

AMENDED IN SENATE APRIL 21, 1997

SENATE BILL

No. 1347

**Introduced by Committee on Business and Professions
(Senators Polanco (Chair), Ayala, Craven, Greene,
Johannessen, Kelley, O'Connell, and Rosenthal)**

March 18, 1997

An act to amend Sections 651, 2590, 2591, 2592, 3105.1, and 3135 of the Business and Professions Code, relating to healing arts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1347, as amended, Committee on Business and Professions. Healing arts.

(1) Existing law governs the licensure and regulation of podiatrists by the Board of Podiatric Medicine within the Medical Board of California. Existing law restricts or prohibits certain forms of advertising by persons licensed pursuant to the healing arts division of the Business and Professions Code or under any initiative act referred to in that division. Existing law authorizes a licensed physician and surgeon and a licensed dentist to include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including a multidisciplinary board or association, as defined.

This bill would also permit a licensed podiatrist to include a statement that he or she is certified or eligible or qualified for certification, pursuant to similar requirements. It would require the Board of Podiatric Medicine to adopt regulations to establish and collect a fee, not to exceed the administration

costs, from each board or association applying for recognition under these provisions. Since these fees would be deposited in the continuously appropriated Podiatry Fund, this bill would make an appropriation by increasing the revenues available in the fund.

(2) Existing law establishes certain educational and examination requirements for persons who hold themselves out as perfusionists. Existing law provides that the performance of certain procedures are included in the definition of perfusion services, and provides that this does not exempt perfusionists from the requirements of the Clinical Laboratory Improvement Amendments Act of 1988 (CLIA), or from the nonpersonnel related requirements of state laws governing the practice of clinical laboratory technology.

This bill would delete the reference to CLIA, and would refer to all of the state laws governing the practice of clinical laboratory technology.

Existing law provides that a person may be deemed to have completed the examination and education requirements if, among other things, he or she has performed at least 40 cases of cardiopulmonary bypass during cardiopulmonary surgery in a licensed health facility.

This bill would require the cardiopulmonary bypass procedures to be performed during cardiac surgery.

Existing law provides that after completion of an approved perfusion training program, and until notification of passage of the entire examination, that person shall identify himself or herself only as a “graduate perfusionist.”

This bill would ~~require a graduate perfusionist to be under the supervision and direction of a perfusionist at all times, and would~~ provide that use of the title “graduate perfusionist” is valid for no more than 3 years from the date of completion of the approved training program. The bill would make other technical changes.

(3) Existing law provides for the licensure and regulation of the practice of optometry by the State Board of Optometry. Existing law provides that the use or consumption of alcoholic beverages by a licensee to the extent or in a manner as to be dangerous or injurious to the person, or any other person, or the public, constitutes unprofessional conduct.



This bill would amend this to also apply it to the use or consumption of narcotic drugs. Since a violation of this provision would be subject to criminal sanction, this bill would impose a state-mandated local program, by changing the definition of a crime.

Existing law also provides that the conviction of the certificate holder of more than one misdemeanor or any felony involving the use or consumption of alcoholic beverages constitutes unprofessional conduct.

This bill would delete this provision.

Existing law authorizes the board to establish a system for the issuance of citations, and the assessment of administrative fines, as deemed appropriate by the board where a licensee is in violation of specified provisions. Existing law requires the citation system to include prescribed provisions regarding the amount of the fines and the right to a hearing.

This bill would delete the requirement that the citation system contain the prescribed provisions, and would instead require the citation system to be as deemed appropriate by the board, and in accordance with provisions of existing law that establish a citation system for other healing arts professions.

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 651 of the Business and
- 2 Professions Code is amended to read:
- 3 651. (a) It is unlawful for any person licensed under
- 4 this division or under any initiative act referred to in this
- 5 division to disseminate or cause to be disseminated, any
- 6 form of public communication containing a false,
- 7 fraudulent, misleading, or deceptive statement or claim,



1 for the purpose of or likely to induce, directly or
2 indirectly, the rendering of professional services or
3 furnishing of products in connection with the professional
4 practice or business for which he or she is licensed. A
5 “public communication” as used in this section includes,
6 but is not limited to, communication by means of
7 television, radio, motion picture, newspaper, book, or list
8 or directory of healing arts practitioners.

9 (b) A false, fraudulent, misleading, or deceptive
10 statement or claim includes a statement or claim which
11 does any of the following:

12 (1) Contains a misrepresentation of fact.

13 (2) Is likely to mislead or deceive because of a failure
14 to disclose material facts.

15 (3) Is intended or is likely to create false or unjustified
16 expectations of favorable results.

17 (4) Relates to fees, other than a standard consultation
18 fee or a range of fees for specific types of services, without
19 fully and specifically disclosing all variables and other
20 material factors.

21 (5) Contains other representations or implications
22 that in reasonable probability will cause an ordinarily
23 prudent person to misunderstand or be deceived.

24 (c) Any price advertisement shall be exact, without
25 the use of phrases, including, but not limited to, “as low
26 as,” “and up,” “lowest prices” or words or phrases of
27 similar import. Any advertisement that refers to services,
28 or costs for services, and that uses words of comparison
29 shall be based on verifiable data substantiating the
30 comparison. Any person so advertising shall be prepared
31 to provide information sufficient to establish the accuracy
32 of that comparison. Price advertising shall not be
33 fraudulent, deceitful, or misleading, including statements
34 or advertisements of bait, discount, premiums, gifts, or
35 any statements of a similar nature. In connection with
36 price advertising, the price for each product or service
37 shall be clearly identifiable. The price advertised for
38 products shall include charges for any related
39 professional services, including dispensing and fitting



1 services, unless the advertisement specifically and clearly
2 indicates otherwise.

3 (d) Any person so licensed shall not compensate or
4 give anything of value to a representative of the press,
5 radio, television, or other communication medium in
6 anticipation of, or in return for, professional publicity
7 unless the fact of compensation is made known in that
8 publicity.

9 (e) Any person so licensed may not use any
10 professional card, professional announcement card, office
11 sign, letterhead, telephone directory listing, medical list,
12 medical directory listing, or a similar professional notice
13 or device if it includes a statement or claim that is false,
14 fraudulent, misleading, or deceptive within the meaning
15 of subdivision (b).

16 (f) Any person so licensed who violates this section is
17 guilty of a misdemeanor. A bona fide mistake of fact shall
18 be a defense to this subdivision but only to this
19 subdivision.

20 (g) Any violation of this section by a person so licensed
21 shall constitute good cause for revocation or suspension
22 of his or her license or other disciplinary action.

23 (h) Advertising by any person so licensed may include
24 the following:

25 (1) A statement of the name of the practitioner.

26 (2) A statement of addresses and telephone numbers
27 of the offices maintained by the practitioner.

28 (3) A statement of office hours regularly maintained
29 by the practitioner.

30 (4) A statement of languages, other than English,
31 fluently spoken by the practitioner or a person in the
32 practitioner's office.

33 (5) (A) A statement that the practitioner is certified
34 by a private or public board or agency or a statement that
35 the practitioner limits his or her practice to specific fields.
36 For the purposes of this section, the statement of a
37 practitioner licensed under Chapter 4 (commencing
38 with Section 1600) who limits his or her practice to a
39 specific field or fields, shall only include a statement that
40 he or she is certified or is eligible for certification by a



1 private or public board or parent association recognized
2 by that practitioner's licensing board. A statement of
3 certification by a practitioner licensed under Chapter 7
4 (commencing with Section 3000) shall only include a
5 statement that he or she is certified or eligible for
6 certification by a private or public board or parent
7 association recognized by that practitioner's licensing
8 board.

9 (B) A physician and surgeon licensed under Chapter
10 5 (commencing with Section 2000) by the Medical Board
11 of California may include a statement that he or she limits
12 his or her practice to specific fields, but may only include
13 a statement that he or she is certified or eligible for
14 certification by a private or public board or parent
15 association, including, but not limited to, a
16 multidisciplinary board or association, if that board or
17 association is (i) an American Board of Medical
18 Specialties member board, (ii) a board or association with
19 equivalent requirements approved by that physician and
20 surgeon's licensing board, or (iii) a board or association
21 with an Accreditation Council for Graduate Medical
22 Education approved postgraduate training program that
23 provides complete training in that specialty or
24 subspecialty. A physician and surgeon licensed under
25 Chapter 5 (commencing with Section 2000) by the
26 Medical Board of California who is certified by an
27 organization other than a board or association referred to
28 in clause (i), (ii), or (iii) shall not use the term "board
29 certified" in reference to that certification.

30 For purposes of this subparagraph, a "multidisciplinary
31 board or association" means an educational certifying
32 body that has a psychometrically valid testing process, as
33 determined by the Medical Board of California, for
34 certifying medical doctors and other health care
35 professionals that is based on the applicants' education,
36 training, and experience.

37 For purposes of the term "board certified," as used in
38 this subparagraph, the terms "board" and "association"
39 means an organization that is an American Board of
40 Medical Specialties member board, an organization with



1 equivalent requirements approved by a physician and
2 surgeon's licensing board, or an organization with an
3 Accreditation Council for Graduate Medical Education
4 approved postgraduate training program that provides
5 complete training in a specialty or subspecialty.

6 The Medical Board of California shall adopt regulations
7 to establish and collect a reasonable fee from each board
8 or association applying for recognition pursuant to this
9 subparagraph. The fee shall not exceed the cost of
10 administering this subparagraph. Notwithstanding
11 Section 2 of Chapter 1660 of the Statutes of 1990, this
12 subparagraph shall become operative July 1, 1993.
13 However, an administrative agency or accrediting
14 organization may take any action contemplated by this
15 subparagraph relating to the establishment or approval of
16 specialist requirements on and after January 1, 1991.

17 (C) A doctor of podiatric medicine licensed under
18 Chapter 5 (commencing with Section 2000) by the
19 Medical Board of California may include a statement that
20 he or she is certified or eligible or qualified for
21 certification by a private or public board or parent
22 association, including, but not limited to, a
23 multidisciplinary board or association, if that board or
24 association meets one of the following: (i) is approved by
25 the Council on Podiatric Medical Education, (ii) is a
26 board or association with equivalent requirements
27 approved by the California Board of Podiatric Medicine,
28 or (iii) is a board or association with the Council on
29 Podiatric Medical Education approved postgraduate
30 training programs that provide training in podiatric
31 medicine and podiatric surgery. A doctor of podiatric
32 medicine licensed under Chapter 5 (commencing with
33 Section 2000) by the Medical Board of California who is
34 certified by an organization other than a board or
35 association referred to in clause (i), (ii), or (iii) shall not
36 use the term "board certified" in reference to that
37 certification.

38 For purposes of this subparagraph, a "multidisciplinary
39 board or association" means an educational certifying
40 body that has a psychometrically valid testing process, as



1 determined by the California Board of Podiatric
2 Medicine, for certifying doctors of podiatric medicine
3 that is based on the applicant's education, training, and
4 experience. For purposes of the term "board certified,"
5 as used in this subparagraph, the terms "board" and
6 "association" mean an organization that is a Council on
7 Podiatric Medical Education approved board, an
8 organization with equivalent requirements approved by
9 the California Board of Podiatric Medicine, or an
10 organization with a Council on Podiatric Medical
11 Education approved postgraduate training program that
12 provides training in podiatric medicine and podiatric
13 surgery.

14 The California Board of Podiatric Medicine shall adopt
15 regulations to establish and collect a reasonable fee from
16 each board or association applying for recognition
17 pursuant to this subparagraph, to be deposited in the
18 State Treasury in the Podiatry Fund, pursuant to Section
19 2499. The fee shall not exceed the cost of administering
20 this subparagraph.

21 (6) A statement that the practitioner provides services
22 under a specified private or public insurance plan or
23 health care plan.

24 (7) A statement of names of schools and postgraduate
25 clinical training programs from which the practitioner
26 has graduated, together with the degrees received.

27 (8) A statement of publications authored by the
28 practitioner.

29 (9) A statement of teaching positions currently or
30 formerly held by the practitioner, together with
31 pertinent dates.

32 (10) A statement of his or her affiliations with hospitals
33 or clinics.

34 (11) A statement of the charges or fees for services or
35 commodities offered by the practitioner.

36 (12) A statement that the practitioner regularly
37 accepts installment payments of fees.

38 (13) Otherwise lawful images of a practitioner, his or
39 her physical facilities, or of a commodity to be advertised.



1 (14) A statement of the manufacturer, designer, style,
2 make, trade name, brand name, color, size, or type of
3 commodities advertised.

4 (15) An advertisement of a registered dispensing
5 optician may include statements in addition to those
6 specified in paragraphs (1) to (15), inclusive, provided,
7 that any statement shall not violate subdivision (a), (b),
8 (c), or (e) of this section or any other section of this code.

9 (16) A statement, or statements, providing public
10 health information encouraging preventative or
11 corrective care.

12 (17) Any other item of factual information that is not
13 false, fraudulent, misleading, or likely to deceive.

14 (i) Each of the healing arts boards and examining
15 committees within Division 2 shall adopt appropriate
16 regulations to enforce this section in accordance with
17 Chapter 3.5 (commencing with Section 11340) of Part 1
18 of Division 3 of Title 2 of the Government Code.

19 Each of the healing arts boards and committees and
20 examining committees within Division 2 shall, by
21 regulation, define those efficacious services to be
22 advertised by business or professions under their
23 jurisdiction for the purpose of determining whether
24 advertisements are false or misleading. Until a definition
25 for that service has been issued, no advertisement for that
26 service shall be disseminated. However, if a definition of
27 a service has not been issued by a board or committee
28 within 120 days of receipt of a request from a licensee, all
29 those holding the license may advertise the service. Those
30 boards and committees shall adopt or modify regulations
31 defining what services may be advertised, the manner in
32 which defined services may be advertised, and restricting
33 advertising that would promote the inappropriate or
34 excessive use of health services or commodities. A board
35 or committee shall not, by regulation, unreasonably
36 prevent truthful, nondeceptive price or otherwise lawful
37 forms of advertising of services or commodities, by either
38 outright prohibition or imposition of onerous disclosure
39 requirements. However, any member of a board or
40 committee acting in good faith in the adoption or



1 enforcement of any regulation shall be deemed to be
2 acting as an agent of the state.

3 (j) The Attorney General shall commence legal
4 proceedings in the appropriate forum to enjoin
5 advertisements disseminated or about to be disseminated
6 in violation of this section and seek other appropriate
7 relief to enforce this section. Notwithstanding any other
8 provision of law, the costs of enforcing this section to the
9 respective licensing boards or committees may be
10 awarded against any licensee found to be in violation of
11 any provision of this section. This shall not diminish the
12 power of district attorneys, county counsels, or city
13 attorneys pursuant to existing law to seek appropriate
14 relief.

15 SEC. 2. Section 2590 of the Business and Professions
16 Code is amended to read:

17 2590. (a) For purposes of this section, “perfusion”
18 means those functions necessary for the support,
19 treatment, measurement, or supplementation of the
20 cardiovascular system, circulatory system with or without
21 the oxygenation circuit, or any combination of those
22 activities, and to ensure the safe management of
23 physiologic functions by monitoring the necessary
24 parameters of those systems pursuant to an order and
25 under the supervision of a licensed physician and
26 surgeon.

27 (b) Perfusion services include, but are not limited to,
28 all of the following:

29 (1) The use of extracorporeal circulation,
30 cardiopulmonary support techniques, and other ancillary
31 therapeutic and diagnostic technologies. “Extracorporeal
32 circulation,” as used in this section, means the diversion
33 of a patient’s blood through a heart-lung machine or a
34 similar device that assumes the functions of the patient’s
35 heart, lungs, or both.

36 (2) Counterpulsation, ventricular assistance,
37 autotransfusion, including blood conservation
38 techniques, myocardial and organ preservation,
39 extracorporeal life support, and isolated limb perfusion.



1 (3) The use of techniques involving blood
2 management, advanced life support, and other related
3 functions.

4 (c) Perfusion services also include, but only during the
5 performance of functions described in subdivision (b),
6 the following:

7 (1) The administration of pharmacological and
8 therapeutic agents, blood products, or anesthetic agents
9 through the extracorporeal circuit or through an
10 intravenous line as ordered by a physician and surgeon.

11 (2) The performance and use of anticoagulation
12 analysis, physiologic monitoring, blood gas and chemistry
13 analysis, hematocrit analysis, hypothermia,
14 hyperthermia, hemoconcentration, and hemodilution.
15 Nothing in this paragraph shall exempt perfusionists from
16 the requirements of Chapter 3 (commencing with
17 Section 1200), including, but not limited to, quality
18 assurance and equipment maintenance requirements.

19 (3) The observation of signs and symptoms related to
20 perfusion services.

21 (4) Making a determination whether the signs and
22 symptoms related to perfusion services exhibit abnormal
23 characteristics.

24 (5) Implementation, based on observed
25 abnormalities, of appropriate reporting, or perfusion
26 protocols, or changes in treatment regimen, pursuant to
27 an order by a physician and surgeon, or the initiation of
28 emergency procedures. "Perfusion protocols" as used in
29 this section means perfusion-related policies and
30 protocols developed or approved by a licensed health
31 facility or a physician and surgeon through collaboration
32 with administrators and health professionals, including
33 perfusionists.

34 (d) Commencing January 1, 1993, no person shall hold
35 himself or herself out as a perfusionist, unless at the time
36 of doing so the person meets the educational and
37 examination requirements specified in subdivisions (e)
38 and (f).

39 (e) Except as provided in subdivision (f), persons
40 holding themselves out as perfusionists shall be graduates



1 of a training program described in Section 2592 and
2 produce satisfactory evidence of successful completion of
3 the entire examination of the American Board of
4 Cardiovascular Perfusion, or its successor agency, or the
5 equivalent thereof if an equivalent is determined to be
6 necessary by the Division of Licensing of the Medical
7 Board of California.

8 (f) Any person may be deemed to have completed the
9 equivalent of the examination and education
10 requirements if that person is currently certified by the
11 American Board of Cardiovascular Perfusion, or if, as of
12 January 1, 1993, the person has practiced as a perfusionist
13 and has annually performed a minimum of 40 cases of
14 cardiopulmonary bypass during cardiac surgery in a
15 licensed health facility and has done so for at least five
16 years since January 1, 1987. For the purposes of this
17 subdivision, "licensed health facility" means a health
18 facility licensed in any jurisdiction within the United
19 States.

20 (g) In order to continue to use the title of
21 "perfusionist," the person shall complete the continuing
22 education requirements of, or maintain active
23 certification by, the American Board of Cardiovascular
24 Perfusion, or its successor agency, or the equivalent if an
25 equivalent is determined to be necessary by the Division
26 of Licensing of the Medical Board of California.

27 (h) Any person who violates this section is guilty of a
28 misdemeanor.

29 SEC. 3. Section 2591 of the Business and Professions
30 Code is amended to read:

31 2591. (a) After completion of an approved perfusion
32 training program, as defined in Section 2592, and until
33 notification of passage of the entire examination of the
34 American Board of Cardiovascular Perfusion, or its
35 successor agency, that person shall identify himself or
36 herself only as a "graduate perfusionist."

37 ~~(b) A graduate perfusionist shall be under the~~
38 ~~supervision and direction of a perfusionist at all times~~
39 ~~during which the graduate perfusionist performs~~
40 ~~perfusion services. Supervision and direction shall not~~



1 ~~require the immediate physical presence of the~~
2 ~~supervising perfusionist.~~

3 ~~(e)~~

4 (b) The use of the title “graduate perfusionist” is valid
5 for no more than three years from the date of completion
6 of an approved perfusion training program.

7 SEC. 4. Section 2592 of the Business and Professions
8 Code is amended to read:

9 2592. (a) Except as otherwise provided in Section
10 2590, all persons calling themselves perfusionists shall be
11 graduates of an approved perfusion training program.

12 (b) For purposes of this article, an “approved
13 perfusion training program” means a training program in
14 perfusion reviewed by the Accreditation Committee on
15 Perfusion Education and approved by the Commission on
16 Accreditation of Allied Health Education Programs or its
17 successor or the equivalent training program if an
18 equivalent is determined to be necessary by the Division
19 of Licensing of the Medical Board of California.

20 SEC. 5. Section 3105.1 of the Business and Professions
21 Code is amended to read:

22 3105.1. The use or consumption of alcoholic
23 beverages or a narcotic drug by a person holding a
24 certificate under this chapter to the extent or in a manner
25 that is dangerous or injurious to the person or to any other
26 person or to the public or to an extent that the use or
27 consumption impairs the ability of the person holding the
28 certificate to conduct with safety to the public the
29 practice authorized by the certificate constitutes
30 unprofessional conduct. Section 3120 shall apply to a
31 violation of this section.

32 SEC. 6. Section 3135 of the Business and Professions
33 Code is amended to read:

34 3135. (a) In accordance with Section 125.9, the board
35 may establish a system for the issuance of citations, and
36 the assessment of administrative fines, as deemed
37 appropriate by the board.

38 SEC. 7. No reimbursement is required by this act
39 pursuant to Section 6 of Article XIII B of the California
40 Constitution because the only costs that may be incurred



1 by a local agency or school district will be incurred
2 because this act creates a new crime or infraction,
3 eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section
5 17556 of the Government Code, or changes the definition
6 of a crime within the meaning of Section 6 of Article
7 XIII B of the California Constitution.

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

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