



## **MEETING NOTICE**

**May 19, 2014**

**PHYSICIAN ASSISTANT BOARD**  
**2005 Evergreen Street – Hearing Room #1150**  
**Sacramento, CA 95815**  
**9:30 A.M. – 5:00 P.M.**

### **AGENDA**

**(Please see below for Webcast information)**

**ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE**

1. Call to Order by President (Sachs)
2. Roll Call (Forsyth)
3. Approval of February 24, 2014 Meeting Minutes (Sachs)
4. Public Comment on Items not on the Agenda (Sachs) [Note: The Board may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda for a future meeting. [Government Code Sections 11125, 11125.7(a).]
5. Reports
  - a. President's Report (Sachs)
    1. Discussion regarding California licensed physician assistants using the title "Physician Associates"
  - b. Executive Officer's Report (Mitchell)
    1. Update on BreEZe Implementation
    2. CURES Update
  - c. Licensing Program Activity Report (Forsyth)
  - d. Diversion Program Activity Report (Mitchell)
  - e. Enforcement Program Activity Report (Tincher)
6. Department of Consumer Affairs
  - a. Director's Update (Christine Lally)
7. Regulations
  - a. Proposed amendments to title 16, California Code of Regulations, Section 1399.541 Medical Services Performable (Sachs/Shellans)
8. Presentation on Ethical Decision Making for Board Members (Shellans)
9. Medical Board of California Activities (Bishop)
  - a. Prescribing Task Force Update
10. Budget Update (Tincher)

11. The Legislative Committee (Hazelton/Earley)
  - a. Proposal to amend Business and Professions Code, Division 2, Chapter 7, Section 3509.5 – Administration. This proposal would delete “chairperson” and “vice chairperson” and replace with “president” and “vice president”
  - b. Legislation of Interest to the Physician Assistant Board  
AB 1702, AB 1841, AB 2058, AB 2102, AB 2396, SB 981, SB 1083, SB 1091, SB 500 and other bills impacting the Board identified by staff after publication of the agenda
12. Lunch break will be taken at some point during the day’s meeting.
13. **CLOSED SESSION:**
  - a. Pursuant to Section 11126(c)(3) of the Government Code, the Board will move into closed session to deliberate on disciplinary matters

**RETURN TO OPEN SESSION**
14. Agenda Items for Next Meeting (Sachs)
15. Adjournment (Sachs)

Note: Agenda discussion and report items are subject to action being taken on them during the meeting by the Board at its discretion. All times when stated are approximate and subject to change without prior notice at the discretion of the Board unless listed as “time certain”. Agenda items may be taken out of order and total time allocated for public comment on particular issues may be limited.

While the Board intends to webcast this meeting, it may not be possible to webcast the meeting due to limitations on resources. The webcast can be located at [www.dca.ca.gov](http://www.dca.ca.gov). If you would like to ensure participation, please plan to attend at the physical location.

Notice: The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Lynn Forsyth at (916) 561-8785 or email [Lynn.Forsyth@mbc.ca.gov](mailto:Lynn.Forsyth@mbc.ca.gov) or send a written request to the Physician Assistant Board, 2005 Evergreen Street, Suite 1100, Sacramento, California 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the request.

Agenda

Item

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## MEETING MINUTES

February 24, 2014

PHYSICIAN ASSISTANT BOARD  
2005 Evergreen Street – Hearing Room #1150  
Sacramento, CA 95815  
9:00 A.M. – 5:00 P.M.

### 1. Call to Order by President

President Sachs called the meeting to order at 9:05 a.m.

### 2. Roll Call

Staff called the roll. A quorum was present.

Board Members Present:            Robert Sachs, PA-C  
   Charles Alexander, Ph.D.  
   Michael Bishop, M.D.  
   Cristina Gomez-Vidal Diaz  
   Sonya Earley, PA  
   Jed Grant, PA-C  
   Xavier Martinez  
   Rosalee Shorter, PA-C

Board Members Absent:            Catherine Hazelton

Staff Present:                            Glenn Mitchell, Executive Officer  
   Laura Freedman, Senior Staff Counsel,  
   Department of Consumer Affairs (DCA)  
   Kristy Shellans, Senior Staff Counsel,  
   Department of Consumer Affairs (DCA)  
   Dianne Tincher, Enforcement Analyst  
   Lynn Forsyth, Staff Services Analyst  
   Julie Caldwell, Licensing Technician

### 3. Approval of December 9, 2013 Meeting Minutes

Following a brief discussion, a change was made to Item 10, Update on Current Budget, paragraph two. The loan amount stated in the draft was incorrect and should state \$1.5 million and not \$5 million.

The December 9, 2013 meeting minutes were approved as amended.  
(m/Grant, s/Earley, motion passes)

4. **Public Comment on Items not on the Agenda (Sachs)**

There was no public comment at this time.

5. **Reports**

a. **President's Report**

President Sachs informed the members that on February 25, 2014, he would be providing a physician assistant laws and regulations, licensing, and enforcement presentation to the senior year students at the University of Southern California Physician Assistant Program.

President Sachs introduced Xavier Martinez, who was recently appointed to the board.

Mr. Martinez has been the owner of Martinez and Associates Inc. since 1995. He was a temporary tax preparer at Jassoy Graff and Douglas from 1993 to 1994 and temporary staff member at Security Pacific Financial from 1992 to 1994. Martinez was a tax manager at McDonnell Douglas Computer Systems from 1989 to 1991 and at USA Petroleum from 1987 to 1988. He was director of taxes at the Wickes Corporation from 1973 to 1987. Martinez earned a Master of Science degree in taxation from Golden Gate University.

b. **Executive Officer's Report**

Mr. Mitchell stated that on October 8, 2013 the board's licensing, verifications and enforcement functions were converted to the Department of Consumer Affairs BreEZe system. Mr. Mitchell stated that we continue to work with the BreEZe team on production stabilization issues.

He added that the board is scheduled to implement on line physician assistant applications during April 2014. Additionally, the board is scheduled to implement on line physician assistant license renewals during August 2014.

Mr. Mitchell stated that the CURES system (Controlled Substance Utilization Review and Evaluation System) is a data base that contains records of controlled substance drugs dispensed in California.

Mr. Mitchell informed the board that the CURES data is useful in investigating complaints concerning dispensing or use of controlled substances by physician assistants. Mr. Mitchell also stated that Governor Brown signed into law SB 809, which will address CURES funding issues and allow for enhancements to the system to better meet the needs of the users of this information.

Mr. Mitchell stated that the Medical Board of California held a regulatory hearing on February 7, 2014 for Title 16, California Code of Regulations, Section 1399.541 Medical Services Performable.

He added that following a discussion it was proposed to delete "or" from the language. Mr. Mitchell also stated that due to the change there would be a 15 day public comment period.

A motion was made to support the revised language deleting the word, "or." The board directed Mr. Mitchell to write a letter to the Medical Board of California in support of the proposed change.  
(m/Grant, s/Shorter, motion passes)

c. Licensing Program Activity Report

Between November 1, 2013 and February 1, 2014, 144 physician assistant licenses were issued.

As of February 1, 2014, 8,822 physician assistant licenses are renewed and current.

d. Diversion Program Activity Report

As of January 1, 2014, the board's Diversion Program has 17 participants, which includes 2 self-referral participants and 15 board-referral participants.

A total of 118 participants have participated in the program since implementation in 1990.

e. Enforcement Program Activity Report

Between July 1, 2013 and December 31, 2013, 11 accusations were filed; 2 statement of issues were filed; 7 probationary licenses were issued, and there are currently 47 probationers.

6. Department of Consumer Affairs

Christine Lally, Deputy Director, Board and Bureau Relations for the Department of Consumer Affairs, informed members that the Department of Consumer Affairs has recently revised their Strategic Plan and that it is now available on the department's website.

Ms. Lally also reminded the board members that the Form 700 required by the Fair Political Practices Commission must to be submitted by April 1, 2014 to comply with the Commission's requirements concerning conflict of interest.

On behalf of the Director, Ms. Lally congratulated Mr. Xavier Martinez on his recent appointment to the board.

Ms. Lally informed the board that the next Board Member Orientation Training is scheduled for April 2, 2014 in Sacramento. She added that all new board members are required to attend this training.

7. **Schedule of Board Meeting Dates and Locations for the Remainder of 2014**

Board members discussed the following proposed dates and meeting locations for 2014:

May 12 or 19, 2014 - Monday in Sacramento.  
August 11 or 18, 2014 - Monday in Sacramento.  
November 3 or 17, 2014 - Monday in Sacramento.

By consensus, the following meeting dates and meeting locations for the remainder of 2014 were established:

May 19, 2014 – Monday in Sacramento  
August 18, 2014 – Monday in Sacramento  
November 3, 2014 – Monday in Sacramento

8. **Budget Update**

Ms. Tincher indicated that as of December 31, 2013 Calstars projected 51% of our current budget remains. Ms. Tincher also stated that budget projections indicate a 13% surplus for the year.

9. **Discussion of National Commission on Certification of Physician Assistant Initial Licensing Examination: Exam Development and Scoring**

Title 16, California Code of Regulations Section 1399.507 states, in part, that the physician assistant licensing examination is that administered by the National Commission on Certification of Physician Assistants (NCCPA).

At the December 9, 2013 meeting, members expressed an interest in learning more about the NCCPA's Physician Assistant National Certifying Examination (PANCE) development and scoring process.

Mr. Mitchell stated that a detailed description of PANCE development and scoring process has been included in the agenda packet materials.

Briefly, Mr. Mitchell stated that PANCE questions are developed by a NCCPA committee comprising of physician assistants and physicians. The test committee write questions and then each question goes through a review process.

A mathematically based procedure is employed to score the exam. The minimum reported score is 200 and the maximum score is 800.

Mr. Mitchell stated that it is his understanding that this process is typically employed by the examination community as standard practice.

10. **Presentation from the Department of Consumer Affairs, Division of Investigation Regarding - SB 304**

Mr. Michael Gomez, Deputy Director, Division of Investigation and Enforcement for the Department of Consumer Affairs, informed the board that SB 304 will transfer the Medical Board of California investigators to the department's Division of Investigation and Enforcement. A Health Quality Unit will be formed incorporating the former Medical Board of California investigators. This transfer will take place July 1, 2014.

As the board utilizes the services of Medical Board investigators to conduct investigations regarding physician assistant complaints, the board will be impacted by this reorganization.

Mr. Gomez assured the board that the transfer will be seamless and will not impact how the board investigates complaints as physician assistant investigations will be handled by the new Health Quality Unit which will incorporate former Medical Board of California investigators who are already familiar with physician assistant laws and regulations.

11. **Presentation on Services Provided By The Health Quality Enforcement Section of the Office of the Attorney General**

Judith Alvarado has been with the Department of Justice since 2007, in the Health Quality Enforcement Section. She was appointed to the position of Supervising Deputy Attorney General in October 2013. Ms. Alvarez currently serves as the board's Liaison Deputy Attorney General.

Ms. Alvarado gave a presentation about her role as the board's Liaison Deputy Attorney General and her role of the Health Quality Enforcement Section of the Office of the Attorney General.

Ms. Alvarado described some of the legal service liaison duties that she provides to the board, including:

- Communicating board policies and procedures to other DAGs.
- Assisting board staff on physician assistant application and licensing issues.
- Periodically reviewing board case loads to ensure cases are handled efficiently.
- Being aware of board legislative proposals, changes to laws and regulations.
- Working with the board's legal counsel to assure coordinated and consistent legal advice.

Ms. Alvarado also briefly described the Vertical Enforcement and Prosecution Model which is sometimes utilized with physician assistant disciplinary cases. With this model, the trial attorney and board investigator are assigned as a team to handle a case as soon as a formal investigation is opened.

12. **Discussion of Possible Legislation Regarding Physician Assistants Signing Disability Forms.**

Mr. Sachs stated that currently physician assistants are may not legally sign disability insurance forms, However, he added, physicians and nurse practitioners may sign these forms.

Mr. Sachs also informed the board that SB 1083 (Pavley), sponsored by the California Academy of Physician Assistants, was recently introduced which would permit physician assistants to sign disability insurance forms.

13. **The Legislative Committee**

a. **Report from Adhoc Legislative Sub-Committee**

Mr. Grant indicated that originally this sub-committee was formed to review legislation of interest to the board and possibly seek legislation for proposed legislation. Mr. Grant added that since the California Academy of Physician Assistants already seeks legislation concerning physician assistants, the sub-committee's purpose is duplicative of that of the California Academy of Physician Assistants.

Because of the duplicative function, Mr. Grant recommended dissolving the Adhoc Legislative Sub-Committee.

Following a brief discussion a motion was made to dissolve the Adhoc Legislative Sub-Committee.

(m/Grant, s/Earley, motion passes)

b. **Legislation of Interest to the Physician Assistant Board**

Ms. Earley indicated that SB 500 (Medical Practice: Pain Management) would require the Medical Board of California, on or before July 1, 2015 to update their pain management standards. Ms. Earley also stated that SB 500 would require the Medical Board of California to convene a task force to develop and recommend the updates standards to the board.

Dr. Bishop pointed out to members that the Medical Board of California is currently holding meetings to obtain public input to revise their current pain management guidelines to ensure that they are relevant in today's medical community.

At this time, there was no other legislation of interest to the board.

14. A brief lunch break was taken.

15. **CLOSED SESSION:**

- a. Pursuant to Section 11126(c)(3) of the Government Code, the Board moved into closed session to deliberate on disciplinary matters.

**RETURN TO OPEN SESSION**

16. **Review and Discussion of the Board's Strategic Plan**

Terrie Meduri and Dennis Zanchi from the Department of Consumer Affairs, provided the members with a draft copy of the board's Strategic Plan for their review.

Following a discussion a motion was made to adopt the proposed Strategic Plan for 2014 to 2018.

(m/Grant, s/Earley, motion passes)

17. **Agenda Items for Next Meeting**

A. Regulations update:

Proposed amendments to title 16, California Code of Regulations, Section 1399.541 Medical Services Performable.

B. Legislation Report of bills of interest to the board.

C. Presentation by legal counsel on Ethical Decision Making for Board Members.

D. Medical Board of California Activities.

E. Medical Board of California: Prescribing Task Force: update.

18. **Adjournment**

With no further business, the meeting adjourned at 2:00 P.M.

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**PHYSICIAN ASSISTANT BOARD**  
**LICENSING PROGRAM ACTIVITY REPORT**

**INITIAL LICENSES ISSUED**

	<b>1 February 2014- 1 May 2014</b>	<b>1 February 2013- 1 May 2013</b>
Initial Licenses	167	163

**SUMMARY OF RENEWED/CURRENT LICENSES**

	<b>As of 1 May 2014</b>	<b>As of 1 May 2013</b>
Physician Assistant	9,405	8,999

**PHYSICIAN ASSISTANT BOARD  
DIVERSION PROGRAM**

**ACTIVITY REPORT**

California licensed physician assistants participating in the Physician Assistant Board drug and alcohol diversion program:

	As of 1 April 2014	As of 1 April 2013	As of 1 April 2012
Voluntary referrals	04	02	06
Board referrals	10	15	20
Total number of participants	14	17	26

**HISTORICAL STATISTICS**  
(Since program inception: 1990)

Total intakes into program as of 1 April 2014.....	124
Closed Cases as of 1 April 2014	
• Participant expired.....	1
• Successful completion.....	41
• Dismissed for failure to receive benefit.....	4
• Dismissed for non-compliance.....	24
• Voluntary withdrawal.....	21
• Not eligible.....	17
Total closed cases.....	108

**OTHER DCA BOARD DIVERSION PROGRAM PARTICIPANTS**  
(As of April 2014)

Dental Board of California.....	33
Osteopathic Medical Board of California.....	13
Board of Pharmacy.....	64

**PHYSICIAN ASSISTANT BOARD  
ENFORCEMENT ACTIVITY REPORT**

**July 1 through March 31, 2014**

Submitted by: Dianne Tincher

**Disciplinary Decisions**

License Denied .....	1
Probation.....	4
Public Reprimand/Reproval .....	1
Revocation .....	4
Surrender .....	6
Probationary Licenses Issued.....	10
Petition for Reinstatement Denied .....	1
Petition for Reinstatement Granted .....	0
Petition for Termination of Probation Denied .....	2
Petition for Termination of Probation Granted ....	0
Other .....	0

**Accusation/Statement of Issues**

Accusation Filed.....	14
Accusation Withdrawn .....	0
Statement of Issues Filed .....	2
Statement of Issues Withdrawn .....	2
Petition to Revoke Probation Filed.....	1
Petition to Compel Psychiatric Exam.....	0
Interim Suspension Orders (ISO)/PC23 .....	3

**Citation and Fines**

Pending from previous FY .....	3
Issued .....	16
Closed .....	5
Withdrawn .....	1
Sent to AG/noncompliance .....	0
Pending.....	13
Initial Fines Issued .....	\$9200
Modified Fines Due .....	\$8750
Fines Received .....	\$1100

**Current Probationers**

Active .....	48
Tolled .....	11

Agenda

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AGENDA ITEM 7a  
19 May 2014

TO: Members,  
Physician Assistant Board

FROM: Glenn L. Mitchell, Jr., Executive Officer  
Physician Assistant Board 

DATE: 8 May 2014

SUBJECT: Regulatory Proposal: Title 16, California Code of Regulations  
Section 1399.541 – Medical Services Performable

### Background

Please see attached Medical Board of California Agenda Item 17 materials.

This matter was discussed at the Medical Board of California meeting on 2 May 2014. Medical Board of California members were asked to consider additional modifications to the proposed language as suggested by counsel of the Office of the Attorney General to further clarify the definition of “immediately available.”

Members of the Medical Board of California considered the matter and voted to approve the modified language and refer it back to the Physician Assistant Board for review and approval.

If the modified language is approved by the Physician Assistant Board it will be noticed for another 15-day public comment period. If no adverse comments are received, the Medical Board of California will submit the regulatory package to the Office of Administrative Law for their consideration.

### Requested Action

Staff recommends that the Physician Assistant Board review the attached proposed language modifying Title 16, California Code of Regulations Section 1399.541, make a motion to approve the modified language, and refer the matter back to the Medical Board of California for a 15-day public comment period.

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: April 15, 2014  
ATTENTION: Board Members  
SUBJECT: Physician Assistant Regulation, 16 CCR 1399.541  
FROM: Kerrie Webb, Senior Staff Counsel

REQUESTED ACTION:

After review and consideration of the attached proposed language modifying Title 16, California Code of Regulations (CCR) section 1399.541 (Attachment A), make a motion to approve the modified language, and refer the matter back to the Physician Assistant Board for consideration. If the language is approved without substantive changes, authorize the modified language to be noticed for another 15-day comment period.

BACKGROUND:

At the February 2014 meeting of the Medical Board of California (Board), Board Members held a hearing and reviewed the comments received during the 45-day comment period on the proposed modifications to 16 CCR 1399.541, addressing physician supervision of physician assistants acting as first or second surgery assistants. Members voted to make a small modification to the language by striking an “or” from the last sentence. The proposed modification was noticed for a 15-day comment period on March 13, 2014 (see Attachment B).

The comments received during this 15-day period, included herewith as Attachment C, are not related to the specific modification prompting the re-notice. Nonetheless, the Board has the discretion to reopen and reconsider the language. Following consideration of the comments received and discussions with counsel from the Department of Consumer Affairs and Health Quality Enforcement Section, staff recommends further clarifying the definition of “immediately available,” and submits the attached proposed language (see Attachment A).

If the Board Members vote to support this further modification, the proposed regulation should be referred back the Physician Assistant Board for review and approval. If the Physician Assistant Board approves the modified language, it will be noticed for another 15-day comment period. If no adverse comments are received, the Executive Director will submit the regulation to the Office of Administrative Law and complete the rulemaking process.

MEDICAL BOARD OF CALIFORNIA  
SPECIFIC LANGUAGE OF PROPOSED CHANGES  
MEDICAL SERVICES PERFORMABLE

AMENDED MODIFIED TEXT

Legend

<u>Underlined</u>	Indicates proposed amendments or additions to the existing regulation
<u>Red underlined</u>	Indicates additional proposed amendments to the originally proposed language.
<del>Strikeout</del>	Indicates proposed deletions to the existing regulation.
<del>Double strikeout</del>	Indicates additional deletions to the originally proposed language

Amend Section 1399.541 of Article 4 of Division 13.8 as follows:

**§ 1399.541. Medical Services Performable.**

Because physician assistant practice is directed by a supervising physician, and a physician assistant acts as an agent for that physician, the orders given and tasks performed by a physician assistant shall be considered the same as if they had been given and performed by the supervising physician. Unless otherwise specified in these regulations or in the delegation or protocols, these orders may be initiated without the prior patient specific order of the supervising physician.

In any setting, including for example, any licensed health facility, out-patient settings, patients' residences, residential facilities, and hospices, as applicable, a physician assistant may, pursuant to a delegation and protocols where present:

(a) Take a patient history; perform a physical examination and make an assessment and diagnosis therefrom; initiate, review and revise treatment and therapy plans including plans for those services described in Section 1399.541(b) through Section 1399.541(i) inclusive; and record and present pertinent data in a manner meaningful to the physician.

(b) Order or transmit an order for x-ray, other studies, therapeutic diets, physical therapy, occupational therapy, respiratory therapy, and nursing services.

(c) Order, transmit an order for, perform, or assist in the performance of laboratory procedures, screening procedures and therapeutic procedures

(d) Recognize and evaluate situations which call for immediate attention of a physician and institute, when necessary, treatment procedures essential for the life of the patient.

(e) Instruct and counsel patients regarding matters pertaining to their physical and mental health. Counseling may include topics such as medications, diets, social habits, family planning, normal growth and development, aging, and understanding of and long-term management of their diseases.

(f) Initiate arrangements for admissions, complete forms and charts pertinent to the patient's medical record, and provide services to patients requiring continuing care, including patients at home.

(g) Initiate and facilitate the referral of patients to the appropriate health facilities, agencies, and resources of the community.

(h) Administer or provide medication to a patient, or issue or transmit drug orders orally or in writing in accordance with the provisions of subdivisions (a)-(f), inclusive, of Section 3502.1 of the Code.

(i)(1) Perform surgical procedures without the personal presence of the supervising physician which are customarily performed under local anesthesia. Prior to delegating any such surgical procedures, the supervising physician shall review documentation which indicates that the physician assistant is trained to perform the surgical procedures. All other surgical procedures requiring other forms of anesthesia may be performed by a physician assistant only in the personal presence of an approved supervising physician.

(2) A physician assistant may also act as first or second assistant in surgery under the supervision of an approved supervising physician. The physician assistant may so act without the personal presence of the supervising physician if the supervising physician is immediately available to the physician assistant. "Immediately available" means the physician is physically accessible and able to return to the patient, without any delay, upon the request of the physician assistant or to address any situation requiring the supervising physician's services.

Note: Authority cited: Sections 2018, 3502 and 3510, Business and Professions Code.  
Reference: Sections 2058, 3502 and 3502.1, Business and Professions Code.

## AVAILABILITY OF MODIFIED TEXT

NOTICE IS HEREBY GIVEN that Medical Board of California has proposed modifications to the text of section 1399.541 in Title 16 Cal. Code Reg. which was the subject of a regulatory hearing on February 7, 2014. A copy of the modified text is enclosed. Any person who wishes to comment on the proposed modifications may do so by submitting written comments on or before March 28, 2014, to the following:

Glenn L. Mitchell, Jr.  
Physician Assistant Board  
2005 Evergreen Street, Suite 1100  
Sacramento, CA 95815

Telephone Number: 916. 561.8783  
Fax Number: 916.261.2671  
E-Mail Address: glenn.mitchell@mbc.ca.gov

DATED: 3/13/14

  
\_\_\_\_\_  
Christine Valine, Regulations Coordinator

**MEDICAL BOARD OF CALIFORNIA  
SPECIFIC LANGUAGE OF PROPOSED CHANGES  
MEDICAL SERVICES PERFORMABLE**

**MODIFIED TEXT**

Legend

<u>Underlined</u>	Indicates proposed amendments or additions to the existing regulation
<del>Strikeout</del>	Indicates proposed deletions to the existing regulation.
<del>Double-strikeout</del>	Indicates additional deletions to the originally proposed language

Amend Section 1399.541 of Article 4 of Division 13.8 as follows:

**§ 1399.541. Medical Services Performable.**

Because physician assistant practice is directed by a supervising physician, and a physician assistant acts as an agent for that physician, the orders given and tasks performed by a physician assistant shall be considered the same as if they had been given and performed by the supervising physician. Unless otherwise specified in these regulations or in the delegation or protocols, these orders may be initiated without the prior patient specific order of the supervising physician.

In any setting, including for example, any licensed health facility, out-patient settings, patients' residences, residential facilities, and hospices, as applicable, a physician assistant may, pursuant to a delegation and protocols where present:

(a) Take a patient history; perform a physical examination and make an assessment and diagnosis therefrom; initiate, review and revise treatment and therapy plans including plans for those services described in Section 1399.541(b) through Section 1399.541(i) inclusive; and record and present pertinent data in a manner meaningful to the physician.

(b) Order or transmit an order for x-ray, other studies, therapeutic diets, physical therapy, occupational therapy, respiratory therapy, and nursing services.

(c) Order, transmit an order for, perform, or assist in the performance of laboratory procedures, screening procedures and therapeutic procedures.

(d) Recognize and evaluate situations which call for immediate attention of a physician and institute, when necessary, treatment procedures essential for the life of the patient.

(e) Instruct and counsel patients regarding matters pertaining to their physical and mental health. Counseling may include topics such as medications, diets, social habits, family planning, normal growth and development, aging, and understanding of and long-term management of their diseases.

(f) Initiate arrangements for admissions, complete forms and charts pertinent to the patient's medical record, and provide services to patients requiring continuing care, including patients at home.

(g) Initiate and facilitate the referral of patients to the appropriate health facilities, agencies, and resources of the community.

(h) Administer or provide medication to a patient, or issue or transmit drug orders orally or in writing in accordance with the provisions of subdivisions (a)-(f), inclusive, of Section 3502.1 of the Code.

(i)(1) Perform surgical procedures without the personal presence of the supervising physician which are customarily performed under local anesthesia. Prior to delegating any such surgical procedures, the supervising physician shall review documentation which indicates that the physician assistant is trained to perform the surgical procedures. All other surgical procedures requiring other forms of anesthesia may be performed by a physician assistant only in the personal presence of an ~~approved~~ supervising physician.

(2) A physician assistant may also act as first or second assistant in surgery under the supervision of an ~~approved~~ supervising physician. The physician assistant may so act without the personal presence of the supervising physician if the supervising physician is immediately available to the physician assistant. "Immediately available" means able to return to the patient, without delay, upon the request of the physician assistant or to address any situation requiring the supervising physician's services.

Note: Authority cited: Sections 2018, 3502 and 3510, Business and Professions Code.  
Reference: Sections 2058, 3502 and 3502.1, Business and Professions Code.

**From:** Troy Lair [<mailto:troylair@thecompliancedoctor.com>]  
**Sent:** Thursday, March 13, 2014 7:55 PM  
**To:** [glen.mitchell@mbc.ca.gov](mailto:glen.mitchell@mbc.ca.gov)  
**Subject:** regulation changes regarding physician assistants comment

**Mr. Mitchell:**

**As always, I appreciate anyone in a position such as yourself in that the task of trying to please many paralleled with the task of protecting the integrity of professional credentials is most challenging.**

**In so much as I understand the importance of the clarification of this regulatory suggested change, I still feel that there is too much interpretive conclusions that are being left up to a many that may exercise poor judgement in their understanding of what "immediately available" should mean.**

**We have seen this over the years with post operative patients and their surgeons and anesthesia providers wishing to vacate the premises post PACU transfer and report. Likewise, the same issue the CRNAs and Anesthesiologist and the Governorship involvement in the matter.**

**My suggestion is simple, immediately available could be interpreted into telephonic or face to face. With telephonic, immediately available should never pose a threat nor problem. But, with face to face- it is a dreaded and obvious failure. In California alone, traffic would be the underlying issue for anyone trying to reach a destination with the sense of urgency. So I think there should be more clarity in defining the term immediate leaving less chance for multiple interpretations of the physicians being they are the ones that will see their roles compromised by the ethical definition of being immediately available. Lives could be saved by adding just this simple two part clarity.**

**Best to you.**

**Troy Lair, PhD**



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

PHYSICIAN ASSISTANT BOARD  
2005 Evergreen Street, Suite 1100, Sacramento, CA 95815  
P (916) 561-8780 Fax(916) 263-2671 web www.pac.ca.gov



2014 MAR 13 PM 1:30

March 14, 2014

LICENSING  
PROGRAM

Medical Board of California  
The Medical Board of California  
2005 Evergreen Street, Suite 1200  
Sacramento, CA 95815

Dear Board Members:

I am writing to you regarding the regulatory proposal to amend Title 16, California Code of Regulations (CCR) Section 1399.541, which seeks to update and clarify physician assistant supervision requirements.

Following the regulatory hearing held on February 7, 2014, members of the Medical Board of California, after public comment and discussion, modified the language by deleting the word "or" from the originally proposed text. The Board voted to approve the proposed amendment to the text. Because of this amendment, a 15-day comment period will take place to allow for further public comment regarding this change.

At the Physician Assistant Board meeting on February 24, 2014, Physician Assistant Board members reviewed the modified text of Title 16, CCR Section 1399.541 as approved by the Medical Board of California. The Physician Assistant Board asked that I inform you that it supports this suggested amendment to the proposed text of the regulation.

I would like to thank the Medical Board of California for their support of this regulatory proposal to amend Title 16, California Code of Regulations Section 1399.541.

Thank you.

Sincerely,

Glenn L. Mitchell, Jr.  
Executive Officer

cc: Members, Physician Assistant Board

**From:** S. Ross [mailto:qrs@comcast.net]  
**Sent:** Friday, March 21, 2014 3:36 PM  
**To:** Mitchell, Glenn@MBC  
**Cc:** [bjohnson@cmanet.org](mailto:bjohnson@cmanet.org)  
**Subject:** Modified PA Supervision Language

Dear Mr. Mitchell:

I am concerned that the modified text of Sec. 1399.541 in title 16 CA. Code Reg. loosens the supervisory responsibilities of the physician. In (i) 1 it clearly states that a PA can only perform "surgical procedures" in the "**personal presence**" of a supervising physician" when the patient is under any form of anesthetic other than procedures that are **customarily** performed under local anesthetic (incidentally that would NOT include wound closure for open procedures conducted under general or regional anesthesia). This means that the **supervising physician** must be **right there** i.e. in the **same** operating/procedure suite with eyes on the procedure and the PA.

In (i)2 the language now states that the PA can do exactly the same procedures under the same anesthetic conditions with the supervising physician ONLY "immediately available" (which could of course mean a delay), and only when the PA requests h/er, which is clearly intended to mean that s/he is not in the "personal presence" of the now unsupervised PA as required by (i)1.

Any language change as it relates to patient care should always err in the patient's favor. This is clearly not the case here. A physician assistant is exactly that - an assistant - and when the physician is away from the patient the PA now becomes the **de facto** surgeon. Surely this is not the intent of the modified language. Please reconsider this language change. Thank you

Stephen Ross, M.D.  
P.O. Box 222335  
Carmel, CA 93922  
Ph. 510-9957773

Agenda

Item

8

**BAGLEY-KEENE OPEN MEETING ACT  
TOP TEN RULES  
(May 2014)**

[NOTE: GC § = Government Code Section; AG = Opinions of the California Attorney General.]

1. All meetings are public. (GC §11123.)
2. Meetings must be noticed 10 calendar days in advance—including posting on the Internet. (GC §11125(a).)
3. Agenda required—must include a description of specific items to be discussed (GC §§ 11125 & 11125.1).
  - a. No item may be added to the agenda unless it meets criteria for an emergency. (GC §11125(b).)
4. Meeting is “gathering” of a majority of the board (PAB Majority is “5” members) or a majority of a committee of 3 or more persons where board business will be discussed. Includes telephone & e-mail communications. (GC § 11122.5; Stockton Newspapers Inc. v. Members of the Redevelopment Agency of the City of Stockton (1985) 171 Cal.App.3d 95.)
5. Law applies to committees, subcommittees, and task forces that consist of 3 or more persons (includes all persons whether or not they are board members). (GC §11121)
6. Public comment must be allowed on open session agenda items before or during discussion of each item and before a vote, unless: (GC §11125.7.)
  - a. The public was provided an opportunity to comment at a previous committee meeting of the board. If the item has been substantially changed, another opportunity for comment must be provided.
7. Closed sessions (GC §11126.) At least one staff member must be present to record topics discussed and decisions made. (GC § 11126.1).

**Closed session allowed:**

- a. Discuss and vote on disciplinary or enforcement matters under the Administrative Procedure Act (APA). (subd. (c)(3).)
- b. Prepare, approve or grade examinations. (subd. (c)(1).)

- c. Pending litigation. (subd. (e)(1).)
- d. Appointment, employment, or dismissal of executive officer (EO) unless EO requests such action to be held in public. (subd. (a), (b).)

No closed session allowed for:

- a. Election of board officers. (68 AG 65.)
- b. Discussion of controversial regulations or issues.

- 8. No secret ballots or votes except mail votes on APA enforcement matters. (68 AG 65; GC §11526.)
- 9. No proxy votes. (68 AG 65.)
- 10. Teleconference Meetings (GC §11123.)
  - a. Suitable audio or video must be audible to those present at designated location(s). (subd. (b)(1)(B).)
  - b. Notice and agenda required. (subd. (b)(1)(A).)
  - c. Every location must be open to the public and at least one board member must be physically present at every noticed location. All members must attend at a public location. (subds. (b)(1) (C), and (F).)
  - e. Rollcall vote required. (subd. (b)(1)(D).)
  - f. Emergency meeting closed sessions not allowed. (subd. (b)(1)(E).)

**Reference: January 2014 "Public Meetings" Memorandum & Attached Guide to the Bagley-Keene Open Meeting Act**

[http://www.dca.ca.gov/publications/bagleykeene\\_meetingact.pdf](http://www.dca.ca.gov/publications/bagleykeene_meetingact.pdf)

# DISCIPLINARY PROCESS/PETITIONS FOR REINSTATEMENT

Complaint Received

Intake Analysis  
- send to Investigation?  
- expert review?

Investigation and Findings  
- Refer to AG?

Refer to AG, who prepares Accusation  
EO signs and returns to AG for service

Accusation

Administrative  
Hearing before ALJ  
or default decision

Proposed Settlement  
(Stipulation)

Proposed  
Decision

Board Votes  
(adopt, non-adopt)  
Final Decision's  
Penalty = Revocation

Consideration for  
Final Decision Prior to  
Effective Date of Final  
Decision?

Petition for Reinstatement filed

Written or Oral Argument Before the Board

# ETHICAL DECISION MAKING

Handout #2

Questions	Mandatory Disqualification	Need Further Discussion
<p>Have you served as</p> <ul style="list-style-type: none"> <li>• investigator</li> <li>• prosecutor, or</li> <li>• advocate</li> </ul> <p>before or during the adjudicative proceeding?</p>	<b>Yes</b>	
<p>Are you biased or prejudiced for or against the person?</p> <p style="text-align: center;">or</p> <p>Do you have an interest (including a financial interest) in the proceeding?</p>	<b>Yes</b>	
<p>Have you</p> <ul style="list-style-type: none"> <li>• engaged in a prohibited ex parte communication before or during adjudicative proceeding (may result in disqualification)?</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• complained to you about investigation currently in progress and said how great he or she is</li> </ul> <p>√ "Ex parte" communication: direct or indirect communication with you by one of the parties or its representative without notice and opportunity for all parties to participate in the communication (e.g. applicant or licensee (or someone acting on that person's behalf))</p>		<b>Yes</b>
<p>Do you or your spouse or a close family member (such as an uncle or cousin) have personal knowledge of disputed evidentiary facts concerning the proceeding?</p>		<b>Yes</b>
<p>Do you doubt your capacity to be impartial?</p>		<b>Yes</b>
<p>Do you, for any reason, believe that your recusal would further the interests of justice?</p>		<b>Yes</b>

Agenda

Item

10

PHYSICIAN ASSISTANT COMMITTEE

BUDGET REPORT

AS OF 3/31/2014

FM 09

PHYSICIAN ASSISTANT BOARD

DESCRIPTION	BUDGET	CURR. MONTH	YR-TO-DATE	ENCUMBRANCE	YTD + ENCUMBRANCE	BALANCE	PC REM
<b>PERSONAL SERVICES</b>							
<b>SALARIES AND WAGES</b>							
003 00 CIVIL SERVICE-PERM	193,428	11,998	106,184	0	106,184	87,244	
033 04 TEMP HELP (907)	30,000	2,160	23,145	0	23,145	6,855	
063 00 STATUTORY-EXEMPT	75,564	6,612	57,618	0	57,618	17,946	
063 03 COMM MEMBER (911)	1,530	200	5,200	0	5,200	(3,670)	
<b>TOTAL SALARIES AND WAGES</b>	<b>300,522</b>	<b>20,969</b>	<b>192,147</b>	<b>0</b>	<b>192,147</b>	<b>108,375</b>	<b>36.0</b>
<b>STAFF BENEFITS</b>							
103 00 OASDI	15,959	1,140	10,034	0	10,034	5,925	
104 00 DENTAL INSURANCE	1,695	89	804	0	804	891	
105 00 HEALTH/WELFARE INS	39,102	1,030	9,101	0	9,101	30,001	
106 01 RETIREMENT	57,498	3,946	34,731	0	34,731	22,767	
125 00 WORKERS' COMPENSAT	4,266	0	0	0	0	4,266	
125 15 SCIF ALLOCATION CO	0	137	1,334	0	1,334	(1,334)	
134 00 OTHER-STAFF BENEFI	0	743	6,605	0	6,605	(6,605)	
134 01 TRANSIT DISCOUNT	0	0	103	0	103	(103)	
135 00 LIFE INSURANCE	0	7	62	0	62	(62)	
136 00 VISION CARE	445	26	233	0	233	212	
137 00 MEDICARE TAXATION	314	301	2,758	0	2,758	(2,444)	
<b>TOTAL STAFF BENEFITS</b>	<b>119,279</b>	<b>7,418</b>	<b>65,763</b>	<b>0</b>	<b>65,763</b>	<b>53,516</b>	<b>44.8</b>
<b>TOTAL PERSONAL SERVICES</b>	<b>419,801</b>	<b>28,387</b>	<b>257,911</b>	<b>0</b>	<b>257,911</b>	<b>161,890</b>	<b>38.5</b>
<b>OPERATING EXPENSES &amp; EQUIPMENT</b>							
<b>FINGERPRINTS</b>							
213 04 FINGERPRINT REPORT	24,890	1,029	8,152	0	8,152	16,738	
<b>TOTAL FINGERPRINTS</b>	<b>24,890</b>	<b>1,029</b>	<b>8,152</b>	<b>0</b>	<b>8,152</b>	<b>16,738</b>	<b>67.2</b>
<b>GENERAL EXPENSE</b>							
201 00 GENERAL EXPENSE	12,714	0	0	0	0	12,714	
206 00 MISC OFFICE SUPPLI	0	535	1,739	0	1,739	(1,739)	
207 00 FREIGHT & DRAYAGE	0	11	1,060	0	1,060	(1,060)	
213 02 ADMIN OVERHEAD-OTH	0	0	1,241	0	1,241	(1,241)	
217 00 MTG/CONF/EXHIBIT/S	0	0	4,998	1,327	6,324	(6,324)	
<b>TOTAL GENERAL EXPENSE</b>	<b>12,714</b>	<b>546</b>	<b>9,037</b>	<b>1,327</b>	<b>10,364</b>	<b>2,350</b>	<b>18.4</b>

DEPARTMENT OF CONSUMER AFFAIRS

PHYSICIAN ASSISTANT COMMITTEE

BUDGET REPORT

RUN DATE

AS OF 3/31/2014

P

FM 09

PHYSICIAN ASSISTANT BOARD

DESCRIPTION	BUDGET	CURR. MONTH	YR-TO-DATE	ENCUMBRANCE	YTD + ENCUMBRANCE	BALANCE
<b>PRINTING</b>						
241 00 PRINTING	3,344	0	0	0	0	3,344
242 02 REPRODUCTION SVS	0	0	10	0	10	(10)
242 03 COPY COSTS ALLO	0	0	165	0	165	(165)
242 04 EDD PRODUCTIONS	0	172	172	0	172	(172)
242 05 METRO PRINT/MAIL	0	720	3,477	0	3,477	(3,477)
244 00 OFFICE COPIER EXP	0	309	618	702	1,320	(1,320)
<b>TOTAL PRINTING</b>	<b>3,344</b>	<b>1,201</b>	<b>4,441</b>	<b>702</b>	<b>5,144</b>	<b>(1,800)</b>
<b>COMMUNICATIONS</b>						
251 00 COMMUNICATIONS	7,669	0	0	0	0	7,669
252 00 CELL PHONES,PDA,PA	0	61	492	0	492	(492)
257 01 TELEPHONE EXCHANGE	0	144	1,186	0	1,186	(1,186)
<b>TOTAL COMMUNICATIONS</b>	<b>7,669</b>	<b>205</b>	<b>1,678</b>	<b>0</b>	<b>1,678</b>	<b>5,991</b>
<b>POSTAGE</b>						
261 00 POSTAGE	8,187	0	0	0	0	8,187
262 00 STAMPS, STAMP ENVE	0	1,714	1,888	0	1,888	(1,888)
263 05 DCA POSTAGE ALLO	0	475	3,205	0	3,205	(3,205)
263 06 EDD POSTAGE ALLO	0	0	536	0	536	(536)
<b>TOTAL POSTAGE</b>	<b>8,187</b>	<b>2,188</b>	<b>5,629</b>	<b>0</b>	<b>5,629</b>	<b>2,558</b>
<b>TRAVEL: IN-STATE</b>						
291 00 TRAVEL: IN-STATE	27,918	0	0	0	0	27,918
292 00 PER DIEM-I/S	0	0	2,531	0	2,531	(2,531)
294 00 COMMERCIAL AIR-I/S	0	0	2,564	0	2,564	(2,564)
296 00 PRIVATE CAR-I/S	0	0	1,491	0	1,491	(1,491)
297 00 RENTAL CAR-I/S	0	0	1,075	0	1,075	(1,075)
301 00 TAXI & SHUTTLE SER	0	0	40	0	40	(40)
<b>TOTAL TRAVEL: IN-STATE</b>	<b>27,918</b>	<b>0</b>	<b>7,702</b>	<b>0</b>	<b>7,702</b>	<b>20,216</b>
<b>TRAINING</b>						
331 00 TRAINING	1,034	0	0	0	0	1,034
332 00 TUITN/REGISTRATN F	0	0	1,200	0	1,200	(1,200)
<b>TOTAL TRAINING</b>	<b>1,034</b>	<b>0</b>	<b>1,200</b>	<b>0</b>	<b>1,200</b>	<b>(166)</b>

DEPARTMENT OF CONSUMER AFFAIRS

PHYSICIAN ASSISTANT COMMITTEE

BUDGET REPORT

RUN D.

AS OF 3/31/2014

FM 09

PHYSICIAN ASSISTANT BOARD

DESCRIPTION	BUDGET	CURR. MONTH	YR-TO-DATE	ENCUMBRANCE	YTD + ENCUMBRANCE	BALANCE
<u>TOTAL</u> FACILITIES OPERATIONS	55,958	3,743	31,173	14,352	45,525	10,433
C/P SVS - INTERDEPARTMENTAL						
382 00 CONSULT/PROF-INTER	123,899	0	0	0	0	123,899
<u>TOTAL</u> C/P SVS - INTERDEPARTMENTAL	123,899	0	0	0	0	123,899
C/P SVS - EXTERNAL						
402 00 CONSULT/PROF SERV-	7,250	0	0	0	0	7,250
404 05 C&P EXT ADMIN CR C	16,568	5	30	2,570	2,600	13,968
418 02 CONS/PROF SVS-EXTR	0	0	14,888	15,340	30,229	(30,229)
<u>TOTAL</u> C/P SVS - EXTERNAL	23,818	5	14,918	17,911	32,829	(9,011)
DEPARTMENTAL SERVICES						
424 03 OIS PRO RATA	80,707	0	60,530	0	60,530	20,177
427 00 INDIRECT DISTRB CO	46,294	0	34,720	0	34,720	11,574
427 01 INTERAGENCY SERVS	7,717	0	0	0	0	7,717
427 02 SHARED SVS-MBC ONL	93,326	0	46,662	46,664	93,326	0
427 30 DOI - ISU PRO RATA	1,473	0	1,105	0	1,105	368
427 34 PUBLIC AFFAIRS PRO	2,069	0	1,552	0	1,552	517
427 35 PCSD PRO RATA	1,775	0	1,331	0	1,331	444
<u>TOTAL</u> DEPARTMENTAL SERVICES	233,361	0	145,900	46,664	192,564	40,797
CONSOLIDATED DATA CENTERS						
428 00 CONSOLIDATED DATA	4,810	0	639	0	639	4,171
<u>TOTAL</u> CONSOLIDATED DATA CENTERS	4,810	0	639	0	639	4,171
DATA PROCESSING						
431 00 INFORMATION TECHNO	3,019	0	0	0	0	3,019
<u>TOTAL</u> DATA PROCESSING	3,019	0	0	0	0	3,019
CENTRAL ADMINISTRATIVE SERVICES						
438 00 PRO RATA	61,708	0	46,281	0	46,281	15,427
<u>TOTAL</u> CENTRAL ADMINISTRATIVE SERVICES	61,708	0	46,281	0	46,281	15,427
ENFORCEMENT						
396 00 ATTORNEY GENL-INTE	271,418	25,655	208,428	0	208,428	62,990
397 00 OFC ADMIN HEARNG-I	75,251	5,597	20,972	0	20,972	54,279
414 31 EVIDENCE/WITNESS F	492	2,775	24,640	0	24,640	(24,148)
418 97 COURT REPORTER SER	0	159	877	0	877	(877)

DEPARTMENT OF CONSUMER AFFAIRS

PHYSICIAN ASSISTANT COMMITTEE

BUDGET REPORT  
AS OF 3/31/2014

RUN DATE  
P/

FM 09

PHYSICIAN ASSISTANT BOARD

DESCRIPTION	BUDGET	CURR. MONTH	YR-TO-DATE	ENCUMBRANCE	YTD + ENCUMBRANCE	BALANCE
<u>TOTAL</u> ENFORCEMENT	566,031	46,845	330,488	0	330,488	235,543
<u>TOTAL</u> OPERATING EXPENSES & EQUIPMEN	1,158,360	55,762	607,238	80,955	688,193	470,167
PHYSICIAN ASSISTANT BOARD	1,578,161	84,149	865,149	80,955	946,104	632,057
	1,578,161	84,149	865,149	80,955	946,104	632,057

Agenda

Item

11

**BUSINESS AND PROFESSIONS CODE  
DIVISION 2. HEALING ARTS  
CHAPTER 7.7.**

**ARTICLE 2. Administration**

**3509.5.**

The board shall elect annually a ~~chairperson~~ president and a ~~vice-chairperson~~ vice president from among its members.

*(Amended by Stats. 2012, Ch. 332, Sec. 38. Effective January 1, 2013.)*

Number	Author	Vote summary	Status as of May 3, 2014	Summary	Comments and considerations for PAB	Questions for staff
	<p>Maienschein (R) - - San Diego (Coauthor: Senator Holly Mitchell (D) -- Los Angeles)</p>	<p>Unanimous support in policy committee</p>	<p>Asm Approps hearing on May 7</p>	<p>This bill would prohibit boards, including the PA board, from denying or delaying a license to a person on the basis that they received their education while incarcerated. The bill does not prohibit a board from denying a license if the criminal conviction merits denial. In other words, the PA board could still deny a license to an applicant recently incarcerated for a relevant crime, but could not consider the fact that the applicant attended PA school while incarcerated as grounds for denial.</p>	<p>The CA Correctional Peace Officers Association and legislators from both parties support the bill because improving employment options for the formerly incarcerated is likely to reduce recidivism. There is no opposition on file.</p>	<p>What are the PA board's policies and practices related to licensing applicants who received their training while incarcerated? How would this bill alter or affect those policies or practices?</p>
	<p>Mullin (D) -- South San Francisco</p>	<p>Unanimous support in policy committee</p>	<p>Awaiting vote on Asm Floor</p>	<p>Allows medical assistants to distribute to patients properly labeled and prepackaged prescription drugs (excluding controlled substances) as ordered by physicians, PAs and other prescribing officials. The prescribing official must first verify patient's name and correct Rx before the medical assistant may distribute.</p>	<p>Bill is intended to clarify that the "technical supportive services" MAs provide includes distributing prescribed medication. It is intended to improve efficiency in clinics and reduce demands on physicians and PAs. The bill is sponsored by Planned Parenthood and supported by CAPA. SEIU, which represents RNs and pharmacy technicians, opposes the bill.</p>	

Wilk (R) -- Santa Clarita	Unanimous support in policy committee	On suspense file in Asm Approps	Would require all committees of boards, including the PA board, to adhere to the Bagley-Keene Open Meeting Act, even if the committee membership is only two board members.	Would require PA Board committees such as the legislative committee to comply with the open meeting act, likely resulting in considerably less activity by such committees. For example, over two weeks in 2013, the two members of the legislative committee met twice by phone and enumerable times by email to prepare the committee's bylaws and policy summary. It is unlikely the committee members would have had time to schedule and conduct those meetings if they had been required to arrange public notice. Additionally, the bill could be interpreted to prohibit committee activity, such as providing expert analysis or preparing documents, outside of a public meeting. Board members should consider the philosophy behind the Bagley-Keene Act: transparency in government should be favored over administrative efficiency.	Would committees be required to meet in-person or could they conduct business by phone? Could committees share work product via email? How would committees draft documents-- would they have to be verbally drafted during open meetings? How much would it cost PA board to host such in-person meetings (including staff and travel costs)?
Ting (D) -- San Francisco	Passed policy committee 10:3 and Approps 12:4 (party line votes)	Awaiting vote on Asm Floor	Requires the PA Board and other medical boards to collect and report demographic data on their licensees.	The bill is intended to provide consistent data on the health care workforce in order to identify geographic, language and other shortages and inform policymaking in this arena.	To what extent does the PAB already collect these data? What more would staff need to do to comply? What additional burden or cost would this entail for the PAB?
Bonta (D) -- Alameda	Passed policy committee 11:2 with one GOP aye vote	Awaiting vote in Asm Approps on May 7	Prohibits DCA boards, including PAB, from denying a license based solely on a dismissed criminal conviction.	Sponsored by the Alameda County Board of Supervisors and supported by civil rights groups, this bill is intended to alleviate barriers to employment after incarceration. In order to obtain a dismissal, a person must successfully complete the terms of their sentence and not be charged with any other offenses. The person must request dismissal from the court and submit letters of recommendation and proof of compliance. The crime committed must not have included a prison sentence, although it may have included time in jail (in other words, it was a misdemeanor or less serious felony). The bill has no stated opposition.	How does PAB staff currently treat dismissed criminal convictions?
Lieu (D) -- Torrance	Passed policy committee unanimously	Awaiting vote on Senate Floor	Requires the Medical Board of California to update prescriber standards for controlled substances once every five years and broadens the types of experts with which the MBC may consult to develop the standards.	The bill seeks to ensure that the standards guiding prescription of controlled substances are updated regularly and in consultation with key stakeholders who can best inform the MBC and highlight current practice.	

Huff (R) -- Diamond Bar	Failed policy committee 5:5 with Dems opposed	Granted reconsideration but unlikely to pass in present form	This bill would require each state agency to review every regulation adopted prior to January 1, 2014, and to develop a report to the Legislature on each regulation's implementation, cost, etc.	The purpose of the bill is to identify unnecessary, duplicative or conflicting regulations. Opponents argue that the bill would burden state agencies and make it harder for them to provide their core services. The bill is supported by business organizations and opposed by labor. It is effectively dead for this legislative session.	
Pavley (D) -- Agoura Hills	Passed policy committee unanimously	Awaiting vote on Senate Floor	Authorizes PAs to certify claims for disability insurance after performance of a physical examination by the PA and under the supervision of a physician	This bill is intended to "close a loophole" in the law that currently allows PAs to certify some claims of temporary disability, such as Paid Family Leave, but not others such as claims for disability insurance with the EDD. The bill is sponsored by CAPA which also argues that the current restrictions are inconsistent with the PA scope of practice. Currently NPs may certify disability.	
Galgiani (D) -- Stockton	Passed policy committee unanimously	In Senate Approps, on Suspense File	Requires state agencies to notify the public at least 15 days prior to any meeting or hearing that occurs prior to publication of official notices of proposed regulatory action. Requires that, by 2017, all notices must be available online in a searchable database.	The bill is intended to make it easier for the public to weigh in on proposed regulations before they are developed, published or amended by notifying the public of "pre-rulemaking" activity. Proponents suggest that California should join other states and begin offering centrally located, searchable, rulemaking notices to which the public can subscribe. The bill is supported by many business associations.	How would this bill affect the PAB?

Date of Hearing: May 7, 2014

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Mike Gatto, Chair

AB 1702 (Maienschein) – As Amended: April 23, 2014

Policy Committee: Business and Professions Vote: 14 - 0

Urgency: No State Mandated Local Program: No Reimbursable:

SUMMARY

This bill specifies that an individual who has satisfied the requirements for licensure while incarcerated and who applies for licensure after being released from incarceration shall not have his or her application delayed or denied solely on the basis that some or all of the requirements were completed while the individual was incarcerated. The bill exempts the Board of Chiropractic Examiners (BCE) from these requirements.

FISCAL EFFECT

Negligible fiscal impact to each of the affected boards.

COMMENTS

- 1) Purpose. The goal of this bill is to remove obstacles preventing individuals who have obtained specific job training and education while incarcerated from receiving a license for that particular profession. The author states, "This bill is necessary because many of the licensing boards have provisions in place to delay or prevent a person with a criminal record from receiving a professional license."

In order to alleviate barriers to employment after incarceration, this bill specifies that an individual cannot have their application for licensure denied or delayed solely because some or all of the requirements for licensure were completed while the individual was incarcerated.

- 2) Existing law. Boards under the Department of Consumer Affairs are permitted to make licensure decisions based on the specific criminal history reported by an applicant or identified through background check requirements. This bill does not alter or impede a board's ability to deny a license if the criminal conviction merits denial under current law.
- 3) Exemption for Chiropractic Board. The Chiropractic Act was created through an initiative measure approved by the voters of California on November 7, 1922. As is common with many initiatives, unless the initiative measure states otherwise, it may not be amended or repealed by the Legislature without voter approval.
- 4) Related legislation. AB 2396 (Bonta) of 2014 prohibits a board from denying a license based on a criminal conviction that does not constitute a felony. This bill's initiative measure

Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER  
PROTECTION

Susan A. Bonilla, Chair

AB 1702 (Maienschein) – As Introduced: February 13, 2014

SUBJECT: Professions and vocations: incarceration.

SUMMARY: Specifies that an individual who has satisfied the requirements for licensure while incarcerated and who applies for licensure after being released from incarceration shall not have his or her application delayed or denied solely based on the prior incarceration; and, exempts the Board of Chiropractic Examiners (BCE) from these requirements. Specifically, this bill:

- 1) Specifies that an individual who has satisfied any of the requirements needed to obtain a license, while incarcerated, and who applies for licensure upon release from incarceration, and who is otherwise eligible for the license, may not be subject to a delay in the processing of his or her application or the denial of the license solely based on their prior incarceration, except as specified.
- 2) Specifies that the above provision does not apply to a petition for reinstatement of a license or to the licensure of individuals under the Chiropractic Act, as specified.

EXISTING LAW

- 1) Allows a board to deny a license, as specified, on the grounds that the applicant has done one of the following:
  - a) Been convicted of a crime, as specified;
  - b) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another; or,
  - c) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. (Business & Professions Code (BPC) Section 480(a))
- 2) Authorizes a board to deny a license, as specified, only if a crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. (BPC 480(a)(3)(B))
- 3) Specifies that no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation, as specified, or that he or she has been convicted of a misdemeanor, if he or she has met all applicable requirements of the criteria of rehabilitation, developed by the board, to evaluate the rehabilitation of a person when considering the denial of a license, as specified. (BPC 480(a))

- 4) Requires each board, as specified, to develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates. (BPC 481)
- 5) Requires each board, as specified, to develop criteria to evaluate the rehabilitation of a person when:
  - a) Considering the denial of a license by the board, as specified; or,
  - b) Considering suspension or revocation of a license, as specified. (BPC 482)
- 6) Requires a board who has denied an application for a license, as specified, to include a copy of the criteria relating to rehabilitation, as specified, and to inform the applicant of the following:
  - a) The earliest date on which the applicant may reapply for licensure, as specified; and
  - b) That all competent evidence of rehabilitation presented will be considered upon reapplication. (BPC 486).

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Purpose of this bill. In order to alleviate unnecessary barriers to employment after incarceration, this bill specifies that an individual who has completed certain requirements for licensure while incarcerated cannot have their application for licensure denied or delayed solely based on their prior incarceration.
- 2) Author's statement. According to the author, "The purpose of [this bill] is to remove any obstacles preventing individuals who have obtained specific job training [and education], while incarcerated, from receiving a license for that particular profession. This bill is necessary because many of the licensing boards have provisions in place to delay or prevent a person with a criminal record from receiving a professional license."
- 3) Requirements for licensure. Each board under the Department of Consumer Affairs (DCA) is responsible for enforcing their licensing standards and ensuring that an applicant has met all of the specified educational, examination, and experience requirements necessary for licensure, based on the criteria set forth in each specified practice act. The individual boards are tasked with the duty of examining the content of applications to ensure they have met the appropriate criteria, including the investigation of criminal convictions.

Current law authorizes boards to deny a license based on certain elements, including the conviction of a crime for duties substantially related to the criteria of the profession, and each board determines what those duties are. Additionally, boards are required to develop criteria

In 2010, one of the boards under DCA, the Board of Barbering and Cosmetology (BBC), established a licensing process which allows an applicant with past convictions to submit an application prior to enrolling in a school. This allows BBC to review the convictions and determine if the convictions are substantially related to the practice prior to a student paying tuition and completing schooling only to later be denied licensure.

Additionally, BBC currently has a program in which examinations for their specific licensure categories are offered in state correctional facilities. According to BBC, they work closely with the California Department of Corrections and Rehabilitation to schedule and administer examinations in the correctional facilities. However, this is a unique program which is not consistent across the boards, and this bill would not interfere with the current program offered by BBC.

- 4) School approval. The boards under DCA are primarily responsible for establishing the criteria for curriculum, coursework, equipment and other relevant materials for schools within their profession. In addition, most schools are also approved by the Bureau for Private Postsecondary Education (BPPE), which requires disclosure of critical information to students such as program outlines, graduation and job placement rates, and license examination information, and ensures colleges justify those figures.

This bill would help to ensure that individuals applying for licensure who have obtained an education from institutions approved by both board-approved schools and the BPPE will not be denied licensure, nor will their application for licensure be delayed simply because they attended an institution while incarcerated. If a school has received the appropriate approval or accreditation, this should not be the reason for licensure delay.

- 5) Barriers to employment for individuals with criminal convictions. According to the author, numerous studies and research have been conducted about employment barriers for individuals who have criminal records. In 2011, Attorney General Eric Holder established the *Reentry Council* to assist in the coordination of helping to remove federal barriers to successful reentry, so that motivated individuals—who have served their time—are able to compete for a job, attain stable housing, and support their children and their families.

Information provided by the Council of State Governments, Justice Center, found that each year nearly 700,000 individuals are released from state and federal prisons and another 12 million cycle through local jails. More than two-thirds of state prisoners are rearrested within three years of their release; half are re-incarcerated. Further, it was reported that two out of every three men were employed before they were incarcerated, and many were the primary financial contributors in their households. Individuals who have been incarcerated can expect future annual earnings to be reduced by some 40 percent after they return to their communities.

Under current law, boards under DCA are permitted to make licensure decisions based on the specific criminal history reported by an applicant or identified through background check requirements. This bill does not alter or impede a board's ability to deny a license if the criminal conviction merits denial under current law, but may assist other individuals in

- 6) Exemption for Chiropractic Board. This bill makes clear that BCE is exempt from the provisions of this bill because the Chiropractic Act was created through an initiative measure approved by the electors of California on November 7, 1922. As is common with many initiatives, unless the initiative measure states otherwise, it may not be amended or repealed by the Legislature without a vote of approval of the electors, thus prohibiting a legislative change.
- 7) Arguments in support. The California Correctional Peace Officers Association writes in support, "If California is serious about reducing recidivism; it needs to promote work among the previously incarcerated. Allowing a person who has met the qualifications for a profession, and has not served time for a crime related to that profession, to become licensed represents a sound use of the resources devoted to that person's training. More importantly, it provides that individual with a clear path to becoming a productive, tax-paying member of society, rather than to continue to be a financial dependent on state and local governments. For these reasons, we urge your support for this important measure."
- 8) Author's amendments. The author has requested amendments to this bill to further clarify the prohibition on delay and denial based on the fact that the applicant completed some or all of the licensure requirements while incarcerated. The author's proposed amendments will continue to provide boards with the ability to deny a license based on criminal convictions relevant to the duties and functions of a specific license.

In addition to adding a co-author and making a technical correction, the amendments are as follows:

*On page in line 8, strike "based on the prior incarceration, except," strike out line 9, and insert "on the basis that some or all of the licensure requirements were completed while the individual was incarcerated."*

*On page 2, in line 11, after "license" insert "or to limit the ability of a board to deny a license pursuant to Section 480."*

- 9) Related legislation. AB 2396 (Bonta) of 2014 prohibits a board from denying a license based solely on a conviction that has been dismissed, as specified. This bill is pending in the Assembly Business, Professions and Consumer Protection Committee.
- 10) Previous legislation. AB 2423 (Bass), Chapter 675, Statutes of 2008, permits specified DCA boards to issue initial licenses on probation and makes other changes related to licensing and discipline to encourage the employment of ex-offenders.

AB 1025 (Bass) of 2007, would have provided that an applicant for a license with a board under DCA may not be denied licensure or have his or her license suspended or revoked solely on the basis that he or she has been convicted of a felony or misdemeanor, provided he or she has obtained a certificate of rehabilitation and the felony or misdemeanor conviction was dismissed. A board would be required to presume the applicant or licensee has been

AB 861 (Bass), Chapter 411, Statutes of 2006, authorized BBC to issue probationary licenses to applicants, subject to specified terms and conditions, and required BBC to submit a report to the Legislature on or before September 1, 2007, on various aspects and trends of licensing by BBC over a five-year period.

SB 1759 (Ashburn), Chapter 902, Statutes of 2006, made a number of revisions to criminal clearance provisions for departments under the jurisdiction of the California Health and Human Services Agency, including the Department of Health Services and the Department of Social Services, with regard to clearance requirements before work.

REGISTERED SUPPORT / OPPOSITION:

Support

AFSCME Local 2620  
California Board of Accountancy  
California Communities United Institute  
California Correctional Peace Officers Association  
Legal Services for Prisoners with Children  
National Employment Law Project  
Riverside Sheriffs' Association  
The Los Angeles Probation Officers' Union, AFSCME Local 685  
The Women's Foundation  
Fifty-two individuals

Opposition

None on file.

Analysis Prepared by: Elissa Silva / B.,P. & C.P. / (916) 319-3301

CURRENT BILL STATUS

MEASURE : A.B. No. 1841  
AUTHOR(S) : Mullin (Coauthor: Senator Hernandez).  
TOPIC : Medical assistants.  
HOUSE LOCATION : ASM  
+LAST AMENDED DATE : 04/21/2014

TYPE OF BILL :  
Active  
Non-Urgency  
Non-Appropriations  
Majority Vote Required  
Non-State-Mandated Local Program  
Non-Fiscal  
Non-Tax Levy

LAST HIST. ACT. DATE: 05/01/2014  
LAST HIST. ACTION : Read second time. Ordered to third reading.  
FILE : ASM THIRD READING  
FILE DATE : 05/12/2014  
ITEM : 63

COMM. LOCATION : ASM BUSINESS, PROFESSIONS AND CONSUMER PROTECTION  
COMM. ACTION DATE : 04/29/2014  
COMM. ACTION : Do pass.  
COMM. VOTE SUMMARY : Ayes: 14 Noes: 00PASS

TITLE : An act to amend Section 2069 of the Business and Professions Code, relating to medicine.

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1841**

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**Introduced by Assembly Member Mullin**  
(Coauthor: Senator Hernandez)

February 18, 2014

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An act to amend Section 2069 of the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 1841, as amended, Mullin. Medical assistants.

Existing law, the Medical Practice Act, provides for the licensure and regulation of the practice of medicine by the Medical Board of California. The act authorizes a medical assistant to administer medication only by intradermal, subcutaneous, or intramuscular injections and to perform skin tests and additional technical supportive services upon the specific authorization and supervision of a licensed physician and surgeon, a licensed podiatrist, a physician assistant, a nurse practitioner, or a certified nurse-midwife. Existing law defines the term "technical supportive services" to mean simple routine medical tasks and procedures that may be safely performed by a medical assistant who has limited training and who functions under the supervision of a licensed physician and surgeon, a licensed podiatrist, a physician assistant, a nurse practitioner, or a certified nurse-midwife. Existing law, the Pharmacy Law, prohibits a prescriber, as defined, from dispensing drugs to patients in his or her office unless specified conditions are satisfied, and authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor who functions pursuant to a specified protocol or procedure to hand to a

patient of his or her supervising physician a properly labeled and prepackaged prescription drug.

This bill would specify that the “technical supportive services” a medical assistant may perform also includes handing to a patient a properly labeled and prepackaged prescription drug, other than a controlled substance, ordered by a licensed physician and surgeon, a licensed podiatrist, a physician assistant, a nurse practitioner, or a certified nurse-midwife, *as specified*.

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

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

1 SECTION 1. Section 2069 of the Business and Professions  
2 Code is amended to read:

3 2069. (a) (1) Notwithstanding any other law, a medical  
4 assistant may administer medication only by intradermal,  
5 subcutaneous, or intramuscular injections and perform skin tests  
6 and additional technical supportive services upon the specific  
7 authorization and supervision of a licensed physician and surgeon  
8 or a licensed podiatrist. A medical assistant may also perform all  
9 these tasks and services upon the specific authorization of a  
10 physician assistant, a nurse practitioner, or a certified  
11 nurse-midwife.

12 (2) The supervising physician and surgeon may, at his or her  
13 discretion, in consultation with the nurse practitioner, certified  
14 nurse-midwife, or physician assistant, provide written instructions  
15 to be followed by a medical assistant in the performance of tasks  
16 or supportive services. These written instructions may provide that  
17 the supervisory function for the medical assistant for these tasks  
18 or supportive services may be delegated to the nurse practitioner,  
19 certified nurse-midwife, or physician assistant within the  
20 standardized procedures or protocol, and that tasks may be  
21 performed when the supervising physician and surgeon is not  
22 onsite, if either of the following apply:

23 (A) The nurse practitioner or certified nurse-midwife is  
24 functioning pursuant to standardized procedures, as defined by  
25 Section 2725, or protocol. The standardized procedures or protocol,  
26 including instructions for specific authorizations, shall be

1 developed and approved by the supervising physician and surgeon  
2 and the nurse practitioner or certified nurse-midwife.

3 (B) The physician assistant is functioning pursuant to regulated  
4 services defined in Section 3502, including instructions for specific  
5 authorizations, and is approved to do so by the supervising  
6 physician and surgeon.

7 (b) As used in this section and Sections 2070 and 2071, the  
8 following definitions apply:

9 (1) "Medical assistant" means a person who may be unlicensed,  
10 who performs basic administrative, clerical, and technical  
11 supportive services in compliance with this section and Section  
12 2070 for a licensed physician and surgeon or a licensed podiatrist,  
13 or group thereof, for a medical or podiatry corporation, for a  
14 physician assistant, a nurse practitioner, or a certified  
15 nurse-midwife as provided in subdivision (a), or for a health care  
16 service plan, who is at least 18 years of age, and who has had at  
17 least the minimum amount of hours of appropriate training pursuant  
18 to standards established by the board. The medical assistant shall  
19 be issued a certificate by the training institution or instructor  
20 indicating satisfactory completion of the required training. A copy  
21 of the certificate shall be retained as a record by each employer of  
22 the medical assistant.

23 (2) "Specific authorization" means a specific written order  
24 prepared by the supervising physician and surgeon or the  
25 supervising podiatrist, or the physician assistant, the nurse  
26 practitioner, or the certified nurse-midwife as provided in  
27 subdivision (a), authorizing the procedures to be performed on a  
28 patient, which shall be placed in the patient's medical record, or  
29 a standing order prepared by the supervising physician and surgeon  
30 or the supervising podiatrist, or the physician assistant, the nurse  
31 practitioner, or the certified nurse-midwife as provided in  
32 subdivision (a), authorizing the procedures to be performed, the  
33 duration of which shall be consistent with accepted medical  
34 practice. A notation of the standing order shall be placed on the  
35 patient's medical record.

36 (3) "Supervision" means the supervision of procedures  
37 authorized by this section by the following practitioners, within  
38 the scope of their respective practices, who shall be physically  
39 present in the treatment facility during the performance of those  
40 procedures:

- 1 (A) A licensed physician and surgeon.  
2 (B) A licensed podiatrist.  
3 (C) A physician assistant, nurse practitioner, or certified  
4 nurse-midwife as provided in subdivision (a).

5 (4) (A) “Technical supportive services” means simple routine  
6 medical tasks and procedures that may be safely performed by a  
7 medical assistant who has limited training and who functions under  
8 the supervision of a licensed physician and surgeon or a licensed  
9 podiatrist, or a physician assistant, a nurse practitioner, or a  
10 certified nurse-midwife as provided in subdivision (a).

11 (B) Notwithstanding any other law, “technical supportive  
12 services” includes handing to a patient a properly labeled and  
13 prepackaged prescription drug, excluding a controlled substance,  
14 ordered by a licensed physician and surgeon, a licensed podiatrist,  
15 a physician assistant, a nurse practitioner, or a certified  
16 nurse-midwife ~~operative~~ in accordance with subdivision (a). *In*  
17 *every instance, prior to handing the medication to a patient, the*  
18 *properly labeled and prepackaged prescription drug shall have*  
19 *the patient’s name affixed to the package and a licensed physician*  
20 *and surgeon, a licensed podiatrist, a physician assistant, a nurse*  
21 *practitioner, or a certified nurse-midwife shall verify that it is the*  
22 *correct medication and dosage for that specific patient.*

23 (c) Nothing in this section shall be construed as authorizing any  
24 of the following:

- 25 (1) The licensure of medical assistants.  
26 (2) The administration of local anesthetic agents by a medical  
27 assistant.  
28 (3) The board to adopt any regulations that violate the  
29 prohibitions on diagnosis or treatment in Section 2052.  
30 (4) A medical assistant to perform any clinical laboratory test  
31 or examination for which he or she is not authorized by Chapter  
32 3 (commencing with Section 1200).  
33 (5) A nurse practitioner, certified nurse-midwife, or physician  
34 assistant to be a laboratory director of a clinical laboratory, as those  
35 terms are defined in paragraph (8) of subdivision (a) of Section  
36 1206 and subdivision (a) of Section 1209.  
37 ~~(6) A medical assistant to dispense dangerous drugs or devices~~  
38 ~~to a patient, except as may be authorized by subdivision (a) or by~~  
39 ~~the board in regulations adopted pursuant to Section 2071.~~

1 (d) A nurse practitioner, certified nurse-midwife, or physician  
2 assistant shall not authorize a medical assistant to perform any  
3 clinical laboratory test or examination for which the medical  
4 assistant is not authorized by Chapter 3 (commencing with Section  
5 1200). A violation of this subdivision constitutes unprofessional  
6 conduct.

7 (e) Notwithstanding any other law, a medical assistant shall not  
8 be employed for inpatient care in a licensed general acute care  
9 hospital, as defined in subdivision (a) of Section 1250 of the Health  
10 and Safety Code.

ASSEMBLY THIRD READING

AB 1841 (Mullin)

As Amended April 21, 2014

Majority vote

BUSINESS & PROFESSIONS 14-0

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Ayes: Bonilla, Jones, Bocanegra, Campos,  
Dickinson, Eggman, Gordon,  
Hagman, Holden, Maienschein,  
Mullin, Skinner, Ting, Wilk

SUMMARY: Clarifies that medical assistants (MAs) may hand out properly labeled and prepackaged prescription drugs to patients as part of their existing authorization to provide "technical supportive services." Specifically, this bill:

- 1) States that, notwithstanding any other law, "technical supportive services" includes the ability for an MA to hand a patient a properly labeled and prepackaged prescription drug, excluding a controlled substance, ordered by a licensed physician and surgeon, a licensed podiatrist, a physician assistant, a nurse practitioner, or a certified nurse-midwife, as specified.
- 2) Requires a licensed physician and surgeon, a licensed podiatrist, a physician assistant, a nurse practitioner, or a certified nurse-midwife to verify that the medication and dosage for that specific patient is correct, and that the patient's name is affixed to the package prior to an MA handing the medication to a patient.

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) This bill clarifies that MAs may hand out properly labeled and prepackaged prescription drugs to patients as part of their existing scope of practice under "technical supportive services." This bill is sponsored by Planned Parenthood.
- 2) According to the author's office, "Providing MAs this authority will help reduce waiting times, expand access, and improve patient care and satisfaction in community clinics, including Planned Parenthoods. Allowing an MA to hand over medication and provide follow up instruction will ensure that a patient has received counseling on their medication twice and will provide them an additional opportunity to ask questions. This will also free up the clinician, allowing them to spend more time with the patient answering questions because they are not rushing to perform additional duties."
- 3) MAs are unlicensed, but certificated, individuals. An MA must have a high school diploma or GED equivalent and take a certificate course at an approved school. The exact duration of these programs vary, but San Francisco State University, for example, requires 140 classroom hours and a clinical externship. MAs also must complete a minimum of 6001

An MA may perform the following specific functions as part of "technical supportive" services in addition to administrative functions:

- a) Administer medication orally, sublingually, topically, vaginally or rectally, or by providing a single dose to a patient for immediate self-administration;
- b) Administer medication by inhalation if the medications are patient-specific and have been or will be routinely and repetitively administered to that patient;
- c) Perform electrocardiogram, electroencephalogram, or plethysmography tests (used to measure changes in volume in different parts of the body);
- d) Apply and remove bandages and dressings;
- e) Remove sutures or staples from superficial incisions or lacerations;
- f) Collect by non-invasive techniques and preserve specimens for testing, including urine, sputum, semen and stool;
- g) Prepare patients for and assist the physician, podiatrist, physician assistant or registered nurse in examinations or procedures including positioning, draping, shaving and disinfecting treatment sites; and prepare a patient for gait analysis testing;
- h) As authorized by the physician or podiatrist, provide patient information and instructions;
- i) Collect and record patient data including height, weight, temperature, pulse, respiration rate and blood pressure; and,
- j) Perform simple laboratory and screening tests customarily performed in a medical office.

This bill simply clarifies that MAs may hand out properly labeled and prepackaged prescription drugs to patients as part of "technical supportive services." Based on their current abilities, this appears to be well within their scope of practice.

This clarification is consistent with the work of similarly unlicensed "pharmacy clerks" or "pharmacy assistants." This is a traditional title used in the pharmacy industry and is included under regulations for "ancillary personnel" in pharmacy regulations. A pharmacy clerk may also perform various "non-discretionary" tasks that do not require the abilities and authorities of either a pharmacist or a Licensed Pharmacy Technician.

These unlicensed individuals work in a pharmacy under the supervision of a pharmacist and cannot "dispense" prescriptions as that term is understood in current law, but they can "hand" the patient filled prescriptions that have been approved by a pharmacist for dispensing.

Date of Hearing: April 29, 2014

ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER  
PROTECTION

Susan A. Bonilla, Chair

AB 1841 (Mullin) – As Amended: April 21, 2014

SUBJECT: Medical assistants.

SUMMARY: Clarifies that medical assistants (MAs) may hand out properly labeled and prepackaged prescription drugs to patients as part of their existing authorization to provide "technical supportive services." Specifically, this bill:

- 1) States that, notwithstanding any other law, "technical supportive services" includes the ability for an MA to hand a patient a properly labeled and prepackaged prescription drug, excluding a controlled substance, ordered by a licensed physician and surgeon, a licensed podiatrist, a physician assistant, a nurse practitioner, or a certified nurse-midwife, as specified.
- 2) Requires a licensed physician and surgeon, a licensed podiatrist, a physician assistant, a nurse practitioner, or a certified nurse-midwife to verify that the medication and dosage for that specific patient is correct, and that the patient's name is affixed to the package prior to an MA handing the medication to a patient.

EXISTING LAW:

- 1) Establishes the Medical Board of California (MBC) to administer and enforce the Medical Practice Act, which includes the regulation of MAs. (Business and Professions Code (BPC) Section 2000 *et seq.*)
- 2) Defines an MA as a person who may be unlicensed, who performs basic administrative, clerical, and technical supportive services, as specified, for a licensed physician and surgeon or a licensed podiatrist, or group thereof, for a medical or podiatry corporation, for a physician assistant, a nurse practitioner, or a certified nurse-midwife, or for a health care service plan. (BPC 2069 (b)(1))
- 3) Requires an MA to be at least 18 years of age and have at least the minimum amount of hours of appropriate training pursuant to standards established MBC, and further requires an MA to have a certificate by the training institution or instructor indicating satisfactory completion of the required training, and for each employer to retain a copy of this certificate. (BPC 2069 (b)(1))
- 4) Permits a supervising physician and surgeon to provide written instructions to be followed by an MA in the performance of tasks or supportive services. These written instructions may provide that the supervisory function for the medical assistant for these tasks, or supportive services may be delegated to the nurse practitioner, certified nurse-midwife, or physician

- 5) Permits an MA to administer medication only by intradermal, subcutaneous, or intramuscular injections and perform skin tests and additional technical supportive services upon the specific authorization and supervision of a licensed physician and surgeon or a licensed podiatrist. A medical assistant may also perform all these tasks and services upon the specific authorization of a physician assistant, a nurse practitioner, or a certified nurse-midwife. (BPC 2069 (a)(1))
- 6) Defines "technical supportive services" as simple routine medical tasks and procedures that may be safely performed by an MA who has limited training and who functions under the supervision of a licensed physician and surgeon or a licensed podiatrist, or a physician assistant, a nurse practitioner, or a certified nurse-midwife, as specified. (BPC 2069(b)(4))
- 7) Permits an MA to perform venipuncture or skin puncture for the purposes of withdrawing blood upon specific authorization and under the supervision of a licensed physician and surgeon or a licensed podiatrist, or a physician assistant, a nurse practitioner, or a nurse-midwife with at least the minimum amount of hours of appropriate training pursuant to standards established by MBC. (BPC 2070)
- 8) Authorizes a pharmacy to employ a non-licensed person to type a prescription label or otherwise enter prescription information into a computer record system, but the responsibility for the accuracy of the prescription information and the prescription as dispensed lies with the registered pharmacist who initials the prescription or prescription record. At the direction of the registered pharmacist, a non-licensed person may also request and receive refill authorization. (California Code of Regulations, Title 16, Division 17, Article 11, Section 1793.3(a))

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) Purpose of this bill. This bill clarifies that MAs may hand out properly labeled and prepackaged prescription drugs to patients as part of their existing scope of practice under "technical supportive services." This bill is sponsored by Planned Parenthood.
- 2) Author's statement. According to the author's office, "AB 1841 will help increase and improve patient access to care by clarifying that [a] medical assistant's ability to provide 'technical supportive services' includes handing over pre-labeled, pre-packaged medications, excluding controlled substances.

"Current practice in community health centers relies on the use of [MAs] to support clinicians (Nurse Practitioners, Certified Nurse-Midwives, and Physician Assistants). The minor increase in MAs ability to hand over medication will increase health center efficiency and allow clinicians to focus on patient care, improving patient satisfaction. This change will streamline and improve health center operations, increasing and expanding patient access to care.

has received counseling on their medication twice and will provide them an additional opportunity to ask questions. This will also free up the clinician, allowing them to spend more time with the patient answering questions because they are not rushing to perform additional duties.

"With millions of patients who are newly eligible for health care coverage, including the 1.2 million who have enrolled in Medi-Cal, expanding access to care is especially important health care providers like community clinics. Planned Parenthood, along with all other health care facilities, [is] striving to ensure the highest level of health care efficiency and quality in order to serve new populations and continue providing needed coverage for the remaining uninsured."

- 3) Medical Assistants. MAs are unlicensed, but certificated, individuals. An MA must have a high school diploma or GED equivalent and take a certificate course at an approved school. The exact duration of these programs vary, but San Francisco State University, for example, requires 140 classroom hours and a clinical externship. MAs also must complete a minimum of 60 hours of continuing education over 5 years.

An MA may perform the following specific functions as part of "technical supportive" services in addition to administrative functions:

- a) Administer medication orally, sublingually, topically, vaginally or rectally, or by providing a single dose to a patient for immediate self-administration;
- b) Administer medication by inhalation if the medications are patient-specific and have been or will be routinely and repetitively administered to that patient. In every instance, prior to administration of medication by the medical assistant, a licensed physician or podiatrist, or another person authorized by law to do so shall verify the correct medication and dosage. Nothing in this section shall be construed as authorizing the administration of any anesthetic agent by a medical assistant;
- c) Perform electrocardiogram, electroencephalogram, or plethysmography tests (used to measure changes in volume in different parts of the body), except full body plethysmography;
- d) Apply and remove bandages and dressings; apply orthopedic appliances such as knee immobilizers, envelope slings, orthotics, and similar devices; remove casts, splints and other external devices; obtain impressions for orthotics, padding and custom molded shoes; select and adjust crutches to patient; and instruct patient in proper use of crutches;
- e) Remove sutures or staples from superficial incisions or lacerations;
- f) Perform ear lavage to remove impacted cerumen (remove excess earwax);
- g) Collect by non-invasive techniques and preserve specimens for testing, including urine, sputum, semen and stool;

- i) Prepare patients for and assist the physician, podiatrist, physician assistant or registered nurse in examinations or procedures including positioning, draping, shaving and disinfecting treatment sites; and prepare a patient for gait analysis testing;
- j) As authorized by the physician or podiatrist, provide patient information and instructions;
- k) Collect and record patient data including height, weight, temperature, pulse, respiration rate and blood pressure, and basic information about presenting and previous conditions; and,
- l) Perform simple laboratory and screening tests customarily performed in a medical office.

This bill simply clarifies that MAs may hand out properly labeled and prepackaged prescription drugs to patients as part of "technical supportive services." Based on their current abilities, this appears to be well within their scope of practice.

This clarification is consistent with the work of similarly unlicensed "pharmacy clerks" or "pharmacy assistants." This is a traditional title used in the pharmacy industry and is included under regulations for "ancillary personnel" in pharmacy regulations. A pharmacy clerk may also perform various "non-discretionary" tasks that do not require the abilities and authorities of either a pharmacist or a Licensed Pharmacy Technician.

These unlicensed individuals work in the pharmacy under the supervision of a pharmacist and cannot "dispense" prescriptions as that term is understood in current law, but they can "hand" the patient filled prescriptions that have been approved by a pharmacist for dispensing.

- 4) Arguments in support. Planned Parenthood writes, "AB 1841 will allow MAs to hand to a patient their medication (excluding controlled substances) that has already been packaged and labeled by a physician, nurse practitioner, certified nurse midwife or physician assistant – those who have prescribing, furnishing and dispensing authority. The MA would hand over this pre-packaged/pre-labeled medication only after that patient has been seen by their physician or clinician, who has diagnosed them, discussed treatment options, educated them about their medication, and finally, selected and packaged that medication. The MA would also be authorized to hand over pre-packaged/pre-labeled medication to an existing patient who is picking up a re-fill.

"Authorizing MA to hand over pre-packaged/pre-labeled medication is consistent with (if not less complicated than) the level and complexity and range of medical and technical support services they are already authorized to perform, including administering narcotics and giving injections.

"Providing MAs the ability to hand over medication will increase access to care in Planned Parenthood health centers by reducing waiting times caused, in part, by clinicians who must package the medications and then themselves hand it to the patient. Freeing up the clinician from this ministerial duty will allow them to see more patients and spend more time with

5) Arguments in opposition. Service Employees International Union (SEIU) Local 1000 writes, "We believe AB 1841 has several unintended consequences. First, it changes the scope of practice for [unlicensed MAs], not just at community health clinics, but also those in state agencies that [utilize] medical professionals. Our members include [licensed vocational nurses, registered nurses] and pharmacy technicians, all of whom are trained and [licensed]. This is an industry mandate in the State of California. Second, the intent of this bill is to allow MAs to dispense medication in a health clinic like a pharmacy tech does in a pharmacy. MAs have restrictions on handling medications. Currently, MAs can administer a single dose under the supervision of a licensed provider who must physically be present.

"Our members have expressed additional concerns including that AB 1841 will give MAs authority to make decisions based on a physician's orders which they are not trained to do and has the potential to cause liability issues for supervising staff."

REGISTERED SUPPORT / OPPOSITION:

Support

Planned Parenthood Affiliates of California (sponsor)  
Association of California Healthcare Districts  
California Academy of Physician Assistants  
California Association for Nurse Practitioners  
California Family Health Council  
California Nurse-Midwives Association  
California Primary Care Association  
Planned Parenthood Advocacy Project Los Angeles County  
Planned Parenthood Mar Monte  
Planned Parenthood of Orange and San Bernardino Counties  
Planned Parenthood of Santa Barbara, Ventura, and San Luis Obispo Counties, Inc.  
Planned Parenthood of the Pacific Southwest  
Planned Parenthood Pasadena and San Gabriel Valley  
Planned Parenthood Shasta Pacific Action Fund  
Six Rivers Planned Parenthood

Opposition

SEIU Local 1000

Analysis Prepared by: Sarah Huchel / B.,P. & C.P./ (916) 319-3301

CURRENT BILL STATUS

MEASURE : A.B. No. 2058  
AUTHOR(S) : Wilk (Coauthors: Hagman and Harkey) (Coauthors: Senators  
DeSaulnier, Gaines, and Vidak).  
TOPIC : Open meetings.  
HOUSE LOCATION : ASM  
+LAST AMENDED DATE : 04/09/2014

TYPE OF BILL :

Active  
Urgency  
Non-Appropriations  
2/3 Vote Required  
Non-State-Mandated Local Program  
Fiscal  
Non-Tax Levy

LAST HIST. ACT. DATE: 04/30/2014  
LAST HIST. ACTION : In committee: Set, first hearing. Referred to APPR.  
suspense file.  
COMM. LOCATION : ASM APPROPRIATIONS

TITLE : An act to amend Section 11121 of the Government Code,  
relating to state government, and declaring the urgency  
thereof, to take effect immediately.

AMENDED IN ASSEMBLY APRIL 9, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2058**

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**Introduced by Assembly Member Wilk**  
*(Coauthors: Assembly Members Hagman and Harkey)*  
*(Coauthor: Senator DeSaulnier)*  
*(Coauthors: Senators DeSaulnier, Gaines, and Vidak)*

February 20, 2014

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An act to amend Section 11121 of the Government Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2058, as amended, Wilk. Open meetings.

The Bagley-Keene Open Meeting Act requires that all meetings of a state body, as defined, be open and public and that all persons be permitted to attend and participate in any meeting of a state body, subject to certain conditions and exceptions.

This bill would modify the definition of "state body" to exclude an advisory body with less than 3 individuals, except for certain standing committees. ~~This bill would also make legislative findings and declarations in this regard.~~

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1 ~~SECTION 1. The Legislature finds and declares all of the~~  
2 ~~following:~~

3 ~~(a) The unpublished decision of the Third District Court of~~  
4 ~~Appeals in *Funeral Security Plans v. State Board of Funeral*~~  
5 ~~*Directors* (1994) 28 Cal. App.4th 1470 is an accurate reflection of~~  
6 ~~legislative intent with respect to the applicability of the~~  
7 ~~Bagley-Keene Open Meeting Act (Article 9 (commencing with~~  
8 ~~Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of~~  
9 ~~the Government Code) (Bagley-Keene Act) to a two-member~~  
10 ~~standing advisory committee of a state body. A two-member~~  
11 ~~standing committee of a state body, even if operating solely in an~~  
12 ~~advisory capacity, already is a "state body," as defined in~~  
13 ~~subdivision (d) of Section 11121 of the Government Code,~~  
14 ~~irrespective of its size, if a member of the state body sits on the~~  
15 ~~committee and the committee receives funds from the state body.~~  
16 ~~For this type of two-member standing advisory committee, this~~  
17 ~~bill is declaratory of existing law.~~

18 ~~(b) A two-member standing committee of a state body, even if~~  
19 ~~operating solely in an advisory capacity, already is a "state body,"~~  
20 ~~as defined in subdivision (b) of Section 11121 of the Government~~  
21 ~~Code, irrespective of its composition, if it exercises any authority~~  
22 ~~of a state body delegated to it by that state body. For this type of~~  
23 ~~two-member standing advisory committee, this bill is declaratory~~  
24 ~~of existing law.~~

25 ~~(c) All two-member standing advisory committees of a local~~  
26 ~~body are subject to open meeting requirements under the Ralph~~  
27 ~~M. Brown Act (Chapter 9 (commencing with Section 54950) of~~  
28 ~~Part 1 of Division 2 of Title 5 of the Government Code) (Brown~~  
29 ~~Act). It is the intent of the Legislature in this act to reconcile~~  
30 ~~language in the Brown Act and Bagley-Keene Act with respect to~~  
31 ~~all two-member standing advisory committees, including, but not~~  
32 ~~limited to, those described in subdivisions (a) and (b).~~

33 ~~SEC. 2.~~

34 ~~SECTION 1. Section 11121 of the Government Code is~~  
35 ~~amended to read:~~

36 ~~11121. As used in this article, "state body" means each of the~~  
37 ~~following:~~

38 ~~(a) Every state board, or commission, or similar multimember~~  
39 ~~body of the state that is created by statute or required by law to~~

1 conduct official meetings and every commission created by  
2 executive order.

3 (b) A board, commission, committee, or similar multimember  
4 body that exercises any authority of a state body delegated to it by  
5 that state body.

6 (c) An advisory board, advisory commission, advisory  
7 committee, advisory subcommittee, or similar multimember  
8 advisory body of a state body, if created by formal action of the  
9 state body or of any member of the state body. ~~Advisory bodies~~  
10 *An advisory body* created to consist of fewer than three individuals  
11 ~~are~~ *is not* a state body, except that ~~a standing committees~~ *committee*  
12 of a state body, irrespective of ~~their~~ *its* composition, which ~~have~~  
13 *has* a continuing subject matter jurisdiction, or a meeting schedule  
14 fixed by resolution, policies, bylaws, or formal action of a state  
15 body ~~are~~ *is a state bodies body* for the purposes of this chapter.

16 (d) A board, commission, committee, or similar multimember  
17 body on which a member of a body that is a state body pursuant  
18 to this section serves in his or her official capacity as a  
19 representative of that state body and that is supported, in whole or  
20 in part, by funds provided by the state body, whether the  
21 multimember body is organized and operated by the state body or  
22 by a private corporation.

23 ~~SEC. 3.~~

24 *SEC. 2.* This act is an urgency statute necessary for the  
25 immediate preservation of the public peace, health, or safety within  
26 the meaning of Article IV of the Constitution and shall go into  
27 immediate effect. The facts constituting the necessity are:

28 In order to avoid unnecessary litigation and ensure the people's  
29 right to access of the meetings of public bodies pursuant to Section  
30 3 of Article 1 of the California Constitution, it is necessary that  
31 act take effect immediately.

Date of Hearing: April 30, 2014

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Mike Gatto, Chair

AB 2058 (Wilk) – As Amended: April 9, 2014

Policy Committee: Governmental Organization

Vote: 19-0

Urgency: No State Mandated Local Program: No

Reimbursable: No

SUMMARY

This bill modifies the definition of "state body" in the Bagley-Keene Open Meeting Act (the Bagley-Keene Act) to clarify that standing committees of a state body, including advisory bodies, that have a continuing subject matter jurisdiction or a regular meeting schedule fixed by formal action are state bodies for purposes of the Bagley-Keene Act regardless of the number of individuals that comprise those committees.

FISCAL EFFECT

Potentially significant costs, in excess of \$150,000 to the GF, to state agencies for complying with notice and open meeting requirements in instances currently not subject to those requirements.

COMMENTS

- 1) Purpose. According to the author, the current definition of "state body" in the Bagley-Keene Act contains an ambiguity with respect to whether standing committees composed of fewer than three members need to comply with the public notice and open meeting requirements of the Act. The author contends this ambiguity has been interpreted by certain state agencies to allow standing committees to hold closed-door meetings so long as those committees contain only two members and do not vote on action items. AB 2058 would clarify that all standing committees, including advisory committees, are subject to the transparency of open meeting regulations regardless of committee size or membership.
- 2) Open Meeting Acts. The Government Code contains two parallel open meeting statutes, the Bagley-Keene Act for state government, and the Ralph M. Brown Act (the Brown Act) for local governments. The philosophy underpinning the two acts is that transparency and consensus should be favored over administrative efficiency in most cases. The acts explicitly mandate open meetings for state and local agencies, boards, and commissions, providing the public with the ability to monitor and participate in the decision-making process.
- 3) State Body Definition. Prior to 1993, the Bagley-Keene Act and the Brown Act contained very similar definitions for "state body". Following an interpretation of that definition by a particular local government to exempt two-member standing committees from the open meeting requirements of the Brown Act, the Legislature amended the definition of "state body" in the Bagley-Keene Act to clarify that all standing committees, including advisory committees, are subject to the transparency of open meeting regulations regardless of committee size or membership.

align the definitions and requirements for open meetings among standing committees between the Bagley-Keene Act and the Brown Act as amended in 1993.

- 4) Opposition. The California Board of Accountancy (the CBA) opposes AB 2058 on the grounds that the bill appears to exclude even a single member from acting in an advisory body capacity without public notice. According to the CBA, this should prevent it and its various committees from asking its members to draft a letter, provide expert analysis, or work on legal language without giving public notice. Under current law, the advisory activities of the CBA's one- and two-member committees are vetted and voted upon in a publically noticed meeting of the whole committee board.
  
- 5) Staff comment. The author may wish to consider whether the ambiguity highlighted in the CBA opposition letter merits clarification. Currently, subsection (c) of the "state body" definition includes "an advisory board, advisory commission, advisory committee...or similar *multimember* advisory body..." (emphasis added). As drafted, the new definition attempts to clarify that "...a standing committee of a state body, *irrespective of its composition*,..." (emphasis added) is a state body.

As a result of these two provisions, it may remain unclear whether a one person standing committee is intended to be considered a state body for purposes of the revised definition.

Date of Hearing: April 2, 2014

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Isadore Hall, Chair

AB 2058 (Wilk) – As Introduced: February 20, 2014

SUBJECT: Open meetings.

SUMMARY: Modifies the definition of "state body" to clarify that standing committees, even if composed of less than three members, are a "state body" for the purposes of the Bagley-Keene Open Meeting Act (Act). Specifically, this bill:

- 1) Clarifies that advisory bodies created to consist of fewer than three individuals are not a state body, except that standing committees of a state body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by resolution, policies, bylaws, or formal action of a state body are state bodies for the purposes of the Bagley-Keene Open Meeting Act.
- 2) Makes various legislative findings.

EXISTING LAW

- 1) The Act generally requires that all meetings of a state body be open and public and that all persons be permitted to attend and participate in any meeting of a state body.
- 2) Defines a "state body" as each of the following:
  - a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.
  - b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.
  - c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.
  - d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this sections serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.
- 3) Generally requires, under the Ralph M. Brown Act, that all meetings of a local government

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of the bill: According to the author, current law contains two parallel open meeting statutes; the Brown Act for local governments and the Bagley-Keene Act for state government. Prior to 1993, the Brown Act contained language very similar to the current language in the Bagley-Keene Act regarding standing committees. However, in the 1990's when a local government entity attempted to claim a loophole existed for two-member standing committees, the legislature promptly removed any ambiguity on the matter of the Brown Act. However, a conforming change was not made, to the Bagley-Keene Act, as no change was thought necessary.

The ambiguity left in the Bagley-Keene Act is allowing state bodies to deliberate and direct staff behind closed doors. These state agencies are allowing standing committees to interpret the language of the Bagley-Keene Act in a manner that is contrary to the intent of the Legislature and the public; government at all levels must conduct its business visibly and transparently.

AB 2058 would align the definitions in the Bagley-Keene Act to those in the Brown Act, making the clarifying change in the Bagley-Keene Act that the Legislature made to the Brown Act in 1993. In addition, the bill would make it definite that all standing committees are subject to the transparency of open meeting regulations, regardless of the size of the membership.

Bagley-Keene Act: When the Legislature enacted the Bagley-Keene Act of 1967 it essentially said that when a body sits down to develop its consensus, there needs to be a seat at the table reserved for the public. In doing so, the Legislature has provided the public with the ability to monitor and be part of the decision-making process. The Act explicitly mandates open meetings for California State agencies, boards, and commissions. The Act facilitates transparency of government activities and protects the rights of citizens to participate in state government deliberations. Therefore, absent a specific reason to keep the public out of meetings, the public should be allowed to monitor and participate in the decision-making process. Similarly, the California's Brown Act of 1953 protects citizen's rights to open meetings at the local and county government levels.

Similar language in the Brown Act: As discussed above, the Brown Act currently contains language that is very similar to the language found in AB 2058 (Wilk). The Brown Act defines a "legislative body" as a:

A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committee, composed solely of the members of the legislative body that are less than a quorum of the legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative boy are legislative bodies for purposes of this chapter. (CA Government Code Section 54952, subdivision (b))

simply align the definitions of a "state body" in the Bagley-Keene Act to the definitions of a "legislative body" in the Brown Act.

Arguments in opposition: The California Board of Accountancy (CBA) writes in opposition of the bill stating that AB 2058 would prevent the CBA, and all of its various committees, from asking fewer than three members to review a document, draft a letter, provide expert analysis, or work on legal language without giving public notice. Under current law, the advisory activities of these one or two members are already vetted and voted upon in a publically noticed meeting of the whole committee or board. This bill would prevent the CBA, and all of its various committees, from asking fewer than three members to review a document, draft a letter, provide expert analysis, or work on legal language without giving public notice.

In Addition, CBA states that making advisory activities of one or two members open to the public will greatly increase costs as a staff member would need to travel to attend the meeting for the purpose of recording minutes. Agencies would also need to contract for meeting space that would be able to accommodate the public, thus incurring further costs.

Prior Legislation: AB 245 (Grove), 2013-2014 Legislative Session. Would have Subject the Western Climate Initiative, Incorporated (WCI, Inc.), and its appointees to the Bagley-Keene Open Meeting Act (Act) when performing their duties. (Held in Assembly Governmental Organization Committee)

AB 527 (Gaines), 2013-2014 Legislative Sessions. Would have repealed the exemption from the Bagley-Keene Open Meeting Act (Bagley-Keene) enacted in 2012 for the Western Climate Initiative (WCI, Inc.) and provided that a contract between the state and WCI, Inc. shall be subject to audit by the State Auditor. (Vetoed by the Governor)

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

California Board of Accountancy

Analysis Prepared by: Felipe Lopez / G. O. / (916) 319-2531

## CURRENT BILL STATUS

MEASURE : A.B. No. 2102  
AUTHOR(S) : Ting.  
TOPIC : Licensees: data collection.  
HOUSE LOCATION : ASM  
+LAST AMENDED DATE : 04/24/2014

## TYPE OF BILL :

Active  
Non-Urgency  
Non-Appropriations  
Majority Vote Required  
Non-State-Mandated Local Program  
Fiscal  
Non-Tax Levy

LAST HIST. ACT. DATE: 05/01/2014  
LAST HIST. ACTION : Read second time. Ordered to third reading.  
FILE : ASM THIRD READING  
FILE DATE : 05/12/2014  
ITEM : 69

COMM. LOCATION : ASM APPROPRIATIONS  
COMM. ACTION DATE : 04/30/2014  
COMM. ACTION : Do pass.  
COMM. VOTE SUMMARY : Ayes: 12 Noes: 04PASS

TITLE : An act to amend Section 2717 of, and to add Sections 2852.5, 3518.1, 3770.1, and 4506 to, the Business and Professional Code, relating to healing arts.

AMENDED IN ASSEMBLY APRIL 24, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2102**

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**Introduced by Assembly Member Ting**

February 20, 2014

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An act to amend Section 2717 of, and to add Sections 2852.5, 3518.1, 3770.1, and 4506 to, the Business and Professional Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2102, as amended, Ting. Licensees: data collection.

Existing law requires the Board of Registered Nursing, the Physician Assistant Board, the Respiratory Care Board of California, and Board of Vocational Nursing and Psychiatric Technicians of the State of California to regulate and oversee the practice the healing arts within their respective jurisdictions.

This bill would require these boards to ~~annually~~ collect and report specific demographic data relating to its licensees, *subject to a licensee's discretion to report his or her race or ethnicity*, to Office of Statewide Health Planning and Development. *The bill would require the Board of Registered Nursing to collect this data at least biennially, and would require those other boards to collect this data at the time of issuing an initial license or a renewal license.*

This bill would also delete obsolete provisions.

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

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

1 SECTION 1. The Legislature finds and declares the following:

2 (a) The Office of Statewide Health Planning and Development  
3 prepares an annual report to the Legislature on the gaps in the  
4 health care workforce in California.

5 (b) The Employment Development Department's Labor Market  
6 Information Division and state licensing boards share data with  
7 the Office of Statewide Health Planning and Development.

8 (c) All regulatory boards collect information about their  
9 licensees through the licensing process.

10 (d) California's regulated health professions collect information  
11 that is often limited and not always regularly updated.

12 (e) The information collected is inconsistent among the various  
13 regulatory agencies using different definitions and categories.

14 (f) The collection of demographic data on certain allied health  
15 professions will allow for the consistent determination of  
16 geographic areas in the state where there are shortages of health  
17 care workers with cultural and linguistic competency.

18 SEC. 2. Section 2717 of the Business and Professions Code is  
19 amended to read:

20 2717. (a) The board shall collect and analyze workforce data  
21 from its licensees for future workforce planning. The board may  
22 collect the data at the time of license renewal or from a  
23 scientifically selected random sample of its licensees. The board  
24 shall produce reports on the workforce data it collects, at a  
25 minimum, on a biennial basis. The board shall maintain the  
26 confidentiality of the information it receives from licensees under  
27 this section and shall only release information in an aggregate form  
28 that cannot be used to identify an individual. The workforce data  
29 collected by the board shall include, at a minimum, employment  
0 information such as hours of work, number of positions held, time  
1 spent in direct patient care, clinical practice area, type of employer,  
2 and work location. The data shall also include future work  
3 intentions, reasons for leaving or reentering nursing, job satisfaction  
4 ratings, and demographic data.

5 (b) Aggregate information collected pursuant to this section  
6 shall be placed on the board's Internet Web site.

1 (c) (1) Notwithstanding subdivision (a), the board shall ~~annually~~  
2 collect, *at least biennially*, all of the following data on nurses  
3 licensed under this chapter:

- 4 (A) Location of practice.
- 5 (B) Race or ethnicity, *subject to paragraph (3)*.
- 6 (C) Gender.
- 7 (D) Languages spoken.
- 8 (E) Educational background.

9 (2) The board shall annually provide the data collected pursuant  
10 to paragraph (1) to the Office of Statewide Health Planning and  
11 Development in a manner directed by the office that allows for  
12 inclusion of the data into the annual report required by Section  
13 128052 of the Health and Safety Code.

14 (3) *A licensee may, but is not required to, report his or her race*  
15 *or ethnicity to the board.*

16 SEC. 3. Section 2852.5 is added to the Business and Professions  
17 Code, to read:

18 2852.5. (a) The board shall ~~annually~~ collect, *at the time of*  
19 *issuing an initial license or a renewal license*, all of the following  
20 data on vocational nurses licensed under this chapter:

- 21 (1) Location of practice.
- 22 (2) Race or ethnicity, *subject to subdivision (c)*.
- 23 (3) Gender.
- 24 (4) Languages spoken.
- 25 (5) Educational background.

26 (b) The board shall annually provide the data collected pursuant  
27 to subdivision (a) to the Office of Statewide Health Planning and  
28 Development in a manner directed by the office that allows for  
29 inclusion of the data into the annual report required by Section  
30 128052 of the Health and Safety Code.

31 (c) *A licensee may, but is not required to, report his or her race*  
32 *or ethnicity to the board.*

33 SEC. 4. Section 3518.1 is added to the Business and Professions  
34 Code, to read:

35 3518.1. (a) The board shall ~~annually~~ collect, *at the time of*  
36 *issuing an initial license or a renewal license*, all of the following  
37 data on physician assistants licensed under this chapter:

- 38 (1) Location of practice.
- 39 (2) Race or ethnicity, *subject to subdivision (c)*.
- 40 (3) Gender.

1 (4) Languages spoken.

2 (5) Educational background.

3 (b) The board shall annually provide the data collected pursuant  
4 to subdivision (a) to the Office of Statewide Health Planning and  
5 Development in a manner directed by the office that allows for  
6 inclusion of the data into the annual report required by Section  
7 128052 of the Health and Safety Code.

8 (c) *A licensee may, but is not required to, report his or her race  
9 or ethnicity to the board.*

10 SEC. 5. Section 3770.1 is added to the Business and Professions  
11 Code, to read:

12 3770.1. (a) The board shall ~~annually~~ collect, *at the time of*  
13 *issuing an initial license or a renewal license*, all of the following  
14 data on respiratory therapists licensed under this chapter:

15 (1) Location of practice.

16 (2) Race or ethnicity, *subject to subdivision (c)*.

17 (3) Gender.

18 (4) Languages spoken.

19 (5) Educational background.

20 (b) The board shall annually provide the data collected pursuant  
21 to subdivision (a) to the Office of Statewide Health Planning and  
22 Development in a manner directed by the office that allows for  
23 inclusion of the data into the annual report required by Section  
24 128052 of the Health and Safety Code.

25 (c) *A licensee may, but is not required to, report his or her race  
26 or ethnicity to the board.*

27 SEC. 6. Section 4506 is added to the Business and Professions  
28 Code, to read:

29 4506. (a) The board shall ~~annually~~ collect, *at the time of issuing*  
30 *an initial license or a renewal license*, all of the following data on  
1 psychiatric technicians licensed under this chapter:

2 (1) Location of practice.

3 (2) Race or ethnicity, *subject to subdivision (c)*.

4 (3) Gender.

5 (4) Languages spoken.

6 (5) Educational background.

7 (b) The board shall annually provide the data collected pursuant  
8 to subdivision (a) to the Office of Statewide Health Planning and  
9 Development in a manner directed by the office that allows for

1 inclusion of the data into the annual report required by Section  
2 128052 of the Health and Safety Code.

3 (c) *A licensee may, but is not required to, report his or her race*  
4 *or ethnicity to the board.*

O

ASSEMBLY THIRD READING

AB 2102 (Ting)

As Amended April 24, 2014

Majority vote

BUSINESS & PROFESSIONS

10-3

APPROPRIATIONS

12-4

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Ayes: Bonilla, Bocanegra, Campos,  
Dickinson, Eggman, Gordon, Holden,  
Mullin, Skinner, Ting

Ayes: Gatto, Bocanegra, Bradford,  
Ian Calderon, Campos, Eggman,  
Gomez, Holden, Pan, Quirk,  
Ridley-Thomas, Weber

Nays: Jones, Hagman, Wilk

Nays: Bigelow, Donnelly, Jones, Wagner

SUMMARY: Requires the Board of Registered Nursing (BRN), the Board of Vocational Nursing and Psychiatric Technicians (BVNPT), the Physician Assistant Board (PAB), and the Respiratory Care Board of California (RCBC) to collect demographic data on their respective licensees and provide that data to the Office of Statewide Health Planning and Development (OSHPD). Specifically, this bill:

- 1) Requires BRN, BVNPT, PAB, and RCBC to collect all of the following information on their respective licensees at least biennially, or at the time of issuing an initial or renewal license:
  - a) Location of practice;
  - b) Race or ethnicity, by election of the licensee;
  - c) Gender;
  - d) Languages spoken; and,
  - e) Educational background.
- 2) Requires BRN, BVNPT, PAB, and RCBC to provide that data annually to OSHPD in a manner directed by OSHPD that allows for inclusion into the annual health care workforce report provided to the Legislature, as specified.
- 3) Makes Legislative findings and declarations relative to the collection of information about California's health care workforce.
- 4) Makes technical and clarifying changes.

FISCAL EFFECT: According to the Assembly Appropriations Committee, potential one-time costs of up to \$90,000 (various fee-supported special funds) if programming changes are necessary to the information technology (IT) system supporting licensure functions.

COMMENTS:

- 1) This bill will require BRN, BVNPT, PAB, and RCBC to report demographic information on their licensees to OSHPD so that OSHPD can collect more complete and consistent data on California's health care workforce. With that data, policy makers will ideally be better able to identify geographic areas of the state where there are shortages of health care workers with cultural and linguistic competencies. This bill is sponsored by the California Pan-Ethnic Health Network and the Latino Coalition for a Healthy California.
- 2) According to the author's office, "For millions of Californians, comprehensive access to healthcare depends on professionals who can provide culturally and linguistically appropriate medical services. California collects data on healthcare occupations, but current data is insufficient for determining the state's capacity to address the needs of our diverse population, in particular language access. AB 2102 requires the collection and reporting of key demographic data for registered nurses, nurse practitioners, physician assistants, respiratory care providers, vocational nurses and psychiatric technicians. This will enable the state to better identify health care disparities and craft solutions to ensure comprehensive coverage and greater health care access for all Californians."
- 3) OSHPD was created in 1978 to provide California with an enhanced understanding of the structure and function of its healthcare delivery systems. OSHPD is the statewide leader in collecting data and disseminating information about California's healthcare infrastructure, promoting an equitably distributed healthcare workforce, and publishing valuable information about healthcare outcomes.

OSHPD publishes an annual report to the Legislature with information on education and employment trends in the health care professions, current supply and demand for health care workers, and gaps in the educational pipeline producing workers in specific occupations and geographic area. Available information for these reports is limited, however. According to the author's office, race, language capacity, and gender demographic information would greatly enrich the quality of OSHPD's reports and better inform policymaking. While some boards, such as BRN, do collect demographic data on its licensees, this bill would standardize the information required to be collected and formalize its inclusion in OSHPD's annual report.

The author's office reports that these boards were chosen because the Medical Board of California and Dental Board of California already collect this demographic information, and the remaining boards in this bill already report some information to OSHPD and represent those professionals who work closely with patients.

Date of Hearing: April 30, 2014

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Mike Gatto, Chair

AB 2102 (Ting) – As Amended: April 24, 2014

Policy Committee: Business and Professions

Vote: 10-3

Urgency: No State Mandated Local Program: No

Reimbursable: No

SUMMARY

This bill requires the Board of Registered Nursing (BRN), the Board of Vocational Nursing and Psychiatric Technicians (BVNPT), the Physician Assistant Board (PAB), and the Respiratory Care Board of California (RCBC) to collect demographic data on their respective licensees and provide that data to the Office of Statewide Health Planning and Development (OSHPD).

FISCAL EFFECT

Potential one-time costs of up to \$90,000 (various fee-supported special funds) if programming changes are necessary to the information technology (IT) system supporting licensure functions.

COMMENTS

- 1) Purpose. This bill will require various boards to report demographic information on their licensees to OSHPD, in order to allow OSHPD to collect more complete and consistent data on California's health care workforce. With that data, policy makers will ideally be better able to identify geographic areas of the state where there are shortages of certain health care workers with cultural and linguistic competencies. This bill is sponsored by the California Pan-Ethnic Health Network and the Latino Coalition for a Healthy California.
- 2) Background. OSHPD collects data about the state's health care workforce, and provides data and analysis to inform state health workforce policy. The author's office reports that the specific boards listed above were chosen because the Medical Board of California and Dental Board of California already collect this demographic information, and the remaining boards in this bill represent those professionals who work closely with patients.
- 3) Amendments specify the data is to be collected every two years to coincide with the license renewal cycle, and make race and ethnicity reporting optional.

Analysis Prepared by: Lisa Murawski / APPR. / (916) 319-2081

Date of Hearing: April 8, 2014

ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER  
PROTECTION

Susan A. Bonilla, Chair

AB 2102 (Ting) – As Amended: March 28, 2014

SUBJECT: Licensees: data collection.

SUMMARY: Requires the Board of Registered Nursing (BRN), the Board of Vocational Nursing and Psychiatric Technicians (BVNPT), the Physician Assistant Board (PAB), and the Respiratory Care Board of California (RCBC) to collect demographic data on their respective licensees and provide that data to the Office of Statewide Health Planning and Development (OSHPD). Specifically, this bill:

- 1) Requires BRN, BVNPT, PAB, and RCBC to annually collect all of the following information on their respective licensees:
  - a) Location of practice;
  - b) Race or ethnicity;
  - c) Gender;
  - d) Languages spoken; and,
  - e) Educational background.
- 2) Requires BRN, BVNPT, PAB, and RCBC to provide that data annually to OSHPD in a manner directed by OSHPD that allows for inclusion into the annual health care workforce report provided to the Legislature, as specified.
- 3) Makes Legislative findings and declarations relative to the collection of information about California's health care workforce.
- 4) Makes technical and clarifying changes.

EXISTING LAW:

- 1) Requires BRN to collect and analyze workforce data from its licensees for future workforce planning and produce reports at least biennially. (Business and Professions Code Section 2717)
- 2) Requires OSHPD to prepare an annual report to the Legislature that does all of the following:
  - a) Identify education and employment trends in the health care profession;

- b) Report on the current supply and demand for health care workers in California and gaps in the educational pipeline producing workers in specific occupations and geographic areas; and,
- c) Recommend state policy needed to address issues of workforce shortage and distribution. (Health and Safety Code Section 128052)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Purpose of this bill. This bill will require BRN, BVNPT, PAB, and RCBC to report demographic information on their licensees to OSHPD so that OSHPD can collect more complete and consistent data on California's health care workforce. With that data, policy makers will ideally be better able to identify geographic areas of the state where there are shortages of health care workers with cultural and linguistic competencies. This bill is sponsored by the California Pan-Ethnic Health Network and the Latino Coalition for a Healthy California.
- 2) Author's statement. According to the author's office, "For millions of Californians, comprehensive access to healthcare depends on professionals who can provide culturally and linguistically appropriate medical services. California collects data on healthcare occupations, but current data is insufficient for determining the state's capacity to address the needs of our diverse population, in particular language access. AB 2102 requires the collection and reporting of key demographic data for registered nurses, nurse practitioners, physician assistants, respiratory care providers, vocational nurses and psychiatric technicians. This will enable the state to better identify health care disparities and craft solutions to ensure comprehensive coverage and greater health care access for all Californians."
- 3) OSHPD's role in health care workforce data collection. OSHPD was created in 1978 to provide California with an enhanced understanding of the structure and function of its healthcare delivery systems. OSHPD is the statewide leader in collecting data and disseminating information about California's healthcare infrastructure, promoting an equitably distributed healthcare workforce, and publishing valuable information about healthcare outcomes.

OSHPD publishes an annual report to the Legislature with information on education and employment trends in the health care professions, current supply and demand for health care workers, and gaps in the educational pipeline producing workers in specific occupations and geographic area. Available information for these reports is limited, however. According to the author's office, race, language capacity, and gender demographic information would greatly enrich the quality of OSHPD's reports and better inform policymaking. While some boards, such as BRN, do collect demographic data on its licensees, this bill would standardize the information required to be collected and formalize its inclusion in OSHPD's annual report.

the remaining boards in this bill already report some information to OSHPD and represent those professionals who work closely with patients.

- 4) Arguments in support. The Latino Coalition for a Healthy California writes in support, "AB 2102 aligns with our mission and builds off an existing practice to assure we collect demographic data from fee-supported boards on allied health professions in order to provide culturally and linguistically appropriate quality care to all Californians. We are committed to address[ing] workforce deficiencies for culturally and linguistically specific subpopulations that have traditionally faced barriers to quality care, including Spanish speaking, Latino communities.

"Expanding the collection of demographic data to include: registered nurses, nurse practitioners, physician assistants, respiratory health providers, vocational nurses, and psychiatric technicians is important to meet the current and future needs of an increasingly diverse constituency. For these reasons, we ask for your support on this important measure."

- 5) Previous legislation. AB 1140 (Thompson) (Chapter 1089, Statutes of 2002) required BRN to collect and analyze workforce data from its licensees for future work force planning, and to produce reports on the workforce data it collects at least biennially.

REGISTERED SUPPORT / OPPOSITION:

Support

California Pan-Ethnic Health Network (sponsor)  
Latino Coalition for a Healthy California (sponsor)  
ACLU of California  
Asian & Pacific Islander American Health Forum  
Asian Pacific Policy & Planning Council  
Borrego Community Health Foundation  
California Pan-Ethnic Health Network  
Greenlining Institute  
Having Our Say  
Worksite Wellness LA

Opposition

None on file.

Analysis Prepared by: Sarah Huchel / B.,P. & C.P. / (916) 319-3301

## CURRENT BILL STATUS

MEASURE : A.B. No. 2396  
AUTHOR(S) : Bonta (Coauthor: Skinner).  
TOPIC : Convictions: expungement: licenses.  
HOUSE LOCATION : ASM  
+LAST AMENDED DATE : 04/21/2014

## TYPE OF BILL :

Active  
Non-Urgency  
Non-Appropriations  
Majority Vote Required  
Non-State-Mandated Local Program  
Fiscal  
Non-Tax Levy

LAST HIST. ACT. DATE: 05/08/2014  
LAST HIST. ACTION : Read second time. Ordered to third reading.  
FILE : ASM THIRD READING  
FILE DATE : 05/12/2014  
ITEM : 105

COMM. LOCATION : ASM APPROPRIATIONS  
COMM. ACTION DATE : 05/07/2014  
COMM. ACTION : Do pass.  
COMM. VOTE SUMMARY : Ayes: 12 Noes: 05PASS

TITLE : An act to amend Section 480 of the Business and Professions Code, relating to expungement.

AMENDED IN ASSEMBLY APRIL 21, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2396**

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**Introduced by Assembly Member Bonta**  
***(Coauthor: Assembly Member Skinner)***

February 21, 2014

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An act to amend Section 480 of the Business and Professions Code, relating to expungement.

LEGISLATIVE COUNSEL'S DIGEST

AB 2396, as amended, Bonta. Convictions: expungement: licenses.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to deny, suspend, or revoke a license on various grounds, including, but not limited to, conviction of a crime if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. Existing law prohibits a board from denying a license on the ground that the applicant has committed a crime if the applicant shows that he or she obtained a certificate of rehabilitation in the case of a felony, or that he or she has met all applicable requirements of the criteria of rehabilitation developed by the board, as specified, in the case of a misdemeanor.

Existing law permits a defendant to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty in any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of

the period of probation, or has been convicted of a misdemeanor and not granted probation and has fully complied with and performed the sentence of the court, or has been sentenced to a county jail for a felony, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted this or other specified relief and requires the defendant to be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

This bill would prohibit a board from denying a license based solely on a conviction that has been dismissed pursuant to the above provisions.

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

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

1 SECTION 1. Section 480 of the Business and Professions Code  
2 is amended to read:

3 480. (a) A board may deny a license regulated by this code  
4 on the grounds that the applicant has one of the following:

5 (1) Been convicted of a crime. A conviction within the meaning  
6 of this section means a plea or verdict of guilty or a conviction  
7 following a plea of nolo contendere. Any action that a board is  
8 permitted to take following the establishment of a conviction may  
9 be taken when the time for appeal has elapsed, or the judgment of  
10 conviction has been affirmed on appeal, or when an order granting  
11 probation is made suspending the imposition of sentence,  
12 irrespective of a subsequent order under the provisions of Section  
13 1203.4, 1203.4a, or 1203.41 of the Penal Code.

14 (2) Done any act involving dishonesty, fraud, or deceit with the  
15 intent to substantially benefit himself or herself or another, or  
16 substantially injure another.

17 (3) (A) Done any act that if done by a licentiate of the business  
18 or profession in question, would be grounds for suspension or  
19 revocation of license.

20 (B) The board may deny a license pursuant to this subdivision  
21 only if the crime or act is substantially related to the qualifications,  
22 functions, or duties of the business or profession for which  
23 application is made.

24 (b) Notwithstanding any other provision of this code, a person  
25 shall not be denied a license solely on the basis that he or she has

1 been convicted of a felony if he or she has obtained a certificate  
2 of rehabilitation under Chapter 3.5 (commencing with Section  
3 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she  
4 has been convicted of a misdemeanor if he or she has met all  
5 applicable requirements of the criteria of rehabilitation developed  
6 by the board to evaluate the rehabilitation of a person when  
7 considering the denial of a license under subdivision (a) of Section  
8 482.

9 (c) Notwithstanding any other provisions of this code, a person  
10 shall not be denied a license solely on the basis of a conviction  
11 that has been dismissed pursuant to Section 1203.4, 1203.4a, or  
12 1203.41.

13 (d) A board may deny a license regulated by this code on the  
14 ground that the applicant knowingly made a false statement of fact  
15 *that is* required to be revealed in the application for the license.

O

ASSEMBLY THIRD READING

AB 2396 (Bonta)

As Amended April 21, 2014

Majority vote

BUSINESS & PROFESSIONS 11-2

APPROPRIATIONS

12-5

Ayes: Bonilla, Bocanegra, Campos,  
Dickinson, Eggman, Gordon, Holden,  
Maienschein, Mullin, Skinner, Ting

Ayes: Gatto, Bocanegra, Bradford,  
Ian Calderon, Campos, Eggman,  
Gomez, Holden, Pan, Quirk,  
Ridley-Thomas, Weber

Nays: Jones, Wilk

Nays: Bigelow, Donnelly, Jones, Linder,  
Wagner

SUMMARY: Prohibits boards within the Department of Consumer Affairs (DCA) from denying a professional license based solely on a criminal conviction that has been withdrawn, set aside or dismissed by the court.

FISCAL EFFECT: According to the Assembly Appropriations Committee, minor and absorbable costs to each of the affected boards.

COMMENTS:

- 1) *Purpose of this bill.* This bill would prohibit boards and bureaus within DCA from denying a professional license based solely on a prior conviction that was dismissed by a court which determined that the individual completed all the terms of his or her sentence without committing any additional offenses, or which determined a dismissal would serve the interests of justice. In doing so, the author aims to alleviate barriers to employment after incarceration. This bill is sponsored by the Alameda County Board of Supervisors.
- 2) *Author's statement.* According to the author, "[This bill] is designed to reduce employment barriers for people with criminal records who have been rehabilitated. [This bill] allows them the opportunity to pursue meaningful employment and work towards entering the middle class, instead of struggling in low-wage jobs or returning to crime.

"In many cases, individuals seeking a professional license struggle to achieve self-sufficiency because of consideration of a dismissed record that is irrelevant to their ability to perform the job. Under current law, even applicants who are presumed to be rehabilitated by the court system may still have their license denied.

"According to a 2007 report prepared by the Board of Barbering and Cosmetology, of the 501 applicants denied by the Board over the preceding five years, all 501 applicants possessed criminal records. Only 33 applicants were determined to have produced evidence of rehabilitation. [This bill] will eliminate this fundamental unfairness within the law. In addition, [this bill] will help address the shortage of qualified labor in many fields, increase

- 3) *Obtaining a dismissal of a conviction.* Penal Code Sections 1203.4, 1203.4(a), and 1203.41 provide expungement relief to an individual who has committed certain types of crimes. This relief is not available to persons who were sentenced to prison, or who have committed certain sex or other offenses, as specified. While most major felonies result in a prison sentence, not all felonies require a defendant to serve a prison sentence. As a result, only persons who were convicted of misdemeanors or felonies who were sentenced to probation, which may include jail time, or who were convicted of misdemeanors or infractions and were not sentenced to probation, may have their conviction dismissed.

In order to obtain a dismissal, a person must successfully serve and complete all the terms of their sentence, including paying any restitution and fines, and not be charged with any other offenses. In addition, a person must file a petition with the court, which may include information about the offense, letters of recommendation, proof of compliance with the terms of probation, and any other materials that may assist the court in making a decision. The petition must also be served to the applicable district or city attorney, who may object to the petition and provide evidence to the court that the dismissal should not be granted. The court will decide on the petition, and if the petition is denied, an individual may file for reconsideration or refile the petition at a later date. As a result, this "set aside and dismissal" remedy is limited both in terms of scope and application.

- 4) *License denials.* Over half of the boards under DCA require criminal history information, and other boards require applicants to self-report any criminal history. While criminal background checks are supposed to show whether a conviction has been dismissed, this does not always occur. If a board denies a license, it is required to notify the applicant by letter, which provides the applicant with the specific reasons why the application was denied. An applicant has the right to appeal the denial of the application by requesting a statement of issues hearing, and must submit a request for that hearing within 60 days of the date of the letter. Once a written request for a hearing is made, it is forwarded to the Attorney General's office. At the hearing, an applicant may present evidence and witnesses to prove that his or her application for a certificate or license should not be denied.
- 5) *Professional boards have great discretion when determining whether to deny a license.* Existing law authorizes each board to deny a professional license based on an applicant's past conviction, "act involving dishonest, fraud, or deceit," or other act that could subject a licensee to license suspension or revocation, if that conviction or act is "substantially related" to the qualifications, functions, or duties of the business or profession for which application is made. This discretion does not distinguish between types of convictions or types of dishonest acts, and these terms are so broad that many convictions or acts could be determined by a board to be cause for denial of a license. In addition, there are no other qualifications, such as how long ago a person was convicted or had committed a bad act, or whether a board has to take that length of time into consideration. It is up to each board to determine what they consider as criteria for license denial or rehabilitation.

Date of Hearing: May 7, 2014

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Mike Gatto, Chair

AB 2396 (Bonta) – As Amended: April 21, 2014

Policy Committee: Business and Professions

Vote: 11 – 2

Urgency: No State Mandated Local Program: No

Reimbursable:

SUMMARY

This bill prohibits boards within the Department of Consumer Affairs (DCA) from denying a professional license based solely on a criminal conviction that has been withdrawn, set aside or dismissed by the court.

FISCAL EFFECT

Minor and absorbable costs to each of the affected boards.

COMMENTS

- 1) Purpose. This bill is intended to reduce employment barriers for people with criminal records who have been rehabilitated and allow them the opportunity to pursue meaningful employment. The author states, "In many cases, individuals seeking a professional license struggle to achieve self-sufficiency because of consideration of a dismissed record that is irrelevant to their ability to perform the job. Under current law, even applicants who are presumed to be rehabilitated by the court system may still have their license denied."
- 2) Existing law. Boards under the Department of Consumer Affairs are permitted to make licensure decisions based on the specific criminal history reported by an applicant or identified through background check requirements. This bill does not alter or impede a board's ability to deny a license if the criminal conviction merits denial under current law.

Current law generally grants boards great latitude to deny a license based on a past conviction or bad act. If a board denies a license, it is required to notify the applicant by letter, which provides the applicant with the specific reasons why the application was denied. An applicant has the right to appeal the denial of the application by requesting a statement of issues hearing, and must submit a request for that hearing within 60 days of the date of the letter. Once a written request for a hearing is made, it is forwarded to the Attorney General's office. At the hearing, an applicant may present evidence and witnesses to prove that his or her application for a certificate or license should not be denied.

- 3) Related legislation.

released from incarceration shall not have his or her application delayed or denied solely based on the prior incarceration. This bill is before this Committee today.

- b) SB 1384 (Mitchell) of 2014 would presume, for purposes of determining whether to deny, or suspend or revoke, a license for a certified nurse assistant, an individual to be successfully rehabilitated if he or she has completed any probation, mandatory supervision, or parole, if applicable, and at least three years have elapsed within a subsequent conviction after final discharge or release from any term of imprisonment. This bill is pending in the Senate Appropriations Committee.

Analysis Prepared by: Jennifer Swenson / APPR. / (916) 319-2081

Date of Hearing: April 29, 2014

ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER  
PROTECTION

Susan A. Bonilla, Chair

AB 2396 (Bonta) – As Amended: April 21, 2014

SUBJECT: Convictions: expungement: licenses.

SUMMARY: Prohibits boards within the Department of Consumer Affairs (DCA) from denying a professional license based solely on a criminal conviction that has been withdrawn, set aside or dismissed by the court.

EXISTING LAW

- 1) Allows a board to deny a license to an applicant if the applicant has done one of the following:
  - a) Been convicted of a crime, as specified;
  - b) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another; or,
  - c) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. (Business & Professions Code (BPC) Section 480(a))
- 2) Authorizes a board to deny a license, as specified, only if a crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. (BPC 480(a)(3)(B))
- 3) Specifies that no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation, as specified, or that he or she has been convicted of a misdemeanor, if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license, as specified. (BPC 480(b))
- 4) Requires each board to develop criteria to aid it when considering the denial, suspension or revocation of a license, in order to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates. (BPC 481)
- 5) Requires each board, as specified, to develop criteria to evaluate the rehabilitation of a person when considering the denial, or suspension or revocation, of a license by the board, as specified. (BPC 482)
- 6) Requires a board that has denied an application for a license to include a copy of the criteria

rehabilitation presented will be considered upon reapplication. (BPC 486).

- 7) Provides that in any case, except as specified, in which a defendant has fulfilled the condition of probation, or has been discharged prior to termination of probation, or in any case in which a court determines a person should be granted relief in the interest of justice, the court may withdraw or set aside a guilty plea and shall dismiss the accusations or information against the defendant and release the defendant from all penalties and disabilities resulting from the offense of which he or she has been convicted and inform them of their right to petition for a certificate of rehabilitation and pardon. (Penal Code Section (PC) 1203.4)
- 8) Provides that if the court dismisses the accusations of information against the defendant, it does not relieve him or her of the obligation to disclose the conviction in an application for licensure for any state or local agency. (PC 1203.4)
- 9) Provides that in a case in which a defendant who was convicted of a misdemeanor and not granted probation, or convicted of an infraction, and who has fully complied with and performed the sentence of the court, is not serving a sentence for any offense and is not under charge of commission of any crime, and if one year has elapsed since the date of judgment, the court may withdraw or set aside the guilty plea and dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she was convicted, except as specified. (PC 1203.4a(a))
- 10) Provides that if a defendant does not satisfy all of the above conditions but has fully complied with and performed the sentence of the court, is not serving a sentence for any offense, and is not under charge of commission of any crime, and one year has lapsed since the judgment, the court may, in its discretion and in the interests of justice, withdraw or set aside and dismiss the conviction. (PC 1203.4a(b))
- 11) Provides that if a defendant is sentenced to county jail pursuant to criminal justice realignment and is not under mandatory supervision and not serving a sentence for, on probation for, or charged with the commission of, any offense, and at least one year has elapsed since the judgment, the court, in its discretion and in the interests of justice, may withdraw or set aside the guilty plea and dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she was convicted, except as specified. (PC 1203.41)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Purpose of this bill. This bill would prohibit boards and bureaus within DCA from denying a professional license based solely on a prior conviction that was dismissed by a court which determined that the individual completed all the terms of his or her sentence without

incarceration. This bill is sponsored by the Alameda County Board of Supervisors.

- 2) Author's statement. According to the author, "[This bill] is designed to reduce employment barriers for people with criminal records who have been rehabilitated. [This bill] allows them the opportunity to pursue meaningful employment and work towards entering the middle class, instead of struggling in low-wage jobs or returning to crime.

"In many cases, individuals seeking a professional license struggle to achieve self-sufficiency because of consideration of a dismissed record that is irrelevant to their ability to perform the job. Under current law, even applicants who are presumed to be rehabilitated by the court system may still have their license denied.

"According to a 2007 report prepared by the Board of Barbering and Cosmetology, of the 501 applicants denied by the Board over the preceding five years, all 501 applicants possessed criminal records. Only 33 applicants were determined to have produced evidence of rehabilitation. [This bill] will eliminate this fundamental unfairness within the law. In addition, [this bill] will help address the shortage of qualified labor in many fields, increase employment in those fields, and spur economic growth."

- 3) Barriers to employment for individuals with criminal convictions. According to the National Institute of Justice Journal, nearly one-third of American adults have been arrested by age 23. A criminal record keeps many people from obtaining employment, even if they have completed their sentences, are qualified for the job and are unlikely to reoffend. In addition, research shows that employment is the single most effective factor in reducing offending rates. In California, nearly one in five California adults has a criminal record, and the state is home to millions of people with arrest, prosecution, and conviction records. While most have successfully completed their sentences, they still continue to experience barriers to employment as a result of their criminal records.

A person's criminal record may range from a one-time arrest that was never prosecuted, to lengthy and serious criminal histories. Criminal background checks are common among employers, and 26 boards under DCA require criminal background checks. As a result, many individuals may be affected by old convictions and arrests, even though research indicates that a person, after a limited period of time, is at no greater risk of being arrested than a counterpart in the general population. In addition to facing bias from potential employers, an individual may also be denied a professional license based on a past conviction, even if that conviction was dismissed by the court. Licensing boards under DCA are authorized by statute to deny a license based on dismissed convictions.

- 4) Obtaining a dismissal of a conviction. Penal Code Sections 1203.4, 1203.4a, and 1203.41 provide expungement relief to an individual who has committed certain types of crimes. This relief is not available to persons who were sentenced to prison, or who have committed certain sex or other offenses, as specified. While most major felonies result in a prison sentence, not all felonies require a defendant to serve a prison sentence. As a result, only persons who were convicted of misdemeanors or felonies who were sentenced to probation, which may include jail time, or who were convicted of misdemeanors or infractions and were not sentenced to prison, may have their convictions dismissed.

their sentence, including paying any restitution and fines, and not be charged with any other offenses. In addition, a person must file a petition with the court, which may include information about the offense, letters of recommendation, proof of compliance with the terms of probation, and any other materials that may assist the court in making a decision. The petition must also be served to the applicable District or City Attorney, who may object to the petition and provide evidence to the court that the dismissal should not be granted. The court will decide on the petition, and if the petition is denied, an individual may file for reconsideration or refile the petition at a later date. As a result, this "set aside and dismissal" remedy is limited both in terms of scope and application.

- 5) License denials. Over half of the boards under DCA require criminal history information, and other boards require applicants to self-report any criminal history. While criminal background checks are supposed to show whether a conviction has been dismissed, this does not always occur.

BPC Section 480 generally grants boards great latitude to deny a license based on a past conviction or bad act. If a board denies a license, it is required to notify the applicant by letter, which provides the applicant with the specific reasons why the application was denied. An applicant has the right to appeal the denial of the application by requesting a statement of issues hearing, and must submit a request for that hearing within 60 days of the date of the letter. Once a written request for a hearing is made, it is forwarded to the Attorney General's office. At the hearing, an applicant may present evidence and witnesses to prove that his or her application for a certificate or license should not be denied.

- 6) Professional boards have great discretion when determining whether to deny a license. Existing law authorizes each board to deny a professional license based on an applicant's past conviction, "act involving dishonest, fraud, or deceit," or other act that could subject a licensee to license suspension or revocation, if that conviction or act is "substantially related" to the qualifications, functions, or duties of the business or profession for which application is made. This discretion does not distinguish between types of convictions or types of dishonest acts, and these terms are so broad that many convictions or acts could be determined by a board to be cause for denial of a license. In addition, there are no other qualifications, such as how long ago a person was convicted or had committed a bad act, or whether a board has to take that length of time into consideration. It is up to each board to determine what they consider as criteria for license denial or rehabilitation.

Some boards, like the Contractor's State License Board, might consider an applicant convicted of a substantially related felony to be rehabilitated if seven years elapsed since his or her sentence was served without any additional criminal activity or other bad acts, and if three years have elapsed for misdemeanor convictions, and looks to other criteria, such as the passage of time since a substantially related crime or act occurred and whether there is evidence of expungement. Conversely, the Board of Barbering and Cosmetology generally requires the board to look at the time that has elapsed since the commission of an act or crime that is substantially related and whether the applicant has completed with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant. As a result, while many boards may take expungement into account, there is no guarantee

used this broad discretion to deny plaintiff's real estate license based on a prior conviction for distribution of cocaine. Prior to the arrest, plaintiff led an "exemplary life," and after he was sentenced, he was in full compliance with his terms of probation, including making regular payments towards his criminal fine. However, plaintiff was still denied a license based on his one and only past criminal conviction. In overturning that license denial, the court determined that, "Given the isolated nature of the incident, the fact that it occurred over four years ago, the lack of any evidence that plaintiff's subsequent conduct has been other than exemplary, or that such conduct bore a substantial relationship to the qualifications, functions or duties of, or otherwise rendered him unfit to engage in, the activity for which he sought a license, we must conclude that the Commissioner's decision to deny plaintiff's application was not supported by substantial evidence."

There is no data that tracks how many people are denied professional licenses based on a past conviction, how many of those denials were based on convictions that were dismissed, or how many denials based on dismissed convictions were successfully appealed. However, according to the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, one nonprofit organization that hosts expungement clinics and assist individuals with prior convictions to obtain a license or appeal a license denial, it has seen at least 20-30 cases where licenses were denied by a professional board based on a conviction that was dismissed. According to the Lawyer's Committee, once they got involved in an appeal, they experienced an extremely high level of success, which makes one question why the license was denied in the first place and whether these decisions are arbitrary or fraught with too much discretion.

License denials are generally not subject to review unless there is alleged misconduct or the denial is being appealed. In addition, while some may argue that the appeals process allows the system to correct itself, many applicants may lack the knowledge or have access to limited legal resources to help them pursue an appeal of a denial.

It should be noted that this bill would not affect a board's ability to deny a license based on other convictions or arrests that are part of a person's criminal record, or other acts that a person has committed. This bill would only prevent boards from presuming that an applicant has not been rehabilitated based only on a conviction that has been dismissed by a court, and using that as the sole reason for denying a license.

- 7) Arguments in support. According to the sponsors, Alameda County Board of Supervisors, "In private industries, applicants are not required to disclose an expunged record as part of the hiring process. [This bill] similarly creates the presumption of rehabilitation (only for an expunged conviction) in determining licensing for professions such as cosmetologists, pharmacists, and optometrists under [DCA]. [This bill] would increase the number of people who are able to obtain livable wage employment, allowing them to more successfully raise their families and contribute to their communities. It would also expand the pool of qualified candidates for jobs in the County."

The Lawyers' Committee for Civil Rights of the San Francisco Bay Area also writes in support, "By disregarding the 'set aside and dismissal' remedy, Section 480 in its current form

of a dismissed conviction unnecessarily limits the applicant's ability to find gainful employment, provide for his or her family, and otherwise successfully reintegrate into the community."

The Women's Foundation of California also writes, "By receiving a dismissal of a conviction, a process that includes proof of rehabilitation, a qualified applicant will be able to receive a license and will be more able to achieve economic security without resorting to criminal behavior. Providing a level playing field where all qualified Californians can have the ability to get a job is in the interest of all of us."

- 8) Related legislation. AB 1702 (Maienschein) of 2014 specifies that an individual who has satisfied the requirements for licensure while incarcerated and who applies for licensure after being released from incarceration shall not have his or her application delayed or denied solely based on the prior incarceration. This bill is in the Assembly Appropriations Committee.

SB 1384 (Mitchell) of 2014 would presume, for purposes of determining whether to deny, or suspend or revoke, a license for a certified nurse assistant, an individual to be successfully rehabilitated if he or she has completed any probation, mandatory supervision, or parole, if applicable, and at least three years have elapsed within a subsequent conviction after final discharge or release from any term of imprisonment. This bill is in the Senate Health Committee.

- 9) Previous legislation. AB 218 (Dickinson), Chapter 699, Statutes of 2013, prohibited a state or local agency from asking an applicant to disclose information regarding a criminal conviction, except as specified, until the agency has determined the applicant meets the minimum employment qualifications for the position.

AB 651 (Bradford), Chapter 787, Statutes of 2013, authorized a court, in its discretion and in the interests of justice, to grant expungement relief for a conviction of a petitioner sentenced to county jail pursuant to criminal justice realignment if specified conditions are satisfied.

SB 1077 (Price), Chapter 291, Statutes of 2011, required the Director of DCA when considering the granting of a probationary license, registration, certificate, or permit, to request that an applicant with a dismissed conviction provide proof of that dismissal, and required that special consideration be given to applicants with dismissed, and that the Director take into account any other reasonable documents or individual character references provided by the applicant.

SB 2017 (Vargas), Chapter 444, Statutes of 2011, provided clarification on the issuance of mortgage loan originator licenses with the existence of expunged or pardoned felony convictions.

AB 2423 (Bass), Chapter 675, Statutes of 2008, required the Veterinary Medical Board, Structural Pest Control Board, Board of Vocational Nursing and Psychiatric Technicians of the State of California, State Board of Barbering and Cosmetology, and the Director of DCA,

dismissed, as specified.

AB 1025 (Bass) of 2007 would have provided that an applicant for a license with a board under DCA may not be denied licensure or have his or her license suspended or revoked solely on the basis that he or she has been convicted of a felony or misdemeanor if that conviction was dismissed, unless the board provides substantial evidence, as specified, justifying the denial, suspension, or revocation. This bill was vetoed by the Governor.

In his veto message, Governor Schwarzenegger wrote, "AB 1025 creates a presumption of rehabilitation based on an expungement of a conviction. This is problematic for two reasons. First, expungement is not intended to be indicative of rehabilitation. Second, this provision places the burden of proof on state licensing bodies to show that an individual is not rehabilitated, which would result in increased litigation and extensive investigations."

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Board of Supervisors (sponsor)  
Lawyers' Committee for Civil Rights of the San Francisco Bay Area  
Legal Services for Prisoners with Children  
National Employment Law Project  
The Women's Foundation of California

Opposition

None on file.

Analysis Prepared by: Eunie Linden / B.,P. & C.P. / (916) 319-3301

CURRENT BILL STATUS

MEASURE : S.B. No. 981  
AUTHOR(S) : Huff (Coauthor: Senator Gaines) (Coauthors: Assembly  
Members Hagman, Harkey, Jones, and Olsen).  
TOPIC : Regulations: review process.  
HOUSE LOCATION : SEN  
+LAST AMENDED DATE : 04/10/2014

TYPE OF BILL :  
Active  
Non-Urgency  
Non-Appropriations  
Majority Vote Required  
Non-State-Mandated Local Program  
Fiscal  
Non-Tax Levy

LAST HIST. ACT. DATE: 04/22/2014  
LAST HIST. ACTION : Set, first hearing. Failed passage in committee. (Ayes  
5. Noes 5. Page 3212.) Reconsideration granted.  
COMM. LOCATION : SEN GOVERNMENTAL ORGANIZATION

TITLE : An act to add Section 11349.11 to, and to add and repeal  
Section 11349.10 of, the Government Code, relating to  
regulations.

AMENDED IN SENATE APRIL 10, 2014

**SENATE BILL**

**No. 981**

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**Introduced by Senator Huff**

**(Coauthor: Senator Gaines)**

*(Coauthors: Assembly Members Hagman, Harkey, Jones, and Olsen)*

February 11, 2014

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An act to add Section 11349.11 to, and to add and repeal Section 11349.10 of, the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

SB 981, as amended, Huff. Regulations: review process.

Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies.

This bill would require each agency to review each regulation adopted prior to January 1, 2014, and to develop a report with prescribed information to be submitted to the Legislature on or before January 1, 2016. The bill would also require each agency, on or before January 1, 2021, and at least every 5 years thereafter, to conduct additional reviews of regulations that have been in effect for at least 20 years, as specified, and to submit an annual report to the Legislature that identifies the regulations reviewed during that year and the associated findings.

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

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

1 SECTION 1. Section 11349.10 is added to the Government  
2 Code, to read:

1 11349.10. (a) Each agency shall review each regulation  
2 adopted prior to January 1, 2014. The review shall be developed  
3 into a report that includes, but is not limited to, the following  
4 information for each regulation:

- 5 (1) The date that the office approved the regulation.
- 6 (2) The purpose.
- 7 (3) The statutory authority.
- 8 (4) The identification of impacted sectors.
- 9 (5) The direct costs by sector.
- 10 (6) Whether the regulation is duplicative of other regulations.
- 11 (7) Whether the regulation is still relevant.
- 12 (8) Whether the regulation needs to be updated in order to  
13 become ~~more effective~~ or less burdensome *or more effective*.

14 (b) The agency shall consult with parties affected by the  
15 regulation in developing the report.

16 (c) The agency shall submit the report to the Legislature pursuant  
17 to Section 9795 on or before January 1, 2016.

18 (d) To the extent that an agency is a component member of  
19 another agency, the member agency shall submit a copy of its  
20 report to the highest ranking agency head prior to submitting the  
21 report to the Legislature as required by this section. The agency  
22 head shall review the reports for each component agency for the  
23 purpose of identifying duplicative or conflicting regulations  
24 between departments.

25 (e) This section shall remain in effect only until January 1, 2020,  
26 and as of that date is repealed, unless a later enacted statute, that  
27 is enacted before January 1, 2010, deletes or extends that date.

28 SEC. 2. Section 11349.11 is added to the Government Code,  
29 to read:

30 11349.11. (a) On or before January 1, 2021, and at least every  
31 five years thereafter, each agency shall review each regulation that  
32 is at least 20 years old and has not been reviewed within the last  
33 10 years. The review shall be developed into a report that shall be  
34 submitted to the Legislature and includes, but is not limited to, the  
35 following information for each regulation:

- 36 (1) The date that the office approved the regulation.
- 37 (2) The purpose.
- 38 (3) The statutory authority.
- 39 (4) The identification of impacted sectors.
- 40 (5) The direct costs by sector.

- 1 (6) Whether the regulation is duplicative of other regulations.
- 2 (7) Whether the regulation is still relevant.
- 3 (8) Whether the regulation needs to be updated in order to
- 4 become more effective or less burdensome.
- 5 (b) Each agency shall submit an annual report to the Legislature
- 6 pursuant to Section 9795 that identifies the regulations reviewed
- 7 during the previous year and the associated findings.

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**Bill No: SB 981**

**SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION  
Senator Lou Correa, Chair  
2013-2014 Regular Session  
Staff Analysis**

**SB 981 Author: Huff  
As Amended: April 10, 2014  
Hearing Date: April 22, 2014  
Consultant: Paul Donahue**

**SUBJECT**

Regulations: Review process

**DESCRIPTION**

This bill would require each state agency to review each regulation adopted prior to January 1, 2014, and to develop a report to the Legislature containing prescribed information. Specifically, this bill:

- 1) Requires each agency to review each regulation adopted prior to January 1, 2014, and develop a report that includes at least the following information for each regulation:
  - a) The date that the Office of Administrative Law (OAL) approved the regulation.
  - b) The purpose.
  - c) The statutory authority.
  - d) The identification of impacted sectors.
  - e) The direct costs by sector.
  - f) Whether the regulation is duplicative of other regulations.
  - g) Whether the regulation is still relevant.
  - h) Whether the regulation needs to be updated in order to become more effective or less burdensome.
- 2) Requires the agency to consult with parties affected by the regulation in developing the report and submit the report to the Legislature by January 1, 2016.

- 3) Specifies that, to the extent that an agency is a component member of another agency, the member agency shall submit a copy of its report to the highest ranking agency head prior to submitting the report to the Legislature.
- 4) Requires an agency head to review the reports for each component agency to identify duplicative or conflicting regulations between departments.
- 5) Requires each agency, by January 1, 2021, and at least every 5 years thereafter, to conduct additional reviews of regulations that have been in effect for at least 20 years, as specified, and to submit an annual report to the Legislature that identifies the regulations reviewed during that year and the associated findings, as outlined above.

### EXISTING LAW

- 1) The Administrative Procedure Act (APA) governs the process for adoption, amendment, or repeal of regulations by state agencies charged with the implementation of statutes, and for legal review of those regulatory actions. (Govt. Code § 11340 et seq.)
- 2) Directs the OAL, at the request of any standing, select, or joint committee of the Legislature, to initiate a priority review of any regulation that the committee believes does not meet the standards of (1) necessity, (2) authority, (3) clarity, (4) reference, and (5) nonduplication. (Govt. Code § 11349.7)
- 3) Specifies that if OAL is notified of, or on its own becomes aware of, an existing regulation for which the statutory authority has been repealed or becomes ineffective, then the OAL shall order the agency to show cause why the regulation should not be repealed, and shall notify the Legislature in writing of this order. (Govt. Code § 11349.8)
- 4) Authorizes an agency that is considering adopting, amending, or repealing a regulation to consult with interested persons before initiating any regulatory action. (Govt. Code § 11346)

### BACKGROUND

- 1) Author's statement: The author's office states that, today, there are well over 28,000 pages of regulations, with hundreds of new agency laws added each year by unelected bureaucracies. All of these regulations carry the same force of law as any legislation, yet there is no systematic review of agency regulations to determine whether or not they are duplicative or excessive. The author notes that OAL does not review the accuracy of cost information supplied by state agencies when promulgating regulations. The author predicts that SB 981 will provide policy makers with the objective information needed to identify job-killing regulations and allow the state to take appropriate action to reform or repeal these regulations. The author says that California's arduous and vast regulatory laws are hampering business expansion and job growth, and lists specific examples of the consequences, some of which include:

- a) A Sacramento State University study found the total cost of regulation is approximately \$493 billion, or 3.8 million lost jobs – a tenth of the state’s population. Today, there are well over 28,000 pages of regulations with hundreds of new agency laws added each year by unelected bureaucracies. All of these carry the same force of law as any legislation.
  - b) According to the 2013 Bureau of Labor Statistics, California ranks the 5th worst state in unemployment.
  - c) Forbes Magazine ranks California as the most costly state to do business, while the Chief Executive Magazine finds California’s business climate as the worst in the nation for 9 years in a row.
- 2) The regulatory process: Before any state agency can adopt a new regulation, the Administrative Procedure Act (APA)<sup>1</sup> requires OAL to review a proposed regulation using the following standards: necessity, authority, clarity, consistency, reference, and non-duplication.<sup>2</sup> In this regard, “necessity” means that “the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the *purpose of the statute* [or court decision]...” In addition, the APA defines “authority” as “the *provision of law* which permits or obligates the agency to adopt, amend, or repeal a regulation.”<sup>3</sup>
- Thus, while it is no doubt true that California has seen a significant increase in the volume and scope of administrative agency regulations in recent years, it should be noted that none of those regulations could ever have been adopted without express, statutory authorization by the Legislature.
- 3) Support: A coalition of business associations contend that the information provided by SB 981 will help legislators understand the scope and impact of regulations to aid their development of sensible state policies and budgets. Supporters also note that existing regulations are oftentimes never really reviewed again. Supporters note that the Legislature retains an important oversight role in connection with the broad authority which has been delegated to state agencies on matters of great importance, such as public health and safety, consumer protection, business operations and environmental protections. Finally, small business advocates note that the overlapping, duplicative or even obsolete regulations make it difficult for small businesses to keep up with the changing regulatory landscape.
  - 4) Opposition: Opponents contend that SB 981 would undermine the efficiency of state government by requiring all state agencies to review every regulation they have ever adopted and write a report about them. Instead, opponents state, state agencies should be protecting the health and safety of the workers, families, and communities of California. Opponents state that working people in this state depend upon their state

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<sup>1</sup> Govt. Code § 11340 et seq.

agencies to make sure that they are paid fairly, that they have a safe workplace, and that their children have access to clean air and water.

- 5) Technical amendments: On page 2, lines 1 and 2, the following amendments are suggested:

11349.10. (a) Each agency shall review each regulation *that it* adopted prior to January 1, 2014. The review shall be developed ...

On page 2, lines 25 to 27, inclusive should be amended, to read:

(e) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2010~~ 2020, deletes or extends that date.

### PRIOR/RELATED LEGISLATION

**SB 396 (Huff), 2011-2012 Session.** Would have required each agency to review each regulation adopted prior to January 1, 2011, and develop a report with prescribed information that shall be submitted to the Legislature on or before January 1, 2013. (Held in Senate Environmental Quality Committee)

**SB 366 (Calderon), 2011-2012 Session.** Would have required each state agency to review its regulations to identify duplicative, overlapping, inconsistent or outdated provisions and repeal or amend identified regulations. Creates a Streamlined Permit Review Team charged with improving the efficiency of the state permitting process for development projects. (Held in this Committee)

**SB 401 (Fuller), 2011-2012 Session.** Would have required every regulation proposed by an agency after January 1, 2012, include a provision repealing the regulation in 5 years. (Held in Senate Environmental Quality Committee)

**SB 942 (Dutton), 2009-2010 Session.** Would have required state agencies that are proposing a regulatory action to submit more detailed cost information. (Held in Senate Appropriations Committee)

### SUPPORT:

California Asian Pacific Chamber of Commerce  
 California Business Properties Association  
 California Business Roundtable  
 California Chamber of Commerce  
 California Manufacturers and Technology Association  
 California Restaurant Association  
 Consumer Specialty Products Association  
 Howard Jarvis Taxpayers Association  
 Industrial Environmental Association

Pacific Merchant Shipping Association

**OPPOSE:**

California Conference of Machinists

California Conference of the Amalgamated Transit Union

California Labor Federation

California Teamsters Public Affairs Council

Engineers & Scientists, IFPTE Local 20

International Longshore and Warehouse Union, Coast Division

Professional & Technical Engineers, IFPTE Local 21

State Building and Construction Trades Council

UNITE HERE

Utility Workers Union of America, Local 132

**FISCAL COMMITTEE:** Senate Appropriations Committee

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CURRENT BILL STATUS

MEASURE : S.B. No. 1083  
AUTHOR(S) : Pavley.  
TOPIC : Physician assistants: disability certifications.  
HOUSE LOCATION : ASM

TYPE OF BILL :

- Active
- Non-Urgency
- Non-Appropriations
- Majority Vote Required
- Non-State-Mandated Local Program
- Non-Fiscal
- Non-Tax Levy

LAST HIST. ACT. DATE: 04/28/2014  
LAST HIST. ACTION : In Assembly. Read first time. Held at Desk.  
COMM. LOCATION : SEN BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT  
COMM. ACTION DATE : 04/21/2014  
COMM. ACTION : Do pass and be placed on the Consent Calendar.  
COMM. VOTE SUMMARY : Ayes: 09 Noes: 00PASS

TITLE : An act to amend Section 3502.3 of the Business and Professions Code, and to amend Section 2708 of the Unemployment Insurance Code, relating to physician assistants.

**Introduced by Senator Pavley**February 19, 2014

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An act to amend Section 3502.3 of the Business and Professions Code, and to amend Section 2708 of the Unemployment Insurance Code, relating to physician assistants.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1083, as introduced, Pavley. Physician assistants: disability certifications.

The Physician Assistant Practice Act authorizes a delegation of services agreement to authorize a physician assistant to engage in specified activities.

Existing law requires a claimant for unemployment compensation disability benefits to establish medical eligibility for each uninterrupted period of disability by filing a first claim for disability benefits supported by the certificate of a treating physician or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee. Existing law defines the term "practitioner" to mean a person duly licensed or certified in California acting within the scope of his or her license or certification who is a dentist, podiatrist, or a nurse practitioner, as prescribed.

This bill would amend the Physician Assistant Practice Act to authorize a physician assistant to certify disability, after performance of a physical examination by the physician assistant under the supervision of a physician and surgeon consistent with the act. The bill would correspondingly expand the definition of practitioner to include a physician assistant.

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

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

1 SECTION 1. Section 3502.3 of the Business and Professions  
2 Code is amended to read:

3 3502.3. (a) Notwithstanding any other provision of law, in  
4 addition to any other practices that meet the general criteria set  
5 forth in this chapter or the Medical Board of California’s  
6 regulations for inclusion in a delegation of services agreement, a  
7 delegation of services agreement may authorize a physician  
8 assistant to do any of the following:

9 (1) Order durable medical equipment, subject to any limitations  
10 set forth in Section 3502 or the delegation of services agreement.  
11 Notwithstanding that authority, nothing in this paragraph shall  
12 operate to limit the ability of a third-party payer to require prior  
13 approval.

14 (2) For individuals receiving home health services or personal  
15 care services, after consultation with the supervising physician,  
16 approve, sign, modify, or add to a plan of treatment or plan of care.

17 (3) *After performance of a physical examination by the physician*  
18 *assistant under the supervision of a physician and surgeon*  
19 *consistent with this chapter, certify disability pursuant to Section*  
20 *2708 of the Unemployment Insurance Code.*

21 (b) Nothing in this section shall be construed to affect the  
22 validity of any delegation of services agreement in effect prior to  
23 the enactment of this section or those adopted subsequent to  
24 enactment.

25 SEC. 2. Section 2708 of the Unemployment Insurance Code,  
26 as added by Section 2 of Chapter 350 of the Statutes of 2013, is  
27 amended to read:

28 2708. (a) (1) In accordance with the director’s authorized  
29 regulations, and except as provided in subdivision (c) and Sections  
30 2708.1 and 2709, a claimant shall establish medical eligibility for  
31 each uninterrupted period of disability by filing a first claim for  
32 disability benefits supported by the certificate of a treating  
33 physician or practitioner that establishes the sickness, injury, or  
34 pregnancy of the employee, or the condition of the family member  
35 that warrants the care of the employee. For subsequent periods of

1 uninterrupted disability after the period covered by the initial  
2 certificate or any preceding continued claim, a claimant shall file  
3 a continued claim for those benefits supported by the certificate  
4 of a treating physician or practitioner. A certificate filed to establish  
5 medical eligibility for the employee's own sickness, injury, or  
6 pregnancy shall contain a diagnosis and diagnostic code prescribed  
7 in the International Classification of Diseases, or, if no diagnosis  
8 has yet been obtained, a detailed statement of symptoms.

9 (2) A certificate filed to establish medical eligibility of the  
10 employee's own sickness, injury, or pregnancy shall also contain  
11 a statement of medical facts, including secondary diagnoses when  
12 applicable, within the physician's or practitioner's knowledge,  
13 based on a physical examination and a documented medical history  
14 of the claimant by the physician or practitioner, indicating the  
15 physician's or practitioner's conclusion as to the claimant's  
16 disability, and a statement of the physician's or practitioner's  
17 opinion as to the expected duration of the disability.

18 (b) An employee shall be required to file a certificate to establish  
19 eligibility when taking leave to care for a family member with a  
20 serious health condition. The certificate shall be developed by the  
21 department. In order to establish medical eligibility of the serious  
22 health condition of the family member that warrants the care of  
23 the employee, the information shall be within the physician's or  
24 practitioner's knowledge and shall be based on a physical  
25 examination and documented medical history of the family member  
26 and shall contain all of the following:

27 (1) A diagnosis and diagnostic code prescribed in the  
28 International Classification of Diseases, or, if no diagnosis has yet  
29 been obtained, a detailed statement of symptoms.

30 (2) The date, if known, on which the condition commenced.

31 (3) The probable duration of the condition.

32 (4) An estimate of the amount of time that the physician or  
33 practitioner believes the employee needs to care for the child,  
34 parent, grandparent, grandchild, sibling, spouse, or domestic  
35 partner.

36 (5) (A) A statement that the serious health condition warrants  
37 the participation of the employee to provide care for his or her  
38 child, parent, grandparent, grandchild, sibling, spouse, or domestic  
39 partner.

1 (B) "Warrants the participation of the employee" includes, but  
2 is not limited to, providing psychological comfort, and arranging  
3 "third party" care for the child, parent, grandparent, grandchild,  
4 sibling, spouse, or domestic partner, as well as directly providing,  
5 or participating in, the medical care.

6 (c) The department shall develop a certification form for bonding  
7 that is separate and distinct from the certificate required in  
8 subdivision (a) for an employee taking leave to bond with a minor  
9 child within the first year of the child's birth or placement in  
10 connection with foster care or adoption.

11 (d) The first and any continuing claim of an individual who  
12 obtains care and treatment outside this state shall be supported by  
13 a certificate of a treating physician or practitioner duly licensed  
14 or certified by the state or foreign country in which the claimant  
15 is receiving the care and treatment. If a physician or practitioner  
16 licensed by and practicing in a foreign country is under  
17 investigation by the department for filing false claims and the  
18 department does not have legal remedies to conduct a criminal  
19 investigation or prosecution in that country, the department may  
20 suspend the processing of all further certifications until the  
21 physician or practitioner fully cooperates, and continues to  
22 cooperate, with the investigation. A physician or practitioner  
23 licensed by, and practicing in, a foreign country who has been  
24 convicted of filing false claims with the department may not file  
25 a certificate in support of a claim for disability benefits for a period  
26 of five years.

27 (e) For purposes of this part:

28 (1) "Physician" has the same meaning as defined in Section  
29 3209.3 of the Labor Code.

30 (2) "Practitioner" means a person duly licensed or certified in  
31 California acting within the scope of his or her license or  
32 certification who is a dentist, podiatrist, *physician assistant who*  
33 *has performed a physical examination under the supervision of a*  
34 *physician and surgeon*, or a nurse practitioner, and in the case of  
35 a nurse practitioner, after performance of a physical examination  
36 by a nurse practitioner and collaboration with a physician and  
37 surgeon, or as to normal pregnancy or childbirth, a midwife or  
38 nurse midwife, or nurse practitioner.

39 (f) For a claimant who is hospitalized in or under the authority  
40 of a county hospital in this state, a certificate of initial and

1 continuing medical disability, if any, shall satisfy the requirements  
2 of this section if the disability is shown by the claimant's hospital  
3 chart, and the certificate is signed by the hospital's registrar. For  
4 a claimant hospitalized in or under the care of a medical facility  
5 of the United States government, a certificate of initial and  
6 continuing medical disability, if any, shall satisfy the requirements  
7 of this section if the disability is shown by the claimant's hospital  
8 chart, and the certificate is signed by a medical officer of the  
9 facility duly authorized to do so.

10 (g) Nothing in this section shall be construed to preclude the  
11 department from requesting additional medical evidence to  
12 supplement the first or any continued claim if the additional  
13 evidence can be procured without additional cost to the claimant.  
14 The department may require that the additional evidence include  
15 any or all of the following:

16 (1) Identification of diagnoses.

17 (2) Identification of symptoms.

18 (3) A statement setting forth the facts of the claimant's disability.

19 The statement shall be completed by any of the following  
20 individuals:

21 (A) The physician or practitioner treating the claimant.

22 (B) The registrar, authorized medical officer, or other duly  
23 authorized official of the hospital or health facility treating the  
24 claimant.

25 (C) An examining physician or other representative of the  
26 department.

27 (h) This section shall become operative on July 1, 2014.

**SENATE RULES COMMITTEE**

SB 1083

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

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CONSENT

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Bill No: SB 1083  
Author: Pavley (D)  
Amended: As introduced  
Vote: 21

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SENATE BUSINESS, PROF. & ECON. DEV. COMM.: 9-0, 4/21/14

AYES: Lieu, Wyland, Berryhill, Block, Corbett, Galgiani, Hernandez, Hill,  
Padilla

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**SUBJECT:** Physician assistants: disability certifications

**SOURCE:** California Academy of Physician Assistants

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**DIGEST:** This bill amends the Physician Assistant Practice Act to authorize a physician assistant (PA) to certify claims for disability insurance (DI), after performance of a physical examination by the PA and under the supervision of a physician and surgeon; also expands the definition of “practitioner” to include PAs.

**ANALYSIS:**

Existing law:

1. Authorizes the Physician Assistant Board to license and regulate the practice of PAs.
2. Specifies the delegation of services agreement for a PA including ordering durable medical equipment, approving, signing, modifying or, after consultation with a supervising physician, adding to a plan of treatment or

3. Allows a PA or nurse practitioner (NP), under the supervision of a physician, to carry out the initial report for and authorize temporary disability for no more than three calendar days.
4. Prohibits a PA or NP from prescribing permanent DI.
5. Allows the claimant to apply for DI by having a doctor's note that certifies the claimant's illness, injury, or pregnancy, or that of a family member that is under the claimant's care. If the claimant requires more DI after the first period of DI is over, they can continue to file for DI using the original doctor's note.
6. Defines a "doctor's note" as a medical document that certifies the claimant's illness, injury, or pregnancy based on the physician or practitioner's medical knowledge, a physical examination, and the claimant's medical history. The note must also include the physician or practitioner's recommendation for the claimant's leave from work and their reception of DI.
7. Defines "practitioner" as a person duly licensed or certified in California acting within the scope of his/her license or certification who is a dentist, podiatrist, or an NP, and in the case of an NP, after performance of a physical examination by an NP and collaboration with a physician and surgeon, or as to normal pregnancy or childbirth, a midwife or nurse midwife, or NP.

**This bill:**

1. Permits PAs to certify disability under the supervision of a physician and surgeon.
2. Expands the definition of "practitioner" to include PAs for the purpose of conducting a physical examination required for disability certification.

**Background**

**PA roles and training.** A PA is a licensed and highly skilled health care professional trained to provide patient evaluation, education, and health care services. A PA works with a physician to provide medical care and guidance needed by a patient.

academic degree and/or certificate is awarded upon graduation. Most PA training programs require prior health care experience. Many PAs have two or four-year academic degrees before entering a PA training program.

Authorization to sign forms. Existing law permits PAs to sign corresponding certificates or forms for the purpose of issuing disabled person placards, certify licensees to drive standard commercial vehicles, school buses, general public transportation vehicles, and farm labor vehicles. PAs are also authorized to conduct physical examinations and sign corresponding forms or certificates for those seeking employment in school districts or with the county superintendent of schools.

Under existing law, PAs can certify some claims of temporary disability including Paid Family Leave (PFL). The PFL insurance provides up to six weeks of benefits for individuals who must take time off to care for a seriously ill child, spouse, parent, or registered domestic partner, or to bond with a new child.

State Disability Insurance (SDI) programs. According to information obtained from the Employment Development Department (EDD), SDI programs offer affordable, short-term benefits to eligible workers who suffer a loss of wages when they are unable to work due to a non-work-related injury or due to pregnancy or childbirth. SDI eligible workers must not have been able to perform their daily work tasks for at least eight consecutive days.

Anyone who is considered under California law as a “practitioner” can sign SDI forms via EDD’s online system. A “practitioner” is defined as any person who has been licensed or certified in California as a dentist, podiatrist, or NP who collaborates with a physician and surgeon. In the case of signing forms for an individual who is determined to have a normal pregnancy or childbirth; a midwife, nurse midwife, or NP can perform a physical examination to determine whether or not the patient is eligible for SDI. Additionally, a medical officer of a U.S. Government facility, chiropractor, or psychologist is also authorized to certify claims for SDI. However, because PAs are not recognized as a practitioner, they are not permitted to certify claims for SDI.

### Comments

According to the author, “Physician assistants are licensed health care professionals who practice medicine as members of a physician-led team,

recognized practitioners who may certify disability insurance with EDD.” The author believes, “...this bill closes a loophole in the law that currently allows PAs to certify some claims of temporary disability, such as Paid Family Leave, but not others such as claims for disability insurance with the EDD.”

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**SUPPORT:** (Verified 4/23/14)

California Academy of Physician Assistants (source)  
Kaiser Permanente

**ARGUMENTS IN SUPPORT:** The bill’s sponsor, the California Academy of Physician Assistants, notes, “The restrictions related to EDD forms are inconsistent with the scope of practice of a physician assistant, which allows them to act as an agent of their supervising physician in performing medical examinations as well as most other medical services. The law pertaining to DI is also inconsistent with a physician assistants’ ability to certify other claims of temporary disability, such as Paid Family Leave under the Family Medical Leave Act and the California Family Rights Act, but not claims for Disability Insurance.”

Kaiser Permanente writes, “This bill would align PA’s scope of practice with authority nurse practitioners gained under SB 819 (Yee) in 2009. Kaiser Permanente supports this bill as it would reduce confusion, expand the pool of medical professionals who can certify disability, and ensure appropriate physician supervision.”

MW:d 4/23/14 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

**SENATE COMMITTEE ON BUSINESS, PROFESSIONS  
AND ECONOMIC DEVELOPMENT  
Senator Ted W. Lieu, Chair**

Bill No: SB 1083 Author: Pavley  
As Introduced: February 19, 2014 Fiscal: No

**SUBJECT:** Physicians assistants: disability certifications

**SUMMARY:** Amends the Physician Assistant Practice Act to authorize a physician assistant to certify claims for disability insurance, after performance of a physical examination by the physician assistant and under the supervision of a physician and surgeon. The bill also expands the definition of "practitioner" to include physician assistants.

**Existing law:**

- 1) Authorizes the Physician Assistant Board to license and regulate the practice of physician assistants (PAs). (BPC § 3504 et seq.)
- 2) Specifies the delegation of services agreement for a physician assistant (PA) including ordering durable medical equipment, approving, signing, modifying or, after consultation with a supervising physician, adding to a plan of treatment or care. (BPC § 3502.3 et seq.)
- 3) Allows a physician assistant or nurse practitioner, under the supervision of a physician, to carry out the initial report for and authorize temporary disability for no more than three calendar days. (Labor Code § 3209.10)
- 4) Prohibits a physician assistant or nurse practitioner from prescribing permanent disability insurance. (Labor Code § 3209.10)
- 5) Allows the claimant to apply for disability insurance (DI) by having a doctor's note that certifies the claimant's illness, injury, or pregnancy, or that of a family member that is under the claimant's care. If the claimant requires more DI after the first period of DI is over, they can continue to file for DI using the original doctor's note. (Unemployment Insurance Code § 2708 (a) (1))
- 6) Defines a "doctor's note" as a medical document that certifies the claimant's illness, injury, or pregnancy based on the physician or practitioner's medical knowledge, a physical examination, and the claimant's medical history. The note must also include the physician or practitioner's recommendation for the claimant's leave from work and their reception of disability insurance. (Unemployment Insurance Code § 2708 (a) (2))

and in the case of a nurse practitioner, after performance of a physical examination by a nurse practitioner and collaboration with a physician and surgeon, or as to normal pregnancy or childbirth, a midwife or nurse midwife, or nurse practitioner. (Unemployment Insurance Code § 2708 (e) (2))

**This bill:**

- 1) Permits physician assistants to certify disability under the supervision of a physician and surgeon.
- 2) Expands the definition of practitioner to include physician assistants for the purpose of conducting a physical examination required for disability certification.

**FISCAL EFFECT:** Unknown. This bill has been keyed “non-fiscal” by Legislative Counsel.

**COMMENTS:**

1. **Purpose.** This bill is sponsored by the California Academy of Physician Assistants. According to the Author, “Physician assistants are licensed health care professionals who practice medicine as members of a physician-led team, delivering a broad range of medical and surgical services to diverse populations in rural, urban and suburban settings... SB 1083 would include physician assistants as recognized practitioners who may certify disability insurance with the State Employment Development Department (EDD).” The Author believes, “...this bill closes a loophole in the law that currently allows PAs to certify *some* claims of temporary disability, such as Paid Family Leave, but not others such as claims for disability insurance with the EDD.”

2. **Background.**

- a) Physician Assistant Roles and Training.

A physician assistant, or PA, is a licensed and highly skilled health care professional trained to provide patient evaluation, education, and health care services. A PA works with a physician to provide medical care and guidance needed by a patient.

A PA must attend a specialized medical training program associated with a medical school that includes classroom studies and clinical experience. An Academic degree and/or certificate is awarded upon graduation. Most PA training programs require prior health care experience. Many PAs have two or four-year academic degrees before entering a PA training program.

- b) Authorization to Sign Forms.

Current law permits PAs to sign corresponding certificates or forms for the purpose of issuing disabled person placards, certify licensees to drive standard commercial vehicles, school buses, general public transportation vehicles, and farm labor vehicles. PAs are also authorized to conduct physical examinations and sign corresponding forms or

Under current law, PAs can certify some claims of temporary disability including Paid Family Leave (PFL). The PFL insurance provides up to six weeks of benefits for individuals who must take time off to care for a seriously ill child, spouse, parent, or registered domestic partner, or to bond with a new child.

c) State Disability Insurance (SDI) programs.

According to information obtained from the California Employment Development Department, SDI programs offer affordable, short-term benefits to eligible workers who suffer a loss of wages when they are unable to work due to a non-work-related injury or due to pregnancy or childbirth. SDI eligible workers must not have been able to perform their daily work tasks for at least eight consecutive days.

Anyone who is considered under California law as a “practitioner” can sign SDI forms via EDD’s online system. A “practitioner” is defined as any person who has been licensed or certified in California as a dentist, podiatrist, or nurse practitioner who collaborates with a physician and surgeon. In the case of signing forms for an individual who is determined to have a normal pregnancy or childbirth; a midwife, nurse midwife, or nurse practitioner can perform a physical examination to determine whether or not the patient is eligible for SDI. Additionally, a medical officer of a U.S. Government facility, chiropractor, or psychologist is also authorized to certify claims for SDI. However, because PAs are not recognized as a practitioner, they are not permitted to certify claims for SDI.

**Arguments in Support.** The California Academy of Physician Assistants is the sponsor of this measure and notes in their letter, “The restrictions related to EDD forms are inconsistent with the scope of practice of a physician assistant, which allows them to act as an agent of their supervising physician in performing medical examinations as well as most other medical services. The law pertaining to DI is also inconsistent with a physician assistants’ ability to certify other claims of temporary disability, such as Paid Family Leave under the Family Medical Leave Act and the California Family Rights Act, but not claims for Disability Insurance.”

Kaiser Permanente also supports the bill and writes, “This bill would align PA’s scope of practice with authority nurse practitioners gained under SB 819 (Yee) in 2009. Kaiser Permanente supports this bill as it would reduce confusion, expand the pool of medical professionals who can certify disability, and ensure appropriate physician supervision.”

4. **Policy Issue.** According to the Author, EDD has recently created an online version of the SDI application. If PAs are added to the list of authorized providers who can sign off on SDI claims, it will be necessary for PAs to be added to the newly automated EDD SDI form.

## **SUPPORT AND OPPOSITION:**

Support: California Academy of Physician Assistants (Sponsor)

Opposition: None received as of April 15, 2014

CURRENT BILL STATUS

MEASURE : S.B. No. 1091  
AUTHOR(S) : Galgiani.  
TOPIC : Administrative procedures: California Regulatory Notice  
Register: proposed rulemaking activities.  
HOUSE LOCATION : SEN

TYPE OF BILL :

- Active
- Non-Urgency
- Non-Appropriations
- Majority Vote Required
- Non-State-Mandated Local Program
- Fiscal
- Non-Tax Levy

LAST HIST. ACT. DATE: 04/07/2014  
LAST HIST. ACTION : Placed on APPR. suspense file.  
COMM. LOCATION : SEN APPROPRIATIONS

TITLE : An act to amend Section 11344.1 of, and to add Section 11344.15 to, the Government Code, relating to administrative procedures.

**Introduced by Senator Galgiani**February 19, 2014

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An act to amend Section 11344.1 of, and to add Section 11344.15 to, the Government Code, relating to administrative procedures.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1091, as introduced, Galgiani. Administrative procedures: California Regulatory Notice Register: proposed rulemaking activities.

Existing law governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law, including procedures relating to increased public participation in the adoption, amendment, and repeal of these regulations. Existing law requires that an agency mail a notice of proposed action to specified entities at least 45 days prior to the hearing and close of the public comment period on the adoption, amendment, or repeal of a regulation. Existing law requires the office to provide for the publication of the California Regulatory Notice Register and to include specified information in the register, including notices of proposed action prepared by regulatory agencies.

This bill would require each state agency to submit a notice to the office for publication in the California Regulatory Notice Register of any meeting or hearing that occurs prior to the mailing or posting of the notice of proposed action, for which the agency posts on its Internet Web site a public notice of a meeting or hearing, as provided.

This bill would also require the office, before January 1, 2017, to make the California Regulatory Notice Register available in an electronically searchable Internet Web-based format, and to include the ability for interested parties to subscribe to an electronic mail notification subscription to the California Regulatory Notice Register or other

specific notices contained within the California Regulatory Notice Register.

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

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

1 SECTION 1. Section 11344.1 of the Government Code is  
2 amended to read:

3 11344.1. The office shall do all of the following:

4 (a) Provide for the publication of the California Regulatory  
5 Notice Register, which shall be an official publication of the State  
6 of California and which shall contain the following:

7 (1) Notices of proposed action prepared by regulatory agencies,  
8 subject to the notice requirements of this chapter, and which have  
9 been approved by the office.

10 (2) A summary of all regulations filed with the Secretary of  
11 State in the previous week.

12 (3) Summaries of all regulation decisions issued in the previous  
13 week detailing the reasons for disapproval of a regulation, the  
14 reasons for not filing an emergency regulation, and the reasons for  
15 repealing an emergency regulation. The California Regulatory  
16 Notice Register shall also include a quarterly index of regulation  
17 decisions.

18 (4) Material that is required to be published under Sections  
19 11349.5, 11349.7, and 11349.9.

20 (5) Determinations issued pursuant to Section 11340.5.

21 (6) *Materials and notices required to be published under Section*  
22 *11344.15.*

23 (b) Establish the publication dates and manner and form in  
24 which the California Regulatory Notice Register shall be prepared  
25 and published and ensure that it is published and distributed in a  
26 timely manner to the presiding officer and rules committee of each  
27 house of the Legislature and to all subscribers.

28 (c) Post on its ~~website~~ *Internet Web site*, on a weekly basis:

29 (1) The California Regulatory Notice Register. Each issue of  
30 the California Regulatory Notice Register on the office's ~~website~~  
31 *Internet Web site* shall remain posted for a minimum of 18 months.

32 (2) One or more Internet links to assist the public to gain access  
33 to the text of regulations proposed by state agencies.

1 (d) Before January 1, 2017, the office shall make the California  
2 Regulatory Notice Register available in an electronically  
3 searchable Internet-Web based format, and shall include the ability  
4 for interested parties to subscribe to an electronic mail notification  
5 subscription to the California Regulatory Notice Register or other  
6 specific notices contained within the California Regulatory Notice  
7 Register.

8 SEC. 2. Section 11344.15 is added to the Government Code,  
9 to read:

10 11344.15. (a) Each state agency shall submit a notice to the  
11 office for publication in the California Regulatory Notice Register  
12 of proposed rulemaking activity. For purposes of this section,  
13 “proposed rulemaking activity” means any meeting or hearing that  
14 occurs prior to the mailing or posting of the notice required  
15 pursuant to Sections 11346.4 and 11346.5, for which the agency  
16 posts on its Internet Web site a public notice of a meeting or  
17 hearing. The notice required pursuant to this section shall appear  
18 in the California Regulatory Notice Register at least 15 days prior  
19 to the meeting or hearing date.

20 (b) The notice required by subdivision (a) shall include all of  
21 the following:

22 (1) The name of the state agency organizing the meeting.

23 (2) The date, time, place, location, and nature of the meeting.

24 (3) A brief statement identifying each topic under consideration  
25 or discussion.

26 (4) An Internet Web site address for the public meeting notice.

27 (5) An Internet Web site address to any other information  
28 prepared in connection with the meeting.

29 (c) Proposed rulemaking activity subject to the notice  
30 requirement of subdivision (a) shall include the following:

31 (1) Informational hearings.

32 (2) Workshops.

33 (3) Scoping hearings.

34 (4) Preliminary meetings.

35 (5) Public and stakeholder outreach meetings.

36 (d) Failure to publish proposed rulemaking activity shall not  
37 invalidate an action taken by a state agency pursuant to Section  
38 11346.4 or 11346.5 if upon the agency’s discovery or notification  
39 of failure to publish the agency submits the required notice to the  
40 office for publication in the California Regulatory Notice Register

1 that notifies the public of the publication error. If an agency is  
2 required to republish a notice pursuant to this subdivision, the  
3 agency shall permit public comments related to the unnoticed  
4 meeting to be submitted for an additional 15 days, once the agency  
5 has posted all relevant meeting materials, presentations, studies,  
6 recordings, or minutes of the meeting to its Internet Web site. The  
7 notice required by this subdivision shall include the requirements  
8 specified in subdivision (b) and include an Internet Web site  
9 address for transcript, recording, or minutes of the improperly  
10 noticed meeting or hearing.

11 (e) An intentional failure of the public to delay notice to an  
12 agency regarding a known publication oversight constitutes a  
13 waiver of the right to object and shall not invalidate a state agency's  
14 ability to enact a regulation if both of the following apply:

15 (1) The public comment period as prescribed in Section 11346.4  
16 has been published in the California Regulatory Notice Register.

17 (2) The agency has made every reasonable attempt to comply  
18 with the procedures set forth in subdivision (d) which would  
19 remedy any publication oversight that may have occurred.

20 (f) Agencies shall not condition consideration of comments  
21 received during the period described in Section 11346.4 on  
22 attendance of proposed rulemaking activities as described in  
23 subdivision (a), and shall consider all issues pertinent to the  
24 regulation that may not have been raised during proposed  
25 rulemaking activities.

**Senate Appropriations Committee Fiscal Summary**  
**Senator Kevin de León, Chair**

**SB 1091 (Galgiani) – Administrative procedures.**

**Amended:** As introduced

**Policy Vote:** GO 8-0

**Urgency:** No

**Mandate:** No

**Hearing Date:** April 7, 2014

**Consultant:** Mark McKenzie

**This bill meets the criteria for referral to the Suspense File.**

**Bill Summary:** SB 1091 would require state agencies to provide advance notice of specified meetings and hearings that occur prior to publication of formal notice of proposed regulatory action in the California Regulatory Notice Register (Register). The new notice must be published in the Register at least 15 days in advance of the meeting or hearing. The bill would also require the Office of Administrative Law (OAL) to make the Register available in an electronically searchable web-based format and provide for specified subscription services related to the Register by January 1, 2017.

**Fiscal Impact:**

- Estimated one-time information technology costs of \$975,000 (General Fund) to make the Register available in a web-based searchable format and provide for subscription services by January 1, 2017. Additional ongoing IT support costs of approximately \$410,000 annually (General Fund).
- OAL costs of approximately \$61,000 annually for the addition of one permanent staff services analyst position to manage the publication of the new notices and administer activities related to the web-based Register (General Fund).
- Reduction in contract revenues related to publication of the Register, likely in the range of \$50,000 to \$100,000 annually related to the new notice requirements (General Fund). Additional reductions in contract revenues are expected as a result of the requirements for the Register to include web-based search functionality. (See staff comments)
- Unknown potentially significant aggregate impact on over 200 state agencies related to the increased notice publication requirements. (General Fund and Various Special Funds).

**Background:** The OAL is charged with ensuring that agency regulations are clear, necessary, legally valid, and available to the public. OAL is responsible for reviewing administrative regulations proposed by over 200 state regulatory agencies for compliance with the standards set forth in California's Administrative Procedure Act (APA), for transmitting these regulations to the Secretary of State, and for publishing regulations in the California Code of Regulations (CCR). OAL oversees the publication and distribution, in print and on the Internet, of the CCR and the California Regulatory Notice Register. Existing law requires OAL, on a weekly basis, to post a copy of the Register and links to regulations proposed by state agencies on its website.

Existing law requires all state agencies to provide public notice of proposed action at

amendment, or repeal of a regulation. State agencies considering adopting, amending, or repealing a regulation are *authorized* to consult with interested persons before initiating any formal regulatory action. When a state agency is proposing to adopt complex or numerous regulatory proposals, existing law *requires* the agency, prior to publication of a required notice of public regulations, to involve parties who would be subject to those proposed regulations in public discussions. The OAL is specifically exempted from participation in any such preliminary discussions.

**Proposed Law:** SB 1091 would require state agencies to publish notice of “pre-rulemaking” activities in the Register, as specified, and require OAL to make the Register available in a searchable web-based format that allows for subscription services by January 1, 2017. Specifically, this bill would:

- Require OAL to publish additional notices specified below in the Register.
- Require OAL to make the Register available in an electronically searchable Internet-Web based format by January 1, 2017, and include the ability for interested parties to subscribe to an email notification of the Register and specific notices.
- Require state agencies to submit notices of “proposed rulemaking activity” to OAL for publication in the Register at least 15 days prior to a noticed meeting or hearing date.
- Define “proposed rulemaking activity” as any meeting or activity that occurs prior to the mailing or posting of specified rulemaking notices (45-day notices of proposed action) for which an agency posts a public notice of a meeting or hearing on its website.
- Specify that “proposed rulemaking activity” includes the following: informational hearings, workshops, scoping hearings, preliminary meetings, and public and stakeholder outreach meetings.
- Require the contents of the notice of proposed rulemaking activity to include the agency organizing the meeting, logistical information about the meeting, and website links to the public meeting notice and any information connected to the meeting.
- Specify that if an agency fails to publish a proposed rulemaking activity notice, such a failure will not invalidate actions by the agency taken during the 45-day comment period, as long as the agency submits the required notice for publication in the Register and permits public comment related to the unnoticed meeting for an additional 15 days after all relevant materials are posted to its website, as specified.
- Specify that an intentional failure of the public to delay notice to an agency of a known publication oversight constitutes a waiver of the right to object and shall not invalidate an agency’s rulemaking action if the agency published the required public comment period in the Register and has made every reasonable effort to remedy the publication oversight.
- Prohibit an agency from conditioning consideration of comments received during the 45-day comment period on attendance at proposed rulemaking activities, and require an agency to consider relevant issues raised outside of those activities.

required state agencies to include parties that would be subject to a proposed regulation in public discussions prior to the publication of the rulemaking notice, regardless of the complexity of the proposal.

**Staff Comments:** This bill will likely cause OAL to re-negotiate the contract it currently has with the publisher (West Publishing Corporation) of the California Regulatory Notice Register. Pursuant to the terms of the current contract, West pays the state \$400,000 annually, plus 7% royalties, through the 2015 calendar year for the privilege of publishing the Register and California Code of Regulations. The contract includes a provision specifying that if there are any changes to California law that result in the alteration of publication services, and such changes result in increased costs to the contractor (West), an equitable adjustment to the compensation must be negotiated. Since this bill would likely result in a substantial increase in the number of pages in the weekly publication of the Register, as well as an increase in workload to the publisher, it is likely that the bill would result in a reduction in contract revenues that accrue to the General Fund. The publishing contract currently results in approximately \$600,000 annually in payments to the General Fund. Staff estimates that this bill would likely reduce contract revenues by up to \$100,000 annually.

OAL indicates that the bill would require the addition of one permanent staff services analyst position at a cost of approximately \$61,000 to review, process, manage, monitor, and prepare the weekly publication of additional notices required by the bill, and administer subscription services and electronic mail notifications related to the web-based Register requirements. Although the number of new notices submitted by state agencies for publication in the Register is indeterminable, it is likely that figures would range in the hundreds annually for notices of informational hearings, workshops, scoping hearings, preliminary meetings, public and stakeholder outreach meetings, and other meetings related to "proposed rulemaking activity" for which an agency posts a notice on its website.

Costs for state agencies to comply with the bill are unquantifiable, but likely significant. There are approximately 225 state agencies with rulemaking powers, and compliance costs would depend upon how each of these entities interprets what constitutes a "proposed rulemaking activity" that occurs in advance of publication of the current 45-day notice of proposed regulatory action in the Register. The bill requires state agencies to submit a notice to OAL for publication in the Register at least 15 days in advance of any meeting or hearing that occurs prior to the formal notice of regulatory action, for which the agency posts a public notice on its website. The bill also includes a non-exclusive list of the types of meetings or hearings that constitute a "proposed rulemaking activity" for which a notice is required. Each notice of these specified meetings and hearings that are provided to the OAL for publication in the Register is likely to involve numerous bureaucratic steps for review within each agency (legal, regulatory, and executive staff, at a minimum). Lastly, staff notes that OAL requires state agencies to submit notices for publication in the Register at least 10 days in advance of the Friday on which the Register is published. As such, the requirement in the bill that the notice of "proposed rulemaking activity" appear in the Register at least 15 days prior to the meeting or hearing is effectively a minimum of 25 day period for

SB 1091 also includes two distinct IT components that OAL must implement prior to January 1, 2017: (1) the Register must be made available in an “electronically searchable Internet-Web based format;” and (2) the functionality must include the availability for interested parties to subscribe to an electronic mail notification subscription of the Register or any specific notices contained therein. Preliminary estimates from the Department of Technology indicate that the new IT requirements would result in one-time costs of approximately \$975,000 for application development and infrastructure in the first year, and ongoing support costs of approximately \$410,000 annually. These costs do not include any pre-project approval activities, such as the development of a business analysis or feasibility study report, which are required for all new IT projects. In addition, the IT components are likely to result in new costs for West Publishing that are outside the parameters of the existing contract. Under the current contract with West, the Register is provided in hardcopy and PDF format. Depending on the specific requirements for search functionality, West would likely have to provide Register data in a new format, resulting in higher costs to West, and decreased contract payments to the General Fund.

SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION  
Senator Lou Correa, Chair  
2013-2014 Regular Session  
Staff Analysis

SB 1091 Author: Galgiani  
As Introduced: February 19, 2014  
Hearing Date: March 25, 2014  
Consultant: Paul Donahue

**SUBJECT**

California Regulatory Notice Register: Proposed rulemaking activities

**DESCRIPTION**

Requires state agencies to notify the public at least 15 days prior to any meeting or hearing that occurs prior to publication of official notices of proposed regulatory action. Specifically, this bill:

- 1) Requires each state agency to submit a notice to the Office of Administrative Law (OAL) for publication in the California Regulatory Notice Register of "proposed rulemaking activity" at least 15 days prior to undertaking the activity.
- 2) Defines "proposed rulemaking activity" as any meeting or hearing that occurs prior to the mailing or posting of the formal Notice of Proposed Action (that occurs 45 days prior to a public hearing and close of the regulatory comment period) for which the state agency posts on its Internet Web site a public notice of a meeting or hearing.
- 3) Specifies that "proposed rulemaking activity" subject to the notice requirement includes:
  - a) Informational hearings.
  - b) Workshops.
  - c) Scoping hearings.
  - d) Preliminary meetings.
  - e) Public and stakeholder outreach meetings.

- 4) Directs that the notice of a meeting or hearing must include:

- a) The name of the state agency organizing the meeting.
- b) The date, time, place, location, and nature of the meeting.

- e) An Internet address to any other information prepared in connection with the meeting.
- 5) Provides that failure to publish “proposed rulemaking activity” shall not invalidate the opening or suspend the pendency of a formal comment period, which is required before adoption of final regulations, if, upon the agency’s discovery or notification of failure to publish, the agency submits the required notice to OAL for publication in the Regulatory Notice Register that notifies the public of the publication error.
- 6) Provides that if an agency is required to republish a notice, the agency must allow public comments related to the unnoticed meeting to be submitted for an additional 15 days, once the agency has posted all relevant meeting materials, presentations, studies, recordings, or minutes of the meeting to its Internet Web site.<sup>1</sup>
- 7) Makes clear that if the public intentionally delays notifying an agency regarding a known publication oversight, that constitutes a waiver of the right to object, and that oversight does not invalidate a state agency’s ability to enact a regulation, so long as both of the following conditions are met:
  - a) The public comment period on the regulations has been published in the Regulatory Notice Register.
  - b) The agency has made every reasonable attempt to comply with the procedures designed to remedy any publication oversight that may have occurred.
- 8) Prohibits state agencies from requiring attendance at “proposed rulemaking activities,” as a condition precedent to being allowed to submit comments, and have those comments responded to by the agency during the formal 45-day comment period preceding adoption of a regulation. In addition, agencies are required to consider all issues pertinent to a regulation whether or not they were raised during “proposed rulemaking activities.”
- 9) Specifies that, before January 1, 2017, OAL shall make the Regulatory Notice Register available in an electronically searchable Internet Web-based format. The website must include the ability for interested parties to subscribe to an electronic mail notification subscription to the Regulatory Notice Register, or other specific notices contained within the Regulatory Notice Register.

#### EXISTING LAW

- 1) Governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by OAL.<sup>2</sup>

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<sup>1</sup> The bill also specifies that the notice shall include an Internet website address for transcript recording, or

- 2) Requires OAL to publish the California Regulatory Notice Register and to include specified information in the register, including notices of proposed action prepared by regulatory agencies.
- 3) Specifies that, in order to increase public participation and improve the quality of regulations, state agencies proposing to adopt complex or numerous regulations shall involve parties who would be subject to the proposed regulations in public discussions prior to publishing the official notice of proposed regulations.<sup>3</sup>
- 4) Authorizes an agency that is considering adopting, amending, or repealing a regulation to consult with interested persons before initiating any regulatory action.<sup>4</sup>
- 5) Requires an agency intending to adopt emergency regulations to send a notice to every person who has filed a request for notice of regulatory action with the agency.<sup>5</sup>
- 6) Requires a state agency to make available to the public upon request, a copy of the express terms of all proposed regulations.<sup>6</sup>
- 7) Specifies that, at least 45 days prior to the hearing and close of the public comment period on the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be mailed to every person who has filed a request for notice of regulatory actions with the state agency. Each state agency shall give a person filing a request for notice of regulatory actions the option of being notified of all proposed regulatory actions or being notified of regulatory actions concerning one or more particular programs of the state agency.<sup>7</sup>
- 8) Requires the OAL to make the California Regulatory Notice Register available to the public and state agencies at a nominal cost that is consistent with a policy of encouraging the widest possible notice distribution to interested persons.<sup>8</sup>

### **BACKGROUND**

- 1) Purpose of bill: The author's office notes that, under the Administrative Procedures Act (APA), the Office of Administrative Law (OAL) is responsible for reviewing regulations proposed by over 200 state agencies. According to OAL, there were 3,830 new regulations adopted, approved, or repealed by state agencies in 2011, and 2,630 for 2012. Current state law requires state agencies to provide at least 45 days' notice (formal rulemaking) to interested parties prior to the close of the public comment period and adoption, amendment or repeal of the regulation. State agencies are only required to notice a hearing of formal rulemaking in the Regulatory Notice Register – they are not required provide notice in the Register for informational hearings, workshops and stakeholder meetings.

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<sup>3</sup> Govt. Code § 11346.45

<sup>4</sup> Govt. Code § 11346

<sup>5</sup> Govt. Code § 11346.1

Unfortunately for the public, it is often in these less formal meetings where the actual agenda or roadmap for the regulation is determined. More and more regulation development occurs during proposed rulemaking activities, hearings, workshops and scoping hearings. These activities are noticed only on agency websites, forcing citizens to navigate many websites on a daily basis to obtain updates on these important regulatory activities.

The author notes that agencies are already required to post all meeting information and notices to their respective websites. This bill will simply require a re-posting of that information within a usable and searchable Internet-based format, complete with an email notification system.

- 2) Little Hoover Commission: In a comprehensive review of the state's rulemaking process, the Little Hoover Commission recently observed that:

“California’s process lacks any requirement to bring in the affected public before a rule is released for public comment. This prevents parties who stand to be impacted by the regulation – regulated and unregulated – from offering their expertise about real world conditions or suggesting better approaches before a proposed regulation is released for public comment.”<sup>9</sup>

This bill would address this issue by requiring a state agency that does hold workshops, public meetings, and the like to let the public know about them by publishing a notice in the Regulatory Notice Register at least 15 days in advance.

- 3) The Federal Register: In contrast to the California APA, the Federal APA requires federal agencies to publish, in a single website (the Federal Register), all proposed rules, final rules, public notices, Presidential actions, and formal notices of proposed rulemaking. The federal government is required by federal law to maintain the Federal Register in electronic format that permits public access to its contents online. In January, 2009, President Obama signed a “transparency and Open Government” memorandum that calls upon federal agencies to “harness new technologies to put information about their operations and decisions online and readily available to the public.” In response, the Office of the Federal Register established an electronically searchable Federal Register to which the public may subscribe. It went online in the summer of 2010.
- 4) California Regulatory Notice Register: In comparison to the Federal Register, the Regulatory Notice Register contains rather cursory information. It is published every Friday in PDF format. It differs significantly from the Federal Register website, an interactive website that contains very extensive and informative information concerning proposed federal rulemaking actions.

But the Regulatory Notice Register does contain all notices of proposed regulatory actions by state regulatory agencies to adopt, amend, or repeal regulations. In

addition, OAL publishes an index to the Notice Register that covers all state agency regulatory actions taken over the past twelve months, sorted according to agency name.

- 5) Support: Proponents suggest that California should join other states and begin offering centrally located, searchable, rulemaking notices to which the public can subscribe. Supporters state that 24 other state already have a single, searchable database that the public can use to gain access to all proposed state agency regulations; 12 states offer a central website for pre-rulemaking notices; and 37 states offer some type of subscription service for state rulemaking activities.

SB 1091 will provide notice to the public in a manner similar to states like Delaware, Florida, Virginia, and West Virginia, who already offer a central, searchable online repository for pre-rulemaking and formal rulemaking activity, to which the public can subscribe.

### **PRIOR/RELATED LEGISLATION**

**SB 176 (Galgiani), 2013-2014 Session.** Would have required state agencies proposing to adopt regulations, prior to publication of a notice of proposed adoption of a regulation, to involve parties that would be subject to the proposed regulations in public discussions regarding those proposed regulations, without regard to the complexity or number of proposals. Would also have required agencies to make a reasonable effort to consult with interested parties who would be subject to proposed regulations prior to initiating regulatory action. (Held in Assembly Appropriations Committee)

**SB 1099 (Wright), Chapter 295, Statutes of 2012.** Among other things, requires OAL to post a regulation on its website within 15 days after it receives a regulation from a state agency. Requires the state agency to keep the regulation on its Internet website for at least six months from the date the regulation is filed with the Secretary of State. Within five days of posting, the state agency will be required to send to the OAL an Internet link to each regulation the agency posts on its website.

### **SUPPORT:**

California Apartment Association  
 California Association of Realtors  
 California Building Industry Association  
 California Business Properties Association  
 California Business Roundtable  
 California Chamber of Commerce  
 California Construction & Industrial Materials Association  
 California Independent Petroleum Association  
 California Land and Title Association  
 California Manufacturers & Technology Association  
 California Restaurant Association  
 California Retailers Association

USANA Health Sciences, Inc.  
Western Manufactured Housing Communities Association

**OPPOSE:**

None on file

**FISCAL COMMITTEE:** Senate Appropriations Committee

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CURRENT BILL STATUS

MEASURE : S.B. No. 500  
AUTHOR(S) : Lieu.  
TOPIC : Medical practice: pain management.  
HOUSE LOCATION : ASM  
+LAST AMENDED DATE : 01/09/2014

TYPE OF BILL :

Active  
Non-Urgency  
Non-Appropriations  
Majority Vote Required  
Non-State-Mandated Local Program  
Fiscal  
Non-Tax Levy

LAST HIST. ACT. DATE: 04/24/2014  
LAST HIST. ACTION : Referred to Com. on B.,P. & C.P.  
COMM. LOCATION : SEN APPROPRIATIONS  
COMM. ACTION DATE : 01/21/2014  
COMM. ACTION : Senate Rule 28.8.

TITLE : An act to amend Section 2241.6 of the Business and Professions Code, relating to healing arts.

AMENDED IN SENATE JANUARY 9, 2014

AMENDED IN SENATE JANUARY 6, 2014

**SENATE BILL**

**No. 500**

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**Introduced by Senator Lieu**

February 21, 2013

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An act to amend Section 2241.6 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 500, as amended, Lieu. Medical practice: pain management.

Existing law establishes the Medical Board of California within the Department of Consumer Affairs. Existing law, among other things, required the board to develop standards before June 1, 2002, to ensure the competent review in cases concerning the management, including, but not limited to, the undertreatment, undermedication, and overmedication of a patient's pain.

This bill would require the board, on or before July 1, 2015, to update those standards. The bill would require the board to convene a task force to develop and recommend the updated standards to the board. The bill would also require the board to update those standards on or before July 1 each 5th year thereafter.

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

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

1 SECTION 1. Section 2241.6 of the Business and Professions  
2 Code is amended to read:

1 2241.6. (a) (1) The board shall develop standards before June  
2 1, 2002, to ensure the competent review in cases concerning the  
3 management, including, but not limited to, the undertreatment,  
4 undermedication, and overmedication of a patient's pain.

5 (2) The ~~division~~ *board* may consult with entities such as the  
6 American Pain Society, the American Academy of Pain Medicine,  
7 the California Society of Anesthesiologists, the California Chapter  
8 of the American College of Emergency Physicians, and any other  
9 medical entity specializing in pain control therapies to develop the  
10 standards utilizing, to the extent they are applicable, current  
11 authoritative clinical practice guidelines.

12 (b) The board shall update the standards adopted pursuant to  
13 subdivision (a) on or before July 1, 2015, and on or before July 1  
14 each fifth year thereafter.

15 (c) The board shall convene a task force to develop and  
16 recommend the updated standards to the board. The task force, in  
17 developing the updated standards, ~~shall~~ *may* consult with the  
18 entities specified in paragraph (2) of subdivision (a), the American  
19 Cancer Society, *a physician who treats or evaluates patients as*  
20 *part of the workers' compensation system*, and specialists in  
21 pharmacology and addiction medicine.

**SENATE RULES COMMITTEE**

SB 500

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

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**THIRD READING**

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Bill No: SB 500  
Author: Lieu (D)  
Amended: 1/9/14  
Vote: 21

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SENATE BUSINESS, PROF. & ECON. DEV. COMM.: 9-0, 1/13/14

AYES: Lieu, Block, Corbett, Galgiani, Hernandez, Hill, Padilla, Wyland, Yee

NO VOTE RECORDED: Vacancy

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

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**SUBJECT:** Medical practice: pain management

**SOURCE:** Author

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**DIGEST:** This bill requires the Medical Board of California (MBC) to update prescriber standards for controlled substances once every five years; and adds the American Cancer Society, a workers' compensation physician, specialists in pharmacology, and specialists in addiction medicine to the entities MBC may consult with in developing the standards.

**ANALYSIS:**

Existing law:

1. Licenses and regulates physicians and surgeons under the Medical Practice Act by the MBC within the Department of Consumer Affairs and states that the protection of the public is the highest priority of the MBC in exercising its functions.

2. Authorizes a physician and surgeon to prescribe, dispense, or administer prescription drugs, including prescription controlled substances, to an addict under his/her treatment for a purpose other than maintenance on, or detoxification from, prescription drugs or controlled substances. Authorizes a physician and surgeon to prescribe, dispense, or administer prescription drugs or prescription controlled substances to an addict for purposes of maintenance on, or detoxification from, prescription drugs under certain circumstances. Provides that a physician and surgeon may not prescribe, dispense, or administer dangerous drugs or controlled substances to a person he/she knows or reasonably believes is using or will use the drugs or substances for a nonmedical purpose.
3. Authorizes a physician and surgeon to prescribe for, or dispense or administer to, a person under his/her treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain. Provides that a physician and surgeon shall not be subject to disciplinary action for prescribing, dispensing, or administering dangerous drugs or prescription controlled substances according to certain requirements. Authorizes MBC to take any action against a physician and surgeon who violates laws related to inappropriate prescribing. Provides that a physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist.
4. Requires the Division of Medical Quality (DMQ), within MBC, to develop standards before June 1, 2002, to ensure competent review in cases concerning the management, including, but not limited to, the undertreatment, undermedication, and overmedication of a patient's pain.
5. Authorizes DMQ to consult with entities such as the American Pain Society, the American Academy of Pain Medicine, the California Society of Anesthesiologists, the California Chapter of the American College of Emergency Physicians, and any other medical entity specializing in pain control therapies to develop the standards utilizing, to the extent they are applicable, current authoritative clinical practice guidelines.

This bill:

1. Requires MBC to update standards to ensure competent review in cases concerning the management, including, but not limited to, the undertreatment, undermedication, and overmedication of a patient’s pain.
2. Requires MBC to update the standards on or before July 1, 2015, and on or before July 1 every five years.
3. Requires MBC to convene a task force to develop and recommend the updated standards. Authorizes the task force to consult with the American Cancer Society, a workers’ compensation physician, specialists in pharmacology and specialists in addiction medicine, in addition to the entities MBC may consult with in developing the standards.

Background

Controlled substances. Through the Controlled Substances Act (CSA), Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, the federal government regulates the manufacture, distribution and dispensing of controlled substances. The CSA ranks into five schedules those drugs known to have potential for physical or psychological harm, based on their potential for abuse; their accepted medical use; and their accepted safety under medical supervision. The schedules are as follows:

Schedule I	Controlled substances have a high potential for abuse and no generally accepted medical use such as heroin, ecstasy, and LSD.
Schedule II	Controlled substances have a currently accepted medical use in treatment, or a currently accepted medical use with severe restrictions, and have a high potential for abuse and psychological or physical dependence. Schedule II drugs can be narcotics or non-narcotic. (Examples include morphine, methadone, Ritalin, Demerol, Dilaudid, Percocet, Percodan, and Oxycontin.)
Schedule III/IV	Controlled substances have a currently accepted medical use in treatment, less potential for abuse but are known to be mixed in specific ways to achieve a narcotic-like end product. (Examples include Vicodin, Zanax, Ambien, and other anti-anxiety drugs.)
Schedule V	Drugs have a low potential for abuse, a currently accepted medical use and are available over the counter.

Among other requirements, the CSA mandates that all prescriptions for drugs that fall under Schedules I–V must cite the physician’s federal Drug Enforcement Agency (DEA) registration number. The DEA provides oversight and enforces

explicitly outline valid prescribing, administering, and dispensing requirements. When physicians register as a prescriber with the DEA, it is presumed they have read the handbook and guidance on the DEA Web site.

The three classes of prescription drugs that are most commonly abused are (1) opioids, which are most often prescribed to treat pain; (2) central nervous system (CNS) depressants, which are used to treat anxiety and sleep disorders; and (3) stimulants, which are prescribed to treat the sleep disorder narcolepsy and attention-deficit hyperactivity disorder (ADHD). Each class can induce euphoria, and when administered by routes other than recommended, such as snorting or dissolving into liquid to drink or inject, can intensify that sensation. Opioids, in particular, act on the same receptors as heroin and, therefore, can be highly addictive. Common opioids are hydrocodone (Vicodin), oxycodone (OxyContin), propoxyphene (Darvon), hydromorphone (Dilaudid), meperidine (Demerol), and diphenoxylate (Lomotil).

Guidelines for prescribing controlled substances. In 1994, MBC unanimously adopted a policy statement entitled “Prescribing Controlled Substances for Pain.” Stemming from studies and discussions about controlled substances, this policy statement was designed to provide guidance to improve prescriber standards for pain management, while simultaneously undermining opportunities for drug diversion and abuse. The guidelines outlined appropriate steps related to a patient’s examination, treatment plan, informed consent, periodic review, consultation, records, and compliance with controlled substances laws. Guidelines are used by physicians as well as MBC in its regulation of licensees.

MBC currently encourages all licensees to consult the policy statement and *Guidelines for Prescribing Controlled Substances for Pain*. According to the MBC Web site, “The board strongly urges physicians and surgeons to view effective pain management as a high priority in all patients, including children, the elderly, and patients who are terminally ill. Pain should be assessed and treated promptly, effectively and for as long as pain persists. The medical management of pain should be based on up-to-date knowledge about pain, pain assessment and pain treatment. Pain treatment may involve the use of several medications and non-pharmacological treatment modalities, often in combination. For some types of pain, the use of medications is emphasized and should be pursued vigorously; for other types, the use of medications is better de-emphasized in favor of other therapeutic modalities. Physicians and surgeons should have sufficient knowledge or utilize consultations to make such judgments for their patients. Medications, in

MBC also highlights that while it is lawful under both federal and California law to prescribe controlled substances for the treatment of pain, including intractable pain, there are limitations on the prescribing of controlled substances to or for patients for the treatment of chemical dependency. MBC expects that a licensee follow the same standard of care when prescribing and/or administering a narcotic controlled substance to a “known addict” patient as he/she would for any other patient. The physician and surgeon must (1) perform an appropriate prior medical examination; (2) identify a medical indication; (3) keep accurate and complete medical records, including treatments, medications, periodic reviews of treatment plans, etc.; and (4) provide ongoing and follow-up medical care as appropriate and necessary.

According to the MBC Web site, MBC “emphasizes the above issues, both to ensure physicians and surgeons know that a patient in pain who is also chemically dependent should not be deprived of appropriate pain relief, and to recognize the special issues and difficulties associated with patients who suffer both from drug addiction and pain. The MBC expects that the acute pain from trauma or surgery will be addressed regardless of the patient's current or prior history of substance abuse.”

### Comments

According to the author's office, this bill simply ensures that important standards guiding physicians in their prescribing of controlled substances are updated regularly, and in consultation with key stakeholders who can best inform the MBC and highlight current practice. The author states that “particularly when we are talking about prescription medications that are incredibly potent and may result in significant impacts to a patient, it is important that the right people are informing the Board regularly to ensure that guidelines are crafted appropriately.” According to the author, “it is important for the Medical Board's prescriber guidelines to strike the right balance so that patients in pain are treated appropriately, timely and in a consistent and safe manner by their doctor. Similarly, it is critical for the Board to have appropriate, current guidelines that take into account the realities faced by patients, physicians and regulators in the Board's efforts managing the important issue of prescribing controlled substances.”

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

MW:d 1/22/14 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* **END** \*\*\*\*

**SENATE COMMITTEE ON BUSINESS, PROFESSIONS  
AND ECONOMIC DEVELOPMENT  
Senator Ted W. Lieu, Chair**

Bill No: SB 500 Author: Lieu  
As Amended: January 9, 2014 Fiscal: Yes

**SUBJECT:** Medical practice: pain management.

**SUMMARY:** Requires the Medical Board of California to update prescriber standards for controlled substances once every five years. Adds the American Cancer Society, specialists in pharmacology and specialists in addiction medicine to the entities MBC may consult with in developing the standards.

**Existing law:**

- 1) Licenses and regulates physicians and surgeons under the Medical Practice Act (Act) by the Medical Board of California (MBC) within the Department of Consumer Affairs (DCA) and states that the protection of the public is the highest priority of the MBC in exercising its functions. (Business and Professions Code (BPC) § 2000 et. seq.)
- 2) Authorizes a physician and surgeon to prescribe, dispense, or administer prescription drugs, including prescription controlled substances, to an addict under his or her treatment for a purpose other than maintenance on, or detoxification from, prescription drugs or controlled substances. Authorizes a physician and surgeon to prescribe, dispense, or administer prescription drugs or prescription controlled substances to an addict for purposes of maintenance on, or detoxification from, prescription drugs under certain circumstances. Provides that a physician and surgeon may not prescribe, dispense, or administer dangerous drugs or controlled substances to a person he or she knows or reasonably believes is using or will use the drugs or substances for a nonmedical purpose. (BPC § 2241)
- 3) Authorizes a physician and surgeon to prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain. Provides that a physician and surgeon shall not be subject to disciplinary action for prescribing, dispensing, or administering dangerous drugs or prescription controlled substances according to certain requirements. Authorizes MBC to take any action against a physician and surgeon who violates laws related to inappropriate prescribing. Provides that a physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist. (BPC § 2241.5)

- 4) Requires the Division of Medical Quality (DMQ), within MBC, to develop standards before June 1, 2002 to ensure competent review in cases concerning the management, including, but not limited to, the undertreatment, undermedication, and overmedication of a patient's pain. (BPC § 2241.6)
- 5) Authorizes DMQ to consult with entities such as the American Pain Society, the American Academy of Pain Medicine, the California Society of Anesthesiologists, the California Chapter of the American College of Emergency Physicians, and any other medical entity specializing in pain control therapies to develop the standards utilizing, to the extent they are applicable, current authoritative clinical practice guidelines. (ld)

**This bill:**

- 1) Requires MBC to update standards to ensure competent review in cases concerning the management, including, but not limited to, the undertreatment, undermedication, and overmedication of a patient's pain.
- 2) Requires MBC to update the standards on or before July 1, 2015 and on or before July 1 every five years.
- 3) Requires MBC to convene a task force to develop and recommend the updated standards. Authorizes the task force to consult with the American Cancer Society, a workers compensation physician, specialists in pharmacology and specialists in addiction medicine, in addition to the entities MBC may consult with in developing the standards.

**FISCAL EFFECT:** Unknown. This bill is keyed "fiscal" by Legislative Counsel.

**COMMENTS:**

1. **Purpose.** The Author is the Sponsor of this bill. According to the Author, this bill simply ensures that important standards guiding physicians in their prescribing of controlled substances are updated regularly, and in consultation with key stakeholders who can best inform the Medical Board and highlight current practice. The Author states that "particularly when we are talking about prescription medications that are incredibly potent and may result in significant impacts to a patient, it is important that the right people are informing the Board regularly to ensure that guidelines are crafted appropriately." According to the Author, "it is important for the Medical Board's prescriber guidelines to strike the right balance so that patients in pain are treated appropriately, timely and in a consistent and safe manner by their doctor. Similarly, it is critical for the Board to have appropriate, current guidelines that take into account the realities faced by patients, physicians and regulators in the Board's efforts managing the important issue of prescribing controlled substances."

Guidelines from different national professional organization, as well as recommendations from government agencies may change, taking into account new information, practices or different medication. For example, the FDA issued recommendations to DEA federal Department of Health and Human Services to limit a patient to 90 days of pain medicine treatment. down from 180 days. Under these recommendations, after 90 days, patients must

controlled substances in 2007. This bill will reflect the changing nature of guidelines, standards and guidance for a critical issue in our health care system.

- 2. Background: Controlled Substances.** Through the Controlled Substances Act, Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, the federal government regulates the manufacture, distribution and dispensing of controlled substances. The Act ranks into five schedules those drugs known to have potential for physical or psychological harm, based on three considerations: (a) their potential for abuse; (b) their accepted medical use; and, (c) their accepted safety under medical supervision. The Schedules are as follows:

Schedule I controlled substances have a high potential for abuse and no generally accepted medical use such as heroin, ecstasy, and LSD.

Schedule II controlled substances have a currently accepted medical use in treatment, or a currently accepted medical use with severe restrictions, and have a high potential for abuse and psychological or physical dependence. Schedule II drugs can be narcotics or non-narcotic. Examples of Schedule II controlled substances include morphine, methadone, Ritalin, Demerol, Dilaudid, Percocet, Percodan, and Oxycontin.

Schedule III and IV controlled substances have a currently accepted medical use in treatment, less potential for abuse but are known to be mixed in specific ways to achieve a narcotic-like end product. Examples include drugs include Vicodin, Zanax, Ambien and other anti-anxiety drugs.

Schedule V drugs have a low potential for abuse, a currently accepted medical use and are available over the counter.

Among other requirements, the Act mandates that all prescriptions for drugs that fall under Schedules I–V must cite the physician’s federal Drug Enforcement Agency (DEA) registration number. The DEA provides oversight and enforces regulations concerning all controlled substances. The DEA created a practitioner’s handbook, originally written in 1990 and most recently updated in 2006, to explicitly outline valid prescribing, administering, and dispensing requirements. When physicians register as a prescriber with the DEA, it is presumed they have read the handbook and guidance on the DEA website.

The three classes of prescription drugs that are most commonly abused are: opioids, which are most often prescribed to treat pain; central nervous system (CNS) depressants, which are used to treat anxiety and sleep disorders and; stimulants, which are prescribed to treat the sleep disorder narcolepsy and attention-deficit hyperactivity disorder (ADHD). Each class can induce euphoria, and when administered by routes other than recommended, such as snorting or dissolving into liquid to drink or inject, can intensify that sensation. Opioids, in particular, act on the same receptors as heroin and, therefore, can be highly addictive. Common opioids are: hydrocodone (Vicodin), oxycodone (OxyContin), propoxyphene (Darvon), hydromorphone (Dilaudid), meperidine (Demerol), and diphenoxylate (Lomotil).

- 3. Guidelines for Prescribing Controlled Substances.** In 1994, MBC unanimously adopted a policy statement entitled “Prescribing Controlled Substances for Pain.” Stemming from

simultaneously undermining opportunities for drug diversion and abuse. The guidelines outlined appropriate steps related to a patient's examination, treatment plan, informed consent, periodic review, consultation, records, and compliance with controlled substances laws. Guidelines are used by physicians as well as MBC in its regulation of licensees.

Subsequent to MBC's 1994 action, legislation that took effect in 2002 (AB 487, Aroner, Chapter 518, Statutes of 2001) created a task force to revisit the 1994 guidelines to develop standards assuring competent review in cases concerning the under-treatment and under-medication of a patient's pain and also required continuing education courses for physicians in the subjects of pain management and the treatment of terminally ill and dying patients. The intent of the bill was to broaden and update the knowledge base of all physicians related to the appropriate care and treatment of patients suffering from pain, and terminally ill and dying patients. As a result, the task force amended the guidelines from referencing only *intractable* pain to *all* kinds of pain.

The passage of AB 2198 in 2006 (Houston, Chapter 350, Statutes of 2006) updated California law governing the use of drugs to treat pain by clarifying that health care professionals with a medical basis, including the treatment of pain, for prescribing, furnishing, dispensing, or administering dangerous drugs or prescription controlled substances, may do so without being subject to disciplinary action or prosecution. AB 2198 stemmed from MBC's efforts to better reflect the current state of treating pain, as well as the current manner of investigating and disciplining physicians who treat patients with pain, who often require large quantities of medication. The bill recognized that existing standards of care require physicians in some instances to prescribe pain medications to addicts, outside of treatment for detoxification and maintenance, creating circumstances under which a practitioner could prescribe, dispense, or administer prescription drugs, including controlled substances, to an addict.

MBC currently encourages all licensees to consult the policy statement and *Guidelines for Prescribing Controlled Substances for Pain*. According to the MBC website, "The board strongly urges physicians and surgeons to view effective pain management as a high priority in all patients, including children, the elderly, and patients who are terminally ill. Pain should be assessed and treated promptly, effectively and for as long as pain persists. The medical management of pain should be based on up-to-date knowledge about pain, pain assessment and pain treatment. Pain treatment may involve the use of several medications and non-pharmacological treatment modalities, often in combination. For some types of pain, the use of medications is emphasized and should be pursued vigorously; for other types, the use of medications is better de-emphasized in favor of other therapeutic modalities. Physicians and surgeons should have sufficient knowledge or utilize consultations to make such judgments for their patients. Medications, in particular opioid analgesics, are considered the cornerstone of treatment for pain associated with trauma, surgery, medical procedures, or cancer."

MBC also highlights that while it is lawful under both federal and California law to prescribe controlled substances for the treatment of pain, including intractable pain, there are limitations on the prescribing of controlled substances to or for patients for the treatment of chemical dependency. MBC expects that a licensee follow the same standard of care when

appropriate prior medical examination; (2) identify a medical indication; (3) keep accurate and complete medical records, including treatments, medications, periodic reviews of treatment plans, etc; and, (4) provide ongoing and follow-up medical care as appropriate and necessary.

According to the MBC website, MBC “emphasizes the above issues, both to ensure physicians and surgeons know that a patient in pain who is also chemically dependent should not be deprived of appropriate pain relief, and to recognize the special issues and difficulties associated with patients who suffer both from drug addiction and pain. The MBC expects that the acute pain from trauma or surgery will be addressed regardless of the patient’s current or prior history of substance abuse.”

#### **SUPPORT AND OPPOSITION:**

##### Support:

None received as of January 8, 2013.

##### Opposition:

None received as of January 8, 2013.

Consultant: Sarah Mason and Mark Mendoza