AMENDED IN SENATE APRIL 22, 2009

AMENDED IN SENATE APRIL 20, 2009

AMENDED IN SENATE APRIL 1, 2009

# SENATE BILL No. 58

**Introduced by Senator Aanestad**

January 20, 2009

An act to amend Sections 800, 803.1, 805.5, and 2027 of, and to add Sections 805.3, *805.8,* and 2191.5 to, the Business and Professions Code, relating to ~~healing arts~~ *physicians and surgeons*.

LEGISLATIVE COUNSEL'S DIGEST

SB 58, as amended, Aanestad. ~~Peer review: reporting.~~ *Physicians and surgeons: peer review.*

Existing law provides for the professional review of specified healing arts licentiates through a peer review process conducted by peer review bodies, as defined.

This bill would require peer review bodies to annually report to the Medical Board of California on their peer review activities involving licensees of that board and to comply with any requests from the board for more detailed information.

~~The bill would require peer review bodies of health care facilities or clinics to obtain external peer review from an external peer review organization for the evaluation or investigation of an applicant, privilege holder, or member of the medical staff of the facility or clinic in specified circumstances and would encourage those peer review bodies to obtain that external review in certain other circumstances. The bill would require the external peer review organization to meet certain~~

~~requirements, as specified, and would authorize the organization to establish and collect reasonable fees for its services.~~

Under existing law, specified persons are required to file a report, designated as an "805 report," with a licensing board if a peer review body takes one of several specified actions against a person licensed by that board. ~~Existing~~ *Existing law provides various due process rights for licentiates who are the subject of a final proposed disciplinary action of a peer review body, including authorizing a licensee to request a hearing concerning that action.*

*With respect to physicians and surgeons, this bill would require peer review bodies to administer an early detection and resolution program (EDR) in which a peer review body would, where it deems appropriate, allow a physician and surgeon to complete certain training, observation, or consultation requirements instead of being subject to disciplinary action and an 805 report. The bill would delay the physician and surgeon's right to a hearing concerning a final proposed action pending his or her successful completion of EDR.*

*Existing* law requires the Medical Board of California to maintain a central file of its licensees containing, among other things, disciplinary information reported through 805 reports and authorizes licensees to submit additional exculpatory or explanatory statements, as specified. Existing law requires the board to disclose an 805 report to specified health care entities and requires the board to post on the Internet, and to disclose to inquiring members of the public, certain hospital disciplinary actions.

The bill would require the board to include the exculpatory or explanatory statement submitted by licensees regarding 805 reports in disclosures or postings of those reports or of hospital disciplinary actions. The bill would prohibit the board from including certain summary suspension information reported through an 805 report in a licensee's central file *or reporting that information to certain health care facilities*, except as specified. The bill would also prohibit the board from reporting or posting, and would require the board to remove from a licensee's central file, certain disciplinary information if a court reverses a disciplinary action reported pursuant to Section 805 or if the board's independent investigation exonerates the licensee from the charges forming the basis of the disciplinary action.

Existing law requires the Medical Board of California to adopt and administer standards for the continuing education of licensed physicians and surgeons.

This bill would require the board to adopt and administer standards allowing a physician and surgeon to receive credit for up to 10 hours of continuing education each year for participating in a peer review body without compensation.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 800 of the Business and Professions Code is amended to read:

800. (a) The Medical Board of California, the Board of Psychology, the Dental Board of California, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, the Physical Therapy Board of California, the California State Board of Pharmacy, and the Speech-Language Pathology and Audiology Board shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to the following information:

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

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

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

(4) (A) Disciplinary information reported pursuant to Section 805.

(B) Notwithstanding subparagraph (A), with respect to a physician and surgeon licensed by the Medical Board of California, all of the following shall apply:

(i) If a court reverses a disciplinary action reported pursuant to Section 805 or if the board's independent investigation exonerates the licensee from the charges forming the basis of the reported disciplinary action, the board shall remove the corresponding disciplinary information described in subparagraph (A) from the licensee's central file.

(ii) The board shall not include a summary suspension of staff privileges, employment, or membership reported pursuant to Section 805 in the licensee's central file unless the board confirms, by independent investigation, that the suspension is supported by substantial evidence of risk to patients.

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

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

Notwithstanding this subdivision, the Board of Psychology, the Board of Behavioral Sciences, and the Respiratory Care Board of California shall maintain complaints or reports as long as each board deems necessary.

(c) The contents of any central file that are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a

licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications. The information required to be disclosed pursuant to Section 803.1 shall not be considered among the contents of a central file for the purposes of this subdivision.

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

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

These disclosures shall effect no change in the confidential status of these records.

SEC. 2. Section 803.1 of the Business and Professions Code is amended to read:

803.1. (a) Notwithstanding any other provision of law, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public information regarding any enforcement actions taken against a licensee by either board or by another state or jurisdiction, including all of the following:

(1) Temporary restraining orders issued.

(2) Interim suspension orders issued.

(3) Revocations, suspensions, probations, or limitations on practice ordered by the board, including those made part of a probationary order or stipulated agreement.

(4) Public letters of reprimand issued.

(5) Infractions, citations, or fines imposed.

(b) Notwithstanding any other provision of law, in addition to the information provided in subdivision (a), the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public all of the following:

(1) Civil judgments in any amount, whether or not vacated by a settlement after entry of the judgment, that were not reversed on appeal and arbitration awards in any amount of a claim or action for damages for death or personal injury caused by the physician

and surgeon's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services.

(2) (A) All settlements in the possession, custody, or control of the board shall be disclosed for a licensee in the low-risk category if there are three or more settlements for that licensee within the last 10 years, except for settlements by a licensee regardless of the amount paid where (i) the settlement is made as a part of the settlement of a class claim, (ii) the licensee paid in settlement of the class claim the same amount as the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in the context of a case where the complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action. All settlements in the possession, custody, or control of the board shall be disclosed for a licensee in the high-risk category if there are four or more settlements for that licensee within the last 10 years except for settlements by a licensee regardless of the amount paid where (i) the settlement is made as a part of the settlement of a class claim, (ii) the licensee paid in settlement of the class claim the same amount as the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in the context of a case where the complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action. Classification of a licensee in either a "high-risk category" or a "low-risk category" depends upon the specialty or subspecialty practiced by the licensee and the designation assigned to that specialty or subspecialty by the Medical Board of California, as described in subdivision (f). For the purposes of this paragraph, "settlement" means a settlement of an action described in paragraph (1) entered into by the licensee on or after January 1, 2003, in an amount of thirty thousand dollars ($30,000) or more.

(B) The board shall not disclose the actual dollar amount of a settlement but shall put the number and amount of the settlement in context by doing the following:

(i) Comparing the settlement amount to the experience of other licensees within the same specialty or subspecialty, indicating if it is below average, average, or above average for the most recent 10-year period.

(ii) Reporting the number of years the licensee has been in practice.

(iii) Reporting the total number of licensees in that specialty or subspecialty, the number of those who have entered into a settlement agreement, and the percentage that number represents of the total number of licensees in the specialty or subspecialty.

(3) Current American Board of Medical Specialty certification or board equivalent as certified by the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine.

(4) Approved postgraduate training.

(5) Status of the license of a licensee. By January 1, 2004, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall adopt regulations defining the status of a licensee. The board shall employ this definition when disclosing the status of a licensee pursuant to Section 2027.

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

(B) The Medical Board of California shall include in the information disclosed pursuant to subparagraph (A) any exculpatory or explanatory statement regarding the hospital disciplinary action provided by a licensed physician and surgeon pursuant to subdivision (d) of Section 800.

(C) The Medical Board of California shall not disclose the information described in subparagraph (A) with respect to a licensed physician and surgeon if a court reverses the hospital disciplinary action or if the board's independent investigation exonerates the licensee from the charges forming the basis of the hospital disciplinary action.

(c) Notwithstanding any other provision of law, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public information received regarding felony convictions of a physician and surgeon or doctor of podiatric medicine.

(d) The Medical Board of California, the Osteopathic Medical Board of California, 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 an inquiring member of the public because that information is unreliable or not sufficiently related to the licensee's professional practice. The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall include the following statement when disclosing information concerning a settlement:

"Some studies have shown that there is no significant correlation between malpractice history and a doctor's competence. At the same time, the State of California believes that consumers should have access to malpractice information. In these profiles, the State of California has given you information about both the malpractice settlement history for the doctor's specialty and the doctor's history of settlement payments only if in the last 10 years, the doctor, if in a low-risk specialty, has three or more settlements or the doctor, if in a high-risk specialty, has four or more settlements. The State of California has excluded some class action lawsuits because those cases are commonly related to systems issues such as product liability, rather than questions of individual professional competence and because they are brought on a class basis where the economic incentive for settlement is great. The State of California has placed payment amounts into three statistical categories: below average, average, and above average compared to others in the doctor's specialty. To make the best health care decisions, you should view this information in perspective. You could miss an opportunity for high-quality care by selecting a doctor based solely on malpractice history.

When considering malpractice data, please keep in mind:

Malpractice histories tend to vary by specialty. Some specialties are more likely than others to be the subject of litigation. This report compares doctors only to the members of their specialty, not to all doctors, in order to make an individual doctor's history more meaningful.

This report reflects data only for settlements made on or after January 1, 2003. Moreover, it includes information concerning those settlements for a 10-year period only. Therefore, you should know that a doctor may have made settlements in the 10 years immediately preceding January 1, 2003, that are not included in

this report. After January 1, 2013, for doctors practicing less than 10 years, the data covers their total years of practice. You should take into account the effective date of settlement disclosure as well as how long the doctor has been in practice when considering malpractice averages.

The incident causing the malpractice claim may have happened years before a payment is finally made. Sometimes, it takes a long time for a malpractice lawsuit to settle. Some doctors work primarily with high-risk patients. These doctors may have malpractice settlement histories that are higher than average because they specialize in cases or patients who are at very high risk for problems.

Settlement of a claim may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the doctor. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.

You may wish to discuss information in this report and the general issue of malpractice with your doctor."

(e) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall, by regulation, develop standard terminology that accurately describes the different types of disciplinary filings and actions to take against a licensee as described in paragraphs (1) to (5), inclusive, of subdivision (a). In providing the public with information about a licensee via the Internet pursuant to Section 2027, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall not use the terms "enforcement," "discipline," or similar language implying a sanction unless the physician and surgeon has been the subject of one of the actions described in paragraphs (1) to (5), inclusive, of subdivision (a).

(f) The Medical Board of California shall adopt regulations no later than July 1, 2003, designating each specialty and subspecialty practice area as either high risk or low risk. In promulgating these regulations, the board shall consult with commercial underwriters of medical malpractice insurance companies, health care systems that self-insure physicians and surgeons, and representatives of the California medical specialty societies. The board shall utilize

the carriers' statewide data to establish the two risk categories and the averages required by subparagraph (B) of paragraph (2) of subdivision (b). Prior to issuing regulations, the board shall convene public meetings with the medical malpractice carriers, self-insurers, and specialty representatives.

(g) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall provide each licensee with a copy of the text of any proposed public disclosure authorized by this section prior to release of the disclosure to the public. The licensee shall have 10 working days from the date the board provides the copy of the proposed public disclosure to propose corrections of factual inaccuracies. Nothing in this section shall prevent the board from disclosing information to the public prior to the expiration of the 10-day period.

(h) Pursuant to subparagraph (A) of paragraph (2) of subdivision (b), the specialty or subspecialty information required by this section shall group physicians by specialty board recognized pursuant to paragraph (5) of subdivision (h) of Section 651 unless a different grouping would be more valid and the board, in its statement of reasons for its regulations, explains why the validity of the grouping would be more valid.

SEC. 3. Section 805.3 is added to the Business and Professions Code, to read:

805.3. A peer review body shall annually report to the Medical Board of California on its peer review activities involving licensees of that board and shall comply with any requests from that board for more detailed information. The information reported pursuant to this section shall be kept confidential.

SEC. 4. Section 805.5 of the Business and Professions Code is amended to read:

805.5. (a) Prior to granting or renewing staff privileges for any physician and surgeon, psychologist, podiatrist, or dentist, any health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, or any health care service plan or medical care foundation, or the medical staff of the institution shall request a report from the Medical Board of California, the Board of Psychology, the Osteopathic Medical Board of California, or the Dental Board of California to determine if any report has been made pursuant to Section 805 indicating that the applying physician and surgeon, psychologist, podiatrist,

or dentist has been denied staff privileges, been removed from a medical staff, or had his or her staff privileges restricted as provided in Section 805. The request shall include the name and California license number of the physician and surgeon, psychologist, podiatrist, or dentist. Furnishing of a copy of the 805 report shall not cause the 805 report to be a public record.

(b) Upon a request made by, or on behalf of, an institution described in subdivision (a) or its medical staff, which is received on or after January 1, 1980, the board shall furnish a copy of any report made pursuant to Section 805. However, the board shall not send a copy of a report (1) if the denial, removal, or restriction was imposed solely because of the failure to complete medical records, (2) if the board has found the information reported is without merit, or (3) if a period of three years has elapsed since the report was submitted. This three-year period shall be tolled during any period the licentiate has obtained a judicial order precluding disclosure of the report, unless the board is finally and permanently precluded by judicial order from disclosing the report. In the event a request is received by the board while the board is subject to a judicial order limiting or precluding disclosure, the board shall provide a disclosure to any qualified requesting party as soon as practicable after the judicial order is no longer in force.

In the event that the board fails to advise the institution within 30 working days following its request for a report required by this section, the institution may grant or renew staff privileges for the physician and surgeon, psychologist, podiatrist, or dentist.

(c) With respect to the Medical Board of California, both of the following shall apply:

(1) In addition to the circumstances identified in subdivision (b), the board shall not send a copy of a report made pursuant to Section 805 if a court reverses the denial, removal, or restriction.

*In addition, the board shall not send a copy of a report made pursuant to subdivision (e) of Section 805, regarding the imposition of a summary suspension of staff privileges, membership, or employment, unless the board confirms, by independent investigation, that the suspension is supported by substantial evidence of risk to patients.*

(2) The board shall include with the copy of the 805 report furnished under this section any exculpatory or explanatory

statement made regarding the report pursuant to subdivision (d) of Section 800.

(d) Any institution described in subdivision (a) or its medical staff that violates subdivision (a) is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars ($200) nor more than one thousand two hundred dollars ($1,200).

*SEC. 5. Section 805.8 is added to the Business and Professions Code, to read:*

*805.8. (a) For purposes of this section, the following definitions apply:*

*(1) "Board" means the Medical Board of California.*

*(2) "Physician and surgeon" means a physician and surgeon licensed by the board.*

*(b) A peer review body shall administer an early detection and resolution program (EDR) in which all of the following occur:*

*(1) The peer review body, where it deems appropriate, gives a physician and surgeon, who is the subject of a final proposed action for which an 805 report is required to be filed, the option of completing EDR.*

*(2) The peer review body requires the physician and surgeon participating in EDR to do any of the following for a period of time designated by the peer review body as a condition of completion of EDR:*

*(A) Be observed during patient care interventions by another physician and surgeon.*

*(B) Consult another physician and surgeon prior to implementing a course of care.*

*(C) Complete education or training designated by the peer review body.*

*(c) Notwithstanding Section 809.1 or 809.2, a physician and surgeon shall not have a right to a hearing concerning the peer review body's final proposed action while participating in or after successfully completing EDR. The time limit to request this hearing shall be tolled pending the physician and surgeon's successful completion of EDR.*

*(d) The peer review body acting pursuant to subdivision (b) shall not file an 805 report for any action that resulted in referral to EDR while a physician and surgeon participates in EDR or after the physician and surgeon successfully completes EDR.*

*(e) A physician and surgeon who successfully completes EDR shall not be subject to any disciplinary action by the peer review body acting pursuant to subdivision (b) or the board for any action that resulted in referral to EDR. However, participation in EDR shall not preclude the peer review body or the board from investigating or continuing to investigate, or from taking or continuing to take disciplinary action against, a physician and surgeon for any unprofessional conduct that does not serve as a basis for referral to EDR.*

*(f) The time limit for filing an accusation under Section 2230.5 shall be tolled from the date on which a peer review body notifies the board of the physician and surgeon's participation in EDR under subdivision (h) until the date that the board receives notice from the peer review body that the physician and surgeon failed to successfully complete EDR under subdivision (h).*

*(g) A physician and surgeon participating in EDR shall not establish staff privileges at any new facility while participating in EDR.*

*(h) A peer review body shall notify the board of a physician and surgeon's participation in EDR. A peer review body shall also provide that notification to health care facilities at which the physician and surgeon has staff privileges. The peer review body shall also notify the board and those health care facilities when that participation has ceased, including whether or not the physician and surgeon successfully completed EDR.*

*(i) Costs incurred in connection with EDR shall be the sole responsibility of the participating physician and surgeon.*

*(j) Except for disclosures to the board and health care facilities required under subdivision (h), a peer review body shall not disclose information obtained in administering EDR that individually identifies patients, participants in EDR, individual health care professionals, peer review bodies, or their committees or members, or individual health care facilities.*

~~SEC. 5.~~

*SEC. 6.* Section 2027 of the Business and Professions Code is amended to read:

2027. (a) The board shall post on the Internet the following information in its possession, custody, or control 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), subject to an interim suspension order (ISO), or subject to any of the enforcement actions set forth in Section 803.1.

(2) With regard to prior discipline, whether or not the licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

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

(4) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" shall mean an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the Medical Board of California unless an appeal of that decision is pending.

(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. The board shall also post any exculpatory or explanatory statement regarding those hospital disciplinary actions provided by the licensee pursuant to subdivision (d) of Section 800.

(7) Any misdemeanor conviction that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(8) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(9) Any information required to be disclosed pursuant to Section 803.1.

(b) (1) From January 1, 2003, the information described in paragraphs (1) (other than whether or not the licensee is in good standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain posted for a period of 10 years from the date the board obtains possession, custody, or control of the information, and after the end of that period shall be removed from being posted on the

board's Internet Web site. Information in the possession, custody, or control of the board prior to January 1, 2003, shall be posted for a period of 10 years from January 1, 2003. Settlement information shall be posted as described in paragraph (2) of subdivision (b) of Section 803.1.

(2) The information described in paragraphs (3) and (6) of subdivision (a) shall not be removed from being posted on the board's Internet Web site. Notwithstanding the provisions of this paragraph, if a licensee's hospital staff privileges are restored and the licensee notifies the board of the restoration, the information pertaining to the termination or revocation of those privileges, as described in paragraph (6) of subdivision (a), shall remain posted for a period of 10 years from the restoration date of the privileges, and at the end of that period shall be removed from being posted on the board's Internet Web site.

(c) Notwithstanding subdivision (a) or paragraph (2) of subdivision (b), the board shall remove and shall not post the information described in paragraph (6) of subdivision (a) if a court reverses the hospital disciplinary action or if the board's independent investigation exonerates the licensee from the charges forming the basis of the hospital disciplinary action.

(d) 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. 6.~~

*SEC. 7.* Section 2191.5 is added to the Business and Professions Code, to read:

2191.5. The board shall adopt and administer standards allowing a physician and surgeon to receive credit for up to 10 hours of continuing education each year for participating in a peer review body without compensation. For purposes of this section, "peer review body" has the same meaning as that term is defined in Section 805.

O