

AMENDED IN SENATE APRIL 12, 2016

SENATE BILL

No. 1217

Introduced by Senator Stone

February 18, 2016

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 amended, 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. *Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists and pharmacies by the California State Board of Pharmacy, which is within the Department of Consumer Affairs.*

This bill ~~would~~ *would, notwithstanding the above provision*, instead require the record to contain reported judgments or settlements with damages over ~~\$10,000~~. *\$10,000 for persons licensed under the Pharmacy Act.*

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~~ *\$10,000 for persons licensed under the Pharmacy Law*.

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

1 maintain a central file of the names of all persons who hold a
2 license, certificate, or similar authority from that board. Each
3 central file shall be created and maintained to provide an individual
4 historical record for each licensee with respect to the following
5 information:

6 (1) Any conviction of a crime in this or any other state that
7 constitutes unprofessional conduct pursuant to the reporting
8 requirements of Section 803.

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

16 (B) *Notwithstanding subparagraph (A), any judgment or*
17 *settlement requiring a person licensed pursuant to Chapter 9*
18 *(commencing with Section 4000) or his or her insurer to pay any*
19 *amount of damages in excess of ten thousand dollars (\$10,000)*
20 *for any claim that injury or death was proximately caused by the*
21 *licensee's negligence, error or omission in practice, or by*
22 *rendering unauthorized professional services, pursuant to the*
23 *reporting requirements of Section 801 or 802.*

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

26 (4) Disciplinary information reported pursuant to Section 805,
27 including any additional exculpatory or explanatory statements
28 submitted by the licensee pursuant to subdivision (f) of Section
29 805. If a court finds, in a final judgment, that the peer review
30 resulting in the 805 report was conducted in bad faith and the
31 licensee who is the subject of the report notifies the board of that
32 finding, the board shall include that finding in the central file. For
33 purposes of this paragraph, "peer review" has the same meaning
34 as defined in Section 805.

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

38 (b) (1) Each board shall prescribe and promulgate forms on
39 which members of the public and other licensees or certificate
40 holders may file written complaints to the board alleging any act

1 of misconduct in, or connected with, the performance of
2 professional services by the licensee.

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

7 (3) Notwithstanding this subdivision, the Board of Psychology,
8 the Board of Behavioral Sciences, and the Respiratory Care Board
9 of California shall maintain complaints or reports as long as each
10 board deems necessary.

11 (c) (1) The contents of any central file that are not public
12 records under any other provision of law shall be confidential
13 except that the licensee involved, or his or her counsel or
14 representative, shall have the right to inspect and have copies made
15 of his or her complete file except for the provision that may
16 disclose the identity of an information source. For the purposes of
17 this section, a board may protect an information source by
18 providing a copy of the material with only those deletions necessary
19 to protect the identity of the source or by providing a
20 comprehensive summary of the substance of the material.
21 Whichever method is used, the board shall ensure that full
22 disclosure is made to the subject of any personal information that
23 could reasonably in any way reflect or convey anything detrimental,
24 disparaging, or threatening to a licensee's reputation, rights,
25 benefits, privileges, or qualifications, or be used by a board to
26 make a determination that would affect a licensee's rights, benefits,
27 privileges, or qualifications. The information required to be
28 disclosed pursuant to Section 803.1 shall not be considered among
29 the contents of a central file for the purposes of this subdivision.

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

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

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

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

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

(b) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4991), or Chapter 16 (commencing with Section 4999.10) shall send a complete report to the Board of Behavioral Sciences as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

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

1 ~~(b)~~

2 (d) Every insurer providing liability insurance to a veterinarian
3 licensed pursuant to Chapter 11 (commencing with Section 4800)
4 shall send a complete report to the Veterinary Medical Board of
5 any settlement or arbitration award over ten thousand dollars
6 (\$10,000) of a claim or action for damages for death or injury
7 caused by that person's negligence, error, or omission in practice,
8 or rendering of unauthorized professional service. The report shall
9 be sent within 30 days after the written settlement agreement has
10 been reduced to writing and signed by all parties thereto or within
11 30 days after service of the arbitration award on the parties.

12 ~~(e) Every insurer providing liability insurance to a person~~
13 ~~licensed pursuant to Chapter 9 (commencing with Section 4000)~~
14 ~~shall send a complete report to the California State Board of~~
15 ~~Pharmacy of any settlement or arbitration award over ten thousand~~
16 ~~dollars (\$10,000) of a claim or action for damages for death or~~
17 ~~injury caused by that person's negligence, error, or omission in~~
18 ~~practice, or rendering of unauthorized professional service. The~~
19 ~~report shall be sent within 30 days after the written settlement~~
20 ~~agreement has been reduced to writing and signed by all parties~~
21 ~~thereto or within 30 days after service of the arbitration award on~~
22 ~~the parties.~~

23 ~~(e)~~

24 (f) The insurer shall notify the claimant, or if the claimant is
25 represented by counsel, the insurer shall notify the claimant's
26 attorney, that the report required by subdivision (a) has been sent
27 to the agency. If the attorney has not received this notice within
28 45 days after the settlement was reduced to writing and signed by
29 all of the parties, the arbitration award was served on the parties,
30 or the date of entry of the civil judgment, the attorney shall make
31 the report to the agency.

32 ~~(d)~~

33 (g) Notwithstanding any other provision of law, no insurer shall
34 enter into a settlement without the written consent of the insured,
35 except that this prohibition shall not void any settlement entered
36 into without that written consent. The requirement of written
37 consent shall only be waived by both the insured and the insurer.
38 This section shall only apply to a settlement on a policy of
39 insurance executed or renewed on or after January 1, 1971.

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

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

(b) *Every state or local governmental agency that self-insures a person licensed pursuant to Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4991), or Chapter 16 (commencing with Section 4999.10) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.*

(c) *Every state or local governmental agency that self-insures a person licensed pursuant to Chapter 9 (commencing with Section 4000) shall send a complete report to the California State Board of Pharmacy as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by*

1 *all parties thereto or within 30 days after service of the arbitration*
2 *award on 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 ~~ten thousand dollars (\$10,000)~~ *three thousand dollars (\$3,000)* 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 4991), 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
10 to the agency that issued the license, certificate, or similar
11 authority. A complete report shall be made by appropriate means
12 by the person or his or her counsel, with a copy of the
13 communication to be sent to the claimant through his or her
14 counsel if he or she is so represented, or directly if he or she is
15 not. If, within 45 days of the conclusion of the written settlement
16 agreement or service of the judgment or arbitration award on the
17 parties, counsel for the claimant (or if he or she is not represented
18 by counsel, the claimant himself or herself) has not received a
19 copy of the report, he or she shall himself or herself make a
20 complete report. Failure of the marriage and family therapist,
21 clinical social worker, or professional clinical counselor or
22 claimant (or, if represented by counsel, his or her counsel) to
23 comply with this section is a public offense punishable by a fine
24 of not less than fifty dollars (\$50) nor more than five hundred
25 dollars (\$500). Knowing and intentional failure to comply with
26 this section, or conspiracy or collusion not to comply with this
27 section or to hinder or impede any other person in that compliance,
28 is a public offense punishable by a fine of not less than five
29 thousand dollars (\$5,000) nor more than fifty thousand dollars
30 (\$50,000).

31 (c) Every settlement, judgment, or arbitration award over ten
32 thousand dollars (\$10,000) of a claim or action for damages for
33 death or personal injury caused by negligence, error or omission
34 in practice, or by the unauthorized rendering of professional
35 services, by a person licensed pursuant to Chapter 9 (commencing
36 with Section 4000) who does not possess professional liability
37 insurance as to that claim shall within 30 days after the written
38 settlement agreement has been reduced to writing and signed by
39 all the parties thereto or 30 days after service of the judgment or
40 arbitration award on the parties be reported to the California

1 *State Board of Pharmacy. A complete report shall be made by*
2 *appropriate means by the person or his or her counsel, with a copy*
3 *of the communication to be sent to the claimant through his or her*
4 *counsel if he or she is so represented, or directly if he or she is*
5 *not. If, within 45 days of the conclusion of the written settlement*
6 *agreement or service of the judgment or arbitration award on the*
7 *parties, counsel for the claimant (or if he or she is not represented*
8 *by counsel, the claimant himself or herself) has not received a*
9 *copy of the report, he or she shall himself or herself make a*
10 *complete report. Failure of the person licensed pursuant to Chapter*
11 *9 (commencing with Section 4000) (or, if represented by counsel,*
12 *his or her counsel) to comply with this section is a public offense*
13 *punishable by a fine of not less than fifty dollars (\$50) nor more*
14 *than five hundred dollars (\$500).*