

**Introduced by Senator Negrete McLeod**February 18, 2010

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An act to amend Sections 651 and 2023.5 of, and to add Section 2027.5 to, the Business and Professions Code, and to amend Sections 1248, 1248.15, 1248.2, 1248.25, 1248.35, 1248.5, 1248.55, and 1279 of the Health and Safety Code, relating to healing arts.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1150, as introduced, Negrete McLeod. Healing arts.

(1) Existing law provides for the licensure and regulation of various healing arts practitioners and requires certain of those practitioners to use particular designations following their names in specified instances. Existing law provides that it is unlawful for healing arts licensees to disseminate or cause to be disseminated any form of public communication, as defined, containing a false, fraudulent, misleading, or deceptive statement, claim, or image to induce the rendering of services or the furnishing of products relating to a professional practice or business for which he or she is licensed. Existing law authorizes advertising by these healing arts licensees to include certain general information. A violation of these provisions is a misdemeanor.

This bill would require certain healing arts licensees to include in advertisements, as defined, certain words or designations following their names indicating the particular educational degree they hold or healing art they practice, as specified. By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) Existing law requires the Medical Board of California, in conjunction with the Board of Registered Nursing, and in consultation with the Physician Assistant Committee and professionals in the field, to review issues and problems relating to the use of laser or intense light

pulse devices for elective cosmetic procedures by their respective licensees.

This bill would require the board to adopt regulations by January 1, 2012, regarding the appropriate level of physician availability needed within clinics or other settings using certain laser or intense pulse light devices for elective cosmetic procedures.

(3) Existing law requires the Medical Board of California to post on the Internet specified information regarding licensed physicians and surgeons.

This bill would require the board to post on its Internet Web site an easy-to-understand factsheet to educate the public about cosmetic surgery and procedures, as specified.

(4) Existing law requires the Medical Board of California, as successor to the Division of Licensing of the Medical Board of California, to adopt standards for accreditation of outpatient settings, as defined, and, in approving accreditation agencies to perform this accreditation, to ensure that the certification program shall, at a minimum, include standards for specified aspects of the settings' operations. Existing law makes a willful violation of these and other provisions relating to outpatient settings a crime.

This bill would include, among those specified aspects, the submission for approval by an accreditation agency at the time of accreditation, a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery. The bill would also modify the definition of "outpatient setting" to include facilities that offer in vitro fertilization, as defined. By changing the definition of a crime, this bill would impose a state-mandated local program.

Existing law also requires the Medical Board of California to obtain and maintain a list of all accredited, certified, and licensed outpatient settings, and to notify the public, upon inquiry, whether a setting is accredited, certified, or licensed, or whether the setting's accreditation, certification, or license has been revoked.

This bill would require the board, absent inquiry, to notify the public whether a setting is accredited, certified, or licensed, or the setting's accreditation, certification, or license has been revoked, suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency.

Existing law requires accreditation of an outpatient setting to be denied if the setting does not meet specified standards. Existing law authorizes

an outpatient setting to reapply for accreditation at any time after receiving notification of the denial.

This bill would require the accreditation agency to immediately report to the Medical Board of California if the outpatient setting's certificate for accreditation has been denied. Because a willful violation of this requirement would be a crime, the bill would impose a state-mandated local program.

Existing law authorizes the Medical Board of California, as successor to the Division of Medical Quality of the Medical Board of California, or an accreditation agency to, upon reasonable prior notice and presentation of proper identification, enter and inspect any accredited outpatient setting to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of the specified law.

This bill would delete the notice and identification requirements. The bill would require that every outpatient setting that is accredited be inspected by the accreditation agency, as specified, and would specify that it may also be inspected by the board, as specified. The bill would require the board to ensure that accreditation agencies inspect outpatient settings.

Existing law authorizes the Medical Board of California to terminate approval of an accreditation agency if the agency is not meeting the criteria set by the board.

This bill would also authorize the board to issue a citation to the agency, including an administrative fine, in accordance with a specified system established by the board.

Existing law authorizes the Medical Board of California to evaluate the performance of an approved accreditation agency no less than every 3 years, or in response to complaints against an agency, or complaints against one or more outpatient settings accreditation by an agency that indicates noncompliance by the agency with the standards approved by the board.

This bill would make that evaluation mandatory.

(5) Existing law provides for the licensure and regulation of health facilities by the State Department of Public Health and requires the department to periodically inspect those facilities, as specified.

This bill would state the intent of the Legislature that the department, as part of its periodic inspections of acute care hospitals, inspect the peer review process utilized by those hospitals.

(6) 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:*

1 SECTION 1. Section 651 of the Business and Professions Code  
2 is amended to read:

3 651. (a) It is unlawful for any person licensed under this  
4 division or under any initiative act referred to in this division to  
5 disseminate or cause to be disseminated any form of public  
6 communication containing a false, fraudulent, misleading, or  
7 deceptive statement, claim, or image for the purpose of or likely  
8 to induce, directly or indirectly, the rendering of professional  
9 services or furnishing of products in connection with the  
10 professional practice or business for which he or she is licensed.  
11 A “public communication” as used in this section includes, but is  
12 not limited to, communication by means of mail, television, radio,  
13 motion picture, newspaper, book, list or directory of healing arts  
14 practitioners, Internet, or other electronic communication.

15 (b) A false, fraudulent, misleading, or deceptive statement,  
16 claim, or image includes a statement or claim that does any of the  
17 following:

18 (1) Contains a misrepresentation of fact.

19 (2) Is likely to mislead or deceive because of a failure to disclose  
20 material facts.

21 (3) (A) Is intended or is likely to create false or unjustified  
22 expectations of favorable results, including the use of any  
23 photograph or other image that does not accurately depict the  
24 results of the procedure being advertised or that has been altered  
25 in any manner from the image of the actual subject depicted in the  
26 photograph or image.

27 (B) Use of any photograph or other image of a model without  
28 clearly stating in a prominent location in easily readable type the  
29 fact that the photograph or image is of a model is a violation of  
30 subdivision (a). For purposes of this paragraph, a model is anyone

1 other than an actual patient, who has undergone the procedure  
2 being advertised, of the licensee who is advertising for his or her  
3 services.

4 (C) Use of any photograph or other image of an actual patient  
5 that depicts or purports to depict the results of any procedure, or  
6 presents “before” and “after” views of a patient, without specifying  
7 in a prominent location in easily readable type size what procedures  
8 were performed on that patient is a violation of subdivision (a).  
9 Any “before” and “after” views (i) shall be comparable in  
10 presentation so that the results are not distorted by favorable poses,  
11 lighting, or other features of presentation, and (ii) shall contain a  
12 statement that the same “before” and “after” results may not occur  
13 for all patients.

14 (4) Relates to fees, other than a standard consultation fee or a  
15 range of fees for specific types of services, without fully and  
16 specifically disclosing all variables and other material factors.

17 (5) Contains other representations or implications that in  
18 reasonable probability will cause an ordinarily prudent person to  
19 misunderstand or be deceived.

20 (6) Makes a claim either of professional superiority or of  
21 performing services in a superior manner, unless that claim is  
22 relevant to the service being performed and can be substantiated  
23 with objective scientific evidence.

24 (7) Makes a scientific claim that cannot be substantiated by  
25 reliable, peer reviewed, published scientific studies.

26 (8) Includes any statement, endorsement, or testimonial that is  
27 likely to mislead or deceive because of a failure to disclose material  
28 facts.

29 (c) Any price advertisement shall be exact, without the use of  
30 phrases, including, but not limited to, “as low as,” “and up,”  
31 “lowest prices,” or words or phrases of similar import. Any  
32 advertisement that refers to services, or costs for services, and that  
33 uses words of comparison shall be based on verifiable data  
34 substantiating the comparison. Any person so advertising shall be  
35 prepared to provide information sufficient to establish the accuracy  
36 of that comparison. Price advertising shall not be fraudulent,  
37 deceitful, or misleading, including statements or advertisements  
38 of bait, discount, premiums, gifts, or any statements of a similar  
39 nature. In connection with price advertising, the price for each  
40 product or service shall be clearly identifiable. The price advertised

1 for products shall include charges for any related professional  
2 services, including dispensing and fitting services, unless the  
3 advertisement specifically and clearly indicates otherwise.

4 (d) Any person so licensed shall not compensate or give anything  
5 of value to a representative of the press, radio, television, or other  
6 communication medium in anticipation of, or in return for,  
7 professional publicity unless the fact of compensation is made  
8 known in that publicity.

9 (e) Any person so licensed may not use any professional card,  
10 professional announcement card, office sign, letterhead, telephone  
11 directory listing, medical list, medical directory listing, or a similar  
12 professional notice or device if it includes a statement or claim  
13 that is false, fraudulent, misleading, or deceptive within the  
14 meaning of subdivision (b).

15 (f) Any person so licensed who violates this section is guilty of  
16 a misdemeanor. A bona fide mistake of fact shall be a defense to  
17 this subdivision, but only to this subdivision.

18 (g) Any violation of this section by a person so licensed shall  
19 constitute good cause for revocation or suspension of his or her  
20 license or other disciplinary action.

21 (h) Advertising by any person so licensed may include the  
22 following:

23 (1) A statement of the name of the practitioner.

24 (2) A statement of addresses and telephone numbers of the  
25 offices maintained by the practitioner.

26 (3) A statement of office hours regularly maintained by the  
27 practitioner.

28 (4) A statement of languages, other than English, fluently spoken  
29 by the practitioner or a person in the practitioner's office.

30 (5) (A) A statement that the practitioner is certified by a private  
31 or public board or agency or a statement that the practitioner limits  
32 his or her practice to specific fields.

33 (i) For the purposes of this section, a dentist licensed under  
34 Chapter 4 (commencing with Section 1600) may not hold himself  
35 or herself out as a specialist, or advertise membership in or  
36 specialty recognition by an accrediting organization, unless the  
37 practitioner has completed a specialty education program approved  
38 by the American Dental Association and the Commission on Dental  
39 Accreditation, is eligible for examination by a national specialty  
40 board recognized by the American Dental Association, or is a

1 diplomate of a national specialty board recognized by the American  
2 Dental Association.

3 (ii) A dentist licensed under Chapter 4 (commencing with  
4 Section 1600) shall not represent to the public or advertise  
5 accreditation either in a specialty area of practice or by a board  
6 not meeting the requirements of clause (i) unless the dentist has  
7 attained membership in or otherwise been credentialed by an  
8 accrediting organization that is recognized by the board as a bona  
9 fide organization for that area of dental practice. In order to be  
10 recognized by the board as a bona fide accrediting organization  
11 for a specific area of dental practice other than a specialty area of  
12 dentistry authorized under clause (i), the organization shall  
13 condition membership or credentialing of its members upon all of  
14 the following:

15 (I) Successful completion of a formal, full-time advanced  
16 education program that is affiliated with or sponsored by a  
17 university based dental school and is beyond the dental degree at  
18 a graduate or postgraduate level.

19 (II) Prior didactic training and clinical experience in the specific  
20 area of dentistry that is greater than that of other dentists.

21 (III) Successful completion of oral and written examinations  
22 based on psychometric principles.

23 (iii) Notwithstanding the requirements of clauses (i) and (ii), a  
24 dentist who lacks membership in or certification, diplomate status,  
25 other similar credentials, or completed advanced training approved  
26 as bona fide either by an American Dental Association recognized  
27 accrediting organization or by the board, may announce a practice  
28 emphasis in any other area of dental practice only if the dentist  
29 incorporates in capital letters or some other manner clearly  
30 distinguishable from the rest of the announcement, solicitation, or  
31 advertisement that he or she is a general dentist.

32 (iv) A statement of certification by a practitioner licensed under  
33 Chapter 7 (commencing with Section 3000) shall only include a  
34 statement that he or she is certified or eligible for certification by  
35 a private or public board or parent association recognized by that  
36 practitioner's licensing board.

37 (B) A physician and surgeon licensed under Chapter 5  
38 (commencing with Section 2000) by the Medical Board of  
39 California may include a statement that he or she limits his or her  
40 practice to specific fields, but shall not include a statement that he

1 or she is certified or eligible for certification by a private or public  
2 board or parent association, including, but not limited to, a  
3 multidisciplinary board or association, unless that board or  
4 association is (i) an American Board of Medical Specialties  
5 member board, (ii) a board or association with equivalent  
6 requirements approved by that physician and surgeon's licensing  
7 board, or (iii) a board or association with an Accreditation Council  
8 for Graduate Medical Education approved postgraduate training  
9 program that provides complete training in that specialty or  
10 subspecialty. A physician and surgeon licensed under Chapter 5  
11 (commencing with Section 2000) by the Medical Board of  
12 California who is certified by an organization other than a board  
13 or association referred to in clause (i), (ii), or (iii) shall not use the  
14 term "board certified" in reference to that certification, unless the  
15 physician and surgeon is also licensed under Chapter 4  
16 (commencing with Section 1600) and the use of the term "board  
17 certified" in reference to that certification is in accordance with  
18 subparagraph (A). A physician and surgeon licensed under Chapter  
19 5 (commencing with Section 2000) by the Medical Board of  
20 California who is certified by a board or association referred to in  
21 clause (i), (ii), or (iii) shall not use the term "board certified" unless  
22 the full name of the certifying board is also used and given  
23 comparable prominence with the term "board certified" in the  
24 statement.

25 For purposes of this subparagraph, a "multidisciplinary board  
26 or association" means an educational certifying body that has a  
27 psychometrically valid testing process, as determined by the  
28 Medical Board of California, for certifying medical doctors and  
29 other health care professionals that is based on the applicant's  
30 education, training, and experience.

31 For purposes of the term "board certified," as used in this  
32 subparagraph, the terms "board" and "association" mean an  
33 organization that is an American Board of Medical Specialties  
34 member board, an organization with equivalent requirements  
35 approved by a physician and surgeon's licensing board, or an  
36 organization with an Accreditation Council for Graduate Medical  
37 Education approved postgraduate training program that provides  
38 complete training in a specialty or subspecialty.

39 The Medical Board of California shall adopt regulations to  
40 establish and collect a reasonable fee from each board or



1 association applying for recognition pursuant to this subparagraph.  
2 The fee shall not exceed the cost of administering this  
3 subparagraph. Notwithstanding Section 2 of Chapter 1660 of the  
4 Statutes of 1990, this subparagraph shall become operative July  
5 1, 1993. However, an administrative agency or accrediting  
6 organization may take any action contemplated by this  
7 subparagraph relating to the establishment or approval of specialist  
8 requirements on and after January 1, 1991.

9 (C) A doctor of podiatric medicine licensed under Chapter 5  
10 (commencing with Section 2000) by the Medical Board of  
11 California may include a statement that he or she is certified or  
12 eligible or qualified for certification by a private or public board  
13 or parent association, including, but not limited to, a  
14 multidisciplinary board or association, if that board or association  
15 meets one of the following requirements: (i) is approved by the  
16 Council on Podiatric Medical Education, (ii) is a board or  
17 association with equivalent requirements approved by the  
18 California Board of Podiatric Medicine, or (iii) is a board or  
19 association with the Council on Podiatric Medical Education  
20 approved postgraduate training programs that provide training in  
21 podiatric medicine and podiatric surgery. A doctor of podiatric  
22 medicine licensed under Chapter 5 (commencing with Section  
23 2000) by the Medical Board of California who is certified by a  
24 board or association referred to in clause (i), (ii), or (iii) shall not  
25 use the term “board certified” unless the full name of the certifying  
26 board is also used and given comparable prominence with the term  
27 “board certified” in the statement. A doctor of podiatric medicine  
28 licensed under Chapter 5 (commencing with Section 2000) by the  
29 Medical Board of California who is certified by an organization  
30 other than a board or association referred to in clause (i), (ii), or  
31 (iii) shall not use the term “board certified” in reference to that  
32 certification.

33 For purposes of this subparagraph, a “multidisciplinary board  
34 or association” means an educational certifying body that has a  
35 psychometrically valid testing process, as determined by the  
36 California Board of Podiatric Medicine, for certifying doctors of  
37 podiatric medicine that is based on the applicant’s education,  
38 training, and experience. For purposes of the term “board certified,”  
39 as used in this subparagraph, the terms “board” and “association”  
40 mean an organization that is a Council on Podiatric Medical

1 Education approved board, an organization with equivalent  
2 requirements approved by the California Board of Podiatric  
3 Medicine, or an organization with a Council on Podiatric Medical  
4 Education approved postgraduate training program that provides  
5 training in podiatric medicine and podiatric surgery.

6 The California Board of Podiatric Medicine shall adopt  
7 regulations to establish and collect a reasonable fee from each  
8 board or association applying for recognition pursuant to this  
9 subparagraph, to be deposited in the State Treasury in the Podiatry  
10 Fund, pursuant to Section 2499. The fee shall not exceed the cost  
11 of administering this subparagraph.

12 (6) A statement that the practitioner provides services under a  
13 specified private or public insurance plan or health care plan.

14 (7) A statement of names of schools and postgraduate clinical  
15 training programs from which the practitioner has graduated,  
16 together with the degrees received.

17 (8) A statement of publications authored by the practitioner.

18 (9) A statement of teaching positions currently or formerly held  
19 by the practitioner, together with pertinent dates.

20 (10) A statement of his or her affiliations with hospitals or  
21 clinics.

22 (11) A statement of the charges or fees for services or  
23 commodities offered by the practitioner.

24 (12) A statement that the practitioner regularly accepts  
25 installment payments of fees.

26 (13) Otherwise lawful images of a practitioner, his or her  
27 physical facilities, or of a commodity to be advertised.

28 (14) A statement of the manufacturer, designer, style, make,  
29 trade name, brand name, color, size, or type of commodities  
30 advertised.

31 (15) An advertisement of a registered dispensing optician may  
32 include statements in addition to those specified in paragraphs (1)  
33 to (14), inclusive, provided that any statement shall not violate  
34 subdivision (a), (b), (c), or (e) or any other section of this code.

35 (16) A statement, or statements, providing public health  
36 information encouraging preventative or corrective care.

37 (17) Any other item of factual information that is not false,  
38 fraudulent, misleading, or likely to deceive.

39 (i) (1) *Advertising by the following licensees shall include the*  
40 *designations as follows:*

- 1 (A) Advertising by a chiropractor licensed under Chapter 2  
2 (commencing with Section 1000) shall include the designation  
3 “DC” or the word “chiropractor” immediately following the  
4 chiropractor’s name.
- 5 (B) Advertising by a dentist licensed under Chapter 4  
6 (commencing with Section 1600) shall include the designation  
7 “DDS” or “DMD” immediately following the dentist’s name.
- 8 (C) Advertising by a physician and surgeon licensed under  
9 Chapter 5 (commencing with Section 2000) shall include the  
10 designation “MD” immediately following the physician and  
11 surgeon’s name.
- 12 (D) Advertising by an osteopathic physician and surgeon  
13 certified under Article 21 (commencing with Section 2450) shall  
14 include the designation “DO” immediately following the  
15 osteopathic physician and surgeon’s name.
- 16 (E) Advertising by a podiatrist certified under Article 22  
17 (commencing with Section 2460) of Chapter 5 shall include the  
18 designation “DPM” immediately following the podiatrist’s name.
- 19 (F) Advertising by a registered nurse licensed under Chapter  
20 6 (commencing with Section 2700) shall include the designation  
21 “RN” immediately following the registered nurse’s name.
- 22 (G) Advertising by a licensed vocational nurse under Chapter  
23 6.5 (commencing with Section 2840) shall include the designation  
24 “LVN” immediately following the licensed vocational nurse’s  
25 name.
- 26 (H) Advertising by a psychologist licensed under Chapter 6.6  
27 (commencing with Section 2900) shall include the designation  
28 “Ph.D.” immediately following the psychologist’s name.
- 29 (I) Advertising by an optometrist licensed under Chapter 7  
30 (commencing with Section 3000) shall include the applicable  
31 designation or word described in Section 3098 immediately  
32 following the optometrist’s name.
- 33 (J) Advertising by a physician assistant licensed under Chapter  
34 7.7 (commencing with Section 3500) shall include the designation  
35 “PA” immediately following the physician assistant’s name.
- 36 (K) Advertising by a naturopathic doctor licensed under Chapter  
37 8.2 (commencing with Section 3610) shall include the designation  
38 “ND” immediately following the naturopathic doctor’s name.  
39 However, if the naturopathic doctor uses the term or designation

1 “Dr.” in an advertisement, he or she shall further identify himself  
 2 by any of the terms listed in Section 3661.  
 3 (2) For purposes of this subdivision, “advertisement” includes  
 4 communication by means of mail, television, radio, motion picture,  
 5 newspaper, book, directory, Internet, or other electronic  
 6 communication.  
 7 (3) Advertisements do not include any of the following:  
 8 (A) A medical directory released by a health care service plan  
 9 or a health insurer.  
 10 (B) A billing statement from a health care practitioner to a  
 11 patient.  
 12 (C) An appointment reminder from a health care practitioner  
 13 to a patient.  
 14 (4) This subdivision shall not apply until January 1, 2012, to  
 15 any advertisement that is published annually and prior to July 1,  
 16 2011.  
 17 (5) This subdivision shall not apply to any advertisement or  
 18 business card disseminated by a health care service plan that is  
 19 subject to the requirements of Section 1367.26 of the Health and  
 20 Safety Code.  
 21 (i)  
 22 (j) Each of the healing arts boards and examining committees  
 23 within Division 2 shall adopt appropriate regulations to enforce  
 24 this section in accordance with Chapter 3.5 (commencing with  
 25 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
 26 Code.  
 27 Each of the healing arts boards and committees and examining  
 28 committees within Division 2 shall, by regulation, define those  
 29 efficacious services to be advertised by businesses or professions  
 30 under their jurisdiction for the purpose of determining whether  
 31 advertisements are false or misleading. Until a definition for that  
 32 service has been issued, no advertisement for that service shall be  
 33 disseminated. However, if a definition of a service has not been  
 34 issued by a board or committee within 120 days of receipt of a  
 35 request from a licensee, all those holding the license may advertise  
 36 the service. Those boards and committees shall adopt or modify  
 37 regulations defining what services may be advertised, the manner  
 38 in which defined services may be advertised, and restricting  
 39 advertising that would promote the inappropriate or excessive use  
 40 of health services or commodities. A board or committee shall not,

1 by regulation, unreasonably prevent truthful, nondeceptive price  
2 or otherwise lawful forms of advertising of services or  
3 commodities, by either outright prohibition or imposition of  
4 onerous disclosure requirements. However, any member of a board  
5 or committee acting in good faith in the adoption or enforcement  
6 of any regulation shall be deemed to be acting as an agent of the  
7 state.

8 ~~(j)~~

9 (k) The Attorney General shall commence legal proceedings in  
10 the appropriate forum to enjoin advertisements disseminated or  
11 about to be disseminated in violation of this section and seek other  
12 appropriate relief to enforce this section. Notwithstanding any  
13 other provision of law, the costs of enforcing this section to the  
14 respective licensing boards or committees may be awarded against  
15 any licensee found to be in violation of any provision of this  
16 section. This shall not diminish the power of district attorneys,  
17 county counsels, or city attorneys pursuant to existing law to seek  
18 appropriate relief.

19 ~~(k)~~

20 (l) A physician and surgeon or doctor of podiatric medicine  
21 licensed pursuant to Chapter 5 (commencing with Section 2000)  
22 by the Medical Board of California who knowingly and  
23 intentionally violates this section may be cited and assessed an  
24 administrative fine not to exceed ten thousand dollars (\$10,000)  
25 per event. Section 125.9 shall govern the issuance of this citation  
26 and fine except that the fine limitations prescribed in paragraph  
27 (3) of subdivision (b) of Section 125.9 shall not apply to a fine  
28 under this subdivision.

29 SEC. 2. Section 2023.5 of the Business and Professions Code  
30 is amended to read:

31 2023.5. (a) The board, in conjunction with the Board of  
32 Registered Nursing, and in consultation with the Physician  
33 Assistant Committee and professionals in the field, shall review  
34 issues and problems surrounding the use of laser or intense light  
35 pulse devices for elective cosmetic procedures by physicians and  
36 surgeons, nurses, and physician assistants. The review shall include,  
37 but need not be limited to, all of the following:

- 38 (1) The appropriate level of physician supervision needed.  
39 (2) The appropriate level of training to ensure competency.

1 (3) Guidelines for standardized procedures and protocols that  
2 address, at a minimum, all of the following:

3 (A) Patient selection.

4 (B) Patient education, instruction, and informed consent.

5 (C) Use of topical agents.

6 (D) Procedures to be followed in the event of complications or  
7 side effects from the treatment.

8 (E) Procedures governing emergency and urgent care situations.

9 (b) On or before January 1, 2009, the board and the Board of  
10 Registered Nursing shall promulgate regulations to implement  
11 changes determined to be necessary with regard to the use of laser  
12 or intense pulse light devices for elective cosmetic procedures by  
13 physicians and surgeons, nurses, and physician assistants.

14 *(c) On or before January 1, 2012, the board shall adopt*  
15 *regulations regarding the appropriate level of physician*  
16 *availability needed within clinics or other settings using laser or*  
17 *intense pulse light devices for elective cosmetic procedures.*  
18 *However, these regulations shall not apply to laser or intense pulse*  
19 *light devices approved by the federal Food and Drug*  
20 *Administration for over-the-counter use by a health care*  
21 *practitioner or by an unlicensed person on himself or herself.*

22 *(d) Nothing in this section shall be construed to modify the*  
23 *prohibition against the unlicensed practice of medicine.*

24 SEC. 3. Section 2027.5 is added to the Business and Professions  
25 Code, to read:

26 2027.5. The board shall post on its Internet Web site an  
27 easy-to-understand factsheet to educate the public about cosmetic  
28 surgery and procedures, including their risks. Included with the  
29 factsheet shall be a comprehensive list of questions for patients to  
30 ask their physician and surgeon regarding cosmetic surgery.

31 SEC. 4. Section 1248 of the Health and Safety Code is amended  
32 to read:

33 1248. For purposes of this chapter, the following definitions  
34 shall apply:

35 (a) "Division" means the *Medical Board of California. All*  
36 *references in this chapter to the division, the Division of Licensing*  
37 *of the Medical Board of California, or the Division of Medical*  
38 *Quality shall be deemed to refer to the Medical Board of California*  
39 *pursuant to Section 2002 of the Business and Professions Code.*

1 ~~(b) “Division of Medical Quality” means the Division of~~  
2 ~~Medical Quality of the Medical Board of California.~~

3 (e)

4 (b) (1) “Outpatient setting” means any facility, clinic,  
5 unlicensed clinic, center, office, or other setting that is not part of  
6 a general acute care facility, as defined in Section 1250, and where  
7 anesthesia, except local anesthesia or peripheral nerve blocks, or  
8 both, is used in compliance with the community standard of  
9 practice, in doses that, when administered have the probability of  
10 placing a patient at risk for loss of the patient’s life-preserving  
11 protective reflexes.

12 (2) “*Outpatient setting*” also means facilities that offer *in vitro*  
13 fertilization, as defined in subdivision (b) of Section 1374.55.

14 ~~“Outpatient~~

15 (3) “*Outpatient setting*” does not include, among other settings,  
16 any setting where anxiolytics and analgesics are administered,  
17 when done so in compliance with the community standard of  
18 practice, in doses that do not have the probability of placing the  
19 patient at risk for loss of the patient’s life-preserving protective  
20 reflexes.

21 (d)

22 (c) “Accreditation agency” means a public or private  
23 organization that is approved to issue certificates of accreditation  
24 to outpatient settings by the ~~division board~~ pursuant to Sections  
25 1248.15 and 1248.4.

26 SEC. 5. Section 1248.15 of the Health and Safety Code is  
27 amended to read:

28 1248.15. (a) The ~~division board~~ shall adopt standards for  
29 accreditation and, in approving accreditation agencies to perform  
30 accreditation of outpatient settings, shall ensure that the  
31 certification program shall, at a minimum, include standards for  
32 the following aspects of the settings’ operations:

33 (1) Outpatient setting allied health staff shall be licensed or  
34 certified to the extent required by state or federal law.

35 (2) (A) Outpatient settings shall have a system for facility safety  
36 and emergency training requirements.

37 (B) There shall be onsite equipment, medication, and trained  
38 personnel to facilitate handling of services sought or provided and  
39 to facilitate handling of any medical emergency that may arise in  
40 connection with services sought or provided.

1 (C) In order for procedures to be performed in an outpatient  
2 setting as defined in Section 1248, the outpatient setting shall do  
3 one of the following:

4 (i) Have a written transfer agreement with a local accredited or  
5 licensed acute care hospital, approved by the facility's medical  
6 staff.

7 (ii) Permit surgery only by a licensee who has admitting  
8 privileges at a local accredited or licensed acute care hospital, with  
9 the exception that licensees who may be precluded from having  
10 admitting privileges by their professional classification or other  
11 administrative limitations, shall have a written transfer agreement  
12 with licensees who have admitting privileges at local accredited  
13 or licensed acute care hospitals.

14 ~~(iii) Submit~~

15 (D) *The outpatient setting shall submit for approval by an*  
16 *accrediting agency a detailed procedural plan for handling medical*  
17 *emergencies that shall be reviewed at the time of accreditation.*  
18 *No reasonable plan shall be disapproved by the accrediting agency.*

19 (E) *The outpatient setting shall submit for approval by an*  
20 *accreditation agency at the time accreditation of a detailed plan,*  
21 *standardized procedures, and protocols to be followed in the event*  
22 *of serious complications or side effects from surgery that would*  
23 *place a patient at high risk for injury or harm and to govern*  
24 *emergency and urgent care situations.*

25 ~~(F)~~

26 (F) All physicians and surgeons transferring patients from an  
27 outpatient setting shall agree to cooperate with the medical staff  
28 peer review process on the transferred case, the results of which  
29 shall be referred back to the outpatient setting, if deemed  
30 appropriate by the medical staff peer review committee. If the  
31 medical staff of the acute care facility determines that inappropriate  
32 care was delivered at the outpatient setting, the acute care facility's  
33 peer review outcome shall be reported, as appropriate, to the  
34 accrediting body, the Health Care Financing Administration, the  
35 State Department of ~~Health Services~~ *Public Health*, and the  
36 appropriate licensing authority.

37 (3) The outpatient setting shall permit surgery by a dentist acting  
38 within his or her scope of practice under Chapter 4 (commencing  
39 with Section 1600) of *Division 2 of the Business and Professions*  
40 *Code* or physician and surgeon, osteopathic physician and surgeon,



1 or podiatrist acting within his or her scope of practice under  
2 Chapter 5 (commencing with Section 2000) of *Division 2* of the  
3 Business and Professions Code or the Osteopathic Initiative Act.  
4 The outpatient setting may, in its discretion, permit anesthesia  
5 service by a certified registered nurse anesthetist acting within his  
6 or her scope of practice under Article 7 (commencing with Section  
7 2825) of Chapter 6 of *Division 2* of the Business and Professions  
8 Code.

9 (4) Outpatient settings shall have a system for maintaining  
10 clinical records.

11 (5) Outpatient settings shall have a system for patient care and  
12 monitoring procedures.

13 (6) (A) Outpatient settings shall have a system for quality  
14 assessment and improvement.

15 (B) Members of the medical staff and other practitioners who  
16 are granted clinical privileges shall be professionally qualified and  
17 appropriately credentialed for the performance of privileges  
18 granted. The outpatient setting shall grant privileges in accordance  
19 with recommendations from qualified health professionals, and  
20 credentialing standards established by the outpatient setting.

21 (C) Clinical privileges shall be periodically reappraised by the  
22 outpatient setting. The scope of procedures performed in the  
23 outpatient setting shall be periodically reviewed and amended as  
24 appropriate.

25 (7) Outpatient settings regulated by this chapter that have  
26 multiple service locations governed by the same standards may  
27 elect to have all service sites surveyed on any accreditation survey.  
28 Organizations that do not elect to have all sites surveyed shall have  
29 a sample, not to exceed 20 percent of all service sites, surveyed.  
30 The actual sample size shall be determined by the ~~division~~ board.  
31 The accreditation agency shall determine the location of the sites  
32 to be surveyed. Outpatient settings that have five or fewer sites  
33 shall have at least one site surveyed. When an organization that  
34 elects to have a sample of sites surveyed is approved for  
35 accreditation, all of the organizations' sites shall be automatically  
36 accredited.

37 (8) Outpatient settings shall post the certificate of accreditation  
38 in a location readily visible to patients and staff.

1 (9) Outpatient settings shall post the name and telephone number  
2 of the accrediting agency with instructions on the submission of  
3 complaints in a location readily visible to patients and staff.

4 (10) Outpatient settings shall have a written discharge criteria.

5 (b) Outpatient settings shall have a minimum of two staff  
6 persons on the premises, one of whom shall either be a licensed  
7 physician and surgeon or a licensed health care professional with  
8 current certification in advanced cardiac life support (ACLS), as  
9 long as a patient is present who has not been discharged from  
10 supervised care. Transfer to an unlicensed setting of a patient who  
11 does not meet the discharge criteria adopted pursuant to paragraph  
12 (10) of subdivision (a) shall constitute unprofessional conduct.

13 (c) An accreditation agency may include additional standards  
14 in its determination to accredit outpatient settings if these are  
15 approved by the ~~division~~ board to protect the public health and  
16 safety.

17 (d) No accreditation standard adopted or approved by the  
18 ~~division~~ board, and no standard included in any certification  
19 program of any accreditation agency approved by the ~~division~~  
20 board, shall serve to limit the ability of any allied health care  
21 practitioner to provide services within his or her full scope of  
22 practice. Notwithstanding this or any other provision of law, each  
23 outpatient setting may limit the privileges, or determine the  
24 privileges, within the appropriate scope of practice, that will be  
25 afforded to physicians and allied health care practitioners who  
26 practice at the facility, in accordance with credentialing standards  
27 established by the outpatient setting in compliance with this  
28 chapter. Privileges may not be arbitrarily restricted based on  
29 category of licensure.

30 (e) *The board shall adopt standards that it deems necessary for*  
31 *outpatient settings that offer in vitro fertilization.*

32 SEC. 6. Section 1248.2 of the Health and Safety Code is  
33 amended to read:

34 1248.2. (a) Any outpatient setting may apply to an  
35 accreditation agency for a certificate of accreditation. Accreditation  
36 shall be issued by the accreditation agency solely on the basis of  
37 compliance with its standards as approved by the ~~division~~ board  
38 under this chapter.

39 (b) The ~~division~~ board shall obtain and maintain a list of all  
40 accredited, certified, and licensed outpatient settings from the

1 information provided by the accreditation, certification, and  
2 licensing agencies approved by the ~~division~~ *board*, and shall notify  
3 the public, ~~upon inquiry~~, whether a setting is accredited, certified,  
4 or licensed, or ~~whether~~ the setting's accreditation, certification, or  
5 license has been revoked, *suspended, or placed on probation, or*  
6 *the setting has received a reprimand by the accreditation agency.*

7 SEC. 7. Section 1248.25 of the Health and Safety Code is  
8 amended to read:

9 1248.25. If an outpatient setting does not meet the standards  
10 approved by the ~~division~~ *board*, accreditation shall be denied by  
11 the accreditation agency, which shall provide the outpatient setting  
12 notification of the reasons for the denial. An outpatient setting may  
13 reapply for accreditation at any time after receiving notification  
14 of the denial. *The accreditation agency shall immediately report*  
15 *to the board if the outpatient setting's certificate for accreditation*  
16 *has been denied.*

17 SEC. 8. Section 1248.35 of the Health and Safety Code is  
18 amended to read:

19 1248.35. (a) *Every outpatient setting which is accredited shall*  
20 *be inspected by the accreditation agency and may also be inspected*  
21 *by the Medical Board of California. The Medical Board of*  
22 *California shall ensure that accreditation agencies inspect*  
23 *outpatient settings.*

24 (b) *Unless otherwise specified, the following requirements apply*  
25 *to inspections described in subdivision (a).*

26 (1) *The frequency of inspection shall depend upon the type and*  
27 *complexity of the outpatient setting to be inspected.*

28 (2) *Inspections shall be conducted no less often than once every*  
29 *three years by the accreditation agency and as often as necessary*  
30 *by the Medical Board of California to ensure the quality of care*  
31 *provided.*

32 (a)

33 (3) ~~The Division of Medical Quality or an accreditation agency~~  
34 ~~may, upon reasonable prior notice and presentation of proper~~  
35 ~~identification,~~ *Medical Board of California or the accreditation*  
36 *agency may enter and inspect any outpatient setting that is*  
37 *accredited by an accreditation agency at any reasonable time to*  
38 *ensure compliance with, or investigate an alleged violation of, any*  
39 *standard of the accreditation agency or any provision of this*  
40 *chapter.*

1     ~~(b)~~

2     (c) If an accreditation agency determines, as a result of its  
 3 inspection, that an outpatient setting is not in compliance with the  
 4 standards under which it was approved, the accreditation agency  
 5 may do any of the following:

6       (1) Issue a reprimand.

7       (2) Place the outpatient setting on probation, during which time  
 8 the setting shall successfully institute and complete a plan of  
 9 correction, approved by the ~~division~~ *board* or the accreditation  
 10 agency, to correct the deficiencies.

11       (3) Suspend or revoke the outpatient setting’s certification of  
 12 accreditation.

13     ~~(e)~~

14     (d) Except as is otherwise provided in this subdivision, before  
 15 suspending or revoking a certificate of accreditation under this  
 16 chapter, the accreditation agency shall provide the outpatient setting  
 17 with notice of any deficiencies and *the outpatient setting shall*  
 18 *agree with the accreditation agency on a plan of correction that*  
 19 *shall give the outpatient setting* reasonable time to supply  
 20 information demonstrating compliance with the standards of the  
 21 accreditation agency in compliance with this chapter, as well as  
 22 the opportunity for a hearing on the matter upon the request of the  
 23 outpatient center. *During that allotted time, a list of deficiencies*  
 24 *and the plan of correction shall be conspicuously posted in a clinic*  
 25 *location accessible to public view.* The accreditation agency may  
 26 immediately suspend the certificate of accreditation before  
 27 providing notice and an opportunity to be heard, but only when  
 28 failure to take the action may result in imminent danger to the  
 29 health of an individual. In such cases, the accreditation agency  
 30 shall provide subsequent notice and an opportunity to be heard.

31     ~~(d)~~

32     (e) If the ~~division~~ *board* determines that deficiencies found  
 33 during an inspection suggests that the accreditation agency does  
 34 not comply with the standards approved by the ~~division~~ *board*, the  
 35 ~~division~~ *board* may conduct inspections, as described in this  
 36 section, of other settings accredited by the accreditation agency to  
 37 determine if the agency is accrediting settings in accordance with  
 38 Section 1248.15.

39     (f) *Reports on the results of any inspection conducted pursuant*  
 40 *to subdivision (a) shall be kept on file with the board or the*

1 accreditation agency along with the plan of correction and the  
2 outpatient setting comments. The inspection report may include a  
3 recommendation for reinspection. All inspection reports, lists of  
4 deficiencies, and plans of correction shall be public records open  
5 to public inspection.

6 (g) The accreditation agency shall immediately report to the  
7 board if the outpatient setting has been issued a reprimand or if  
8 the outpatient setting's certification of accreditation has been  
9 suspended or revoked or if the outpatient setting has been placed  
10 on probation.

11 SEC. 9. Section 1248.5 of the Health and Safety Code is  
12 amended to read:

13 1248.5. ~~The division may~~ board shall evaluate the performance  
14 of an approved accreditation agency no less than every three years,  
15 or in response to complaints against an agency, or complaints  
16 against one or more outpatient settings accreditation by an agency  
17 that indicates noncompliance by the agency with the standards  
18 approved by the ~~division~~ board.

19 SEC. 10. Section 1248.55 of the Health and Safety Code is  
20 amended to read:

21 1248.55. (a) If the accreditation agency is not meeting the  
22 criteria set by the ~~division~~ board, the ~~division~~ board may terminate  
23 approval of the agency or may issue a citation to the agency in  
24 accordance with the system established under subdivision (b).

25 (b) The board may establish, by regulation, a system for the  
26 issuance of a citation to an accreditation agency that is not meeting  
27 the criteria set by the board. This system shall meet the  
28 requirements of Section 125.9 of the Business and Professions  
29 Code, as applicable, except that both of the following shall apply:

30 (1) Failure of an agency to pay an administrative fine assessed  
31 pursuant to a citation within 30 days of the date of the assessment,  
32 unless the citation is being appealed, may result in the board's  
33 termination of approval of the agency. Where a citation is not  
34 contested and a fine is not paid, the full amount of the assessed  
35 fine shall be added to the renewal fee established under Section  
36 1248.6. Approval of an agency shall not be renewed without  
37 payment of the renewal fee and fine.

38 (2) Administrative fines collected pursuant to the system shall  
39 be deposited in the Outpatient Setting Fund of the Medical Board  
40 of California established under Section 1248.6.

1     ~~(b)~~

2     (c) Before terminating approval of an accreditation agency, the  
3 ~~division board~~ shall provide the accreditation agency with notice  
4 of any deficiencies and reasonable time to supply information  
5 demonstrating compliance with the requirements of this chapter,  
6 as well as the opportunity for a hearing on the matter in compliance  
7 with Chapter 5 (commencing with Section 11500) of Part 1 of  
8 Division 3 of Title 2 of the Government Code.

9     ~~(e)~~

10    (d) (1) If approval of the accreditation agency is terminated by  
11 the ~~division board~~, outpatient settings accredited by that agency  
12 shall be notified by the ~~division board~~ and, except as provided in  
13 paragraph (2), shall be authorized to continue to operate for a  
14 period of 12 months in order to seek accreditation through an  
15 approved accreditation agency, unless the time is extended by the  
16 ~~division board~~ for good cause.

17    (2) The ~~division board~~ may require that an outpatient setting,  
18 that has been accredited by an accreditation agency whose approval  
19 has been terminated by the ~~division board~~, cease operations  
20 immediately ~~in the event that the division~~ if the board is in  
21 possession of information indicating that continued operation poses  
22 an imminent risk of harm to the health of an individual. In such  
23 cases, the ~~division board~~ shall provide the outpatient setting with  
24 notice of its action, the reason underlying it, and a subsequent  
25 opportunity for a hearing on the matter. An outpatient setting that  
26 is ordered to cease operations under this paragraph may reapply  
27 for a certificate of accreditation after six months and shall notify  
28 the ~~division board~~ promptly of its reapplication.

29    SEC. 11. Section 1279 of the Health and Safety Code is  
30 amended to read:

31    1279. (a) Every health facility for which a license or special  
32 permit has been issued shall be periodically inspected by the  
33 department, or by another governmental entity under contract with  
34 the department. The frequency of inspections shall vary, depending  
35 upon the type and complexity of the health facility or special  
36 service to be inspected, unless otherwise specified by state or  
37 federal law or regulation. The inspection shall include participation  
38 by the California Medical Association consistent with the manner  
39 in which it participated in inspections, as provided in Section 1282  
40 prior to September 15, 1992.

1 (b) Except as provided in subdivision (c), inspections shall be  
2 conducted no less than once every two years and as often as  
3 necessary to ensure the quality of care being provided.

4 (c) For a health facility specified in subdivision (a), (b), or (f)  
5 of Section 1250, inspections shall be conducted no less than once  
6 every three years, and as often as necessary to ensure the quality  
7 of care being provided.

8 (d) During the inspection, the representative or representatives  
9 shall offer such advice and assistance to the health facility as they  
10 deem appropriate.

11 (e) For acute care hospitals of 100 beds or more, the inspection  
12 team shall include at least a physician, registered nurse, and persons  
13 experienced in hospital administration and sanitary inspections.  
14 During the inspection, the team shall offer advice and assistance  
15 to the hospital as it deems appropriate.

16 (f) The department shall ensure that a periodic inspection  
17 conducted pursuant to this section is not announced in advance of  
18 the date of inspection. An inspection may be conducted jointly  
19 with inspections by entities specified in Section 1282. However,  
20 if the department conducts an inspection jointly with an entity  
21 specified in Section 1282 that provides notice in advance of the  
22 periodic inspection, the department shall conduct an additional  
23 periodic inspection that is not announced or noticed to the health  
24 facility.

25 (g) Notwithstanding any other provision of law, the department  
26 shall inspect for compliance with provisions of state law and  
27 regulations during a state periodic inspection or at the same time  
28 as a federal periodic inspection, including, but not limited to, an  
29 inspection required under this section. If the department inspects  
30 for compliance with state law and regulations at the same time as  
31 a federal periodic inspection, the inspection shall be done consistent  
32 with the guidance of the federal Centers for Medicare and Medicaid  
33 Services for the federal portion of the inspection.

34 (h) The department shall emphasize consistency across the state  
35 and *in* its district offices when conducting licensing and  
36 certification surveys and complaint investigations, including the  
37 selection of state or federal enforcement remedies in accordance  
38 with Section 1423. The department may issue federal deficiencies  
39 and recommend federal enforcement actions in those circumstances  
40 where they provide more rigorous enforcement action.

1     *(i) It is the intent of the Legislature that the department, pursuant*  
2     *to its existing regulations, inspect the peer review process utilized*  
3     *by acute care hospitals as part of its periodic inspection of those*  
4     *hospitals pursuant to this section.*

5     SEC. 12. No reimbursement is required by this act pursuant to  
6     Section 6 of Article XIII B of the California Constitution because  
7     the only costs that may be incurred by a local agency or school  
8     district will be incurred because this act creates a new crime or  
9     infraction, eliminates a crime or infraction, or changes the penalty  
10    for a crime or infraction, within the meaning of Section 17556 of  
11    the Government Code, or changes the definition of a crime within  
12    the meaning of Section 6 of Article XIII B of the California  
13    Constitution.

O