

Introduced by Senator Lara

February 20, 2014

An act to amend Section 494 of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1159, as introduced, Lara. Professions and vocations: license suspension or restriction.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, among other entities. Existing law authorizes a board or an administrative law judge to, upon petition, issue an interim order suspending a licensee or imposing license restrictions if the petition demonstrates that the licensee has engaged in specified violations of law or has been convicted of a crime related to the licensed activity and permitting the licensee to continue to practice would endanger the public.

This bill would make technical, nonsubstantive changes to that provision.

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

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

- 1 SECTION 1. Section 494 of the Business and Professions Code
- 2 is amended to read:
- 3 494. (a) A board or an administrative law judge sitting alone,
- 4 as provided in subdivision (h), may, upon petition, issue an interim
- 5 order suspending ~~any licensee~~ *a licensee* or imposing license

1 restrictions, including, but not limited to, mandatory biological
2 fluid testing, supervision, or remedial training. The petition shall
3 include affidavits that demonstrate, to the satisfaction of the board,
4 both of the following:

5 (1) The ~~licentiate~~ *licensee* has engaged in acts or omissions
6 constituting a violation of this code or has been convicted of a
7 crime substantially related to the licensed activity.

8 (2) Permitting the ~~licentiate~~ *licensee* to continue to engage in
9 the licensed activity, or permitting the ~~licentiate~~ *licensee* to
10 continue in the licensed activity without restrictions, would
11 endanger the public health, safety, or welfare.

12 (b) ~~No~~ An interim order provided for in this section shall *not* be
13 issued without notice to the ~~licentiate~~ *licensee* unless it appears
14 from the petition and supporting documents that serious injury
15 would result to the public before the matter could be heard on
16 notice.

17 (c) Except as provided in subdivision (b), the ~~licentiate~~ *licensee*
18 shall be given at least 15 days' notice of the hearing on the petition
19 for an interim order. The notice shall include documents submitted
20 to the board in support of the petition. If the order was initially
21 issued without notice as provided in subdivision (b), the ~~licentiate~~
22 *licensee* shall be entitled to a hearing on the petition within 20
23 days of the issuance of the interim order without notice. The
24 ~~licentiate~~ *licensee* shall be given notice of the hearing within two
25 days after issuance of the initial interim order, and shall receive
26 all documents in support of the petition. The failure of the board
27 to provide a hearing within 20 days following the issuance of the
28 interim order without notice, unless the ~~licentiate~~ *licensee* waives
29 his or her right to the hearing, shall result in the dissolution of the
30 interim order by operation of law.

31 (d) At the hearing on the petition for an interim order, the
32 ~~licentiate~~ *licensee* may *do all of the following*:

33 (1) Be represented by counsel.

34 (2) Have a record made of the proceedings, copies of which
35 shall be available to the ~~licentiate~~ *licensee* upon payment of costs
36 computed in accordance with the provisions for transcript costs
37 for judicial review contained in Section 11523 of the Government
38 Code.

39 (3) Present affidavits and other documentary evidence.

40 (4) Present oral argument.

1 (e) The board, or an administrative law judge sitting alone as
2 provided in subdivision (h), shall issue a decision on the petition
3 for interim order within five business days following submission
4 of the matter. The standard of proof required to obtain an interim
5 order pursuant to this section shall be a preponderance of the
6 evidence standard. If the interim order was previously issued
7 without notice, the board shall determine whether the order shall
8 remain in effect, be dissolved, or modified.

9 (f) The board shall file an accusation within 15 days of the
10 issuance of an interim order. In the case of an interim order issued
11 without notice, the time shall run from the date of the order issued
12 after the noticed hearing. If the ~~licentiate~~ *licensee* files a Notice
13 of Defense, the hearing shall be held within 30 days of the agency's
14 receipt of the Notice of Defense. A decision shall be rendered on
15 the accusation no later than 30 days after submission of the matter.
16 Failure to comply with any of the requirements in this subdivision
17 shall dissolve the interim order by operation of law.

18 (g) Interim orders shall be subject to judicial review pursuant
19 to Section 1094.5 of the Code of Civil Procedure and shall be heard
20 only in the superior court in and for the Counties of Sacramento,
21 San Francisco, Los Angeles, or San Diego. The review of an
22 interim order shall be limited to a determination of whether the
23 board abused its discretion in the issuance of the interim order.
24 Abuse of discretion is established if the respondent board has not
25 proceeded in the manner required by law, or if the court determines
26 that the interim order is not supported by substantial evidence in
27 light of the whole record.

28 (h) The board may, in its sole discretion, delegate the hearing
29 on ~~any~~ a petition for an interim order to an administrative law
30 judge in the Office of Administrative Hearings. If the board hears
31 the noticed petition itself, an administrative law judge shall preside
32 at the hearing, rule on the admission and exclusion of evidence,
33 and advise the board on matters of law. The board shall exercise
34 all other powers relating to the conduct of the hearing but may
35 delegate any or all of them to the administrative law judge. When
36 the petition has been delegated to an administrative law judge, he
37 or she shall sit alone and exercise all of the powers of the board
38 relating to the conduct of the hearing. A decision issued by an
39 administrative law judge sitting alone shall be final when it is filed
40 with the board. If the administrative law judge issues an interim

1 order without notice, he or she shall preside at the noticed hearing,
2 unless unavailable, in which case another administrative law judge
3 may hear the matter. The decision of the administrative law judge
4 sitting alone on the petition for an interim order is final, subject
5 only to judicial review in accordance with subdivision (g).

6 (i) Failure to comply with an interim order issued pursuant to
7 subdivision (a) or (b) shall constitute a separate cause for
8 disciplinary action against ~~any licensee~~ *a licensee*, and may be
9 heard at, and as a part of, the noticed hearing provided for in
10 subdivision (f). Allegations of noncompliance with the interim
11 order may be filed at any time prior to the rendering of a decision
12 on the accusation. Violation of the interim order is established
13 upon proof that the ~~licensee~~ *licensee* was on notice of the interim
14 order and its terms, and that the order was in effect at the time of
15 the violation. The finding of a violation of an interim order made
16 at the hearing on the accusation shall be reviewed as a part of any
17 review of a final decision of the agency.

18 If the interim order issued by the agency provides for anything
19 less than a complete suspension of the ~~licensee~~ *licensee* from his
20 or her business or profession, and the ~~licensee~~ *licensee* violates
21 the interim order prior to the hearing on the accusation provided
22 for in subdivision (f), the agency may, upon notice to the ~~licensee~~
23 *licensee* and proof of violation, modify or expand the interim order.

24 (j) A plea or verdict of guilty or a conviction after a plea of nolo
25 contendere is deemed to be a conviction within the meaning of
26 this section. A certified record of the conviction shall be conclusive
27 evidence of the fact that the conviction occurred. A board may
28 take action under this section notwithstanding the fact that an
29 appeal of the conviction may be taken.

30 (k) The interim orders provided for by this section shall be in
31 addition to, and not a limitation on, the authority to seek injunctive
32 relief provided in any other provision of law.

33 (l) In the case of a board, a petition for an interim order may be
34 filed by the executive officer. In the case of a bureau or program,
35 a petition may be filed by the chief or program administrator, as
36 the case may be.

37 (m) "Board," as used in this section, shall include any agency
38 described in Section 22, and any allied health agency within the
39 jurisdiction of the Medical Board of California. Board shall also
40 include the Osteopathic Medical Board of California and the State

- 1 Board of Chiropractic Examiners. The provisions of this section
- 2 shall not be applicable *apply* to the Medical Board of California,
- 3 the Board of Podiatric Medicine, or the State Athletic Commission.

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