the applicant to take the clinical vignette written examination for licensure, but may withhold the results of the examination or notify the applicant that licensure will not be granted pending completion of the investigation.

(f) Notwithstanding Section 135, the board may deny any applicant who has previously failed either the standard written or clinical vignette written examination permission to retake either examination pending completion of the investigation of any complaint against the applicant. Nothing in this section shall prohibit the board from denying an applicant admission to any examination, withholding the results, or refusing to issue a license to any applicant when an accusation or statement of issues has been filed against the applicant pursuant to Section 11503 or 11504 of the Government Code, or the applicant has been denied in accordance with subdivision (b) of Section 485.

SEC. 46. Section 4989.49 is added to the Business and Professions Code, to read:

4989.49. "Advertising," as used in this chapter, includes, but is not limited to, any public communication as defined in subdivision (a) of Section 651, the issuance of any card, sign, or device to any person, or the causing, permitting, or allowing of any sign or marking on, or in, any building or structure, or in any newspaper, magazine, or directory, or any printed matter whatsoever, with or without any limiting qualification. Signs within religious buildings or notices in bulletins from a religious organization mailed to a congregation shall not be construed as advertising within the meaning of this chapter.

SEC. 47. Section 4989.54 of the Business and Professions Code is amended to read:

4989.54. The board may deny a license or may suspend or revoke the license of a licensee if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) Conviction of a crime substantially related to the qualifications, functions and duties of an educational psychologist.

(1) The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(2) The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee under this chapter.

(3) A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee under this chapter shall be deemed to be a conviction within the meaning of this section.

(4) The board may order a license suspended or revoked, or may decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty or setting aside the verdict of guilty or dismissing the accusation, information, or indictment.

(b) Securing a license by fraud, deceit, or misrepresentation on an application for licensure submitted to the board, whether engaged in by an applicant for a license or by a licensee in support of an application for licensure.

(c) Administering to himself or herself a controlled substance or using any of the dangerous drugs specified in Section 4022 or an alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to himself or herself or to any other person or to the public or to the extent that the use impairs his or her ability to safely perform the functions authorized by the license. The board shall deny an application for a license or revoke the license of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing educational psychology.

(d) Failure to comply with the consent provisions in Section 2290.5.

(e) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.

(f) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(g) Commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee.

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States or by any other governmental agency, on a license, certificate, or registration to practice educational psychology or any other healing art. A certified copy of the disciplinary action, decision, or judgment shall be conclusive evidence of that action.

(i) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a clinical social worker or marriage and family therapist.

(j) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(k) Gross negligence or incompetence in the practice of educational psychology.

(*l*) Misrepresentation as to the type or status of a license held by the licensee or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(m) Intentionally or recklessly causing physical or emotional harm to any client.

(n) Engaging in sexual relations with a client or a former client within two years following termination of professional services, soliciting sexual relations with a client, or committing an act of sexual abuse or sexual misconduct with a client or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a licensed educational psychologist.

(o) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services or the basis upon which that fee will be computed.

(p) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients.

(q) Failing to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(r) Performing, holding himself or herself out as being able to perform, or offering to perform any professional services beyond the scope of the license authorized by this chapter or beyond his or her field or fields of competence as established by his or her education, training, or experience.

(s) Reproducing or describing in public, or in any publication subject to general public distribution, any psychological test or other assessment device the value of which depends in whole or in part on the naivete of the subject in ways that might invalidate the test or device. An educational psychologist shall limit access to the test or device to persons with professional interests who can be expected to safeguard its use.

(t) Aiding or abetting an unlicensed person to engage in conduct requiring a license under this chapter.

(u) When employed by another person or agency, encouraging, either orally or in writing, the employer's or agency's clientele to utilize his or her private practice for further counseling without the approval of the employing agency or administration.

(v) Failing to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(w) Failing to comply with the elder and adult dependent abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(x) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(y) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

(z) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of the examination as described in Section 123.

(aa) Impersonation of another by any licensee or applicant for a license, or, in the case of a licensee, allowing any other person to use his or her license.

(ab) Permitting a person under his or her supervision or control to perform, or permitting that person to hold himself or herself out as competent to perform, professional services beyond the level of education, training, or experience of that person.

SEC. 48. Section 4992.1 of the Business and Professions Code is amended to read:

4992.1. (a) Only individuals who have the qualifications prescribed by the board under this chapter are eligible to take the examination.

(b) Every applicant who is issued a clinical social worker license shall be examined by the board.

(c) Notwithstanding any other provision of law, the board may destroy all examination materials two years following the date of an examination.

(d) The board shall not deny any applicant, whose application for licensure is complete, admission to the standard written examination, nor shall the board postpone or delay any applicant's standard written examination or delay informing the candidate of the results of the standard written examination, solely upon the receipt by the board of a complaint alleging acts or conduct that would constitute grounds to deny licensure.

(e) If an applicant for examination who has passed the standard written examination is the subject of a complaint or is under board investigation for acts or conduct that, if proven to be true, would constitute grounds for the board to deny licensure, the board shall permit the applicant to take the clinical vignette written examination for licensure, but may withhold the results of the examination or notify the applicant that licensure will not be granted pending completion of the investigation.

(f) Notwithstanding Section 135, the board may deny any applicant who has previously failed either the standard written or clinical vignette written examination permission to retake either examination pending completion of the investigation of any complaint against the applicant. Nothing in this section shall prohibit the board from denying an applicant admission to any examination, withholding the results, or refusing to issue a license to any applicant when an accusation or statement of issues has been filed against the applicant pursuant to Section 11503 or 11504 of the Government Code, or the applicant has been denied in accordance with subdivision (b) of Section 485.

(g) On or after January 1, 2002, no applicant shall be eligible to participate in a clinical vignette written examination if his or her passing score on the standard written examination occurred more than seven years before.

SEC. 49. Section 4992.2 is added to the Business and Professions Code, to read:

4992.2. "Advertising," as used in this chapter, includes, but is not limited to, any public communication as defined in subdivision (a) of Section 651, the issuance of any card, sign, or device to any person, or the causing, permitting, or allowing of any sign or marking on, or in, any building or structure, or in any newspaper, magazine, or directory, or any printed matter whatsoever, with or without any limiting qualification. Signs within religious buildings or notices in bulletins from a religious organization mailed to a congregation shall not be construed as advertising within the meaning of this chapter.

SEC. 50. Section 4992.3 of the Business and Professions Code is amended to read:

4992.3. The board may deny a license or a registration, or may suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter is a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022 or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license. The board shall deny an application for a registration or license or revoke the license or registration of any person who uses or offers to use drugs in the course of performing clinical social work. This provision does not apply to any person also licensed as a physician and surgeon under Chapter 5 (commencing with Section 2000) or the Osteopathic Act who lawfully prescribes drugs to a patient under his or her care.

(d) ~~Gross negligence or incompetence~~ *Incompetence* in the performance of clinical social work.

(e) An act or omission that falls sufficiently below the standard of conduct of the profession as to constitute an act of gross negligence.

~~(e)~~

(f) Violating, attempting to violate, or conspiring to violate this chapter or any regulation adopted by the board.

~~(f)~~

(g) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity. For purposes of this subdivision, this misrepresentation includes, but is not limited to, misrepresentation of the person's qualifications as an adoption service provider pursuant to Section 8502 of the Family Code.

~~(g)~~

(h) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

~~(h)~~

(i) Aiding or abetting any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

~~(i)~~

(j) Intentionally or recklessly causing physical or emotional harm to any client.

~~(j)~~

(k) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

~~(k)~~

(l) Engaging in sexual relations with a client or with a former client within two years from the termination date of therapy with the client, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a clinical social worker.

~~(l)~~

(m) Performing, or holding one's self out as being able to perform, or offering to perform or permitting, any registered associate clinical social worker or intern under supervision to perform any professional services beyond the scope of the license authorized by this chapter.

~~(m)~~

(n) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

~~(n)~~

(o) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

~~(o)~~

(p) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision ~~(n)~~ *(o)*.

~~(p)~~

(q) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.

~~(q)~~

(r) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or

other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device. *A licensee shall limit access to that test or device to persons with professional interest who are expected to safeguard its use.*

~~(r)~~

(s) Any conduct in the supervision of any registered associate clinical social worker, intern, or trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

~~(s)~~

(t) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

~~(t)~~

(u) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

~~(u)~~

(v) Failure to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

~~(v)~~

(w) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

~~(w)~~

(x) Failure to comply with Section 2290.5.

~~(x)~~

(y) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license

for sexual conduct with a minor occurring prior to the effective date of this section.

~~(y)~~

(z) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of the examination as described in Section 123.

SEC. 51. Section 4996.23 of the Business and Professions Code is amended to read:

4996.23. The experience required by subdivision (c) of Section 4996.2 shall meet the following criteria:

(a) All persons registered with the board on and after January 1, 2002, shall have at least 3,200 hours of post-master's degree supervised experience providing clinical social work services as permitted by Section 4996.9. At least 1,700 hours shall be gained under the supervision of a licensed clinical social worker. The remaining required supervised experience may be gained under the supervision of a licensed mental health professional acceptable to the board as defined by a regulation adopted by the board. This experience shall consist of the following:

(1) A minimum of 2,000 hours in clinical psychosocial diagnosis, assessment, and treatment, including psychotherapy or counseling.

(2) A maximum of 1,200 hours in client-centered advocacy, consultation, evaluation, and research.

(3) Of the 2,000 clinical hours required in paragraph (1), no less than 750 hours shall be face-to-face individual or group psychotherapy provided to clients in the context of clinical social work services.

(4) A minimum of two years of supervised experience is required to be obtained over a period of not less than 104 weeks and shall have been gained within the six years immediately preceding the date on which the application for licensure was filed.

(5) Experience shall not be credited for more than 40 hours in any week.

(b) "Supervision" means responsibility for, and control of, the quality of clinical social work services being provided. Consultation or peer discussion shall not be considered to be supervision.

(c) (1) Prior to the commencement of supervision, a supervisor shall comply with all requirements enumerated in Section 1870 of

Title 16 of the California Code of Regulations and shall sign under penalty of perjury the "Responsibility Statement for Supervisors of an Associate Clinical Social Worker" form.

(2) Supervised experience shall include at least one hour of direct supervisor contact for a minimum of 104 weeks. For purposes of this subdivision, "one hour of ~~director~~ *direct* supervisor contact" means one hour per week of face-to-face contact on an individual basis or two hours of face-to-face contact in a group conducted within the same week as the hours claimed.

(3) An associate shall receive an average of at least one hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy is performed in each setting in which experience is gained. No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(4) Group supervision shall be provided in a group of not more than eight supervisees and shall be provided in segments lasting no less than one continuous hour.

(5) An associate clinical social worker working in a governmental entity, a school, college, or university, or an institution that is both a nonprofit and charitable institution may be credited with up to 30 hours of direct supervisor contact, via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is maintained.

(6) Of the 104 weeks of required supervision, 52 weeks shall be individual supervision, and of the 52 weeks of required individual supervision, not less than 13 weeks shall be supervised by a licensed clinical social worker.

(7) Notwithstanding paragraph (2), an associate clinical social worker working for a governmental entity, school, college, or university, or an institution that is both a nonprofit and charitable institution, may obtain the required weekly direct supervisor contact via live two-way videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is preserved.

(d) The supervisor and the associate shall develop a supervisory plan that describes the goals and objectives of supervision. These goals shall include the ongoing assessment of strengths and limitations and the assurance of practice in accordance with the laws and regulations. The associate shall submit to the board the initial original supervisory plan upon application for licensure.

(e) Experience shall only be gained in a setting that meets both of the following:

(1) Lawfully and regularly provides clinical social work, mental health counseling, or psychotherapy.

(2) Provides oversight to ensure that the associate's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4996.9.

(f) Experience shall not be gained until the applicant has been registered as an associate clinical social worker.

(g) Employment in a private practice as defined in subdivision (h) shall not commence until the applicant has been registered as an associate clinical social worker.

(h) A private practice setting is a setting that is owned by a licensed clinical social worker, a licensed marriage and family therapist, a licensed psychologist, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(i) If volunteering, the associate shall provide the board with a letter from his or her employer verifying his or her voluntary status upon application for licensure.

(j) If employed, the associate shall provide the board with copies of his or her W-2 tax forms for each year of experience claimed upon application for licensure.

(k) While an associate may be either a paid employee or volunteer, employers are encouraged to provide fair remuneration to associates.

(*l*) An associate shall not do the following:

(1) Receive any remuneration from patients or clients and shall only be paid by his or her employer.

(2) Have any proprietary interest in the employer's business.

(3) Lease or rent space, pay for furnishings, equipment, or supplies, or in any other way pay for the obligations of his or her employer.

(m) An associate, whether employed or volunteering, may obtain supervision from a person not employed by the associate's employer if that person has signed a written agreement with the employer to take supervisory responsibility for the associate's social work services.

(n) Notwithstanding any other provision of law, associates and applicants for examination shall receive a minimum of one hour of supervision per week for each setting in which he or she is working.

SEC. 52. Section 4996.24 is added to the Business and Professions Code, to read:

4996.24. (a) A licensee in private practice who has satisfied the requirements of Section 1870 of Title 16 of the California Code of Regulations may supervise or employ, at any one time, no more than a total of two individuals registered as either a marriage and family therapist intern or associate clinical social worker in that private practice.

(b) A licensed clinical social workers' corporation may employ, at any one time, no more than a total of two individuals registered as either a marriage and family therapist intern or associate clinical social worker for each employee or shareholder who has satisfied the requirements of Section 1870 of Title 16 of the California Code of Regulations.

(c) In no event shall any corporation employ, at any one time, more than a total of 10 individuals registered as either a marriage and family therapist intern or associate clinical social worker. In no event shall any supervisor supervise, at any one time, more than a total of two individuals registered as either a marriage and family therapist intern or associate clinical social worker. Persons who supervise individuals registered as either a marriage and family therapist intern or associate clinical social worker shall be employed full time by the professional corporation and shall be actively engaged in performing professional services at and for the professional corporation. Employment and supervision within the licensed clinical social workers' corporation shall be subject to all laws and regulations governing experience and supervision gained in a private practice setting.

SEC. 53. Section 4996.28 of the Business and Professions Code is amended to read:

4996.28. (a) Registration as an associate clinical social worker shall expire one year from the last day of the month during which it was issued. To renew a registration, the registrant shall, on or before the expiration date of the registration, complete all of the following actions:

(1) Apply for renewal on a form prescribed by the board.

(2) Pay a renewal fee prescribed by the board.

(3) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, and whether any disciplinary action has been taken by a regulatory or licensing board in this or any other state, subsequent to the last renewal of the registration.

(b) A registration as an associate clinical social worker may be renewed a maximum of five times. When no further renewals are possible, an applicant may apply for and obtain a new associate clinical social worker registration if the applicant meets all requirements for registration in effect at the time of his or her application for a new associate clinical social worker registration. An applicant issued a subsequent associate registration pursuant to this subdivision may be employed or volunteer in any allowable work setting except private practice.

SEC. 54. Section 4996.5 of the Business and Professions Code is amended to read:

4996.5. The board shall issue a license to each applicant meeting the requirements of this article, which license, so long as the renewal fees have been paid, licenses the holder to engage in the practice of clinical social work as defined in Section 4996.9, entitles the holder to use the title of licensed clinical social worker, and authorizes the holder to hold himself or herself out as qualified to perform any of the functions delineated by this chapter. The form and content of the license shall be determined by the director in accordance with Section 164.

SEC. 55. Section 4999.2 of the Business and Professions Code, as amended by Section 48 of Chapter 31 of the Statutes of 2008, is amended to read:

4999.2. (a) In order to obtain and maintain a registration, in-state or out-of-state telephone medical advice services shall comply with the requirements established by the department. Those requirements shall include, but shall not be limited to, all of the following:

(1) (A) Ensuring that all staff who provide medical advice services are appropriately licensed, certified, or registered as a physician and surgeon pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act, as a dentist, dental hygienist, dental hygienist in alternative practice, or dental hygienist in extended functions pursuant to Chapter 4 (commencing with Section 1600), as an occupational therapist pursuant to

Chapter 5.6 (commencing with Section 2570), as a registered nurse pursuant to Chapter 6 (commencing with Section 2700), as a psychologist pursuant to Chapter 6.6 (commencing with Section 2900), as a marriage and family therapist pursuant to Chapter 13 (commencing with Section 4980), as a licensed clinical social worker pursuant to Chapter 14 (commencing with Section 4990.1), as an optometrist pursuant to Chapter 7 (commencing with Section 3000), or as a chiropractor pursuant to the Chiropractic Initiative Act, and operating consistent with the laws governing their respective scopes of practice in the state within which they provide telephone medical advice services, except as provided in paragraph (2).

(B) Ensuring that all staff who provide telephone medical advice services from an out-of-state location are health care professionals, as identified in subparagraph (A), who are licensed, registered, or certified in the state within which they are providing the telephone medical advice services and are operating consistent with the laws governing their respective scopes of practice.

(2) Ensuring that the telephone medical advice provided is consistent with good professional practice.

(3) Maintaining records of telephone medical advice services, including records of complaints, provided to patients in California for a period of at least five years.

(4) Ensuring that no staff member uses a title or designation when speaking to an enrollee or subscriber that may cause a reasonable person to believe that the staff member is a licensed, certified, or registered professional described in subparagraph (A) of paragraph (1), unless the staff member is a licensed, certified, or registered professional.

(5) Complying with all directions and requests for information made by the department.

(b) To the extent permitted by Article VII of the California Constitution, the department may contract with a private nonprofit accrediting agency to evaluate the qualifications of applicants for registration pursuant to this chapter and to make recommendations to the department.

SEC. 56. Section 123105 of the Health and Safety Code is amended to read:

123105. As used in this chapter:

(a) "Health care provider" means any of the following:

(1) A health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(2) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

(3) A home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2.

(4) A physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or pursuant to the Osteopathic Act.

(5) A podiatrist licensed pursuant to Article 22 (commencing with Section 2460) of Chapter 5 of Division 2 of the Business and Professions Code.

(6) A dentist licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code.

(7) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(8) An optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code.

(9) A chiropractor licensed pursuant to the Chiropractic Initiative Act.

(10) A marriage and family therapist licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(11) A clinical social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code.

(12) A physical therapist licensed pursuant to Chapter 5.7 (commencing with Section 2600) of Division 2 of the Business and Professions Code.

(13) An occupational therapist licensed pursuant to Chapter 5.6 (commencing with Section 2570).

(b) “Mental health records” means patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. “Mental health records” includes, but is not limited to, all alcohol and drug abuse records.

(c) “Patient” means a patient or former patient of a health care provider.

(d) "Patient records" means records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. "Patient records" includes only records pertaining to the patient requesting the records or whose representative requests the records. "Patient records" does not include information given in confidence to a health care provider by a person other than another health care provider or the patient, and that material may be removed from any records prior to inspection or copying under Section 123110 or 123115. "Patient records" does not include information contained in aggregate form, such as indices, registers, or logs.

(e) "Patient's representative" or "representative" means any of the following:

(1) A parent or guardian of a minor who is a patient.

(2) The guardian or conservator of the person of an adult patient.

(3) An agent as defined in Section 4607 of the Probate Code, to the extent necessary for the agent to fulfill his or her duties as set forth in Division 4.7 (commencing with Section 4600) of the Probate Code.

(4) The beneficiary as defined in Section 24 of the Probate Code or personal representative as defined in Section 58 of the Probate Code, of a deceased patient.

(f) "Alcohol and drug abuse records" means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

SEC. 57. Section 3 of Chapter 294 of the Statutes of 2004 is amended to read:

Sec. 3. The sum of one hundred thirty-eight thousand dollars ($138,000) in the 2004–05 fiscal year, and the sum of two hundred sixty-four thousand dollars ($264,000) in the 2005–06 fiscal year and subsequent fiscal years, is hereby appropriated from the State Dental Hygiene Fund to the Dental Hygiene Committee of California for operating expenses necessary to manage the dental hygiene licensing examination.

SEC. 58. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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