

ASSEMBLY BILL

No. 2745

Introduced by Assembly Member Holden

February 19, 2016

An act to amend Sections 2088, 2225, 2441, 2519, 2520, 3576, and 3577 of, and to add Sections 2522, 2523, 3576.1, and 3576.2 to, the Business and Professions Code, relating to healing arts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2745, as introduced, Holden. Healing arts: licensing and certification.

(1) Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law authorizes an applicant for a physician's and surgeon's license who is otherwise eligible for a license but is unable to practice some aspects of medicine safely due to a disability to receive a limited license if the applicant pays the license renewal fee and signs an agreement agreeing to limit his or her practice in the manner prescribed by the reviewing physician and agreed to by the board. Existing law makes any person who knowingly provides false information in this agreement subject to any sanctions available to the board. Existing law authorizes the board to require the applicant to obtain an independent clinical evaluation of his or her ability to practice medicine safely as a condition of receiving the limited license. Violation of the act is a crime. Existing law establishes the Contingent Fund of the Medical Board of California, a continuously appropriated fund.

This bill would specify that a licensee who is otherwise eligible for a license but is unable to practice some aspects of medicine safely due

to a disability is authorized to receive the limited license if the above-described conditions are met. By adding fees for deposit into the Contingent Fund of the Medical Board of California, this bill would make an appropriation.

(2) Existing law authorizes a licensee who demonstrates that he or she is unable to practice medicine due to a disability to request a waiver of the license renewal fee. Under existing law, a licensee granted that waiver is prohibited from practicing medicine until he or she establishes that the disability no longer exists or signs an agreement, under penalty of perjury, agreeing to limit his or her practice in the manner prescribed by the reviewing physician.

This bill would require the board to agree to this limit, would authorize the board to require an independent clinical evaluation, and would subject a person who knowingly provides false information in the agreement to sanctions. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(3) Existing law authorizes the board, in any investigation that involves the death of a patient, to inspect and copy the medical records of the deceased patient without the authorization of the beneficiary or personal representative of the deceased patient or a court order solely to determine the extent to which the death was the result of the physician and surgeon's violation of the Medical Practice Act, if the board provides a written request to the physician and surgeon that includes a declaration that the board has been unsuccessful in locating or contacting the deceased patient's beneficiary or personal representative after reasonable efforts.

This bill would authorize the board to provide the written request to the facility where the medical records are located or the care to the deceased patient was provided.

(4) Existing law, the Licensed Midwifery Practice Act of 1993, provides for the licensing and regulation of midwives by the Board of Licensing of the Medical Board of California. Under the act, the board is authorized to suspend or revoke the license of a midwife for specified conduct, including unprofessional conduct consisting of, among other things, incompetence or gross negligence in carrying out the usual functions of a licensed midwife. A violation of the act is a crime.

This bill would authorize the board to place a license on probation and establish a fee for monitoring a licensee on probation. The bill would also authorize a person whose license has been voluntarily surrendered while under investigation or while charges are pending or

whose license has been suspended, revoked, or placed on probation to petition the board for reinstatement or modification of penalty, as specified. The bill would require the revocation of a license for a person required to register as a sex offender, except as specified.

(5) Existing law prohibits a person from using the title “certified polysomnographic technologist” or engaging in the practice of polysomnography unless he or she is registered as a certified polysomnographic technologist, is supervised and directed by a licensed physician and surgeon, and meets certain other requirements. Existing law requires polysomnographic technologists to apply to and register with the Medical Board of California and to pay specified fees to be fixed by the board at no more than \$100 each, and to renew their registration biennially for a fee of no more than \$150. Existing law requires the deposit of those fees in the Contingent Fund of the Medical Board of California. Existing law authorizes a registration to be suspended, revoked, or otherwise subject to discipline for specified conduct.

This bill would also authorize a registration to be placed on probation if a registrant engages in that conduct and would establish a fee for monitoring a registrant on probation. By increasing fees for deposit into the Contingent Fund, this bill would make an appropriation. The bill would authorize a person whose registration has been voluntarily surrendered while under investigation or while charges are pending or whose registration has been suspended, revoked, or placed on probation to petition the board for reinstatement or modification of penalty, as specified. The bill would require the revocation of a registration for a person required to register as a sex offender, except as specified.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 2088 of the Business and Professions
2 Code is amended to read:

1 2088. (a) An applicant for a physician's and surgeon's license
2 *or a physician's and surgeon's licensee* who is otherwise eligible
3 for that license but is unable to practice some aspects of medicine
4 safely due to a disability may receive a limited license if he or she
5 does both of the following:

6 (1) Pays the *appropriate* initial *or renewal* license fee.

7 (2) Signs an agreement on a form prescribed by the board in
8 which the applicant *or licensee* agrees to limit his or her practice
9 in the manner prescribed by the reviewing physician and agreed
10 to by the board.

11 (b) The board may require the applicant *or licensee* described
12 in subdivision (a) to obtain an independent clinical evaluation of
13 his or her ability to practice medicine safely as a condition of
14 receiving a limited license under this section.

15 (c) Any person who knowingly provides false information in
16 the agreement submitted pursuant to subdivision (a) shall be subject
17 to any sanctions available to the board.

18 SEC. 2. Section 2225 of the Business and Professions Code is
19 amended to read:

20 2225. (a) Notwithstanding Section 2263 and any other law
21 making a communication between a physician and surgeon or a
22 doctor of podiatric medicine and his or her patients a privileged
23 communication, those provisions shall not apply to investigations
24 or proceedings conducted under this chapter. Members of the
25 board, the Senior Assistant Attorney General of the Health Quality
26 Enforcement Section, members of the California Board of Podiatric
27 Medicine, and deputies, employees, agents, and representatives of
28 the board or the California Board of Podiatric Medicine and the
29 Senior Assistant Attorney General of the Health Quality
30 Enforcement Section shall keep in confidence during the course
31 of investigations, the names of any patients whose records are
32 reviewed and shall not disclose or reveal those names, except as
33 is necessary during the course of an investigation, unless and until
34 proceedings are instituted. The authority of the board or the
35 California Board of Podiatric Medicine and the Health Quality
36 Enforcement Section to examine records of patients in the office
37 of a physician and surgeon or a doctor of podiatric medicine is
38 limited to records of patients who have complained to the board
39 or the California Board of Podiatric Medicine about that licensee.

1 (b) Notwithstanding any other law, the Attorney General and
2 his or her investigative agents, and investigators and representatives
3 of the board or the California Board of Podiatric Medicine, may
4 inquire into any alleged violation of the Medical Practice Act or
5 any other federal or state law, regulation, or rule relevant to the
6 practice of medicine or podiatric medicine, whichever is applicable,
7 and may inspect documents relevant to those investigations in
8 accordance with the following procedures:

9 (1) Any document relevant to an investigation may be inspected,
10 and copies may be obtained, where patient consent is given.

11 (2) Any document relevant to the business operations of a
12 licensee, and not involving medical records attributable to
13 identifiable patients, may be inspected and copied if relevant to
14 an investigation of a licensee.

15 (c) (1) Notwithstanding subdivision (b) or any other law, in
16 any investigation that involves the death of a patient, the board
17 may inspect and copy the medical records of the deceased patient
18 without the authorization of the beneficiary or personal
19 representative of the deceased patient or a court order solely for
20 the purpose of determining the extent to which the death was the
21 result of the physician and surgeon's conduct in violation of the
22 Medical Practice Act, if the board provides a written request to
23 *either the physician and surgeon or the facility where the medical*
24 *records are located or the care to the deceased patient was*
25 *provided*, that includes a declaration that the board has been
26 unsuccessful in locating or contacting the deceased patient's
27 beneficiary or personal representative after reasonable efforts.
28 Nothing in this subdivision shall be construed to allow the board
29 to inspect and copy the medical records of a deceased patient
30 without a court order when the beneficiary or personal
31 representative of the deceased patient has been located and
32 contacted but has refused to consent to the board inspecting and
33 copying the medical records of the deceased patient.

34 (2) The Legislature finds and declares that the authority created
35 in the board pursuant to this section, and a physician and surgeon's
36 compliance with this section, are consistent with the public interest
37 and benefit activities of the federal Health Insurance Portability
38 and Accountability Act (HIPAA).

39 (d) In all cases in which documents are inspected or copies of
40 those documents are received, their acquisition or review shall be

1 arranged so as not to unnecessarily disrupt the medical and business
2 operations of the licensee or of the facility where the records are
3 kept or used.

4 (e) If documents are lawfully requested from licensees in
5 accordance with this section by the Attorney General or his or her
6 agents or deputies, or investigators of the board or the California
7 Board of Podiatric Medicine, the documents shall be provided
8 within 15 business days of receipt of the request, unless the licensee
9 is unable to provide the documents within this time period for good
10 cause, including, but not limited to, physical inability to access
11 the records in the time allowed due to illness or travel. Failure to
12 produce requested documents or copies thereof, after being
13 informed of the required deadline, shall constitute unprofessional
14 conduct. The board may use its authority to cite and fine a
15 physician and surgeon for any violation of this section. This remedy
16 is in addition to any other authority of the board to sanction a
17 licensee for a delay in producing requested records.

18 (f) Searches conducted of the office or medical facility of any
19 licensee shall not interfere with the recordkeeping format or
20 preservation needs of any licensee necessary for the lawful care
21 of patients.

22 SEC. 3. Section 2441 of the Business and Professions Code is
23 amended to read:

24 2441. (a) Any licensee who demonstrates to the satisfaction
25 of the board that he or she is unable to practice medicine due to a
26 disability may request a waiver of the license renewal fee. The
27 granting of a waiver shall be at the discretion of the board and may
28 be terminated at any time. Waivers shall be based on the inability
29 of a licensee to practice medicine. A licensee whose renewal fee
30 has been waived pursuant to this section shall not engage in the
31 practice of medicine unless and until the licensee pays the current
32 renewal fee and does either of the following:

33 (a)
34 (1) Establishes to the satisfaction of the board, on a form
35 prescribed by the board and signed under penalty of perjury, that
36 the licensee's disability either no longer exists or does not affect
37 his or her ability to practice medicine safely.

38 (b)
39 (2) Signs an agreement on a form prescribed by the board, signed
40 under penalty of perjury, in which the licensee agrees to limit his

1 or her practice in the manner prescribed by the reviewing physician.
2 *physician and agreed to by the board.*

3 (b) *The board may require the licensee described in paragraph*
4 *(2) of subdivision (a) to obtain an independent clinical evaluation*
5 *of his or her ability to practice medicine safely as a condition of*
6 *receiving a disability license under this section.*

7 (c) *Any person who knowingly provides false information in the*
8 *agreement submitted pursuant to paragraph (2) of subdivision (a)*
9 *shall be subject to any sanctions available to the board.*

10 SEC. 4. Section 2519 of the Business and Professions Code is
11 amended to read:

12 2519. The board may ~~suspend or revoke~~ *suspend, revoke, or*
13 *place on probation* the license of a midwife for any of the
14 following:

15 (a) Unprofessional conduct, which includes, but is not limited
16 to, all of the following:

17 (1) Incompetence or gross negligence in carrying out the usual
18 functions of a licensed midwife.

19 (2) Conviction of a violation of Section 2052, in which event,
20 the record of the conviction shall be conclusive evidence thereof.

21 (3) The use of advertising that is fraudulent or misleading.

22 (4) Obtaining or possessing in violation of law, or prescribing,
23 or except as directed by a licensed physician and surgeon, dentist,
24 or podiatrist administering to himself or herself, or furnishing or
25 administering to another, any controlled substance as defined in
26 Division 10 (commencing with Section 11000) of the Health and
27 Safety Code or any dangerous drug as defined in Article 8
28 (commencing with Section 4210) of Chapter 9 of Division 2 of
29 the Business and Professions Code.

30 (5) The use of any controlled substance as defined in Division
31 10 (commencing with Section 11000) of the Health and Safety
32 Code, or any dangerous drug as defined in Article 8 (commencing
33 with Section 4210) of Chapter 9 of Division 2 of the Business and
34 Professions Code, or alcoholic beverages, to an extent or in a
35 manner dangerous or injurious to himself or herself, any other
36 person, or the public or to the extent that ~~such~~ *this* use impairs his
37 or her ability to conduct with safety to the public the practice
38 authorized by his or her license.

39 (6) Conviction of a criminal offense involving the prescription,
40 consumption, or self-administration of any of the substances

1 described in paragraphs (4) and (5), or the possession of, or
2 falsification of, a record pertaining to, the substances described in
3 paragraph (4), in which event the record of the conviction is
4 conclusive evidence thereof.

5 (7) Commitment or confinement by a court of competent
6 jurisdiction for intemperate use of or addiction to the use of any
7 of the substances described in paragraphs (4) and (5), in which
8 event the court order of commitment or confinement is *prima facie*
9 evidence of such commitment or confinement.

10 (8) Falsifying, or making grossly incorrect, grossly inconsistent,
11 or unintelligible entries in any hospital, patient, or other record
12 pertaining to the substances described in subdivision (a).

13 (b) Procuring a license by fraud or misrepresentation.

14 (c) Conviction of a crime substantially related to the
15 qualifications, functions, and duties of a midwife, as determined
16 by the board.

17 (d) Procuring, aiding, abetting, attempting, agreeing to procure,
18 offering to procure, or assisting at, a criminal abortion.

19 (e) Violating or attempting to violate, directly or indirectly, or
20 assisting in or abetting the violation of, or conspiring to violate
21 any provision or term of this chapter.

22 (f) Making or giving any false statement or information in
23 connection with the application for issuance of a license.

24 (g) Impersonating any applicant or acting as proxy for an
25 applicant in any examination required under this chapter for the
26 issuance of a license or a certificate.

27 (h) Impersonating another licensed practitioner, or permitting
28 or allowing another person to use his or her license or certificate
29 for the purpose of providing midwifery services.

30 (i) Aiding or assisting, or agreeing to aid or assist any person
31 or persons, whether a licensed physician or not, in the performance
32 of or arranging for a violation of any of the provisions of Article
33 12 (commencing with Section 2221) of Chapter 5.

34 (j) Failing to do any of the following when required pursuant
35 to Section 2507:

36 (1) Consult with a physician and surgeon.

37 (2) Refer a client to a physician and surgeon.

38 (3) Transfer a client to a hospital.

39 SEC. 5. Section 2520 of the Business and Professions Code is
40 amended to read:

1 2520. (a) (1) The fee to be paid upon the filing of a license
2 application shall be fixed by the board at not less than seventy-five
3 dollars (\$75) nor more than three hundred dollars (\$300).

4 (2) The fee for renewal of the midwife license shall be fixed by
5 the board at not less than fifty dollars (\$50) nor more than two
6 hundred dollars (\$200).

7 (3) The delinquency fee for renewal of the midwife license shall
8 be 50 percent of the renewal fee in effect on the date of the renewal
9 of the license, but not less than twenty-five dollars (\$25) nor more
10 than fifty dollars (\$50).

11 (4) The fee for the examination shall be the cost of administering
12 the examination to the applicant, as determined by the organization
13 that has entered into a contract with the ~~Division of Licensing~~
14 *board* for the purposes set forth in subdivision (a) of Section
15 2512.5. Notwithstanding subdivision (b), (c), that fee may be
16 collected and retained by that organization.

17 (b) *The fee for monitoring a licensee on probation shall be the*
18 *cost of monitoring, as fixed by the board.*

19 ~~(b)~~

20 (c) The fees prescribed by this article shall be deposited in the
21 Licensed Midwifery Fund, which is hereby established, and shall
22 be available, upon appropriation, to the board for the purposes of
23 this article.

24 SEC. 6. Section 2522 is added to the Business and Professions
25 Code, to read:

26 2522. (a) A person whose license has been voluntarily
27 surrendered while under investigation or while charges are pending
28 or whose license has been revoked or suspended or placed on
29 probation, may petition the board for reinstatement or modification
30 of penalty, including modification or termination of probation.

31 (b) The person may file the petition after a period of not less
32 than the following minimum periods have elapsed from the
33 effective date of the surrender of the license or the decision
34 ordering that disciplinary action:

35 (1) At least three years for reinstatement of a license surrendered
36 or revoked for unprofessional conduct, except that the board may,
37 for good cause shown, specify in a revocation order that a petition
38 for reinstatement may be filed after two years.

39 (2) At least two years for early termination of probation of three
40 years or more.

1 (3) At least one year for modification of a condition, or
2 reinstatement of a license surrendered or revoked for mental or
3 physical illness, or termination of probation of less than three years.

4 (c) The petition shall state any facts as may be required by the
5 board. The petition shall be accompanied by at least two verified
6 recommendations from midwives licensed in any state who have
7 personal knowledge of the activities of the petitioner since the
8 disciplinary penalty was imposed.

9 (d) The petition may be heard by a panel of the board. The board
10 may assign the petition to an administrative law judge designated
11 in Section 11371 of the Government Code. After a hearing on the
12 petition, the administrative law judge shall provide a proposed
13 decision to the board, which shall be acted upon in accordance
14 with Section 2335.

15 (e) The panel of the board or the administrative law judge
16 hearing the petition may consider all activities of the petitioner
17 since the disciplinary action was taken, the offense for which the
18 petitioner was disciplined, the petitioner's activities during the
19 time the license was in good standing, and the petitioner's
20 rehabilitative efforts, general reputation for truth, and professional
21 ability. The hearing may be continued from time to time as the
22 administrative law judge designated in Section 11371 of the
23 Government Code finds necessary.

24 (f) The administrative law judge designated in Section 11371
25 of the Government Code reinstating a license or modifying a
26 penalty may recommend the imposition of any terms and conditions
27 deemed necessary.

28 (g) No petition shall be considered while the petitioner is under
29 sentence for any criminal offense, including any period during
30 which the petitioner is on court-imposed probation or parole. No
31 petition shall be considered while there is an accusation or petition
32 to revoke probation pending against the person. The board may
33 deny without a hearing or argument any petition filed pursuant to
34 this section within a period of two years from the effective date
35 of the prior decision following a hearing under this section.

36 SEC. 7. Section 2523 is added to the Business and Professions
37 Code, to read:

38 2523. (a) Except as provided in subdivisions (b) and (c), the
39 board shall revoke the license of any person who has been required

1 to register as a sex offender pursuant to Section 290 of the Penal
2 Code.

3 (b) This section shall not apply to a person who is required to
4 register as a sex offender pursuant to Section 290 of the Penal
5 Code solely because of a misdemeanor conviction under Section
6 314 of the Penal Code.

7 (c) This section shall not apply to a person who has been relieved
8 under Section 290.5 of the Penal Code of his or her duty to register
9 as a sex offender, or whose duty to register has otherwise been
10 formally terminated under California law.

11 SEC. 8. Section 3576 of the Business and Professions Code is
12 amended to read:

13 3576. (a) A registration under this chapter may be denied,
14 suspended, revoked, *placed on probation*, or otherwise subjected
15 to discipline for any of the following by the holder:

16 (1) Incompetence, gross negligence, or repeated similar
17 negligent acts performed by the registrant.

18 (2) An act of dishonesty or fraud.

19 (3) Committing any act or being convicted of a crime
20 constituting grounds for denial of licensure or registration under
21 Section 480.

22 (4) Violating or attempting to violate ~~any provision of~~ this
23 chapter or any regulation adopted under this chapter.

24 (b) Proceedings under this section shall be conducted in
25 accordance with Chapter 5 (commencing with Section 11500) of
26 Part 1 of Division 3 of Title 2 of the Government Code, and the
27 board shall have all powers granted therein.

28 SEC. 9. Section 3576.1 is added to the Business and Professions
29 Code, to read:

30 3576.1. (a) A person whose registration has been voluntarily
31 surrendered while under investigation or while charges are pending
32 or whose registration has been revoked or suspended or placed on
33 probation, may petition the board for reinstatement or modification
34 of penalty, including modification or termination of probation.

35 (b) The person may file the petition after a period of not less
36 than the following minimum periods have elapsed from the
37 effective date of the surrender of the registration or the decision
38 ordering that disciplinary action:

39 (1) At least three years for reinstatement of a registration
40 surrendered or revoked for unprofessional conduct, except that the

1 board may, for good cause shown, specify in a revocation order
2 that a petition for reinstatement may be filed after two years.

3 (2) At least two years for early termination of probation of three
4 years or more.

5 (3) At least one year for modification of a condition, or
6 reinstatement of a registration surrendered or revoked for mental
7 or physical illness, or termination of probation of less than three
8 years.

9 (c) The petition shall state any facts as may be required by the
10 board. The petition shall be accompanied by at least two verified
11 recommendations from polysomnographic technologists registered
12 in any state who have personal knowledge of the activities of the
13 petitioner since the disciplinary penalty was imposed.

14 (d) The petition may be heard by a panel of the board. The board
15 may assign the petition to an administrative law judge designated
16 in Section 11371 of the Government Code. After a hearing on the
17 petition, the administrative law judge shall provide a proposed
18 decision to the board, which shall be acted upon in accordance
19 with Section 2335.

20 (e) The panel of the board or the administrative law judge
21 hearing the petition may consider all activities of the petitioner
22 since the disciplinary action was taken, the offense for which the
23 petitioner was disciplined, the petitioner's activities during the
24 time the registration was in good standing, and the petitioner's
25 rehabilitative efforts, general reputation for truth, and professional
26 ability. The hearing may be continued from time to time as the
27 administrative law judge designated in Section 11371 of the
28 Government Code finds necessary.

29 (f) The administrative law judge designated in Section 11371
30 of the Government Code reinstating a registration or modifying a
31 penalty may recommend the imposition of any terms and conditions
32 deemed necessary.

33 (g) No petition shall be considered while the petitioner is under
34 sentence for any criminal offense, including any period during
35 which the petitioner is on court-imposed probation or parole. No
36 petition shall be considered while there is an accusation or petition
37 to revoke probation pending against the person. The board may
38 deny without a hearing or argument any petition filed pursuant to
39 this section within a period of two years from the effective date
40 of the prior decision following a hearing under this section.

1 SEC. 10. Section 3576.2 is added to the Business and
2 Professions Code, to read:

3 3576.2. (a) Except as provided in subdivisions (b) and (c), the
4 board shall revoke the registration of any person who has been
5 required to register as a sex offender pursuant to Section 290 of
6 the Penal Code.

7 (b) This section shall not apply to a person who is required to
8 register as a sex offender pursuant to Section 290 of the Penal
9 Code solely because of a misdemeanor conviction under Section
10 314 of the Penal Code.

11 (c) This section shall not apply to a person who has been relieved
12 under Section 290.5 of the Penal Code of his or her duty to register
13 as a sex offender, or whose duty to register has otherwise been
14 formally terminated under California law.

15 SEC. 11. Section 3577 of the Business and Professions Code
16 is amended to read:

17 3577. (a) Each person who applies for registration under this
18 chapter shall pay into the Contingent Fund of the Medical Board
19 of California a fee to be fixed by the board at a sum not in excess
20 of one hundred dollars (\$100).

21 (b) Each person to whom registration is granted under this
22 chapter shall pay into the Contingent Fund of the Medical Board
23 of California a fee to be fixed by the board at a sum not in excess
24 of one hundred dollars (\$100).

25 (c) The registration shall expire after two years. The registration
26 may be renewed biennially at a fee which shall be paid into the
27 Contingent Fund of the Medical Board of California to be fixed
28 by the board at a sum not in excess of one hundred fifty dollars
29 (\$150).

30 (d) *The fee for monitoring a licensee on probation shall be the
31 cost of monitoring, as fixed by the board.*

32 (e)

33 (e) The money in the Contingent Fund of the Medical Board of
34 California that is collected pursuant to this section shall be used
35 for the administration of this chapter.

36 SEC. 12. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIIIIB of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

- 1 for a crime or infraction, within the meaning of Section 17556 of
- 2 the Government Code, or changes the definition of a crime within
- 3 the meaning of Section 6 of Article XIII B of the California
- 4 Constitution.

O