

AMENDED IN SENATE APRIL 12, 2010

**SENATE BILL**

**No. 1172**

---

---

**Introduced by Senator Negrete McLeod**

February 18, 2010

---

---

~~An act to amend Sections 156, 1695, 2360, 2662, 2770, 3534, 4360, and 4860 of the Business and Professions Code, relating to regulatory boards.~~ *An act to amend Section 156.1 of, and to add Sections 315.2, 315.4, and 315.6 to, the Business and Professions Code, relating to regulatory boards.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1172, as amended, Negrete McLeod. ~~Regulatory boards:~~ *boards: diversion programs.*

**Existing**

*(1) Existing law provides for the regulation of specified professions and vocations by various boards, as defined, within the Department of Consumer Affairs. The department is under the control of the Director of Consumer Affairs. Existing law authorizes the director to enter into contracts for and on behalf of any board within the department. Under existing law, individuals or entities contracting with the department or any board within the department for the provision of services relating to the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs are required to retain all records and documents pertaining to those services for 3 years or until they are audited, whichever occurs first. Under existing law, those records and documents are required to be kept confidential and are not subject to discovery or subpoena.*

~~This bill would make a technical, nonsubstantive change to that provision.~~

*This bill would specify that those records and documents shall be kept for 3 years and are not subject to discovery or subpoena unless otherwise expressly provided by law and would prohibit the licentiate from waiving confidentiality. The bill would require the department or board contracting for those services to have an audit conducted at least once every 3 years by a specified independent reviewer or review team, would require that reviewer or review team to prepare an audit report and to submit it to the Legislature, the department, and the board by June 30 every 3 years, with the first report due in 2013, and would require the department, the contract vendor, and the board to respond to the report, as specified.*

*(2) Existing law provides for the licensure and regulation of various healing arts by boards within the Department of Consumer Affairs. Under existing law, these boards are authorized to issue, deny, suspend, and revoke licenses based on various grounds and to take disciplinary action against their licensees.*

Existing law establishes diversion and recovery programs to identify and rehabilitate dentists, osteopathic physicians and surgeons, physical therapists, physical therapy assistants, registered nurses, physician assistants, pharmacists and intern pharmacists, veterinarians, and registered veterinary technicians whose competency may be impaired due to, among other things, alcohol and drug abuse.

~~This bill would, with respect to those programs, revise references to alcohol and drug abuse to include other substances.~~

*The bill would require a healing arts board to order a licensee to cease practice if the licensee tests positive for any prohibited substance under the terms of the licensee's probation or diversion program. The bill would also authorize a board to adopt regulations authorizing it to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation, as specified. Except as provided, the bill would prohibit a healing arts board from disclosing to the public that a licensee is participating in a board diversion program.*

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

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

1     *SECTION 1. Section 156.1 of the Business and Professions*  
2     *Code is amended to read:*

3     156.1. (a) Notwithstanding any other provision of law,  
4     individuals or entities contracting with the department or any board  
5     within the department for the provision of services relating to the  
6     treatment and rehabilitation of licentiates impaired by alcohol or  
7     dangerous drugs; shall retain all records and documents pertaining  
8     to those services until such time as these records and documents  
9     have been reviewed for audit ~~by the department pursuant to~~  
10    ~~subdivision (c).~~ These records and documents shall be retained for  
11    ~~a maximum of three years from the date of the last treatment or~~  
12    ~~service rendered to that licentiate, or until such time as the records~~  
13    ~~pertaining to treatment or services rendered to that licentiate are~~  
14    ~~audited, whichever occurs first,~~ after which time the records and  
15    documents may be purged and destroyed by the contract vendor.  
16    This provision shall supersede any other provision of law relating  
17    to the purging or destruction of records pertaining to those  
18    treatment and rehabilitation programs.

19    (b) ~~Notwithstanding any other provision of law, all~~ Unless  
20    ~~otherwise expressly provided by statute or regulation, all~~ records  
21    and documents pertaining to services for the treatment and  
22    rehabilitation of licentiates impaired by alcohol or dangerous drugs  
23    provided by any contract vendor to the department or to any board  
24    within the department shall be kept confidential and are not subject  
25    to discovery or subpoena. *A licentiate may not waive confidentiality*  
26    *pursuant to this subdivision.*

27    (c) (1) *An external independent audit of an individual or entity*  
28    *contracting with the department pursuant to subdivision (a) shall*  
29    *be conducted at least once every three years by a qualified,*  
30    *independent reviewer or review team from outside the department*  
31    *with no real or apparent conflict of interest with the contractor*  
32    *providing the services. The independent reviewer or review team*  
33    *shall be competent in the professional practice of internal auditing*  
34    *and assessment processes.*

35    (2) *The independent reviewer or review team shall prepare an*  
36    *audit report that assesses the contractor's performance in adhering*  
37    *to any standards established by the department or the board and*  
38    *shall submit that report to the Legislature, the department, and*

1 *the board by June 30 every three years, with the first report due*  
2 *in 2013. The audit report shall make findings and identify any*  
3 *material inadequacies, deficiencies, irregularities, or any other*  
4 *noncompliance with the terms of the contract.*

5 *(3) The department, contract vendor, and the board shall*  
6 *respond to the assessment and findings in the audit report prior*  
7 *to submission to the Legislature.*

8 *(e)*

9 *(d) With respect to all other contracts for services with the*  
10 *department or any board within the department other than those*  
11 *set forth in subdivision (a), the director or chief deputy director*  
12 *may request an examination and audit by the department's internal*  
13 *auditor of all performance under the contract. For this purpose, all*  
14 *documents and records of the contract vendor in connection with*  
15 *such performance shall be retained by such vendor for a period of*  
16 *three years after final payment under the contract. Nothing in this*  
17 *section shall affect the authority of the State Auditor to conduct*  
18 *any examination or audit under the terms of Section 8546.7 of the*  
19 *Government Code.*

20 *SEC. 2. Section 315.2 is added to the Business and Professions*  
21 *Code, to read:*

22 *315.2. (a) A board, as described in Section 315, shall order*  
23 *a licensee of the board to cease practice if the licensee tests positive*  
24 *for any substance that is prohibited under the terms of the*  
25 *licensee's probation or diversion program.*

26 *(b) An order to cease practice under this section shall not be*  
27 *governed by the provisions of Chapter 5 (commencing with Section*  
28 *11500) of Part 1 of Division 3 of Title 2 of the Government Code.*

29 *(c) A cease practice order under this section shall not constitute*  
30 *disciplinary action.*

31 *(d) A licensee may petition to return to practice pursuant to the*  
32 *uniform and specific standards adopted and authorized under*  
33 *Section 315.*

34 *SEC. 3. Section 315.4 is added to the Business and Professions*  
35 *Code, to read:*

36 *315.4. (a) A board, as described in Section 315, may adopt*  
37 *regulations authorizing the board to order a licensee on probation*  
38 *or in a diversion program to cease practice for major violations*  
39 *and when the board orders a licensee to undergo a clinical*

1 *diagnostic evaluation pursuant to the uniform and specific*  
2 *standards adopted and authorized under Section 315.*

3 (b) *An order to cease practice under this section shall not be*  
4 *governed by the provisions of Chapter 5 (commencing with Section*  
5 *11500) of Part 1 of Division 3 of Title 2 of the Government Code.*

6 (c) *A cease practice order under this section shall not constitute*  
7 *disciplinary action.*

8 (d) *The regulations shall also include provisions for a licensee*  
9 *to petition to return to practice pursuant to the uniform and specific*  
10 *standards adopted and authorized under Section 315.*

11 **SEC. 4.** *Section 315.6 is added to the Business and Professions*  
12 *Code, to read:*

13 *315.6. Unless otherwise authorized by statute or regulation,*  
14 *a board, as described in Section 315, shall not disclose to the*  
15 *public that a licensee is participating in a board diversion program*  
16 *unless participation was ordered as a term of probation. However,*  
17 *a board shall disclose to the public any restrictions that are placed*  
18 *on a licensee's practice as a result of the licensee's participation*  
19 *in a board diversion program provided that the disclosure does*  
20 *not contain information linking the restriction to the licensee's*  
21 *participation in the board's diversion program.*

22 **SECTION 1.** ~~Section 156 of the Business and Professions Code~~  
23 ~~is amended to read:~~

24 ~~156. (a) The director may, for the department and at the request~~  
25 ~~and with the consent of a board or bureau within the department~~  
26 ~~on whose behalf the contract is to be made, enter into contracts~~  
27 ~~pursuant to Chapter 3 (commencing with Section 11250) of Part~~  
28 ~~1 of Division 3 of Title 2 of the Government Code or Chapter 2~~  
29 ~~(commencing with Section 10290) of Part 2 of Division 2 of the~~  
30 ~~Public Contract Code for and on behalf of any board or bureau~~  
31 ~~within the department.~~

32 ~~(b) In accordance with subdivision (a), the director may, in his~~  
33 ~~or her discretion, negotiate and execute contracts for examination~~  
34 ~~purposes that include provisions that hold harmless a contractor~~  
35 ~~where liability resulting from a contract between a board in the~~  
36 ~~department and the contractor is traceable to the state or its officers,~~  
37 ~~agents, or employees.~~

38 **SEC. 2.** ~~Section 1695 of the Business and Professions Code is~~  
39 ~~amended to read:~~

1 1695. ~~It is the intent of the Legislature that the Dental Board~~  
2 ~~of California seek ways and means to identify and rehabilitate~~  
3 ~~licensees whose competency may be impaired due to abuse of~~  
4 ~~dangerous drugs or alcohol or other substances, so that licensees~~  
5 ~~so afflicted may be treated and returned to the practice of dentistry~~  
6 ~~in a manner that will not endanger the public health and safety. It~~  
7 ~~is also the intent of the Legislature that the Dental Board of~~  
8 ~~California shall implement this legislation in part by establishing~~  
9 ~~a diversion program as a voluntary alternative approach to~~  
10 ~~traditional disciplinary actions.~~

11 ~~SEC. 3. Section 2360 of the Business and Professions Code is~~  
12 ~~amended to read:~~

13 ~~2360. It is the intent of the Legislature that the Osteopathic~~  
14 ~~Medical Board of California seek ways and means to identify and~~  
15 ~~rehabilitate osteopathic physicians and surgeons whose competency~~  
16 ~~may be impaired due to abuse of dangerous drugs or alcohol or~~  
17 ~~other substances, so that osteopathic physicians and surgeons so~~  
18 ~~afflicted may be treated and returned to the practice of medicine~~  
19 ~~in a manner that will not endanger the public health and safety. It~~  
20 ~~is also the intent of the Legislature that the Osteopathic Medical~~  
21 ~~Board of California shall implement this legislation by establishing~~  
22 ~~a diversion program as a voluntary alternative approach to~~  
23 ~~traditional disciplinary actions.~~

24 ~~SEC. 4. Section 2662 of the Business and Professions Code is~~  
25 ~~amended to read:~~

26 ~~2662. It is the intent of the Legislature that the board shall seek~~  
27 ~~ways and means to identify and rehabilitate physical therapists~~  
28 ~~and physical therapist assistants whose competency is impaired~~  
29 ~~due to abuse of dangerous drugs or alcohol or other substances so~~  
30 ~~that they may be treated and returned to the practice of physical~~  
31 ~~therapy in a manner that will not endanger the public health and~~  
32 ~~safety.~~

33 ~~SEC. 5. Section 2770 of the Business and Professions Code is~~  
34 ~~amended to read:~~

35 ~~2770. It is the intent of the Legislature that the Board of~~  
36 ~~Registered Nursing seek ways and means to identify and~~  
37 ~~rehabilitate registered nurses whose competency may be impaired~~  
38 ~~due to abuse of alcohol or drugs or other substances, or due to~~  
39 ~~mental illness so that registered nurses so afflicted may be~~  
40 ~~rehabilitated and returned to the practice of nursing in a manner~~

1 that will not endanger the public health and safety. It is also the  
2 intent of the Legislature that the Board of Registered Nursing shall  
3 implement this legislation by establishing a diversion program as  
4 a voluntary alternative to traditional disciplinary actions.

5 SEC. 6. Section 3534 of the Business and Professions Code is  
6 amended to read:

7 3534. (a) It is the intent of the Legislature that the examining  
8 committee shall seek ways and means to identify and rehabilitate  
9 physician assistants whose competency is impaired due to abuse  
10 of dangerous drugs or alcohol or other substances so that they may  
11 be treated and returned to the practice of medicine in a manner  
12 that will not endanger the public health and safety.

13 SEC. 7. Section 4360 of the Business and Professions Code is  
14 amended to read:

15 4360. The board shall operate a pharmacists recovery program  
16 to rehabilitate pharmacists and intern pharmacists whose  
17 competency may be impaired due to abuse of alcohol or other  
18 substances, drug use, or mental illness. The intent of the  
19 pharmacists recovery program is to return these pharmacists and  
20 intern pharmacists to the practice of pharmacy in a manner that  
21 will not endanger the public health and safety.

22 SEC. 8. Section 4860 of the Business and Professions Code is  
23 amended to read:

24 4860. It is the intent of the Legislature that the Veterinary  
25 Medical Board seek ways and means to identify and rehabilitate  
26 veterinarians and registered veterinary technicians with impairment  
27 due to abuse of dangerous drugs or alcohol or other substances,  
28 affecting competency so that veterinarians and registered veterinary  
29 technicians so afflicted may be treated and returned to the practice  
30 of veterinary medicine in a manner that will not endanger the public  
31 health and safety.