

**Introduced by Senator Stone**

February 18, 2016

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An act to amend Sections 800, 801, 801.1, and 802 of the Business and Professions Code, relating to healing arts.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1217, as introduced, Stone. Healing arts: reporting requirements: professional liability resulting in death or personal injury.

Existing law establishes within the Department of Consumer Affairs various boards that license and regulate the practice of various professions and vocations, including those relating to the healing arts. Existing law requires each healing arts licensing board to create and maintain a central file containing an individual historical record on each person who holds a license from that board. Existing law requires that the individual historical record contain any reported judgment or settlement requiring the licensee or the licensee's insurer to pay over \$3,000 in damages for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or rendering unauthorized professional service.

This bill would instead require the record to contain reported judgments or settlements with damages over \$10,000.

Existing law requires an insurer providing professional liability insurance to a physician and surgeon, a governmental agency that self-insures a physician and surgeon or, if uninsured, a physician and surgeon himself or herself, to report to the respective licensing board information concerning settlements over \$30,000, arbitration awards in any amount, and judgments in any amount in malpractice actions to the practitioner's licensing board. Existing law provides that information concerning professional liability settlements, judgments, and arbitration

awards of over \$10,000 in damages arising from death or personal injury must be reported to the respective licensing boards of specified healing arts practitioners including, among others, licensed professional clinical counselors, licensed dentists, and licensed veterinarians. Existing law provides that, for other specified healing arts practitioners including, among others, licensed educational psychologists, licensed nurses, and licensed pharmacists, information concerning professional liability settlements, judgments, and arbitration awards of over \$3,000 in damages arising from death or personal injury shall be reported to their respective licensing boards.

This bill would raise the minimum dollar amount triggering those reporting requirements from \$3,000 to \$10,000.

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 800 of the Business and Professions Code  
2     is amended to read:  
3     800. (a) The Medical Board of California, the Board of  
4     Psychology, the Dental Board of California, the Dental Hygiene  
5     Committee of California, the Osteopathic Medical Board of  
6     California, the State Board of Chiropractic Examiners, the Board  
7     of Registered Nursing, the Board of Vocational Nursing and  
8     Psychiatric Technicians of the State of California, the State Board  
9     of Optometry, the Veterinary Medical Board, the Board of  
10    Behavioral Sciences, the Physical Therapy Board of California,  
11    the California State Board of Pharmacy, the Speech-Language  
12    Pathology and Audiology and Hearing Aid Dispensers Board, the  
13    California Board of Occupational Therapy, the Acupuncture Board,  
14    and the Physician Assistant Board shall each separately create and  
15    maintain a central file of the names of all persons who hold a  
16    license, certificate, or similar authority from that board. Each  
17    central file shall be created and maintained to provide an individual  
18    historical record for each licensee with respect to the following  
19    information:  
20    (1) Any conviction of a crime in this or any other state that  
21    constitutes unprofessional conduct pursuant to the reporting  
22    requirements of Section 803.

1 (2) Any judgment or settlement requiring the licensee or his or  
2 her insurer to pay any amount of damages in excess of ~~three~~  
3 ~~thousand dollars (\$3,000)~~ *ten thousand dollars (\$10,000)* for any  
4 claim that injury or death was proximately caused by the licensee's  
5 negligence, error or omission in practice, or by rendering  
6 unauthorized professional services, pursuant to the reporting  
7 requirements of Section 801 or 802.

8 (3) Any public complaints for which provision is made pursuant  
9 to subdivision (b).

10 (4) Disciplinary information reported pursuant to Section 805,  
11 including any additional exculpatory or explanatory statements  
12 submitted by the licensee pursuant to subdivision (f) of Section  
13 805. If a court finds, in a final judgment, that the peer review  
14 resulting in the 805 report was conducted in bad faith and the  
15 licensee who is the subject of the report notifies the board of that  
16 finding, the board shall include that finding in the central file. For  
17 purposes of this paragraph, "peer review" has the same meaning  
18 as defined in Section 805.

19 (5) Information reported pursuant to Section 805.01, including  
20 any explanatory or exculpatory information submitted by the  
21 licensee pursuant to subdivision (b) of that section.

22 (b) (1) Each board shall prescribe and promulgate forms on  
23 which members of the public and other licensees or certificate  
24 holders may file written complaints to the board alleging any act  
25 of misconduct in, or connected with, the performance of  
26 professional services by the licensee.

27 (2) If a board, or division thereof, a committee, or a panel has  
28 failed to act upon a complaint or report within five years, or has  
29 found that the complaint or report is without merit, the central file  
30 shall be purged of information relating to the complaint or report.

31 (3) Notwithstanding this subdivision, the Board of Psychology,  
32 the Board of Behavioral Sciences, and the Respiratory Care Board  
33 of California shall maintain complaints or reports as long as each  
34 board deems necessary.

35 (c) (1) The contents of any central file that are not public  
36 records under any other provision of law shall be confidential  
37 except that the licensee involved, or his or her counsel or  
38 representative, shall have the right to inspect and have copies made  
39 of his or her complete file except for the provision that may  
40 disclose the identity of an information source. For the purposes of

1 this section, a board may protect an information source by  
2 providing a copy of the material with only those deletions necessary  
3 to protect the identity of the source or by providing a  
4 comprehensive summary of the substance of the material.  
5 Whichever method is used, the board shall ensure that full  
6 disclosure is made to the subject of any personal information that  
7 could reasonably in any way reflect or convey anything detrimental,  
8 disparaging, or threatening to a licensee's reputation, rights,  
9 benefits, privileges, or qualifications, or be used by a board to  
10 make a determination that would affect a licensee's rights, benefits,  
11 privileges, or qualifications. The information required to be  
12 disclosed pursuant to Section 803.1 shall not be considered among  
13 the contents of a central file for the purposes of this subdivision.

14 (2) The licensee may, but is not required to, submit any  
15 additional exculpatory or explanatory statement or other  
16 information that the board shall include in the central file.

17 (3) Each board may permit any law enforcement or regulatory  
18 agency when required for an investigation of unlawful activity or  
19 for licensing, certification, or regulatory purposes to inspect and  
20 have copies made of that licensee's file, unless the disclosure is  
21 otherwise prohibited by law.

22 (4) These disclosures shall effect no change in the confidential  
23 status of these records.

24 SEC. 2. Section 801 of the Business and Professions Code is  
25 amended to read:

26 801. (a) Except as provided in Section 801.01 and ~~subdivisions~~  
27 ~~(b), (c), and (d)~~ *subdivision (b)* of this section, every insurer  
28 providing professional liability insurance to a person who holds a  
29 license, certificate, or similar authority from or under any agency  
30 specified in subdivision (a) of Section 800 shall send a complete  
31 report to that agency as to any settlement or arbitration award over  
32 ~~three thousand dollars (\$3,000)~~ *ten thousand dollars (\$10,000)* of  
33 a claim or action for damages for death or personal injury caused  
34 by that person's negligence, error, or omission in practice, or by  
35 his or her rendering of unauthorized professional services. The  
36 report shall be sent within 30 days after the written settlement  
37 agreement has been reduced to writing and signed by all parties  
38 thereto or within 30 days after service of the arbitration award on  
39 the parties.

1     ~~(b) Every insurer providing professional liability insurance to~~  
2     ~~a person licensed pursuant to Chapter 13 (commencing with~~  
3     ~~Section 4980), Chapter 14 (commencing with Section 4990), or~~  
4     ~~Chapter 16 (commencing with Section 4999.10) shall send a~~  
5     ~~complete report to the Board of Behavioral Sciences as to any~~  
6     ~~settlement or arbitration award over ten thousand dollars (\$10,000)~~  
7     ~~of a claim or action for damages for death or personal injury caused~~  
8     ~~by that person's negligence, error, or omission in practice, or by~~  
9     ~~his or her rendering of unauthorized professional services. The~~  
10    ~~report shall be sent within 30 days after the written settlement~~  
11    ~~agreement has been reduced to writing and signed by all parties~~  
12    ~~thereto or within 30 days after service of the arbitration award on~~  
13    ~~the parties.~~

14    ~~(c) Every insurer providing professional liability insurance to~~  
15    ~~a dentist licensed pursuant to Chapter 4 (commencing with Section~~  
16    ~~1600) shall send a complete report to the Dental Board of~~  
17    ~~California as to any settlement or arbitration award over ten~~  
18    ~~thousand dollars (\$10,000) of a claim or action for damages for~~  
19    ~~death or personal injury caused by that person's negligence, error,~~  
20    ~~or omission in practice, or rendering of unauthorized professional~~  
21    ~~services. The report shall be sent within 30 days after the written~~  
22    ~~settlement agreement has been reduced to writing and signed by~~  
23    ~~all parties thereto or within 30 days after service of the arbitration~~  
24    ~~award on the parties.~~

25    ~~(d)~~

26    ~~(b) Every insurer providing liability insurance to a veterinarian~~  
27    ~~licensed pursuant to Chapter 11 (commencing with Section 4800)~~  
28    ~~shall send a complete report to the Veterinary Medical Board of~~  
29    ~~any settlement or arbitration award over ten thousand dollars~~  
30    ~~(\$10,000) of a claim or action for damages for death or injury~~  
31    ~~caused by that person's negligence, error, or omission in practice,~~  
32    ~~or rendering of unauthorized professional service. The report shall~~  
33    ~~be sent within 30 days after the written settlement agreement has~~  
34    ~~been reduced to writing and signed by all parties thereto or within~~  
35    ~~30 days after service of the arbitration award on the parties.~~

36    ~~(e)~~

37    ~~(c) The insurer shall notify the claimant, or if the claimant is~~  
38    ~~represented by counsel, the insurer shall notify the claimant's~~  
39    ~~attorney, that the report required by subdivision (a), (b), or (e) (a)~~  
40    ~~has been sent to the agency. If the attorney has not received this~~

1 notice within 45 days after the settlement was reduced to writing  
2 and signed by all of the parties, the arbitration award was served  
3 on the parties, or the date of entry of the civil judgment, the  
4 attorney shall make the report to the agency.

5 (f)

6 (d) Notwithstanding any other provision of law, no insurer shall  
7 enter into a settlement without the written consent of the insured,  
8 except that this prohibition shall not void any settlement entered  
9 into without that written consent. The requirement of written  
10 consent shall only be waived by both the insured and the insurer.  
11 This section shall only apply to a settlement on a policy of  
12 insurance executed or renewed on or after January 1, 1971.

13 SEC. 3. Section 801.1 of the Business and Professions Code  
14 is amended to read:

15 801.1. (a) Every state or local governmental agency that  
16 self-insures a person who holds a license, certificate, or similar  
17 authority from or under any agency specified in subdivision (a) of  
18 Section 800 (except a person licensed pursuant to Chapter 3  
19 (commencing with Section 1200) or Chapter 5 (commencing with  
20 Section 2000) or the Osteopathic Initiative Act) shall send a  
21 complete report to that agency as to any settlement or arbitration  
22 award over ~~three thousand dollars (\$3,000)~~ *ten thousand dollars*  
23 *(\$10,000)* of a claim or action for damages for death or personal  
24 injury caused by that person's negligence, error, or omission in  
25 practice, or rendering of unauthorized professional services. The  
26 report shall be sent within 30 days after the written settlement  
27 agreement has been reduced to writing and signed by all parties  
28 thereto or within 30 days after service of the arbitration award on  
29 the parties.

30 ~~(b) Every state or local governmental agency that self-insures~~  
31 ~~a person licensed pursuant to Chapter 13 (commencing with~~  
32 ~~Section 4980), Chapter 14 (commencing with Section 4990), or~~  
33 ~~Chapter 16 (commencing with Section 4999.10) shall send a~~  
34 ~~complete report to the Board of Behavioral Science Examiners as~~  
35 ~~to any settlement or arbitration award over ten thousand dollars~~  
36 ~~(\$10,000) of a claim or action for damages for death or personal~~  
37 ~~injury caused by that person's negligence, error, or omission in~~  
38 ~~practice, or rendering of unauthorized professional services. The~~  
39 ~~report shall be sent within 30 days after the written settlement~~  
40 ~~agreement has been reduced to writing and signed by all parties~~

1 ~~thereto or within 30 days after service of the arbitration award on~~  
2 ~~the parties.~~

3 SEC. 4. Section 802 of the Business and Professions Code is  
4 amended to read:

5 802. ~~(a) Every settlement, judgment, or arbitration award over~~  
6 ~~three thousand dollars (\$3,000)~~ *ten thousand dollars (\$10,000)* of  
7 a claim or action for damages for death or personal injury caused  
8 by negligence, error or omission in practice, or by the unauthorized  
9 rendering of professional services, by a person who holds a license,  
10 certificate, or other similar authority from an agency specified in  
11 subdivision (a) of Section 800 (except a person licensed pursuant  
12 to Chapter 3 (commencing with Section 1200) or Chapter 5  
13 (commencing with Section 2000) or the Osteopathic Initiative Act)  
14 who does not possess professional liability insurance as to that  
15 claim shall, within 30 days after the written settlement agreement  
16 has been reduced to writing and signed by all the parties thereto  
17 or 30 days after service of the judgment or arbitration award on  
18 the parties, be reported to the agency that issued the license,  
19 certificate, or similar authority. A complete report shall be made  
20 by appropriate means by the person or his or her counsel, with a  
21 copy of the communication to be sent to the claimant through his  
22 or her counsel if the person is so represented, or directly if he or  
23 she is not. If, within 45 days of the conclusion of the written  
24 settlement agreement or service of the judgment or arbitration  
25 award on the parties, counsel for the claimant (or if the claimant  
26 is not represented by counsel, the claimant himself or herself) has  
27 not received a copy of the report, he or she shall himself or herself  
28 make the complete report. Failure of the licensee or claimant (or,  
29 if represented by counsel, their counsel) to comply with this section  
30 is a public offense punishable by a fine of not less than fifty dollars  
31 (\$50) or more than five hundred dollars (\$500). Knowing and  
32 intentional failure to comply with this section or conspiracy or  
33 collusion not to comply with this section, or to hinder or impede  
34 any other person in the compliance, is a public offense punishable  
35 by a fine of not less than five thousand dollars (\$5,000) nor more  
36 than fifty thousand dollars (\$50,000).

37 ~~(b) Every settlement, judgment, or arbitration award over ten~~  
38 ~~thousand dollars (\$10,000) of a claim or action for damages for~~  
39 ~~death or personal injury caused by negligence, error or omission~~  
40 ~~in practice, or by the unauthorized rendering of professional~~

1 services, by a marriage and family therapist, a clinical social  
2 worker, or a professional clinical counselor licensed pursuant to  
3 Chapter 13 (commencing with Section 4980), Chapter 14  
4 (commencing with Section 4990), or Chapter 16 (commencing  
5 with Section 4999.10), respectively, who does not possess  
6 professional liability insurance as to that claim shall within 30  
7 days after the written settlement agreement has been reduced to  
8 writing and signed by all the parties thereto or 30 days after service  
9 of the judgment or arbitration award on the parties be reported to  
10 the agency that issued the license, certificate, or similar authority.  
11 A complete report shall be made by appropriate means by the  
12 person or his or her counsel, with a copy of the communication to  
13 be sent to the claimant through his or her counsel if he or she is  
14 so represented, or directly if he or she is not. If, within 45 days of  
15 the conclusion of the written settlement agreement or service of  
16 the judgment or arbitration award on the parties, counsel for the  
17 claimant (or if he or she is not represented by counsel, the claimant  
18 himself or herself) has not received a copy of the report, he or she  
19 shall himself or herself make a complete report. Failure of the  
20 marriage and family therapist, clinical social worker, or  
21 professional clinical counselor or claimant (or, if represented by  
22 counsel, his or her counsel) to comply with this section is a public  
23 offense punishable by a fine of not less than fifty dollars (\$50) nor  
24 more than five hundred dollars (\$500). Knowing and intentional  
25 failure to comply with this section, or conspiracy or collusion not  
26 to comply with this section or to hinder or impede any other person  
27 in that compliance, is a public offense punishable by a fine of not  
28 less than five thousand dollars (\$5,000) nor more than fifty  
29 thousand dollars (\$50,000).

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