

Assembly Bill No. 103

Passed the Assembly July 24, 1997

Chief Clerk of the Assembly

Passed the Senate July 17, 1997

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1997, at ____ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act to amend Sections 801, 802, 803, 803.1, 803.2, and 805 of, and to add Section 2027 to, the Business and Professions Code, relating to healing arts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 103, Figueroa. Physicians and surgeons: professional reporting.

(1) Existing law requires every insurer providing professional liability insurance to a physician and surgeon to report to his or her licensing board a claim or action, and any judgment of a claim, for damages for death or personal injury caused by the physician and surgeon's negligence, error, or omission in practice, or rendering of unauthorized professional services as to any settlement or arbitration award over \$30,000. Existing law also requires every physician and surgeon who does not possess professional liability insurance and, in certain circumstances, claimants who receive the settlement or arbitration award, to similarly report to the appropriate licensing board a claim or action for the above-described damages and failure to so report is subject to criminal sanction.

This bill would delete the requirement that the arbitration award be over \$30,000, thereby requiring that the claim or action for damages, and any judgment of a claim for damages with regard to arbitration awards of any amount be reported. By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) Existing law requires the clerk of the court that renders a judgment for damages in an amount in excess of \$30,000 for any death or personal injury caused by the negligence, error or omission in practice, or rendering of unauthorized professional services of certain licensed health professionals, including physicians and surgeons, to report that judgment, within 10 days after the



judgment, to the agency that issued the license, certificate, or other similar authority.

This bill would, instead, authorize the clerk of the court to report those judgments for damages of any amount with regard to a physician and surgeon. By changing the definition of a crime, this bill would impose a state-mandated local program.

(3) Existing law requires the Medical Board of California and the California Board of Podiatric Medicine to disclose to inquiring members of the public information received from the court clerk pursuant to (2) above regarding felony convictions of, and judgments in excess of \$30,000 against, a physician and surgeon or doctor of podiatric medicine.

This bill would delete the restriction to judgments in excess of \$30,000, thereby authorizing disclosure under this provision of information received from the court pursuant to (2) above regarding any judgment.

(4) Existing law requires the Medical Board of California and the Board of Podiatric Medicine to disclose to an inquiring member of the public certain information regarding the status of the license of a licensee and any enforcement actions taken against a licensee by either board or by another state or jurisdiction.

This bill would require the Medical Board of California to additionally disclose under this provision any malpractice judgments, arbitration awards, and summaries of hospital disciplinary actions that result in the termination or revocation of a licensee's staff privileges for a medical disciplinary cause or reason.

(5) Existing law requires any employer who pays or has entered against that employer, a judgment, settlement agreement, or arbitration award over \$30,000 against a physician and surgeon or doctor of podiatric medicine to report that occurrence to the appropriate board.

This bill would delete the requirement that the judgment or arbitration award be over \$30,000, thereby requiring that all of such judgments or arbitration awards be reported.



(6) Existing law requires the chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic to file a report with the relevant agency whenever certain actions are taken as a result of a determination of a peer review body. Existing law provides that the information reported or disclosed pursuant to this provision shall be kept confidential, with some exceptions.

This bill would except, from those confidentiality provisions, information disclosed to the public pursuant to this bill.

This bill also would require the Medical Board of California to post on the Internet certain information regarding licensed physicians and surgeons, and to provide links to other web sites on the Internet that provide information on certain board certifications. This bill would also authorize the board to provide links to other Internet websites relating to health care service plans, health insurers, hospitals, or other facilities, and on the affiliations of licensed physicians and surgeons.

(7) Existing law, the Medical Practice Act, establishes the Medical Board of California and vests within the board jurisdiction over administration of laws relating to the practice of medicine. Existing law provides that all moneys paid to and received by the Medical Board of California shall be credited to the Contingent Fund of the Medical Board of California, a continuously appropriated fund. The contingent fund is for the use of the board to pay all salaries and other expenses necessarily incurred in carrying into effect the Medical Practice Act.

This bill would authorize the Medical Board of California to expend \$21,000 from the Contingent Fund of the Medical Board of California during the 1997–98 fiscal year for purposes of this bill, thereby making an appropriation.

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.

Appropriation: yes.

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

SECTION 1. Section 801 of the Business and Professions Code is amended to read:

801. (a) Every insurer providing professional liability insurance to a person who holds a license, certificate or similar authority from or under any agency mentioned in subdivision (a) of Section 800 (except as provided in subdivisions (b), (c), and (d)) shall send a complete report to that agency as to any settlement or arbitration award over 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 insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act shall send a complete report to the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, as to any settlement over thirty thousand dollars (\$30,000), or arbitration award of any amount, 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 insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) 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.

(d) 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 Board of Dental Examiners 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 service. 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.

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

SEC. 2. Section 802 of the Business and Professions Code is amended to read:

802. (a) Every settlement or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by



negligence, error or omission in practice, or the unauthorized rendering of professional services, by a person who holds a license, certificate or other similar authority from an agency mentioned 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) of Division 2) or the Osteopathic Initiative Act who does not possess professional liability insurance as to that claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the arbitration award on the parties, be reported to the agency which issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if the person is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the physician or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(b) Every settlement over thirty thousand dollars (\$30,000), or arbitration award of any amount, of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or the unauthorized rendering of professional services, by a physician and surgeon licensed pursuant to Chapter 5



(commencing with Section 2000) of Division 2, or the Osteopathic Initiative Act, who does not possess professional liability insurance as to the claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the arbitration award on the parties, be reported to the agency which issued the license, certificate or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the physician or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(c) Every settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by negligence, error, or omission in practice, or the unauthorized rendering of professional services, by a marriage, family, and child counselor or clinical social worker licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990), who does not possess professional liability insurance as to that claim shall within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days



after service of the arbitration award on the parties, be reported to the agency which issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the arbitration award on the parties, counsel for the claimant (or if he or she is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make a complete report. Failure of the marriage, family, and child counselor or clinical social worker or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in that compliance is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

SEC. 3. Section 803 of the Business and Professions Code is amended to read:

803. (a) (1) Except as provided in paragraph (2), within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from the Board of Behavioral Science Examiners or from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200)) has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars (\$30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court which rendered the judgment shall report that



fact to the agency that issued the license, certificate, or other similar authority.

(2) For purposes of a physician and surgeon who has committed a crime, or is liable for any death or personal injury resulting in a judgment of any amount caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court which rendered the judgment shall report that fact to the agency that issued the license.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) shall send a complete report to the Medical Board of California as to any judgment of a claim for damages for death or personal injury caused by that licensee's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 calendar days after entry of judgment.

(c) Notwithstanding any other provision of law, the Medical Board of California and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public information received pursuant to subdivision (a) regarding felony convictions of, and judgments against, a physician and surgeon or doctor of podiatric medicine. The Division of Medical Quality and the California Board of Podiatric Medicine may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may, by regulation, establish categories of information that need not be disclosed to the public because that information is unreliable or not sufficiently related to the licensee's professional practice.

SEC. 4. Section 803.1 of the Business and Professions Code is amended to read:

803.1. (a) Notwithstanding any other provision of law, the Board of Podiatric Medicine shall disclose to an inquiring member of the public information regarding the status of the license of a licensee and any enforcement actions taken against a licensee by either board or by



another state or jurisdiction, including, but not limited to, all of the following:

- (1) Temporary restraining orders issued.
- (2) Interim suspension orders issued.
- (3) Limitations on practice ordered by the board.
- (4) Public letters of reprimand issued.
- (5) Infractions, citations, or fines imposed.

(b) Notwithstanding any other provision of law, the Medical Board of California shall disclose to an inquiring member of the public information regarding the status of the license of a licensee, any malpractice judgments, any arbitration awards, or any summaries of hospital disciplinary actions that result in the termination or revocation of a licensee's staff privileges for a medical disciplinary cause or reason, and any enforcement actions taken against a licensee by the board or by another state or jurisdiction, including, but not limited to, any of the actions described in paragraphs (1) to (5), inclusive, of subdivision (a).

(c) The Medical Board of California and the Board of Podiatric Medicine may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may, by regulation, establish categories of information that need not be disclosed to the public because that information is unreliable or not sufficiently related to the licensee's professional practice.

SEC. 5. Section 803.2 of the Business and Professions Code is amended to read:

803.2. Every entry of settlement agreement over thirty thousand dollars (\$30,000), or judgment or arbitration award of any amount, of a claim or action for damages for death or personal injury caused by, or alleging, the negligence, error, or omission in practice, or the unauthorized rendering of professional services, by a physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act, when that judgment, settlement agreement, or arbitration award is entered against, or paid by, the employer of that licensee



and not the licensee himself or herself, shall be reported to the appropriate board by the entity required to report the information in accordance with Sections 801, 801.1, 802, and 803 as an entry of judgment, settlement, or arbitration award against the negligent licensee.

“Employer” as used in this section means a professional corporation, a group practice, a health care facility or clinic licensed or exempt from licensure under the Health and Safety Code, a licensed health care service plan, a medical care foundation, an educational institution, a professional institution, a professional school or college, a general law corporation, a public entity, or a nonprofit organization that employs, retains, or contracts with a licensee referred to in this section. Nothing in this section shall be construed to authorize the employment of, or contracting with, any licensee in violation of Section 2400.

SEC. 6. Section 805 of the Business and Professions Code is amended to read:

805. (a) As used in this section, the following terms have the following definitions:

(1) “Peer review body” includes:

(A) A medical or professional staff of any health care facility or clinic licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code or of a facility certified to participate in the federal Medicare program as an ambulatory surgical center.

(B) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a nonprofit hospital service plan regulated under Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(C) Any medical, psychological, dental, or podiatric professional society having as members at least 25 percent of the eligible licentiates in the area in which it functions (which must include at least one county), which is not organized for profit and which has been determined to be exempt from taxes pursuant to Section 23701 of the Revenue and Taxation Code.



(D) A committee organized by any entity consisting of or employing more than 25 licentiates of the same class which functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.

(2) “Licentiate” means a physician and surgeon, podiatrist, clinical psychologist, or dentist. “Licentiate” also includes a person authorized to practice medicine pursuant to Section 2113.

(3) “Agency” means the relevant state licensing agency having regulatory jurisdiction over the licentiates listed in paragraph (2).

(4) “Staff privileges” means any arrangement under which a licentiate is allowed to practice in or provide care for patients in a health facility. Those arrangements shall include, but are not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(5) “Denial or termination of staff privileges, membership, or employment” includes failure or refusal to renew a contract or to renew, extend, or reestablish any staff privileges, when the action is based on medical disciplinary cause or reason.

(6) “Medical disciplinary cause or reason” means that aspect of a licentiate’s competence or professional conduct which is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) “805 report” means the written report required under subdivision (b).

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency whenever any of the following actions



are taken as a result of a determination of a peer review body:

(1) A licentiate's application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.

(2) A licentiate's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.

(3) Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason.

In addition to the duty to report as set forth in paragraphs (1), (2), and (3), the peer review body also has a duty to report under this section a licentiate's resignation or leave of absence from membership, staff, or employment following notice of an impending investigation based on information indicating medical disciplinary cause or reason.

The 805 report shall be filed within 15 days after the effective date of the denial, termination, restriction, resignation, or leave of absence, or after the exhaustion of administrative procedures, without regard to any filing for judicial review.

An 805 report shall also be filed within 15 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days.

A copy of the 805 report, and a notice advising the licentiate of his or her right to submit additional statements or other information pursuant to Section 800, shall be sent by the peer review body to the licentiate named in the report.

The information to be reported in an 805 report shall include the name of the licentiate involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

A supplemental report shall also be made within 30 days following the date the licentiate is deemed to have



satisfied any terms, conditions, or sanctions imposed as disciplinary action by the reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.

In those instances where another peer review body is required to file an 805 report, a health care service plan or nonprofit hospital service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason.

(c) The reporting required herein shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and Sections 803.1 and 2027, provided that a copy of the report containing the information required by this section may be disclosed as required by Section 805.5 with respect to reports received on or after January 1, 1976.

(d) The Medical Board of California, the Osteopathic Medical Board of California, and the Board of Dental Examiners shall disclose reports as required by Section 805.5.

(e) An 805 report shall be maintained by an agency for dissemination purposes for a period of three years after receipt.

(f) No person shall incur any civil or criminal liability as the result of making any report required by this section.

(g) An intentional failure to make a report pursuant to this section is a public offense punishable by a fine not to exceed ten thousand dollars (\$10,000).

(h) A failure by the administrator of any peer review body or the chief executive officer or administrator of any health care facility who is designated to transmit a report pursuant to this section whether or not the failure is intentional is punishable by a civil penalty not exceeding five thousand dollars (\$5,000) per violation payable to the board with jurisdiction over the licensee in any action brought by the Attorney General.



SEC. 7. Section 2027 is added to the Business and Professions Code, to read:

2027. (a) The board shall post on the Internet the following information regarding licensed physicians and surgeons:

(1) With regard to the status of the license, whether or not the licensee is in good standing, subject to a temporary restraining order (TRO), or subject to an interim suspension order (ISO).

(2) With regard to prior discipline, whether or not the licensee has been subject to discipline by the board of another state or jurisdiction.

(3) Any felony convictions reported to the board after January 3, 1991.

(4) All current accusations filed by the Attorney General.

(5) Any malpractice judgment or arbitration award reported to the board after January 1, 1993.

(6) Any hospital disciplinary actions that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason.

(7) Appropriate disclaimers and explanatory statements to accompany the above information.

(b) The board shall provide links to other web sites on the Internet that provide information on board certifications that meet the requirements of subdivision (b) of Section 651. The board may provide links to other web sites on the Internet that provide information on health care service plans, health insurers, hospitals, or other facilities. The board may also provide links to any other sites that would provide information on the affiliations of licensed physicians and surgeons.

SEC. 8. The Medical Board of California is authorized to expend twenty-one thousand dollars (\$21,000) from the Contingent Fund of the Medical Board of California during the 1997-98 fiscal year for purposes of the implementation of this act.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred



by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



Approved _____, 1997

Governor

