

AMENDED IN ASSEMBLY SEPTEMBER 6, 2013

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN ASSEMBLY JUNE 19, 2013

AMENDED IN ASSEMBLY JUNE 14, 2013

AMENDED IN SENATE APRIL 25, 2013

AMENDED IN SENATE APRIL 15, 2013

**SENATE BILL**

**No. 305**

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**Introduced by Senator Lieu**

(Principal coauthor: Assembly Member Gordon)

(Coauthor: Assembly Member Bonilla)

February 15, 2013

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An act to amend Sections 1000, 2450, 2450.3, 2530.2, 2531, 2531.06, 2531.75, 2532.6, 2533, 2570.19, 3010.5, 3014.6, 3046, 3056, 3057, 3110, 3685, 3686, 3710, 3716, and 3765 of, and to add ~~Section~~ *Sections* 144.5 and 3090.5 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 305, as amended, Lieu. Healing arts: boards.

(1) Existing law requires specified regulatory boards within the Department of Consumer Affairs to require an applicant for licensure to furnish to the board a full set of fingerprints in order to conduct a criminal history record check.

This bill would additionally authorize those boards to request and receive from a local or state agency certified records of all arrests and

convictions, certified records regarding probation, and any and all other related documentation needed to complete an applicant or licensee investigation and would authorize a local or state agency to provide those records to the board upon request.

(2) The Chiropractic Act, enacted by an initiative measure, provides for the licensure and regulation of chiropractors in this state by the State Board of Chiropractic Examiners. Existing law specifies that the law governing chiropractors is found in the act.

This bill would require that the powers and duties of the board, as provided, be subject to review by the appropriate policy committees of the Legislature as if these provisions were scheduled to be repealed on January 1, 2018. This bill would also make nonsubstantive changes to conform with the Governor's Reorganization Plan No. 2.

(3) Existing law, the Osteopathic Act, provides for the licensure and regulation of osteopathic physicians and surgeons by the Osteopathic Medical Board of California.

This bill would require that the powers and duties of the board, as provided, be subject to review by the appropriate policy committees of the Legislature. The bill would require that the review be performed as if these provisions were scheduled to be repealed as of January 1, 2018.

(4) Existing law, the Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act, provides for the licensure and regulation of speech-language pathologists, audiologists, and hearing aid dispensers by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board. The act authorizes the board to appoint an executive officer. Existing law repeals these provisions on January 1, 2014, and subjects the board to review by the Joint Committee on Boards, Commissions, and Consumer Protection.

This bill would extend the operation of these provisions until January 1, 2018, and provide that the repeal of these provisions subjects the board to review by the appropriate policy committees of the Legislature.

The Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act also authorizes the board to refuse to issue, or issue subject to terms and conditions, a license on specified grounds, including, among others, securing a license by fraud or deceit.

This bill would additionally authorize the board to refuse to issue, or issue subject to terms and conditions, a license for a violation of a term or condition of a probationary order of a license or a term or condition of a conditional license issued by the board, as provided. The bill would also delete an obsolete provision and make other technical changes.

(5) Existing law, the Occupational Therapy Practice Act, provides for the licensure and regulation of occupational therapists, as defined, by the California Board of Occupational Therapy. Existing law repeals those provisions on January 1, 2014, and subjects the board to review by the Joint Committee on Boards, Commissions, and Consumer Protection.

This bill would extend the operation of these provisions until January 1, 2018, and provide that the repeal of these provisions subjects the board to review by the appropriate policy committees of the Legislature.

(6) Existing law, the Naturopathic Doctors Act, until January 1, 2014, provides for the licensure and regulation of naturopathic doctors by the Naturopathic Medicine Committee within the Osteopathic Medical Board of California. Existing law also specifies that the repeal of the committee subjects it to review by the appropriate policy committees of the Legislature.

This bill would extend the operation of these provisions until January 1, 2018, and make conforming changes.

(7) Existing law, the Optometry Practice Act, provides for the licensure and regulation of optometrists by the State Board of Optometry. The Respiratory Care Act provides for the licensure and regulation of respiratory care practitioners by the Respiratory Care Board of California. Each of those acts authorizes the board to employ an executive officer. Existing law repeals these provisions on January 1, 2014, and subjects the boards to review by the Joint Committee on Boards, Commissions, and Consumer Protection.

This bill would extend the operation of these provisions until January 1, 2018, and provide that the repeal of these provisions subjects the boards to review by the appropriate policy committees of the Legislature.

*(8) The Optometry Practice Act prescribes license eligibility requirements, including, but not limited to, not having been convicted of a crime, as specified. The act defines unprofessional conduct to include, committing or soliciting an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of an optometrist. Under the act, the board may take action against a licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed an act of unprofessional conduct. Under existing law, commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional*

*conduct and grounds for disciplinary action against any healing arts licensee, subject to a specified exception for a physician and surgeon.*

*This bill would add to the license eligibility requirements under the act that the applicant is not currently required to register as a sex offender, as specified. The bill would make conviction of a crime that currently requires a licensee to register as a sex offender unprofessional conduct and would expressly specify that commission of an act of sexual abuse or misconduct, as specified, constitutes unprofessional conduct, subject to an exception for an optometrist treating his or her spouse or person in an equivalent domestic relationship. The bill would also state that those acts of unprofessional conduct shall be considered crimes substantially related to the qualifications, functions, or duties of a licensee. The bill would also expressly specify that the board may revoke a license if the licensee has been found, in an administrative proceeding, as specified, to have been convicted of sexual misconduct or convicted of a crime that currently requires the licensee to register as a sex offender.*

~~(8)~~

(9) The Respiratory Care Act also prohibits a person from engaging in the practice of respiratory care unless he or she is a licensed respiratory care practitioner. However, the act does not prohibit specified acts, including, among others, the performance of respiratory care services in case of an emergency or self-care by a patient.

This bill would additionally authorize the performance of pulmonary function testing by persons who are currently employed by Los Angeles County hospitals and have performed pulmonary function testing for at least 15 years.

This bill would make legislative findings and declarations as to the necessity of a special statute for the persons described above.

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

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

- 1 SECTION 1. Section 144.5 is added to the Business and
- 2 Professions Code, to read:
- 3 144.5. Notwithstanding any other law, a board described in
- 4 Section 144 may request, and is authorized to receive, from a local
- 5 or state agency certified records of all arrests and convictions,
- 6 certified records regarding probation, and any and all other related

1 documentation needed to complete an applicant or licensee  
2 investigation. A local or state agency may provide those records  
3 to the board upon request.

4 SEC. 2. Section 1000 of the Business and Professions Code is  
5 amended to read:

6 1000. (a) The law governing practitioners of chiropractic is  
7 found in an initiative act entitled “An act prescribing the terms  
8 upon which licenses may be issued to practitioners of chiropractic,  
9 creating the State Board of Chiropractic Examiners and declaring  
10 its powers and duties, prescribing penalties for violation hereof,  
11 and repealing all acts and parts of acts inconsistent herewith,”  
12 adopted by the electors November 7, 1922.

13 (b) The State Board of Chiropractic Examiners is within the  
14 Department of Consumer Affairs.

15 (c) Notwithstanding any other law, the powers and duties of the  
16 State Board of Chiropractic Examiners, as set forth in this article  
17 and under the act creating the board, shall be subject to review by  
18 the appropriate policy committees of the Legislature. The review  
19 shall be performed as if this chapter were scheduled to be repealed  
20 as of January 1, 2018.

21 SEC. 3. Section 2450 of the Business and Professions Code is  
22 amended to read:

23 2450. There is a Board of Osteopathic Examiners of the State  
24 of California, established by the Osteopathic Act, which shall be  
25 known as the Osteopathic Medical Board of California which  
26 enforces this chapter relating to persons holding or applying for  
27 physician’s and surgeon’s certificates issued by the Osteopathic  
28 Medical Board of California under the Osteopathic Act.

29 Persons who elect to practice using the term of suffix “M.D.,”  
30 as provided in Section 2275, shall not be subject to this article,  
31 and the Medical Board of California shall enforce the provisions  
32 of this chapter relating to persons who made the election.

33 Notwithstanding any other law, the powers and duties of the  
34 Osteopathic Medical Board of California, as set forth in this article  
35 and under the Osteopathic Act, shall be subject to review by the  
36 appropriate policy committees of the Legislature. The review shall  
37 be performed as if this chapter were scheduled to be repealed as  
38 of January 1, 2018.

39 SEC. 4. Section 2450.3 of the Business and Professions Code  
40 is amended to read:

1 2450.3. There is within the jurisdiction of the Osteopathic  
2 Medical Board of California a Naturopathic Medicine Committee  
3 authorized under the Naturopathic Doctors Act (Chapter 8.2  
4 (commencing with Section 3610)). This section shall become  
5 inoperative on January 1, 2018, and, as of that date is repealed,  
6 unless a later enacted statute that is enacted before January 1, 2018,  
7 deletes or extends that date. Notwithstanding any other provision  
8 of law, the repeal of this section renders the Naturopathic Medicine  
9 Committee subject to review by the appropriate policy committees  
10 of the Legislature.

11 SEC. 5. Section 2530.2 of the Business and Professions Code  
12 is amended to read:

13 2530.2. As used in this chapter, unless the context otherwise  
14 requires:

15 (a) “Board” means the Speech-Language Pathology and  
16 Audiology and Hearing Aid Dispensers Board.

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

21 (c) A “speech-language pathologist” is a person who practices  
22 speech-language pathology.

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

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

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

35 (3) Conducting hearing screenings.

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

39 (e) (1) Instrumental procedures referred to in subdivision (d)  
40 are the use of rigid and flexible endoscopes to observe the

1 pharyngeal and laryngeal areas of the throat in order to observe,  
2 collect data, and measure the parameters of communication and  
3 swallowing as well as to guide communication and swallowing  
4 assessment and therapy.

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

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

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

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

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

37 (2) The supervising speech-language pathologist employed or  
38 contracted for by a public school may hold a valid and current  
39 license issued by the board, a valid, current, and professional clear  
40 clinical or rehabilitative services credential in language, speech,

1 and hearing issued by the Commission on Teacher Credentialing,  
2 or other credential authorizing service in language, speech, and  
3 hearing issued by the Commission on Teacher Credentialing that  
4 is not issued on the basis of an emergency permit or waiver of  
5 requirements. For purposes of this paragraph, a “clear” credential  
6 is a credential that is not issued pursuant to a waiver or emergency  
7 permit and is as otherwise defined by the Commission on Teacher  
8 Credentialing. Nothing in this section referring to credentialed  
9 supervising speech-language pathologists expands existing  
10 exemptions from licensing pursuant to Section 2530.5.

11 (j) An “audiologist” is one who practices audiology.

12 (k) “The practice of audiology” means the application of  
13 principles, methods, and procedures of measurement, testing,  
14 appraisal, prediction, consultation, counseling, instruction related  
15 to auditory, vestibular, and related functions and the modification  
16 of communicative disorders involving speech, language, auditory  
17 behavior or other aberrant behavior resulting from auditory  
18 dysfunction; and the planning, directing, conducting, supervising,  
19 or participating in programs of identification of auditory disorders,  
20 hearing conservation, cerumen removal, aural habilitation, and  
21 rehabilitation, including, hearing aid recommendation and  
22 evaluation procedures including, but not limited to, specifying  
23 amplification requirements and evaluation of the results thereof,  
24 auditory training, and speech reading, and the selling of hearing  
25 aids.

26 (l) A “dispensing audiologist” is a person who is authorized to  
27 sell hearing aids pursuant to his or her audiology license.

28 (m) “Audiology aide” means any person meeting the minimum  
29 requirements established by the board. An audiology aide may not  
30 perform any function that constitutes the practice of audiology  
31 unless he or she is under the supervision of an audiologist. The  
32 board may by regulation exempt certain functions performed by  
33 an industrial audiology aide from supervision provided that his or  
34 her employer has established a set of procedures or protocols that  
35 the aide shall follow in performing these functions.

36 (n) “Medical board” means the Medical Board of California.

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

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

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

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

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

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

24 SEC. 6. Section 2531 of the Business and Professions Code is  
25 amended to read:

26 2531. (a) There is in the Department of Consumer Affairs the  
27 Speech-Language Pathology and Audiology and Hearing Aid  
28 Dispensers Board in which the enforcement and administration of  
29 this chapter are vested. The Speech-Language Pathology and  
30 Audiology and Hearing Aid Dispensers Board shall consist of nine  
31 members, three of whom shall be public members.

32 (b) This section shall remain in effect only until January 1, 2018,  
33 and as of that date is repealed, unless a later enacted statute, that  
34 is enacted before January 1, 2018, deletes or extends that date.  
35 Notwithstanding any other law, the repeal of this section renders  
36 the board subject to review by the appropriate policy committees  
37 of the Legislature.

38 SEC. 7. Section 2531.06 of the Business and Professions Code  
39 is amended to read:

1 2531.06. (a) The board is vested with the duties, powers,  
2 purposes, responsibilities, and jurisdiction over the licensing and  
3 regulation of hearing aid dispensers as provided under Article 8  
4 (commencing with Section 2538.10).

5 (b) In the performance of the duties and the exercise of the  
6 powers vested in the board under this chapter, the board may  
7 consult with hearing aid dispenser industry representatives.

8 (c) For the performance of the duties and the exercise of the  
9 powers vested in the board under this chapter, the board shall have  
10 possession and control of all records, papers, offices, equipment,  
11 supplies, or other property, real or personal, held for the benefit  
12 or use by the former Hearing Aid Dispensers Bureau.

13 (d) All regulations in Division 13.3 (commencing with Section  
14 1399.100) of Title 16 of the California Code of Regulations are  
15 continued in existence under the administration of the board until  
16 repealed by regulation.

17 SEC. 8. Section 2531.75 of the Business and Professions Code  
18 is amended to read:

19 2531.75. (a) The board may appoint a person exempt from  
20 civil service who shall be designated as an executive officer and  
21 who shall exercise the powers and perform the duties delegated  
22 by the board and vested in him or her by this chapter.

23 (b) This section shall remain in effect only until January 1, 2018,  
24 and as of that date is repealed, unless a later enacted statute, that  
25 is enacted before January 1, 2018, deletes or extends that date.

26 SEC. 9. Section 2532.6 of the Business and Professions Code  
27 is amended to read:

28 2532.6. (a) The Legislature recognizes that the education and  
29 experience requirements of this chapter constitute only minimal  
30 requirements to assure the public of professional competence. The  
31 Legislature encourages all professionals licensed and registered  
32 by the board under this chapter to regularly engage in continuing  
33 professional development and learning that is related and relevant  
34 to the professions of speech-language pathology and audiology.

35 (b) The board shall not renew any license or registration pursuant  
36 to this chapter unless the applicant certifies to the board that he or  
37 she has completed in the preceding two years not less than the  
38 minimum number of continuing professional development hours  
39 established by the board pursuant to subdivision (c) for the  
40 professional practice authorized by his or her license or registration.

1 (c) (1) The board shall prescribe the forms utilized for and the  
2 number of hours of required continuing professional development  
3 for persons licensed or registered under this chapter.

4 (2) The board shall have the right to audit the records of any  
5 applicant to verify the completion of the continuing professional  
6 development requirements.

7 (3) Applicants shall maintain records of completion of required  
8 continuing professional development coursework for a minimum  
9 of two years and shall make these records available to the board  
10 for auditing purposes upon request.

11 (d) The board shall establish exceptions from the continuing  
12 professional development requirements of this section for good  
13 cause as defined by the board.

14 (e) (1) The continuing professional development services shall  
15 be obtained from accredited institutions of higher learning,  
16 organizations approved as continuing education providers by either  
17 the American Speech-Language Hearing Association or the  
18 American Academy of Audiology, the California Medical  
19 Association's Institute for Medical Quality Continuing Medical  
20 Education Program, or other entities or organizations approved as  
21 continuing professional development providers by the board, in  
22 its discretion.

23 (2) No hours shall be credited for any course enrolled in by a  
24 licensee that has not first been approved and certified by the board,  
25 if the board has sufficient funding and staff resources to implement  
26 the approval and certification process.

27 (3) The continuing professional development services offered  
28 by these entities may, but are not required to, utilize pretesting and  
29 posttesting or other evaluation techniques to measure and  
30 demonstrate improved professional learning and competency.

31 (4) An accredited institution of higher learning, an organization  
32 approved as continuing education providers by either the American  
33 Speech-Language Hearing Association or the American Academy  
34 of Audiology, and the California Medical Association's Institute  
35 for Medical Quality Continuing Education Program shall be exempt  
36 from any application or registration fees that the board may charge  
37 for continuing education providers.

38 (5) Unless a course offered by entities listed in paragraph (4)  
39 meets the requirements established by the board, the course may

1 not be credited towards the continuing professional development  
2 requirements for license renewal.

3 (6) The licensee shall be responsible for obtaining the required  
4 course completion documents for courses offered by entities  
5 specified in paragraph (1).

6 (f) The board, by regulation, shall fund the administration of  
7 this section through professional development services provider  
8 and licensing fees to be deposited in the Speech-Language  
9 Pathology and Audiology Board Fund. The fees related to the  
10 administration of this section shall be sufficient to meet, but shall  
11 not exceed, the costs of administering the corresponding provisions  
12 of this section.

13 (g) The continuing professional development requirements  
14 adopted by the board shall comply with any guidelines for  
15 mandatory continuing education established by the Department of  
16 Consumer Affairs.

17 SEC. 10. Section 2533 of the Business and Professions Code  
18 is amended to read:

19 2533. The board may refuse to issue, or issue subject to terms  
20 and conditions, a license on the grounds specified in Section 480,  
21 or may suspend, revoke, or impose terms and conditions upon the  
22 license of any licensee for any of the following:

23 (a) Conviction of a crime substantially related to the  
24 qualifications, functions, and duties of a speech-language  
25 pathologist or audiologist or hearing aid dispenser, as the case may  
26 be. The record of the conviction shall be conclusive evidence  
27 thereof.

28 (b) Securing a license by fraud or deceit.

29 (c) (1) The use or administering to himself or herself of any  
30 controlled substance.

31 (2) The use of any of the dangerous drugs specified in Section  
32 4022, or of alcoholic beverages, to the extent or in a manner as to  
33 be dangerous or injurious to the licensee, to any other person, or  
34 to the public, or to the extent that the use impairs the ability of the  
35 licensee to practice speech-language pathology or audiology safely.

36 (3) More than one misdemeanor or any felony involving the  
37 use, consumption, or self-administration of any of the substances  
38 referred to in this section.

39 (4) Any combination of paragraph (1), (2), or (3).

1 The record of the conviction shall be conclusive evidence of  
2 unprofessional conduct.

3 (d) Advertising in violation of Section 17500. Advertising an  
4 academic degree that was not validly awarded or earned under the  
5 laws of this state or the applicable jurisdiction in which it was  
6 issued is deemed to constitute a violation of Section 17500.

7 (e) Committing a dishonest or fraudulent act that is substantially  
8 related to the qualifications, functions, or duties of a licensee.

9 (f) Incompetence, gross negligence, or repeated negligent acts.

10 (g) Other acts that have endangered or are likely to endanger  
11 the health, welfare, and safety of the public.

12 (h) Use by a hearing aid dispenser of the term “doctor” or  
13 “physician” or “clinic” or “audiologist,” or any derivation thereof,  
14 except as authorized by law.

15 (i) The use, or causing the use, of any advertising or promotional  
16 literature in a manner that has the capacity or tendency to mislead  
17 or deceive purchasers or prospective purchasers.

18 (j) Any cause that would be grounds for denial of an application  
19 for a license.

20 (k) Violation of Section 1689.6 or 1793.02 of the Civil Code.

21 (l) Violation of a term or condition of a probationary order of  
22 a license issued by the board pursuant to Chapter 5 (commencing  
23 with Section 11500) of Part 1 of Division 3 of Title 2 of the  
24 Government Code.

25 (m) Violation of a term or condition of a conditional license  
26 issued by the board pursuant to this section.

27 SEC. 11. Section 2570.19 of the Business and Professions  
28 Code is amended to read:

29 2570.19. (a) There is hereby created a California Board of  
30 Occupational Therapy, hereafter referred to as the board. The board  
31 shall enforce and administer this chapter.

32 (b) The members of the board shall consist of the following:

33 (1) Three occupational therapists who shall have practiced  
34 occupational therapy for five years.

35 (2) One occupational therapy assistant who shall have assisted  
36 in the practice of occupational therapy for five years.

37 (3) Three public members who shall not be licentiates of the  
38 board, of any other board under this division, or of any board  
39 referred to in Section 1000 or 3600.

1 (c) The Governor shall appoint the three occupational therapists  
2 and one occupational therapy assistant to be members of the board.  
3 The Governor, the Senate Committee on Rules, and the Speaker  
4 of the Assembly shall each appoint a public member. Not more  
5 than one member of the board shall be appointed from the full-time  
6 faculty of any university, college, or other educational institution.

7 (d) All members shall be residents of California at the time of  
8 their appointment. The occupational therapist and occupational  
9 therapy assistant members shall have been engaged in rendering  
10 occupational therapy services to the public, teaching, or research  
11 in occupational therapy for at least five years preceding their  
12 appointments.

13 (e) The public members may not be or have ever been  
14 occupational therapists or occupational therapy assistants or in  
15 training to become occupational therapists or occupational therapy  
16 assistants. The public members may not be related to, or have a  
17 household member who is, an occupational therapist or an  
18 occupational therapy assistant, and may not have had, within two  
19 years of the appointment, a substantial financial interest in a person  
20 regulated by the board.

21 (f) The Governor shall appoint two board members for a term  
22 of one year, two board members for a term of two years, and one  
23 board member for a term of three years. Appointments made  
24 thereafter shall be for four-year terms, but no person shall be  
25 appointed to serve more than two consecutive terms. Terms shall  
26 begin on the first day of the calendar year and end on the last day  
27 of the calendar year or until successors are appointed, except for  
28 the first appointed members who shall serve through the last  
29 calendar day of the year in which they are appointed, before  
30 commencing the terms prescribed by this section. Vacancies shall  
31 be filled by appointment for the unexpired term. The board shall  
32 annually elect one of its members as president.

33 (g) The board shall meet and hold at least one regular meeting  
34 annually in the Cities of Sacramento, Los Angeles, and San  
35 Francisco. The board may convene from time to time until its  
36 business is concluded. Special meetings of the board may be held  
37 at any time and place designated by the board.

38 (h) Notice of each meeting of the board shall be given in  
39 accordance with the Bagley-Keene Open Meeting Act (Article 9

1 (commencing with Section 11120) of Chapter 1 of Part 1 of  
2 Division 3 of Title 2 of the Government Code).

3 (i) Members of the board shall receive no compensation for  
4 their services, but shall be entitled to reasonable travel and other  
5 expenses incurred in the execution of their powers and duties in  
6 accordance with Section 103.

7 (j) The appointing power shall have the power to remove any  
8 member of the board from office for neglect of any duty imposed  
9 by state law, for incompetency, or for unprofessional or  
10 dishonorable conduct.

11 (k) This section shall remain in effect only until January 1, 2018,  
12 and as of that date is repealed, unless a later enacted statute, that  
13 is enacted before January 1, 2018, deletes or extends that date.  
14 Notwithstanding any other law, the repeal of this section renders  
15 the board subject to review by the appropriate policy committees  
16 of the Legislature.

17 SEC. 12. Section 3010.5 of the Business and Professions Code  
18 is amended to read:

19 3010.5. (a) There is in the Department of Consumer Affairs  
20 a State Board of Optometry in which the enforcement of this  
21 chapter is vested. The board consists of 11 members, five of whom  
22 shall be public members.

23 Six members of the board shall constitute a quorum.

24 (b) The board shall, with respect to conducting investigations,  
25 inquiries, and disciplinary actions and proceedings, have the  
26 authority previously vested in the board as created pursuant to  
27 Section 3010. The board may enforce any disciplinary actions  
28 undertaken by that board.

29 (c) This section shall remain in effect only until January 1, 2018,  
30 and as of that date is repealed, unless a later enacted statute, that  
31 is enacted before January 1, 2018, deletes or extends that date.  
32 Notwithstanding any other law, the repeal of this section renders  
33 the board subject to review by the appropriate policy committees  
34 of the Legislature.

35 SEC. 13. Section 3014.6 of the Business and Professions Code  
36 is amended to read:

37 3014.6. (a) The board may appoint a person exempt from civil  
38 service who shall be designated as an executive officer and who  
39 shall exercise the powers and perform the duties delegated by the  
40 board and vested in him or her by this chapter.

1 (b) This section shall remain in effect only until January 1, 2018,  
2 and as of that date is repealed, unless a later enacted statute, that  
3 is enacted before January 1, 2018, deletes or extends that date.

4 *SEC. 14. Section 3046 of the Business and Professions Code*  
5 *is amended to read:*

6 3046. In order to obtain a license to practice optometry in  
7 California, an applicant shall have graduated from an accredited  
8 school of optometry, passed the required examinations for  
9 licensure, ~~and~~ not have met any of the grounds for denial  
10 established in Section 480, *and not be currently required to register*  
11 *as a sex offender pursuant to Section 290 of the Penal Code.* The  
12 proceedings under this section shall be in accordance with Chapter  
13 5 (commencing with Section 11500) of Part 1 of Division 3 of  
14 Title 2 of the Government Code.

15 *SEC. 15. Section 3056 of the Business and Professions Code*  
16 *is amended to read:*

17 3056. (a) The board may issue a license to practice optometry  
18 to a person who meets all of the following qualifications:

19 (1) Has a degree as a doctor of optometry issued by an accredited  
20 school or college of optometry.

21 (2) Is currently licensed in another state.

22 (3) Is currently a full-time faculty member of an accredited  
23 California school or college of optometry and has served in that  
24 capacity for a period of at least five continuous years.

25 (4) Has attained, at an accredited California school or college  
26 of optometry, the academic rank of professor, associate professor,  
27 or clinical professor, except that the status of adjunct or affiliated  
28 faculty member shall not be deemed sufficient.

29 (5) Has successfully passed the board's jurisprudence  
30 examination.

31 (6) Is in good standing, with no past or pending malpractice  
32 awards or judicial or administrative actions.

33 (7) Has met the minimum continuing education requirements  
34 set forth in Section 3059 for the current and preceding year.

35 (8) Has met the requirements of Section 3041.3 regarding the  
36 use of therapeutic pharmaceutical agents under subdivision (e) of  
37 Section 3041.

38 (9) Has never had his or her license to practice optometry  
39 revoked or suspended.

1 (10) (A) Is not subject to denial based on any of the grounds  
2 listed in Section 480.

3 (B) *Is not currently required to register as a sex offender*  
4 *pursuant to Section 290 of the Penal Code.*

5 (11) Pays an application fee in an amount equal to the  
6 application fee prescribed by the board pursuant to Section 3152.

7 (12) Files an application on a form prescribed by the board.

8 (b) Any license issued pursuant to this section shall expire as  
9 provided in Section 3146, and may be renewed as provided in this  
10 chapter, subject to the same conditions as other licenses issued  
11 under this chapter.

12 (c) The term “in good standing,” as used in this section, means  
13 that a person under this section:

14 (1) Is not currently under investigation nor has been charged  
15 with an offense for any act substantially related to the practice of  
16 optometry by any public agency, nor entered into any consent  
17 agreement or subject to an administrative decision that contains  
18 conditions placed by an agency upon a person’s professional  
19 conduct or practice, including any voluntary surrender of license,  
20 nor been the subject of an adverse judgment resulting from the  
21 practice of optometry that the board determines constitutes  
22 evidence of a pattern of incompetence or negligence.

23 (2) Has no physical or mental impairment related to drugs or  
24 alcohol, and has not been found mentally incompetent by a  
25 physician so that the person is unable to undertake the practice of  
26 optometry in a manner consistent with the safety of a patient or  
27 the public.

28 *SEC. 16. Section 3057 of the Business and Professions Code*  
29 *is amended to read:*

30 3057. (a) The board may issue a license to practice optometry  
31 to a person who meets all of the following requirements:

32 (1) Has a degree as a doctor of optometry issued by an accredited  
33 school or college of optometry.

34 (2) Has successfully passed the licensing examination for an  
35 optometric license in another state.

36 (3) Submits proof that he or she is licensed in good standing as  
37 of the date of application in every state where he or she holds a  
38 license, including compliance with continuing education  
39 requirements.

1 (4) Submits proof that he or she has been in active practice in  
2 a state in which he or she is licensed for a total of at least 5,000  
3 hours in five of the seven consecutive years immediately preceding  
4 the date of his or her application under this section.

5 (5) Is not subject to disciplinary action as set forth in subdivision  
6 (h) of Section 3110. If the person has been subject to disciplinary  
7 action, the board shall review that action to determine if it presents  
8 sufficient evidence of a violation of this chapter to warrant the  
9 submission of additional information from the person or the denial  
10 of the application for licensure.

11 (6) Has furnished a signed release allowing the disclosure of  
12 information from the Healthcare Integrity and Protection Data  
13 Bank and, if applicable, the verification of registration status with  
14 the federal Drug Enforcement Administration. The board shall  
15 review this information to determine if it presents sufficient  
16 evidence of a violation of this chapter to warrant the submission  
17 of additional information from the person or the denial of the  
18 application for licensure.

19 (7) Has never had his or her license to practice optometry  
20 revoked or suspended.

21 (8) (A) Is not subject to denial of an application for licensure  
22 based on any of the grounds listed in Section 480.

23 (B) *Is not currently required to register as a sex offender*  
24 *pursuant to Section 290 of the Penal Code.*

25 (9) Has met the minimum continuing education requirements  
26 set forth in Section 3059 for the current and preceding year.

27 (10) Has met the certification requirements of Section 3041.3  
28 to use therapeutic pharmaceutical agents under subdivision (e) of  
29 Section 3041.

30 (11) Submits any other information as specified by the board  
31 to the extent it is required for licensure by examination under this  
32 chapter.

33 (12) Files an application on a form prescribed by the board,  
34 with an acknowledgment by the person executed under penalty of  
35 perjury and automatic forfeiture of license, of the following:

36 (A) That the information provided by the person to the board  
37 is true and correct, to the best of his or her knowledge and belief.

38 (B) That the person has not been convicted of an offense  
39 involving conduct that would violate Section 810.

1 (13) Pays an application fee in an amount equal to the  
2 application fee prescribed pursuant to subdivision (a) of Section  
3 3152.

4 (14) Has successfully passed the board’s jurisprudence  
5 examination.

6 (b) If the board finds that the competency of a candidate for  
7 licensure pursuant to this section is in question, the board may  
8 require the passage of a written, practical, or clinical exam or  
9 completion of additional continuing education or coursework.

10 (c) In cases where the person establishes, to the board’s  
11 satisfaction, that he or she has been displaced by a federally  
12 declared emergency and cannot relocate to his or her state of  
13 practice within a reasonable time without economic hardship, the  
14 board is authorized to do both of the following:

15 (1) Approve an application where the person’s time in active  
16 practice is less than that specified in paragraph (4) of subdivision  
17 (a), if a sufficient period in active practice can be verified by the  
18 board and all other requirements of subdivision (a) are satisfied  
19 by the person.

20 (2) Reduce or waive the fees required by paragraph (13) of  
21 subdivision (a).

22 (d) Any license issued pursuant to this section shall expire as  
23 provided in Section 3146, and may be renewed as provided in this  
24 chapter, subject to the same conditions as other licenses issued  
25 under this chapter.

26 (e) The term “in good standing,” as used in this section, means  
27 that a person under this section:

28 (1) Is not currently under investigation nor has been charged  
29 with an offense for any act substantially related to the practice of  
30 optometry by any public agency, nor entered into any consent  
31 agreement or subject to an administrative decision that contains  
32 conditions placed by an agency upon a person’s professional  
33 conduct or practice, including any voluntary surrender of license,  
34 nor been the subject of an adverse judgment resulting from the  
35 practice of optometry that the board determines constitutes  
36 evidence of a pattern of incompetence or negligence.

37 (2) Has no physical or mental impairment related to drugs or  
38 alcohol, and has not been found mentally incompetent by a  
39 physician so that the person is unable to undertake the practice of

1 optometry in a manner consistent with the safety of a patient or  
2 the public.

3 *SEC. 17. Section 3090.5 is added to the Business and*  
4 *Professions Code, to read:*

5 *3090.5. The board may revoke a license issued to a licensee*  
6 *upon a decision, made in a proceeding as provided in Section*  
7 *3092, that contains a finding of fact of either of the following:*

8 (a) *The licensee has engaged in an act of sexual abuse,*  
9 *misconduct, or relations with a patient, as described in paragraph*  
10 *(2) of subdivision (m) of Section 3110.*

11 (b) *The licensee has been convicted of a crime described in*  
12 *paragraph (3) of subdivision (m) of Section 3110.*

13 *SEC. 18. Section 3110 of the Business and Professions Code*  
14 *is amended to read:*

15 3110. The board may take action against any licensee who is  
16 charged with unprofessional conduct, and may deny an application  
17 for a license if the applicant has committed unprofessional conduct.  
18 In addition to other provisions of this article, unprofessional  
19 conduct includes, but is not limited to, the following:

20 (a) Violating or attempting to violate, directly or indirectly  
21 assisting in or abetting the violation of, or conspiring to violate  
22 any provision of this chapter or any of the rules and regulations  
23 adopted by the board pursuant to this chapter.

24 (b) Gross negligence.

25 (c) Repeated negligent acts. To be repeated, there must be two  
26 or more negligent acts or omissions.

27 (d) Incompetence.

28 (e) The commission of fraud, misrepresentation, or any act  
29 involving dishonesty or corruption, that is substantially related to  
30 the qualifications, functions, or duties of an optometrist.

31 (f) Any action or conduct that would have warranted the denial  
32 of a license.

33 (g) The use of advertising relating to optometry that violates  
34 Section 651 or 17500.

35 (h) Denial of licensure, revocation, suspension, restriction, or  
36 any other disciplinary action against a health care professional  
37 license by another state or territory of the United States, by any  
38 other governmental agency, or by another California health care  
39 professional licensing board. A certified copy of the decision or  
40 judgment shall be conclusive evidence of that action.

1 (i) Procuring his or her license by fraud, misrepresentation, or  
2 mistake.

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

5 (k) Conviction of a felony or of any offense substantially related  
6 to the qualifications, functions, and duties of an optometrist, in  
7 which event the record of the conviction shall be conclusive  
8 evidence thereof.

9 (l) Administering to himself or herself any controlled substance  
10 or using any of the dangerous drugs specified in Section 4022, or  
11 using alcoholic beverages to the extent, or in a manner, as to be  
12 dangerous or injurious to the person applying for a license or  
13 holding a license under this chapter, or to any other person, or to  
14 the public, or, to the extent that the use impairs the ability of the  
15 person applying for or holding a license to conduct with safety to  
16 the public the practice authorized by the license, or the conviction  
17 of a misdemeanor or felony involving the use, consumption, or  
18 self administration of any of the substances referred to in this  
19 subdivision, or any combination thereof.

20 (m) (1) Committing or soliciting an act punishable as a sexually  
21 related crime, if that act or solicitation is substantially related to  
22 the qualifications, functions, or duties of an optometrist.

23 (2) *Committing any act of sexual abuse, misconduct, or relations*  
24 *with a patient. The commission of and conviction for any act of*  
25 *sexual abuse, sexual misconduct, or attempted sexual misconduct,*  
26 *whether or not with a patient, shall be considered a crime*  
27 *substantially related to the qualifications, functions, or duties of*  
28 *a licensee. This paragraph shall not apply to sexual contact*  
29 *between any person licensed under this chapter and his or her*  
30 *spouse or person in an equivalent domestic relationship when that*  
31 *licensee provides optometry treatment to his or her spouse or*  
32 *person in an equivalent domestic relationship.*

33 (3) *Conviction of a crime that currently requires the person to*  
34 *register as a sex offender pursuant to Section 290 of the Penal*  
35 *Code. A conviction within the meaning of this paragraph means*  
36 *a plea or verdict of guilty or a conviction following a plea of nolo*  
37 *contendere. A conviction described in this paragraph shall be*  
38 *considered a crime substantially related to the qualifications,*  
39 *functions, or duties of a licensee.*

- 1 (n) Repeated acts of excessive prescribing, furnishing or  
2 administering of controlled substances or dangerous drugs specified  
3 in Section 4022, or repeated acts of excessive treatment.
- 4 (o) Repeated acts of excessive use of diagnostic or therapeutic  
5 procedures, or repeated acts of excessive use of diagnostic or  
6 treatment facilities.
- 7 (p) The prescribing, furnishing, or administering of controlled  
8 substances or drugs specified in Section 4022, or treatment without  
9 a good faith prior examination of the patient and optometric reason.
- 10 (q) The failure to maintain adequate and accurate records  
11 relating to the provision of services to his or her patients.
- 12 (r) Performing, or holding oneself out as being able to perform,  
13 or offering to perform, any professional services beyond the scope  
14 of the license authorized by this chapter.
- 15 (s) The practice of optometry without a valid, unrevoked,  
16 unexpired license.
- 17 (t) The employing, directly or indirectly, of any suspended or  
18 unlicensed optometrist to perform any work for which an optometry  
19 license is required.
- 20 (u) Permitting another person to use the licensee's optometry  
21 license for any purpose.
- 22 (v) Altering with fraudulent intent a license issued by the board,  
23 or using a fraudulently altered license, permit certification or any  
24 registration issued by the board.
- 25 (w) Except for good cause, the knowing failure to protect  
26 patients by failing to follow infection control guidelines of the  
27 board, thereby risking transmission of blood borne infectious  
28 diseases from optometrist to patient, from patient to patient, or  
29 from patient to optometrist. In administering this subdivision, the  
30 board shall consider the standards, regulations, and guidelines of  
31 the State Department of Health Services developed pursuant to  
32 Section 1250.11 of the Health and Safety Code and the standards,  
33 guidelines, and regulations pursuant to the California Occupational  
34 Safety and Health Act of 1973 (Part 1 (commencing with Section  
35 6300) of Division 5 of the Labor Code) for preventing the  
36 transmission of HIV, hepatitis B, and other blood borne pathogens  
37 in health care settings. As necessary, the board may consult with  
38 the Medical Board of California, the Board of Podiatric Medicine,  
39 the Board of Registered Nursing, and the Board of Vocational

1 Nursing and Psychiatric Technicians, to encourage appropriate  
2 consistency in the implementation of this subdivision.

3 (x) Failure or refusal to comply with a request for the clinical  
4 records of a patient, that is accompanied by that patient’s written  
5 authorization for release of records to the board, within 15 days  
6 of receiving the request and authorization, unless the licensee is  
7 unable to provide the documents within this time period for good  
8 cause.

9 (y) Failure to refer a patient to an appropriate physician in either  
10 of the following circumstances:

11 (1) Where an examination of the eyes indicates a substantial  
12 likelihood of any pathology that requires the attention of that  
13 physician.

14 (2) As required by subdivision (c) of Section 3041.

15 ~~SEC. 14.~~

16 *SEC. 19.* Section 3685 of the Business and Professions Code  
17 is amended to read:

18 3685. Notwithstanding any other law, the repeal of this chapter  
19 renders the committee subject to review by the appropriate policy  
20 committees of the Legislature.

21 ~~SEC. 15.~~

22 *SEC. 20.* Section 3686 of the Business and Professions Code  
23 is amended to read:

24 3686. This chapter shall remain in effect only until January 1,  
25 2018, and as of that date is repealed, unless a later enacted statute,  
26 that is enacted before January 1, 2018, deletes or extends that date.

27 ~~SEC. 16.~~

28 *SEC. 21.* Section 3710 of the Business and Professions Code  
29 is amended to read:

30 3710. (a) The Respiratory Care Board of California, hereafter  
31 referred to as the board, shall enforce and administer this chapter.

32 (b) This section shall remain in effect only until January 1, 2018,  
33 and as of that date is repealed, unless a later enacted statute, that  
34 is enacted before January 1, 2018, deletes or extends that date.  
35 Notwithstanding any other law, the repeal of this section renders  
36 the board subject to review by the appropriate policy committees  
37 of the Legislature.

38 ~~SEC. 17.~~

39 *SEC. 22.* Section 3716 of the Business and Professions Code  
40 is amended to read:

1 3716. The board may employ an executive officer exempt from  
2 civil service and, subject to the provisions of law relating to civil  
3 service, clerical assistants and, except as provided in Section 159.5,  
4 other employees as it may deem necessary to carry out its powers  
5 and duties.

6 This section shall remain in effect only until January 1, 2018,  
7 and as of that date is repealed, unless a later enacted statute, that  
8 is enacted before January 1, 2018, deletes or extends that date.

9 ~~SEC. 18.~~

10 *SEC. 23.* Section 3765 of the Business and Professions Code  
11 is amended to read:

12 3765. This act does not prohibit any of the following activities:

13 (a) The performance of respiratory care that is an integral part  
14 of the program of study by students enrolled in approved  
15 respiratory therapy training programs.

16 (b) Self-care by the patient or the gratuitous care by a friend or  
17 member of the family who does not represent or hold himself or  
18 herself out to be a respiratory care practitioner licensed under the  
19 provisions of this chapter.

20 (c) The respiratory care practitioner from performing advances  
21 in the art and techniques of respiratory care learned through formal  
22 or specialized training.

23 (d) The performance of respiratory care in an emergency  
24 situation by paramedical personnel who have been formally trained  
25 in these modalities and are duly licensed under the provisions of  
26 an act pertaining to their specialty.

27 (e) Respiratory care services in case of an emergency.  
28 “Emergency,” as used in this subdivision, includes an epidemic  
29 or public disaster.

30 (f) Persons from engaging in cardiopulmonary research.

31 (g) Formally trained licensees and staff of child day care  
32 facilities from administering to a child inhaled medication as  
33 defined in Section 1596.798 of the Health and Safety Code.

34 (h) The performance by a person employed by a home medical  
35 device retail facility or by a home health agency licensed by the  
36 State Department of Public Health of specific, limited, and basic  
37 respiratory care or respiratory care related services that have been  
38 authorized by the board.

1 (i) The performance of pulmonary function testing by persons  
2 who are currently employed by Los Angeles County hospitals and  
3 have performed pulmonary function testing for at least 15 years.

4 ~~SEC. 19.~~

5 *SEC. 24.* The Legislature finds and declares that a special law,  
6 as set forth in Section 18 of this act, is necessary and that a general  
7 law cannot be made applicable within the meaning of Section 16  
8 of Article IV of the California Constitution because of the unique  
9 circumstances relating to persons who are currently employed by  
10 Los Angeles County hospitals and have performed pulmonary  
11 function testing for at least 15 years.

O