

AMENDED IN SENATE APRIL 24, 2013

AMENDED IN SENATE APRIL 16, 2013

**SENATE BILL**

**No. 304**

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**Introduced by Senator Price**  
(Principal coauthor: Assembly Member Gordon)

February 15, 2013

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An act to amend Sections 651, 2021, 2177, 2220.08, 2225.5, 2334, 2514, and 2569 of, and to add Sections 2291.5 and 2403 to, the Business and Professions Code, and to amend Sections ~~11529, 12529.6, 11529~~ and 12529.7 of, and to amend and repeal Sections 12529 and 12529.5 of, the Government Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 304, as amended, Price. Healing arts: boards.

Existing law makes it unlawful for a healing arts practitioner to disseminate, or cause to be disseminated, any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of, or likely to induce, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. Existing law provides for the licensure of physicians and surgeons by the Medical Board of California. Existing law prohibits a physician and surgeon's advertisements from including a statement that he or she is certified or eligible for certification by a private or public board or parent association, including a multidisciplinary board or association, as defined, unless that board or association meets at least one of several standards, including being a board or association with equivalent requirements approved by that physician and surgeon's licensing board. A violation of these requirements is a crime.

This bill would limit the application of that exception to a board or association with equivalent requirements approved by that physician and surgeon's licensing board prior to January 1, 2014. The bill would establish that the exception continues to apply to a multidisciplinary board or association approved by the Medical Board of California prior to January 1, 2014.

Because the bill would specify additional provisions regarding the advertising practices of healing art practitioners, the violation of which would be a crime, it would impose a state-mandated local program.

Existing law authorizes the Medical Board of California, if it publishes a directory, as specified, to require persons licensed, as specified, to furnish specified information to the board for purposes of compiling the directory.

This bill would require that an applicant and licensee who has an electronic mail address report to the board that electronic mail address no later than July 1, 2014. The bill would provide that the electronic mail address is to be considered confidential, as specified.

Existing law requires an applicant for a physician and surgeon's certificate to obtain a passing score on ~~step~~ *Step 3* of the United States Medical Licensing Examination with not more than 4 attempts, subject to an exception.

This bill would require an applicant to have obtained a passing score on all parts of that examination with not more than 4 attempts, subject to the exception.

Existing law requires that a complaint, with exceptions, received by the board determined to involve quality of care, before referral to a field office for further investigation, meet certain criteria.

This bill would expand the types of reports that are exempted from that requirement.

Existing law provides for a civil penalty of up to \$1,000 per day, as specified, to be imposed on a health care facility that fails to comply with a patient's medical record request, as specified, within 30 days.

This bill would shorten the time limit for compliance to 15 days for those health care facilities that have electronic health records.

Under existing law, if a healing arts ~~practitioner~~ *practitioner* may be unable to practice his or her profession safely due to mental or physical illness, ~~the his or her~~ licensing agency may order the ~~licentiate~~ *practitioner* to be examined by specified professionals.

This bill would require that a physician and surgeon's failure to comply with an order related to these examination requirements shall

result in the issuance of notification from the board to cease the practice of medicine immediately until the ordered examinations have been completed and would provide that continued failure to comply would be grounds for suspension or revocation of his or her certificate.

Existing law prohibits a party from bringing expert testimony in a matter brought by the board unless certain information is exchanged in written form with counsel for the other party, as specified, within 30 calendar days prior to the commencement of the hearing. Existing law provides that the information exchanged include a brief narrative statement of the testimony the expert is expected to bring.

This bill would instead require that information to be exchanged within 90 days from the filing of a notice of defense and would instead require the information to include a complete expert witness report.

Existing law establishes that corporations and other artificial legal entities have no professional rights, privileges, or powers.

This bill would provide that those provisions do not apply to physicians and surgeons enrolled in approved residency postgraduate training programs or fellowship programs.

Existing law, the Licensed Midwifery Practice Act of 1993, licenses and regulates licensed midwives by the Medical Board of California. Existing law specifies that a midwife student meeting certain conditions is not precluded from engaging in the practice of midwifery as part of his or her course of study, if certain conditions are met, including, that the student is under the supervision of a licensed midwife.

This bill would require that to engage in those practices, the student is to be enrolled and participating in a midwifery education program or enrolled in a program of supervised clinical training, as provided. The bill would add that the student is permitted to engage in those practices if he or she is under the supervision of a licensed nurse-midwife.

Existing law provides for the regulation of registered dispensing opticians by the Medical Board of California and requires that the powers and duties of the board in that regard be subject to review by the Joint Sunset Review Committee as if those provisions were scheduled to be repealed on January 1, 2014.

This bill would instead make the powers and duties of the board subject to review by the appropriate policy committees of the Legislature as if those provisions were scheduled to be repealed on January 1, 2018.

Existing law authorizes the administrative law judge of the Medical Quality Hearing Panel to issue an interim order related to licenses, as provided. Existing law requires that in all of those cases in which an

interim order is issued, and an accusation is not filed and served within 15 days of the date in which the parties to the hearing have submitted the matter, the order be dissolved.

This bill would extend the time in which the accusation must be filed and served to 30 days from the date on which the parties to the hearing submitted the matter.

Existing law establishes the Health Quality Enforcement Section within the Department of Justice to carry out certain duties. Existing law provides for the funding for the section, and for the appointment of a Senior Assistant Attorney General to the section to carry out specified duties. Existing law requires that all complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, or the Board of Psychology be made available to the Health Quality Enforcement Section. Existing law establishes the procedures for processing the complaints, assisting the boards or committees in establishing training programs for their staff, and for determining whether to bring a disciplinary proceeding against a licensee of the boards. Existing law provides for the repeal of those provisions, as provided, on January 1, 2014.

This bill would extend the operation of those provisions indefinitely.

Existing law establishes, *until January 1, 2014*, a vertical enforcement and prosecution model for cases before the Medical Board of California. ~~Existing law requires that a complaint referred to a district office of the board for investigation also be simultaneously and jointly assigned to an investigator and to the deputy attorney general in the Health and Quality Enforcement Section, as provided. Existing law provides for the repeal of those provisions, as provided, on January 1, 2014. Existing law California and requires the board to report to the Governor and Legislature on the vertical prosecution that model by March 1, 2012.~~

~~This bill would extend the operation of those provisions indefinitely and would extend the date that report is due to March 1, 2015.~~

*Existing law authorizes the Medical Board of California and the Dental Board of California to employ individuals who have the authority of peace officers to perform investigative services.*

*This bill would transfer all investigators employed by the Medical Board of California and their staff to the Department of Justice on January 1, 2014, and would provide that the transfer would not affect the status, position, or rights of those transferred. The bill would specify*

*that individuals performing investigations would retain their status as peace officers.*

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

1 fact that the photograph or image is of a model is a violation of  
2 subdivision (a). For purposes of this paragraph, a model is anyone  
3 other than an actual patient, who has undergone the procedure  
4 being advertised, of the licensee who is advertising for his or her  
5 services.

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

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

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

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

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

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

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

1 nature. In connection with price advertising, the price for each  
2 product or service shall be clearly identifiable. The price advertised  
3 for products shall include charges for any related professional  
4 services, including dispensing and fitting services, unless the  
5 advertisement specifically and clearly indicates otherwise.

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

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

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

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

23 (h) Advertising by any person so licensed may include the  
24 following:

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

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

28 (3) A statement of office hours regularly maintained by the  
29 practitioner.

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

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

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

1 (C) A physician and surgeon licensed under Chapter 5  
2 (commencing with Section 2000) by the Medical Board of  
3 California may include a statement that he or she limits his or her  
4 practice to specific fields, but shall not include a statement that he  
5 or she is certified or eligible for certification by a private or public  
6 board or parent association, unless that board or association is (i)  
7 an American Board of Medical Specialties member board, (ii) a  
8 board or association with equivalent requirements approved by  
9 that physician and surgeon's licensing board prior to January 1,  
10 2014, or (iii) a board or association with an Accreditation Council  
11 for Graduate Medical Education approved postgraduate training  
12 program that provides complete training in that specialty or  
13 subspecialty. A physician and surgeon licensed under Chapter 5  
14 (commencing with Section 2000) by the Medical Board of  
15 California who is certified by an organization other than a board  
16 or association referred to in clause (i), (ii), or (iii) shall not use the  
17 term "board certified" in reference to that certification, unless the  
18 physician and surgeon is also licensed under Chapter 4  
19 (commencing with Section 1600) and the use of the term "board  
20 certified" in reference to that certification is in accordance with  
21 subparagraph (A). A physician and surgeon licensed under Chapter  
22 5 (commencing with Section 2000) by the Medical Board of  
23 California who is certified by a board or association referred to in  
24 clause (i), (ii), or (iii) shall not use the term "board certified" unless  
25 the full name of the certifying board is also used and given  
26 comparable prominence with the term "board certified" in the  
27 statement.

28 A multidisciplinary board or association approved by the Medical  
29 Board of California prior to January 1, 2014, shall retain that  
30 approval.

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 prior to  
36 January 1, 2014, or an organization with an Accreditation Council  
37 for Graduate Medical Education approved postgraduate training  
38 program that provides complete training in a specialty or  
39 subspecialty.



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

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 California Board of Podiatric Medicine, for certifying doctors of  
29 podiatric medicine that is based on the applicant’s education,  
30 training, and experience. For purposes of the term “board certified,”  
31 as used in this subparagraph, the terms “board” and “association”  
32 mean an organization that is a Council on Podiatric Medical  
33 Education approved board, an organization with equivalent  
34 requirements approved by the California Board of Podiatric  
35 Medicine, or an organization with a Council on Podiatric Medical  
36 Education approved postgraduate training program that provides  
37 training in podiatric medicine and podiatric surgery.

38 The California Board of Podiatric Medicine shall adopt  
39 regulations to establish and collect a reasonable fee from each  
40 board or association applying for recognition pursuant to this

1 subparagraph, to be deposited in the State Treasury in the Podiatry  
2 Fund, pursuant to Section 2499. The fee shall not exceed the cost  
3 of administering this subparagraph.

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

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

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

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

12 (10) A statement of his or her affiliations with hospitals or  
13 clinics.

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

16 (12) A statement that the practitioner regularly accepts  
17 installment payments of fees.

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

20 (14) A statement of the manufacturer, designer, style, make,  
21 trade name, brand name, color, size, or type of commodities  
22 advertised.

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

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

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

31 (i) Each of the healing arts boards and examining committees  
32 within Division 2 shall adopt appropriate regulations to enforce  
33 this section in accordance with Chapter 3.5 (commencing with  
34 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
35 Code.

36 Each of the healing arts boards and committees and examining  
37 committees within Division 2 shall, by regulation, define those  
38 efficacious services to be advertised by businesses or professions  
39 under their jurisdiction for the purpose of determining whether  
40 advertisements are false or misleading. Until a definition for that

1 service has been issued, no advertisement for that service shall be  
2 disseminated. However, if a definition of a service has not been  
3 issued by a board or committee within 120 days of receipt of a  
4 request from a licensee, all those holding the license may advertise  
5 the service. Those boards and committees shall adopt or modify  
6 regulations defining what services may be advertised, the manner  
7 in which defined services may be advertised, and restricting  
8 advertising that would promote the inappropriate or excessive use  
9 of health services or commodities. A board or committee shall not,  
10 by regulation, unreasonably prevent truthful, nondeceptive price  
11 or otherwise lawful forms of advertising of services or  
12 commodities, by either outright prohibition or imposition of  
13 onerous disclosure requirements. However, any member of a board  
14 or committee acting in good faith in the adoption or enforcement  
15 of any regulation shall be deemed to be acting as an agent of the  
16 state.

17 (j) The Attorney General shall commence legal proceedings in  
18 the appropriate forum to enjoin advertisements disseminated or  
19 about to be disseminated in violation of this section and seek other  
20 appropriate relief to enforce this section. Notwithstanding any  
21 other provision of law, the costs of enforcing this section to the  
22 respective licensing boards or committees may be awarded against  
23 any licensee found to be in violation of any provision of this  
24 section. This shall not diminish the power of district attorneys,  
25 county counsels, or city attorneys pursuant to existing law to seek  
26 appropriate relief.

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

36 SEC. 2. Section 2021 of the Business and Professions Code is  
37 amended to read:

38 2021. (a) If the board publishes a directory pursuant to Section  
39 112, it may require persons licensed pursuant to this chapter to

1 furnish any information as it may deem necessary to enable it to  
2 compile the directory.

3 (b) Each licensee shall report to the board each and every change  
4 of address within 30 days after each change, giving both the old  
5 and new address. If an address reported to the board at the time of  
6 application for licensure or subsequently is a post office box, the  
7 applicant shall also provide the board with a street address. If  
8 another address is the licensee's address of record, he or she may  
9 request that the second address not be disclosed to the public.

10 (c) Each licensee shall report to the board each and every change  
11 of name within 30 days after each change, giving both the old and  
12 new names.

13 (d) Each applicant and licensee who has an electronic mail  
14 address shall report to the board that electronic mail address no  
15 later than July 1, 2014. The electronic mail address shall be  
16 considered confidential and not subject to public disclosure.

17 (e) The board shall annually send an electronic notice to each  
18 applicant and licensee that requests confirmation from the applicant  
19 or licensee that his or her electronic mail address is current.

20 SEC. 3. Section 2177 of the Business and Professions Code is  
21 amended to read:

22 2177. (a) A passing score is required for an entire examination  
23 or for each part of an examination, as established by resolution of  
24 the board.

25 (b) Applicants may elect to take the written examinations  
26 conducted or accepted by the board in separate parts.

27 (c) (1) An applicant shall have obtained a passing score on all  
28 parts of Step 3 of the United States Medical Licensing Examination  
29 within not more than four attempts in order to be eligible for a  
30 physician's and surgeon's certificate.

31 (2) Notwithstanding paragraph (1), an applicant who obtains  
32 a passing score on all parts of Step 3 of the United States Medical  
33 Licensing Examination in more than four attempts and who meets  
34 the requirements of Section 2135.5 shall be eligible to be  
35 considered for issuance of a physician's and surgeon's certificate.

36 SEC. 4. Section 2220.08 of the Business and Professions Code  
37 is amended to read:

38 2220.08. (a) Except for reports received by the board pursuant  
39 to Section 801.01 or 805 that may be treated as complaints by the  
40 board and new complaints relating to a physician and surgeon who

1 is the subject of a pending accusation or investigation or who is  
2 on probation, any complaint determined to involve quality of care,  
3 before referral to a field office for further investigation, shall meet  
4 the following criteria:

5 (1) It shall be reviewed by one or more medical experts with  
6 the pertinent education, training, and expertise to evaluate the  
7 specific standard of care issues raised by the complaint to determine  
8 if further field investigation is required.

9 (2) It shall include the review of the following, which shall be  
10 requested by the board:

11 (A) Relevant patient records.

12 (B) The statement or explanation of the care and treatment  
13 provided by the physician and surgeon.

14 (C) Any additional expert testimony or literature provided by  
15 the physician and surgeon.

16 (D) Any additional facts or information requested by the medical  
17 expert reviewers that may assist them in determining whether the  
18 care rendered constitutes a departure from the standard of care.

19 (b) If the board does not receive the information requested  
20 pursuant to paragraph (2) of subdivision (a) within 10 working  
21 days of requesting that information, the complaint may be reviewed  
22 by the medical experts and referred to a field office for  
23 investigation without the information.

24 (c) Nothing in this section shall impede the board's ability to  
25 seek and obtain an interim suspension order or other emergency  
26 relief.

27 SEC. 5. Section 2225.5 of the Business and Professions Code  
28 is amended to read:

29 2225.5. (a) (1) A licensee who fails or refuses to comply with  
30 a request for the certified medical records of a patient, that is  
31 accompanied by that patient's written authorization for release of  
32 records to the board, within 15 days of receiving the request and  
33 authorization, shall pay to the board a civil penalty of one thousand  
34 dollars (\$1,000) per day for each day that the documents have not  
35 been produced after the 15th day, up to ten thousand dollars  
36 (\$10,000), unless the licensee is unable to provide the documents  
37 within this time period for good cause.

38 (2) A health care facility shall comply with a request for the  
39 certified medical records of a patient that is accompanied by that  
40 patient's written authorization for release of records to the board

1 together with a notice citing this section and describing the  
2 penalties for failure to comply with this section. Failure to provide  
3 the authorizing patient's certified medical records to the board  
4 within 30 days of receiving the request, authorization, and notice  
5 shall subject the health care facility to a civil penalty, payable to  
6 the board, of up to one thousand dollars (\$1,000) per day for each  
7 day that the documents have not been produced after the 30th day,  
8 up to ten thousand dollars (\$10,000), unless the health care facility  
9 is unable to provide the documents within this time period for good  
10 cause. For health care facilities that have electronic health records,  
11 failure to provide the authorizing patient's certified medical records  
12 to the board within 15 days of receiving the request, authorization,  
13 and notice shall subject the health care facility to a civil penalty,  
14 payable to the board, of up to one thousand dollars (\$1,000) per  
15 day for each day that the documents have not been produced after  
16 the 15th day, up to ten thousand dollars (\$10,000), unless the health  
17 care facility is unable to provide the documents within this time  
18 period for good cause. This paragraph shall not require health care  
19 facilities to assist the board in obtaining the patient's authorization.  
20 The board shall pay the reasonable costs of copying the certified  
21 medical records.

22 (b) (1) A licensee who fails or refuses to comply with a court  
23 order, issued in the enforcement of a subpoena, mandating the  
24 release of records to the board shall pay to the board a civil penalty  
25 of one thousand dollars (\$1,000) per day for each day that the  
26 documents have not been produced after the date by which the  
27 court order requires the documents to be produced, up to ten  
28 thousand dollars (\$10,000), unless it is determined that the order  
29 is unlawful or invalid. Any statute of limitations applicable to the  
30 filing of an accusation by the board shall be tolled during the period  
31 the licensee is out of compliance with the court order and during  
32 any related appeals.

33 (2) Any licensee who fails or refuses to comply with a court  
34 order, issued in the enforcement of a subpoena, mandating the  
35 release of records to the board is guilty of a misdemeanor  
36 punishable by a fine payable to the board not to exceed five  
37 thousand dollars (\$5,000). The fine shall be added to the licensee's  
38 renewal fee if it is not paid by the next succeeding renewal date.  
39 Any statute of limitations applicable to the filing of an accusation

1 by the board shall be tolled during the period the licensee is out  
2 of compliance with the court order and during any related appeals.

3 (3) A health care facility that fails or refuses to comply with a  
4 court order, issued in the enforcement of a subpoena, mandating  
5 the release of patient records to the board, that is accompanied by  
6 a notice citing this section and describing the penalties for failure  
7 to comply with this section, shall pay to the board a civil penalty  
8 of up to one thousand dollars (\$1,000) per day for each day that  
9 the documents have not been produced, up to ten thousand dollars  
10 (\$10,000), after the date by which the court order requires the  
11 documents to be produced, unless it is determined that the order  
12 is unlawful or invalid. Any statute of limitations applicable to the  
13 filing of an accusation by the board against a licensee shall be  
14 tolled during the period the health care facility is out of compliance  
15 with the court order and during any related appeals.

16 (4) Any health care facility that fails or refuses to comply with  
17 a court order, issued in the enforcement of a subpoena, mandating  
18 the release of records to the board is guilty of a misdemeanor  
19 punishable by a fine payable to the board not to exceed five  
20 thousand dollars (\$5,000). Any statute of limitations applicable to  
21 the filing of an accusation by the board against a licensee shall be  
22 tolled during the period the health care facility is out of compliance  
23 with the court order and during any related appeals.

24 (c) Multiple acts by a licensee in violation of subdivision (b)  
25 shall be punishable by a fine not to exceed five thousand dollars  
26 (\$5,000) or by imprisonment in a county jail not exceeding six  
27 months, or by both that fine and imprisonment. Multiple acts by  
28 a health care facility in violation of subdivision (b) shall be  
29 punishable by a fine not to exceed five thousand dollars (\$5,000)  
30 and shall be reported to the State Department of Public Health and  
31 shall be considered as grounds for disciplinary action with respect  
32 to licensure, including suspension or revocation of the license or  
33 certificate.

34 (d) A failure or refusal of a licensee to comply with a court  
35 order, issued in the enforcement of a subpoena, mandating the  
36 release of records to the board constitutes unprofessional conduct  
37 and is grounds for suspension or revocation of his or her license.

38 (e) Imposition of the civil penalties authorized by this section  
39 shall be in accordance with the Administrative Procedure Act

1 (Chapter 5 (commencing with Section 11500) of Division 3 of  
2 Title 2 of the Government Code).

3 (f) For purposes of this section, “certified medical records”  
4 means a copy of the patient’s medical records authenticated by the  
5 licensee or health care facility, as appropriate, on a form prescribed  
6 by the board.

7 (g) For purposes of this section, a “health care facility” means  
8 a clinic or health facility licensed or exempt from licensure  
9 pursuant to Division 2 (commencing with Section 1200) of the  
10 Health and Safety Code.

11 SEC. 6. Section 2291.5 is added to the Business and Professions  
12 Code, to read:

13 2291.5. A physician and surgeon’s failure to comply with an  
14 order issued under Section 820 shall result in the issuance of  
15 notification from the board to cease the practice of medicine  
16 immediately upon the receipt of that notification. The physician  
17 and surgeon shall cease the practice of medicine until the ordered  
18 examinations have been completed. A physician and surgeon’s  
19 continued failure to comply with an order issued under Section  
20 820 shall constitute grounds for suspension or revocation of his  
21 or her certificate.

22 SEC. 7. Section 2334 of the Business and Professions Code is  
23 amended to read:

24 2334. (a) Notwithstanding any other provision of law, with  
25 respect to the use of expert testimony in matters brought by the  
26 Medical Board of California, no expert testimony shall be permitted  
27 by any party unless the following information is exchanged in  
28 written form with counsel for the other party within 90 days from  
29 the filing of a notice of defense:

30 (1) A curriculum vitae setting forth the qualifications of the  
31 expert.

32 (2) A complete expert witness report.

33 (3) A representation that the expert has agreed to testify at the  
34 hearing.

35 (4) A statement of the expert’s hourly and daily fee for providing  
36 testimony and for consulting with the party who retained his or  
37 her services.

38 (b) The Office of Administrative Hearings may adopt regulations  
39 governing the required exchange of the information described in  
40 this section.



1 SEC. 8. Section 2403 is added to the Business and Professions  
2 Code, to read:

3 2403. The provisions of Section 2400 do not apply to  
4 physicians and surgeons enrolled in approved residency  
5 postgraduate training programs or fellowship programs.

6 SEC. 9. Section 2514 of the Business and Professions Code is  
7 amended to read:

8 2514. (a) Nothing in this chapter shall be construed to prevent  
9 a bona fide student from engaging in the practice of midwifery in  
10 this state, as part of his or her course of study, if both of the  
11 following conditions are met:

12 (1) The student is under the supervision of a licensed midwife  
13 or certified nurse-midwife, who holds a clear and unrestricted  
14 license in this state, who is present on the premises at all times  
15 client services are provided, and who is practicing pursuant to  
16 Section 2507 or 2746.5, or a physician and surgeon.

17 (2) The client is informed of the student's status.

18 (b) For the purposes of this section, a "bona fide student" means  
19 an individual who is enrolled and participating in a midwifery  
20 education program or who is enrolled in a program of supervised  
21 clinical training as part of the instruction of a three year  
22 postsecondary midwifery education program approved by the  
23 board.

24 SEC. 10. Section 2569 of the Business and Professions Code  
25 is amended to read:

26 2569. Notwithstanding any other law, the powers and duties  
27 of the board, as set forth in this chapter, shall be subject to review  
28 by the appropriate policy committees of the Legislature. The review  
29 shall be performed as if this chapter were scheduled to be repealed  
30 as of January 1, 2018.

31 SEC. 11. Section 11529 of the Government Code is amended  
32 to read:

33 11529. (a) The administrative law judge of the Medical Quality  
34 Hearing Panel established pursuant to Section 11371 may issue  
35 an interim order suspending a license, or imposing drug testing,  
36 continuing education, supervision of procedures, or other license  
37 restrictions. Interim orders may be issued only if the affidavits in  
38 support of the petition show that the licensee has engaged in, or  
39 is about to engage in, acts or omissions constituting a violation of  
40 the Medical Practice Act or the appropriate practice act governing

1 each allied health profession, or is unable to practice safely due to  
2 a mental or physical condition, and that permitting the licensee to  
3 continue to engage in the profession for which the license was  
4 issued will endanger the public health, safety, or welfare.

5 (b) All orders authorized by this section shall be issued only  
6 after a hearing conducted pursuant to subdivision (d), unless it  
7 appears from the facts shown by affidavit that serious injury would  
8 result to the public before the matter can be heard on notice. Except  
9 as provided in subdivision (c), the licensee shall receive at least  
10 15 days' prior notice of the hearing, which notice shall include  
11 affidavits and all other information in support of the order.

12 (c) If an interim order is issued without notice, the administrative  
13 law judge who issued the order without notice shall cause the  
14 licensee to be notified of the order, including affidavits and all  
15 other information in support of the order by a 24-hour delivery  
16 service. That notice shall also include the date of the hearing on  
17 the order, which shall be conducted in accordance with the  
18 requirement of subdivision (d), not later than 20 days from the  
19 date of issuance. The order shall be dissolved unless the  
20 requirements of subdivision (a) are satisfied.

21 (d) For the purposes of the hearing conducted pursuant to this  
22 section, the licentiate shall, at a minimum, have the following  
23 rights:

- 24 (1) To be represented by counsel.
- 25 (2) To have a record made of the proceedings, copies of which  
26 may be obtained by the licentiate upon payment of any reasonable  
27 charges associated with the record.
- 28 (3) To present written evidence in the form of relevant  
29 declarations, affidavits, and documents.

30 The discretion of the administrative law judge to permit  
31 testimony at the hearing conducted pursuant to this section shall  
32 be identical to the discretion of a superior court judge to permit  
33 testimony at a hearing conducted pursuant to Section 527 of the  
34 Code of Civil Procedure.

- 35 (4) To present oral argument.

36 (e) Consistent with the burden and standards of proof applicable  
37 to a preliminary injunction entered under Section 527 of the Code  
38 of Civil Procedure, the administrative law judge shall grant the  
39 interim order where, in the exercise of discretion, the administrative  
40 law judge concludes that:

1 (1) There is a reasonable probability that the petitioner will  
2 prevail in the underlying action.

3 (2) The likelihood of injury to the public in not issuing the order  
4 outweighs the likelihood of injury to the licensee in issuing the  
5 order.

6 (f) In all cases where an interim order is issued, and an  
7 accusation is not filed and served pursuant to Sections 11503 and  
8 11505 within 30 days of the date in which the parties to the hearing  
9 on the interim order have submitted the matter, the order shall be  
10 dissolved.

11 Upon service of the accusation the licensee shall have, in addition  
12 to the rights granted by this section, all of the rights and privileges  
13 available as specified in this chapter. If the licensee requests a  
14 hearing on the accusation, the board shall provide the licensee with  
15 a hearing within 30 days of the request, unless the licensee  
16 stipulates to a later hearing, and a decision within 15 days of the  
17 date the decision is received from the administrative law judge, or  
18 the board shall nullify the interim order previously issued, unless  
19 good cause can be shown by the Division of Medical Quality for  
20 a delay.

21 (g) Where an interim order is issued, a written decision shall be  
22 prepared within 15 days of the hearing, by the administrative law  
23 judge, including findings of fact and a conclusion articulating the  
24 connection between the evidence produced at the hearing and the  
25 decision reached.

26 (h) Notwithstanding the fact that interim orders issued pursuant  
27 to this section are not issued after a hearing as otherwise required  
28 by this chapter, interim orders so issued shall be subject to judicial  
29 review pursuant to Section 1094.5 of the Code of Civil Procedure.  
30 The relief which may be ordered shall be limited to a stay of the  
31 interim order. Interim orders issued pursuant to this section are  
32 final interim orders and, if not dissolved pursuant to subdivision  
33 (c) or (f), may only be challenged administratively at the hearing  
34 on the accusation.

35 (i) The interim order provided for by this section shall be:

36 (1) In addition to, and not a limitation on, the authority to seek  
37 injunctive relief provided for in the Business and Professions Code.

38 (2) A limitation on the emergency decision procedure provided  
39 in Article 13 (commencing with Section 11460.10) of Chapter 4.5.

1 SEC. 12. Section 12529 of the Government Code, as amended  
2 by Section 112 of Chapter 332 of the Statutes of 2012, is amended  
3 to read:

4 12529. (a) There is in the Department of Justice the Health  
5 Quality Enforcement Section. The primary responsibility of the  
6 section is to investigate and prosecute proceedings against licensees  
7 and applicants within the jurisdiction of the Medical Board of  
8 California, the California Board of Podiatric Medicine, the Board  
9 of Psychology, or any committee under the jurisdiction of the  
10 Medical Board of California.

11 *(b) On January 1, 2014, all persons employed by the Medical*  
12 *Board of California who are performing investigations and those*  
13 *person's staff shall be transferred to, and shall become employees*  
14 *of, the Department of Justice. The status, position, and rights of*  
15 *those persons shall, upon transfer, be the same as employees of*  
16 *the Department of Justice holding similar positions, and for those*  
17 *persons transferred who are performing investigations shall*  
18 *include the status of peace officer provided for in Section 830.1*  
19 *of the Penal Code. Nothing in this section affects or diminishes*  
20 *the duty of the Medical Board of California to preserve the*  
21 *confidentiality of records as otherwise required by law. On and*  
22 *after January 1, 2014, any reference in this code to an investigation*  
23 *conducted by the Medical Board of California shall be deemed to*  
24 *refer to an investigation conducted by employees of the Department*  
25 *of Justice.*

26 ~~(b)~~

27 (c) The Attorney General shall appoint a Senior Assistant  
28 Attorney General of the Health Quality Enforcement Section. The  
29 Senior Assistant Attorney General of the Health Quality  
30 Enforcement Section shall be an attorney in good standing licensed  
31 to practice in the State of California, experienced in prosecutorial  
32 or administrative disciplinary proceedings and competent in the  
33 management and supervision of attorneys performing those  
34 functions.

35 ~~(e)~~

36 (d) The Attorney General shall ensure that the Health Quality  
37 Enforcement Section is staffed with a sufficient number of  
38 experienced and able employees that are capable of handling the  
39 most complex and varied types of disciplinary actions against the  
40 licensees of the board.

1     ~~(d)~~

2     (e) Funding for the Health Quality Enforcement Section shall  
3 be budgeted in consultation with the Attorney General from the  
4 special funds financing the operations of the Medical Board of  
5 California, the California Board of Podiatric Medicine, the Board  
6 of Psychology, and the committees under the jurisdiction of the  
7 Medical Board of California, with the intent that the expenses be  
8 proportionally shared as to services rendered.

9     SEC. 13. Section 12529 of the Government Code, as amended  
10 by Section 113 of Chapter 332 of the Statutes of 2012, is repealed.

11     SEC. 14. Section 12529.5 of the Government Code, as amended  
12 by Section 114 of Chapter 332 of the Statutes of 2012, is amended  
13 to read:

14     12529.5. (a) All complaints or relevant information concerning  
15 licensees that are within the jurisdiction of the Medical Board of  
16 California, the California Board of Podiatric Medicine, or the  
17 Board of Psychology shall be made available to the Health Quality  
18 Enforcement Section.

19     (b) The Senior Assistant Attorney General of the Health Quality  
20 Enforcement Section shall assign attorneys to work on location at  
21 the intake unit of the boards described in subdivision (d) of Section  
22 12529 to assist in evaluating and screening complaints and to assist  
23 in developing uniform standards and procedures for processing  
24 complaints.

25     (c) The Senior Assistant Attorney General or his or her deputy  
26 attorneys general shall assist the boards or committees in designing  
27 and providing initial and in-service training programs for staff of  
28 the boards or committees, including, but not limited to, information  
29 collection and investigation.

30     (d) The determination to bring a disciplinary proceeding against  
31 a licensee of the boards shall be made by the executive officer of  
32 the boards or committees as appropriate in consultation with the  
33 senior assistant.

34     SEC. 15. Section 12529.5 of the Government Code, as amended  
35 by Section 115 of Chapter 332 of the Statutes of 2012, is repealed.

36     ~~SEC. 16. Section 12529.6 of the Government Code is amended~~  
37 ~~to read:~~

38     ~~12529.6. (a) The Legislature finds and declares that the~~  
39 ~~Medical Board of California, by ensuring the quality and safety~~  
40 ~~of medical care, performs one of the most critical functions of state~~

1 government. Because of the critical importance of the board's  
2 public health and safety function, the complexity of cases involving  
3 alleged misconduct by physicians and surgeons, and the evidentiary  
4 burden in the board's disciplinary cases, the Legislature finds and  
5 declares that using a vertical enforcement and prosecution model  
6 for those investigations is in the best interests of the people of  
7 California.

8 (b) Notwithstanding any other provision of law, as of January  
9 1, 2006, each complaint that is referred to a district office of the  
10 board for investigation shall be simultaneously and jointly assigned  
11 to an investigator and to the deputy attorney general in the Health  
12 Quality Enforcement Section responsible for prosecuting the case  
13 if the investigation results in the filing of an accusation. The joint  
14 assignment of the investigator and the deputy attorney general  
15 shall exist for the duration of the disciplinary matter. During the  
16 assignment, the investigator so assigned shall, under the direction  
17 but not the supervision of the deputy attorney general, be  
18 responsible for obtaining the evidence required to permit the  
19 Attorney General to advise the board on legal matters such as  
20 whether the board should file a formal accusation, dismiss the  
21 complaint for a lack of evidence required to meet the applicable  
22 burden of proof, or take other appropriate legal action.

23 (c) The Medical Board of California, the Department of  
24 Consumer Affairs, and the Office of the Attorney General shall,  
25 if necessary, enter into an interagency agreement to implement  
26 this section.

27 (d) This section does not affect the requirements of Section  
28 12529.5 as applied to the Medical Board of California where  
29 complaints that have not been assigned to a field office for  
30 investigation are concerned.

31 (e) It is the intent of the Legislature to enhance the vertical  
32 enforcement and prosecution model as set forth in subdivision (a).  
33 The Medical Board of California shall do all of the following:

34 (1) Increase its computer capabilities and compatibilities with  
35 the Health Quality Enforcement Section in order to share case  
36 information.

37 (2) Establish and implement a plan to locate its enforcement  
38 staff and the staff of the Health Quality Enforcement Section in  
39 the same offices, as appropriate, in order to carry out the intent of  
40 the vertical enforcement and prosecution model.

1 ~~(3) Establish and implement a plan to assist in team building~~  
2 ~~between its enforcement staff and the staff of the Health Quality~~  
3 ~~Enforcement Section in order to ensure a common and consistent~~  
4 ~~knowledge base.~~

5 ~~SEC. 17.~~

6 *SEC. 16.* Section 12529.7 of the Government Code is amended  
7 to read:

8 12529.7. By March 1, 2015, the Medical Board of California,  
9 in consultation with the Department of Justice and the Department  
10 of Consumer Affairs, shall report and make recommendations to  
11 the Governor and the Legislature on the vertical enforcement and  
12 prosecution model created under Section 12529.6.

13 ~~SEC. 18.~~

14 *SEC. 17.* No reimbursement is required by this act pursuant to  
15 Section 6 of Article XIII B of the California Constitution because  
16 the only costs that may be incurred by a local agency or school  
17 district will be incurred because this act creates a new crime or  
18 infraction, eliminates a crime or infraction, or changes the penalty  
19 for a crime or infraction, within the meaning of Section 17556 of  
20 the Government Code, or changes the definition of a crime within  
21 the meaning of Section 6 of Article XIII B of the California  
22 Constitution.