CALIFORNIA STATE BOARD OF

OPTOMETRY

California Laws and Regulations

Related to the Practice of Optometry

TATE OF CALIFORNIA

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DEPARTMENT OF CONSUMER AFFAI

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2011 EDITION

CALIFORNIA LAWS AND REGULATIONS

RELATED TO THE PRACTICE OF OPTOMETRY

ISSUED BY THE

CALIFORNIA STATE BOARD OF
OPTOMETRY

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NOTICE

Included in this document are laws and regulations of interest to professionals in the field of optometry fully up to date with legislation enacted through 2010.
THIS BOOKLET DOES NOT CONTAIN CHANGES MADE AFTER JANUARY 1, 2011.
Please refer to the Board's web site (**www.optometry.ca.gov**) for any changes made after this date.

BUSINESS AND PROFESSIONS CODE OF CALIFORNIA

GENERAL PROVISIONS

§6. CERTIFICATION UNDER REPEALED ACTS

All persons, who, at the time this code goes into effect, are entitled to a certificate under any act repealed by this code, are thereby entitled to a certificate under the provisions of this code so far as the provisions of this code are applicable.

Enacted Stats 1937.

§7.5. "CONVICTION"; WHEN AN ACTION BY BOARD FOLLOWING ESTABLISHMENT OF CONVICTION MAY BE TAKEN; PROHIBITION AGAINST DENIAL OF LICENSURE; APPLICATION OF SECTION

A conviction within the meaning of this code means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) of Section 480. Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

Added Stats 1979 ch 876 § 1.

§12.5. VIOLATION OF REGULATION ADOPTED PURSUANT TO CODE PROVISION; ISSUANCE OF CITATION

Whenever in any provision of this code authority is granted to issue a citation for a violation of any provision of this code, that authority also includes the authority to issue a citation for the violation of any regulation adopted pursuant to any provision of this code.

Added Stats 1986 ch 1379 § 1.

§22. "BOARD"; "BUREAU"

(a) "Board," as used in any provision of this code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

Enacted Stats 1937. Amended Stats 1947 ch 1350 § 1; Stats 1980 ch 676 § 1; Stats 1991 ch 654 § 1 (AB 1893); Stats 1999 ch 656 § 1 (SB 1306); Stats 2004 ch 33 § 1 (AB 1467), effective April 13, 2004; Stats 2010 ch 670 § 1 (AB 2130), effective January 1, 2011.

§23. "DEPARTMENT"

"Department," unless otherwise defined, refers to the Department of Consumer Affairs. Wherever the laws of this state refer to the Department of Professional and Vocational Standards, the reference shall be construed to be to the Department of Consumer Affairs.

Enacted Stats 1937. Amended Stats 1971 ch 716 § 1.

§23.5. "DIRECTOR"

"Director," unless otherwise defined, refers to the Director of Consumer Affairs. Wherever the laws of this state refer to the Director of Professional and Vocational Standards, the reference shall be construed to be to the Director of Consumer Affairs.

Added Stats 1939 ch 30 § 2. Amended Stats 1971 ch 716 § 2.

§23.6. "APPOINTING POWER"

"Appointing power," unless otherwise defined, refers to the Director of Consumer Affairs.

Added Stats 1945 ch 1276 § 1. Amended Stats 1971 ch 716 § 3.

§23.7. "LICENSE"

Unless otherwise expressly provided, "license" means license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

Added Stats 1994 ch 26 § 1 (AB 1807), effective March 30, 1994.

§23.8. "LICENTIATE"

"Licentiate" means any person authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Sections 1000 and 3600.

Added Stats 1961 ch 2232 § 1.

§27. INFORMATION TO BE PROVIDED ON INTERNET; ENTITIES IN DEPARTMENT OF CONSUMER AFFAIRS REQUIRED TO COMPLY

(a) Each entity specified in subdivision (b) shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1

(commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. In providing information on the Internet, each entity shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Acupuncture Board shall disclose information on its licensees.

(2) The Board of Behavioral Sciences shall disclose information on its licensees, including marriage and family therapists, licensed clinical social workers, and licensed educational psychologists.

(3) The Dental Board of California shall disclose information on its licensees.

(4) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of its licensees.

(5) The Board for Professional Engineers and Land Surveyors shall disclose information on its registrants and licensees.

(6) The Structural Pest Control Board shall disclose information n its licensees, including applicators, field representatives, and perators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(7) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(8) The Bureau of Electronic and Appliance Repair shall disclose information on its licensees, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(9) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, cemetery managers, crematory managers, cemetery authorities, crematories, cremated remains disposers, embalmers, funeral establishments, and funeral directors.

(10) The Professional Fiduciaries Bureau shall disclose information on its licensees.

(11) The Contractors' State License Board shall disclose information on its licensees in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(12) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

(13) The Bureau for Private Postsecondary Education shall disclose information on private postsecondary institutions under its jurisdiction, including disclosure of notices to comply issued pursuant to Section 94935 of the Education Code.

(c) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (e) of Section 17538.

Added Stats 1997 ch 661 § 1 (SB 492). Amended Stats 1998 ch 59 § 1 (AB 969); Stats 1999 ch 655 § 1 (SB 1308); Stats 2000 ch 927 § 1 (SB 1889); Stats 2001 ch 159 § 1 (SB 662); Stats 2003 ch 894 § 1 (AB 1418).

§29.5. ADDITIONAL QUALIFICATIONS FOR LICENSURE

In addition to other qualifications for licensure prescribed by the various acts of boards under the department, applicants for licensure and licensees renewing their licenses shall also comply with Section 17520 of the Family Code. Added Stats 1991 ch 542 § 1 (SB 1161).

Amended Stats 2003 ch 607 § 1 (SB 1077).

§30. PROVISION OF FEDERAL EMPLOYER IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER BY LICENSEE

(a) Notwithstanding any other provision of law, any board, as defined in Section 22, and the State Bar and the Department of Real Estate shall at the time of

issuance of the license require that the licensee provide its federal employer identification number, if the licensee is a partnership, or his or her social security number for all others.

(b) Any licensee failing to provide the federal identification number or social security number shall be reported by the licensing board to the Franchise Tax Board and, if failing to provide after notification pursuant to paragraph (1) of subdivision (b) of Section 19528 of the Revenue and Taxation Code, shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section 19528 of the Revenue and Taxation Code.

(c) In addition to the penalty specified in subdivision (b), a licensing board may not process any application for an original license unless the applicant or licensee provides its federal employer identification number or social security number where requested on the application.

(d) A licensing board shall, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board the following information with respect to every licensee:

(1) Name.

(2) Address or addresses of record.

(3) Federal employer identification number if the entity is a partnership or social security number for all others.

(4) Type of license.

(5) Effective date of license or a renewal.

(6) Expiration date of license.

(7) Whether license is active or inactive, if known.

(8) Whether license is new or a renewal.

(e) For the purposes of this section:

(1) "Licensee" means any entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(2) "License" includes a certificate, registration, or any other authorization needed to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(3) "Licensing board" means any board, as defined in Section 22, the State Bar, and the Department of Real Estate.

(f) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board.

(g) Licensing boards shall provide to the Franchise Tax Board the information required by this section at a time that the Franchise Tax Board may require.

(h) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the social security number and federal employer identification number furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.

(i) Any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a), or any former officer or employee or other individual who in the course of his or her employment or duty has or has had access to the information required to be furnished under this section, may not disclose or make known in any manner that information, except as provided in this section to the Franchise Tax Board or as provided in subdivision (k).

(j) It is the intent of the Legislature in enacting this section to utilize the social security account number or federal employer identification number for the purpose of establishing the identification of persons affected by state tax laws and for purposes of compliance with Section 17520 of the Family Code and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.

(k) If the board utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the social security number, any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a) may release a social security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.

(l) For the purposes of enforcement of Section 17520 of the Family Code, and notwithstanding any other provision of law, any board, as defined in Section 22, and the State Bar and the Department of Real Estate shall at the time of issuance of the license require that each licensee provide the social security number of each individual listed on the license and any person who qualifies the license. For the purposes of this subdivision, "licensee" means any entity that is issued a license by any board, as defined in Section 22, the State Bar, the Department of Real Estate, and the Department of Motor Vehicles.

Added Stats 1986 ch 1361 § 1. Amended Stats 1988 ch 1333 § 1, effective September 24, 1988; Stats 1991 ch 542 § 2 (SB 1161), ch 654 § 1.5 (AB 1893); Stats 1994 ch 1135 § 1 (AB 3302); Stats 1997 ch 17 § 1 (SB 947) (ch 604 prevails), ch 604 § 1 (SB 1106), effective October 3, 1997, ch 605 § 1 (AB 1040); Stats 1999 ch 652 § 1.5 (SB 240); Stats 2006 ch 658 § 1 (SB 1476), effective January 1, 2007.

§31. COMPLIANCE WITH JUDGEMENT OF ORDER FOR SUPPORT UPON ISSUANCE OR RENEWAL OF LICENSE

(a) As used in this section, "board" means any entity listed in Section 101, the entities referred to in

Sections 1000 and 3600, the State Bar, the Department of Real Estate, and any other state agency that issues a license, certificate, or registration authorizing a person to engage in a business or profession.

(b) Each applicant for the issuance or renewal of a license, certificate, registration, or other means to engage in a business or profession regulated by a board who is not in compliance with a judgment or order for support shall be subject to Section 17520 of the Family Code.

(c) "Compliance with a judgment or order for support" has the meaning given in paragraph (4) of subdivision (a) of Section 17520 of the Family Code.

Added Stats 1991 ch 110 § 4 (SB 101). Amended Stats 1991 ch 542 § 3 (SB 1161); Stats 2010 ch 328 § 1 (SB 1330), effective January 1, 2011.

DIVISION 1 DEPARTMENT OF CONSUMER AFFAIRS

CHAPTER 1 THE DEPARTMENT

§100. ESTABLISHMENT

There is in the state government, in the State and Consumer Services Agency, a Department of Consumer Affairs.

Enacted Stats 1937. Amended Stats 1969 ch 138 § 5; Stats 1971 ch 716 § 4; Stats 1984 ch 144 § 1.

§101. COMPOSITION OF DEPARTMENT

The department is comprised of:

(a) The Dental Board of California.
(b) The Medical Board of California.
(c) The State Board of Optometry.
(d) The California State Board of Pharmacy.
(e) The Veterinary Medical Board.
(f) The California Board of Accountancy.
(g) The California Architects Board.
(h) The Bureau of Barbering and Cosmetology.
(i) The Board for Professional Engineers and Land Surveyors.
(j) The Contractors' State License Board.
(k) The Bureau for Private Postsecondary Education.
(l) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.
(m) The Board of Registered Nursing.
(n) The Board of Behavioral Sciences.
(o) The State Athletic Commission.
(p) The Cemetery and Funeral Bureau.
(q) The State Board of Guide Dogs for the Blind.
(r) The Bureau of Security and Investigative Services.
(s) The Court Reporters Board of California.
(t) The Board of Vocational Nursing and Psychiatric Technicians.
(u) The Landscape Architects Technical Committee.
(v) The Division of Investigation.
(w) The Bureau of Automotive Repair.
(x) The Respiratory Care Board of California.
(y) The Acupuncture Board.
(z) The Board of Psychology.
(aa) The California Board of Podiatric Medicine.
(ab) The Physical Therapy Board of California.
(ac) The Arbitration Review Program.
(ad) The Physician Assistant Committee.
(ae) The Speech-Language Pathology and Audiology Board.
(af) The California Board of Occupational Therapy.
(ag) The Osteopathic Medical Board of California.
(ah) The Naturopathic Medicine Committee.
(ai) The Dental Hygiene Committee of California.
(aj) The Professional Fiduciaries Bureau.
(ak) Any other boards, offices, or officers subject to its jurisdiction by law.

Enacted Stats 1937. Amended Stats 1939 ch 651 § 1; Stats 1947 ch 1350 § 2; Stats 1953 ch 966 § 1; Stats 1955 ch 965 § 1; Stats 1961 ch 1095 § 1; Stats 1968 ch 444 § 1, ch 1323 § 1; Stats 1969 ch 1249 § 5; Stats 1971 ch 716 § 5, ch 1578 § 1, ch 1593 § 23.1, operative July 1, 1973; Stats 1972 ch 749 § 1, ch 1396 § 2; Stats 1973 ch 122 § 2.2, effective June 29, 1973, ch 863 § 1; Stats 1974 ch 546 § 1; Stats 1977 ch 141 § 1, effective June 29, 1977; Stats 1983 ch 150 § 1; Stats 1985 ch 1230 § 1; Stats 1987 ch 925 § 1, effective September 22, 1987; Stats 1989 ch 886 § 1; Stats 1990 ch 1256 § 1 (AB 2649); Stats 1991 ch 359 § 1 (AB 1332), ch 654 § 2 (AB 1893); Stats 1993 ch 1263 § 1 (AB 936); Stats 1994 ch 26 § 3 (AB 1807), effective March 30, 1994, ch 1274 § 1 (SB 2039), ch 1275 § 1 (SB 2101); Stats 1995 ch 60 § 1 (SB 42), effective July 6, 1995; Stats 1997 ch 758 § 1 (SB 1346), ch 759 § 1.5 (SB 827). Amended Stats 1998 ch 59 § 2 (AB 969); Stats 1999 ch 655 § 1.1 (SB 1308); Stats 2000 ch 697 § 1 (SB 1046); Stats 2001 ch 615 § 1 (SB 26), effective October 9, 2001, ch 687 § 1.5 (AB 1409); Stats 2003 ch 485 § 1 (SB 907); Stats 2008 ch 31 § 1 (SB 853), effective January 1, 2009; Stats 2009-2010 4th Ex Sess ch 18 § 1 (AB 20XXXX), effective October 23, 2009; Stats 2009 ch 308 § 2 (SB 819), effective January 1, 2010, ch 309 § 1 (AB 1535), effective January 1, 2010, ch 310 § 2.7 (AB 48), effective January 1, 2010.

§101.6. PURPOSE

The boards, bureaus, and commissions in the department are established for the purpose of ensuring that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California.

To this end, they establish minimum qualifications and levels of competency and license persons desiring to engage in the occupations they regulate upon determining that such persons possess the requisite skills and qualifications necessary to provide safe and effective services to the public, or register or otherwise certify persons in order to identify practitioners and ensure performance according to set and accepted professional standards. They provide a means for redress of grievances by investigating allegations of unprofessional conduct, incompetence, fraudulent action, or unlawful activity brought to their attention by members of the public and institute disciplinary action against persons licensed or registered under the provisions of this code when such action is warranted. In addition, they conduct periodic checks of licensees, registrants, or otherwise certified persons in order to ensure compliance with the relevant sections of this code.

Added Stats 1980 ch 375 § 1.

§102.3. INTERAGENCY AGREEMENT TO DELEGATE DUTIES TO CERTAIN REPEALED BOARDS; TECHNICAL COMMITTEES FOR REGULATION OF PROFESSIONS UNDER DELEGATED AUTHORITY; RENEWAL OF AGREEMENT

(a) The director may enter into an interagency agreement with an appropriate entity within the Department of Consumer Affairs as provided for in Section 101 to delegate the duties, powers, purposes, responsibilities, and jurisdiction that have been succeeded and vested with the department, of a board, as defined in Section 477, which became inoperative and was repealed in accordance with Chapter 908 of the Statutes of 1994.

(b)(1) Where, pursuant to subdivision (a), an interagency agreement is entered into between the director and that entity, the entity receiving the delegation of authority may establish a technical committee to regulate, as directed by the entity, the profession subject to the authority that has been delegated. The entity may delegate to the technical committee only those powers that it received pursuant to the interagency agreement with the director. The technical committee shall have only those powers that have been delegated to it by the entity.

(2) Where the entity delegates its authority to adopt, amend, or repeal regulations to the technical committee, all regulations adopted, amended, or repealed by the technical committee shall be subject to the review and approval of the entity.

(3) The entity shall not delegate to a technical committee its authority to discipline a licentiate who has violated the provisions of the applicable chapter of the Business and Professions Code that is subject to the director's delegation of authority to the entity.

(c) An interagency agreement entered into, pursuant to subdivision (a), shall continue until such time as the licensing program administered by the technical committee has undergone a review by the Joint Committee on Boards, Commissions, and Consumer Protection to evaluate and determine whether the licensing program has demonstrated a public need for its continued existence. Thereafter, at the director's discretion, the interagency agreement may be renewed.

Added Stats 1997 ch 475 § 1 (AB 1546). Amended Stats 2004 ch 33 § 2 (AB 1467), effective April 13, 2004.

§103. COMPENSATION AND REIMBURSEMENT FOR EXPENSES

Each member of a board, commission, or committee created in the various chapters of Division 2 (commencing with Section 500) and Division 3 (commencing with Section 5000), and in Chapter 2 (commencing with Section 18600) and Chapter 3 (commencing with Section 19000) of Division 8, shall receive the moneys specified in this section when authorized by the respective provisions.

Each such member shall receive a per diem of one hundred dollars ($100) for each day actually spent in the discharge of official duties, and shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties.

The payments in each instance shall be made only from the fund from which the expenses of the agency are paid and shall be subject to the availability of money.

Notwithstanding any other provision of law, no public officer or employee shall receive per diem salary compensation for serving on those boards, commissions, committees, or the Consumer Advisory Council on any day when the officer or employee also received compensation for his or her regular public employment.

Added Stats 1959 ch 1645 § 1. Amended Stats 1978 ch 1141 § 1; Stats 1985 ch 502 § 1; Stats 1987 ch 850 § 1; Stats 1993 ch 1264 § 1 (SB 574).

§104. DISPLAY OF LICENSES OR REGISTRATIONS

All boards or other regulatory entities within the department' s jurisdiction that the department determines to be health-related may adopt regulations to require licensees to display their licenses or registrations in the locality in which they are treating patients, and to inform patients as to the identity of the regulatory agency they may contact if they have any questions or complaints regarding the licensee. In complying with this requirement, those boards may take into consideration the particular settings in which licensees practice, or other circumstances which may make the displaying or providing of information to the consumer extremely difficult for the licensee in their particular type of practice.

Added Stats 1998 ch 991 § 1 (SB 1980).

§105. OATH OF OFFICE

Members of boards in the department shall take an oath of office as provided in the Constitution and the Government Code.

Added Stats 1949 ch 829 § 1.

§105.5. TENURE OF MEMBERS OF BOARDS, ETC., WITHIN THE DEPARTMENT

Notwithstanding any other provision of this code, each member of a board, commission, examining committee, or other similarly constituted agency within the department shall hold office until the appointment and qualification of his successor or until one year shall have elapsed since the expiration of the term for which he was appointed, whichever first occurs.

Added Stats 1967 ch 524 § 1.

§106. REMOVAL OF BOARD MEMBERS

The Governor has power to remove from office at any time, any member of any board appointed by him for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct. Nothing in this section shall be construed as a limitation or restriction on the power of the Governor, conferred on him by any other provision of law, to remove any member of any board.

Enacted Stats 1937. Amended Stats 1945 ch 1276 § 3.

§106.5. REMOVAL OF MEMBER OF LICENSING BOARD FOR DISCLOSURE OF EXAMINATION INFORMATION

Notwithstanding any other provision of law, the Governor may remove from office a member of a board or other licensing entity in the department if it is shown that such member has knowledge of the specific questions to be asked on the licensing entity's next examination and directly or indirectly discloses any such question or questions in advance of or during the examination to any applicant for that examination.

The proceedings for removal shall be conducted in accordance with the provisions of Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the Governor shall have all the powers granted therein.

Added Stats 1977 ch 482 § 1.

§107. EXECUTIVE OFFICERS

Pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution, each board may appoint a person exempt from civil service and may fix his or her salary, with the approval of the Department of Personnel Administration pursuant to Section 19825 of the Government Code, who shall be designated as an executive officer unless the licensing act of the particular board designates the person as a registrar.

Enacted Stats 1937. Amended Stats 1984 ch 47 § 2, effective March 21, 1984; Stats 1987 ch 850 § 2.

§107.5. OFFICIAL SEALS

If any board in the department uses an official seal pursuant to any provision of this code, the seal shall contain the words "State of California" and "Department of Consumer Affairs" in addition to the title of the board, and shall be in a form approved by the director.

Added Stats 1967 ch 1272 § 1. Amended Stats 1971 ch 716 § 7.

§108. STATUS AND POWERS OF BOARDS

Each of the boards comprising the department exists as a separate unit, and has the functions of setting standards, holding meetings, and setting dates thereof, preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws under its jurisdiction, issuing citations and holding hearings for the revocation of licenses, and the imposing of penalties following those hearings, insofar as these powers are given by statute to each respective board.

Enacted Stats 1937. Amended Stats 2008 ch 179 § 1 (SB 1498), effective January 1, 2009.

§108.5. WITNESS FEES AND EXPENSES

In any investigation, proceeding or hearing which any board, commission or officer in the department is empowered to institute, conduct, or hold, any witness appearing at such investigation, proceeding or hearing whether upon a subpoena or voluntarily, may be paid the sum of twelve dollars ($12) per day for every day in actual attendance at such investigation, proceeding or hearing and for his actual, necessary and reasonable expenses and such sums shall be a legal charge against the funds of the respective board, commission or officer; provided further, that no witness appearing other than at the instance of the board, commission or officer may be compensated out of such fund.

The board, commission or officer will determine the sums due any such witness and enter the amount on its minutes.

Added Stats 1943 ch 1035 § 1. Amended Stats 1957 ch 1908 § 6; Stats 1970 ch 1061 § 1.

§109. REVIEW OF DECISIONS; INVESTIGATIONS

(a) The decisions of any of the boards comprising the department with respect to setting standards, conducting examinations, passing candidates, and revoking licenses, are not subject to review by the director, but are final within the limits provided by this code which are applicable to the particular board, except as provided in this section.

(b) The director may initiate an investigation of any allegations of misconduct in the preparation, administration, or scoring of an examination which is administered by a board, or in the review of qualifications which are a part of the licensing process of any board. A request for investigation shall be made by the director to the Division of Investigation through the chief of the division or to any law enforcement agency in the jurisdiction where the alleged misconduct occurred.

(c) The director may intervene in any matter of any board where an investigation by the Division of Investigation discloses probable cause to believe that the conduct or activity of a board, or its members or employees constitutes a violation of criminal law.

The term "intervene," as used in paragraph (c) of this section may include, but is not limited to, an application for a restraining order or injunctive relief as specified in Section 123.5, or a referral or request for

criminal prosecution. For purposes of this section, the director shall be deemed to have standing under Section 123.5 and shall seek representation of the Attorney General, or other appropriate counsel in the event of a conflict in pursuing that action.

Enacted Stats 1937. Amended Stats 1991 ch 1013 § 1 (SB 961).

§110. RECORDS AND PROPERTY

The department shall have possession and control of all records, books, papers, offices, equipment, supplies, funds, appropriations, land and other property--real or personal--now or hereafter held for the benefit or use of all of the bodies, offices or officers comprising the department. The title to all property held by any of these bodies, offices or officers for the use and benefit of the state, is vested in the State of California to be held in the possession of the department. Except as authorized by a board, the department shall not have the possession and control of examination questions prior to submission to applicants at scheduled examinations.

Enacted Stats 1937. Amended Stats 1996 ch 829 § 1 (AB 3473).

§111. COMMISSIONERS ON EXAMINATION

Unless otherwise expressly provided, any board may, with the approval of the appointing power, appoint qualified persons, who shall be designated as commissioners on examination, to give the whole or any portion of any examination. A commissioner on examination need not be a member of the board but he shall have the same qualifications as one and shall be subject to the same rules.

Added Stats 1937 ch 474. Amended Stats 1947 ch 1350 § 3; Stats 1978 ch 1161 § 1.

§112. PUBLICATION AND SALE OF DIRECTORIES OF AUTHORIZED PERSONS

Notwithstanding any other provision of this code, no agency in the department, with the exception of the Board for Professional Engineers and Land Surveyors, shall be required to compile, publish, sell, or otherwise distribute a directory. When an agency deems it necessary to compile and publish a directory, the agency shall cooperate with the director in determining its form and content, the time and frequency of its publication, the persons to whom it is to be sold or otherwise distributed, and its price if it is sold. Any agency that requires the approval of the director for the compilation, publication, or distribution of a directory, under the law in effect at the time the amendment made to this section at the 1970 Regular Session of the Legislature becomes effective, shall continue to require that approval. As used in this section, "directory" means a directory, roster, register, or similar compilation of the names of persons who hold a license, certificate, permit, registration, or similar indicia of authority from the agency.

Added Stats 1937 ch 474. Amended Stats 1968 ch 1345 § 1; Stats 1970 ch 475 § 1; Stats 1998 ch 59 § 3 (AB 969).

§113. CONFERENCES; TRAVELING EXPENSES

Upon recommendation of the director, officers, and employees of the department, and the officers, members, and employees of the boards, committees, and commissions comprising it or subject to its jurisdiction may confer, in this state or elsewhere, with officers or employees of this state, its political subdivisions, other states, or the United States, or with other persons, associations, or organizations as may be of assistance to the department, board, committee, or commission in the conduct of its work. The officers, members, and employees shall be entitled to their actual traveling expenses incurred in pursuance hereof, but when these expenses are incurred with respect to travel outside of the state, they shall be subject to the approval of the Governor and the Director of Finance.

Added Stats 1937 ch 474. Amended Stats 1941 ch 885 § 1; Stats 2000 ch 277 § 1 (AB 2697); Stats 2001 ch 159 § 2 (SB 662).

§114. REINSTATEMENT OF EXPIRED LICENSE OF LICENSEE SERVING IN MILITARY

(a) Notwithstanding any other provision of this code, any licensee or registrant of any board, commission, or bureau within the department, whose license expired while the licensee or registrant was on active duty as a member of the California National Guard or the United States Armed Forces, may, upon application, reinstate his or her license or registration without examination or penalty; provided,

(1) His or her license or registration was valid at the time he or she entered the California National Guard or the United States Armed Forces.

(2) The application for reinstatement is made while serving in the California National Guard or the United States Armed Forces, or not later than one year from the date of discharge from active service or return to inactive military status.

(3) The application for reinstatement is accompanied by an affidavit showing the date of entrance into the service, whether still in the service, or date of discharge, and the renewal fee for the current renewal period in which the application is filed is paid.

(b) If application for reinstatement is filed more than one year after discharge or return to inactive status, the applicant, in the discretion of the licensing agency, may be required to pass an examination.

(c) If application for reinstatement is filed and the licensing agency determines that the applicant has not actively engaged in the practice of his or her profession while on active duty, then the licensing agency may require the applicant to pass an examination.

(d) Unless otherwise specifically provided in this code, any licensee or registrant who, either part time or full time, practices in this state the profession or vocation for which he or she is licensed or registered shall be required to maintain his or her license in good standing even though he or she is in military service.

For the purposes in this section, time spent by a licensee in receiving treatment or hospitalization in any veterans' facility during which he or she is prevented from practicing his or her profession or vocation shall be excluded from said period of one year.

Added Stats 1951 ch 185 § 2. Amended Stats 1953 ch 423 § 1; Stats 1961 ch 1253 § 1; Stats 2010 ch 389 § 1 (AB 2500), effective January 1, 2011.

§115. APPLICABILITY OF SECTION 114

The provisions of Section 114 of this code are also applicable to a licensee or registrant whose license or registration was obtained while in the armed services.

Added Stats 1951 ch 1577 § 1.

§116. AUDIT AND REVIEW OF DISCIPLINARY PROCEEDINGS; REPORT TO LEGISLATURE

(a) The director may audit and review, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by the Medical Board of California, the allied health professional boards, and the California Board of Podiatric Medicine. The director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both.

(b) The director shall report to the Chairpersons of the Senate Business and Professions Committee and the Assembly Health Committee annually, commencing March 1, 1995, regarding his or her findings from any audit, review, or monitoring and evaluation conducted pursuant to this section.

Added Stats 1993 ch 1267 § 1 (SB 916).

§118. EFFECT OF WITHDRAWAL OF APPLICATIONS; EFFECT OF SUSPENSION, FORFEITURE, ETC., OF LICENSE

(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

(c) As used in this section, "board" includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and "license" includes "certificate," "registration," and "permit."

Added Stats 1961 ch 1079 § 1.

§119. MISDEMEANORS PERTAINING TO USE OF LICENSES

Any person who does any of the following is guilty of a misdemeanor:

(a) Displays or causes or permits to be displayed or has in his or her possession either of the following:

(1) A canceled, revoked, suspended, or fraudulently altered license.

(2) A fictitious license or any document simulating a license or purporting to be or have been issued as a license.

(b) Lends his or her license to any other person or knowingly permits the use thereof by another.

(c) Displays or represents any license not issued to him or her as being his or her license.

(d) Fails or refuses to surrender to the issuing authority upon its lawful written demand any license, registration, permit, or certificate which has been suspended, revoked, or canceled.

(e) Knowingly permits any unlawful use of a license issued to him or her.

(f) Photographs, photostats, duplicates, manufactures, or in any way reproduces any license or facsimile thereof in a manner that it could be mistaken for a valid license, or displays or has in his or her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.

(g) Buys or receives a fraudulent, forged, or counterfeited license knowing that it is fraudulent, forged, or counterfeited. For purposes of this subdivision, "fraudulent" means containing any misrepresentation of fact.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a

business or profession regulated by this code or referred to in Section 1000 or 3600.

Added Stats 1965 ch 1083 § 1. Amended Stats 1990 ch 350 § 1 (SB 2084) (ch 1207 prevails), ch 1207 § 1 (AB 3242); Stats 1994 ch 1206 § 1 (SB 1775); Stats 2000 ch 568 § 1 (AB 2888).

§121. PRACTICE DURING PERIOD BETWEEN RENEWAL AND RECEIPT OF EVIDENCE OF RENEWAL

No licensee who has complied with the provisions of this code relating to the renewal of his or her license prior to expiration of such license shall be deemed to be engaged illegally in the practice of his or her business or profession during any period between such renewal and receipt of evidence of such renewal which may occur due to delay not the fault of the applicant.

As used in this section, "license" includes "certificate," "permit," "authorization," and "registration," or any other indicia giving authorization, by any agency, board, bureau, commission, committee, or entity within the Department of Consumer Affairs, to engage in a business or profession regulated by this code or by the board referred to in the Chiropractic Act or the Osteopathic Act.

Added Stats 1979 ch 77 § 1.

§121.5. APPLICATION OF FEES TO LICENSES OR REGISTRATIONS LAWFULLY INACTIVATED

Except as otherwise provided in this code, the application of delinquency fees or accrued and unpaid renewal fees for the renewal of expired licenses or registrations shall not apply to licenses or registrations that have lawfully been designated as inactive or retired.

Added Stats 2001 ch 435 § 1 (SB 349).

§122. FEE FOR ISSUANCE OF DUPLICATE CERTIFICATE

Except as otherwise provided by law, the department and each of the boards, bureaus, committees, and commissions within the department may charge a fee for the processing and issuance of a duplicate copy of any certificate of licensure or other form evidencing licensure or renewal of licensure. The fee shall be in an amount sufficient to cover all costs incident to the issuance of the duplicate certificate or other form but shall not exceed twenty-five dollars ($25).

Added Stats 1986 ch 951 § 1.

§123. CONDUCT CONSTITUTING SUBVERSION OF LICENSING EXAMINATION; PENALTIES AND DAMAGES

It is a misdemeanor for any person to engage in any conduct which subverts or attempts to subvert any licensing examination or the administration of an examination, including, but not limited to:

(a) Conduct which violates the security of the examination materials; removing from the examination room any examination materials without authorization; the unauthorized reproduction by any means of any portion of the actual licensing examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing examination; paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination material, except by specific authorization either before, during, or after an examination; or using or purporting to use any examination questions or materials which were improperly removed or taken from any examination for the purpose of instructing or preparing any applicant for examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

(b) Communicating with any other examinee during the administration of a licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination; or impersonating any examinee or having an impersonator take the licensing examination on one's behalf.

Nothing in this section shall preclude prosecution under the authority provided for in any other provision of law.

In addition to any other penalties, a person found guilty of violating this section, shall be liable for the actual damages sustained by the agency administering the examination not to exceed ten thousand dollars ($10,000) and the costs of litigation.

(c) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

Added Stats 1989 ch 1022 § 1. Amended Stats 1991 ch 647 § 1 (SB 879).

§123.5. ENJOINING VIOLATIONS

Whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of Section 123, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining such conduct on application of a board, the

Attorney General or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

The remedy provided for by this section shall be in addition to, and not a limitation on, the authority provided for in any other provision of law.

Added Stats 1983 ch 95 § 2, as B & P C § 497. Amended and Renumbered by Stats 1989 ch 1022 § 4.

§124. MANNER OF NOTICE

Notwithstanding subdivision (c) of Section 11505 of the Government Code, whenever written notice, including a notice, order, or document served pursuant to Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), or Chapter 5 (commencing with Section 11500), of Part 1 of Division 3 of Title 2 of the Government Code, is required to be given by any board in the department, the notice may be given by regular mail addressed to the last known address of the licentiate or by personal service, at the option of the board.

Added Stats 1961 ch 1253 § 2. Amended Stats 1994 ch 26 § 4 (AB 1807), effective March 30, 1994; Stats 1995 ch 938 § 1 (SB 523), operative July 1, 1997.

§125. MISDEMEANOR OFFENSES BY LICENSEES

Any person, licensed under Division 1 (commencing with Section 100), Division 2 (commencing with Section 500), or Division 3 (commencing with Section 5000) is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him or her, who conspires with a person not so licensed to violate any provision of this code, or who, with intent to aid or assist that person in violating those provisions does either of the following:

(a) Allows his or her license to be used by that person.

(b) Acts as his or her agent or partner.

Added Stats 1949 ch 308 § 1. Amended Stats 1994 ch 1206 § 2 (SB 1775).

§125.3. DIRECTION TO LICENTIATE VIOLATING LICENSING ACT TO PAY COSTS OF INVESTIGATION AND ENFORCEMENT

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licentiate who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

(k) Notwithstanding the provisions of this section, the Medical Board of California shall not request nor

obtain from a physician and surgeon, investigation and prosecution costs for a disciplinary proceeding against the licentiate. The board shall ensure that this subdivision is revenue neutral with regard to it and that any loss of revenue or increase in costs resulting from this subdivision is offset by an increase in the amount of the initial license fee and the biennial renewal fee, as provided in subdivision (e) of Section 2435.

Added Stats 1992 ch 1059 § 1 (AB 3745), ch 1289 § 1 (AB 2743). Amended Stats 2001 ch 728 § 1 (SB 724); Stats 2005 ch 674 § 2 (SB 231), effective January 1, 2006; Stats 2006 ch 223 § 2 (SB 1438), effective January 1, 2007.

§125.5. ENJOINING VIOLATIONS; RESTITUTION ORDERS

(a) The superior court for the county in which any person has engaged or is about to engage in any act which constitutes a violation of a chapter of this code administered or enforced by a board within the department may, upon a petition filed by the board with the approval of the director, issue an injunction or other appropriate order restraining such conduct. The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure. As used in this section, "board" includes commission, bureau, division, agency and a medical quality review committee.

(b) The superior court for the county in which any person has engaged in any act which constitutes a violation of a chapter of this code administered or enforced by a board within the department may, upon a petition filed by the board with the approval of the director, order such person to make restitution to persons injured as a result of such violation.

(c) The court may order a person subject to an injunction or restraining order, provided for in subdivision (a) of this section, or subject to an order requiring restitution pursuant to subdivision (b), to reimburse the petitioning board for expenses incurred by the board in its investigation related to its petition.

(d) The remedy provided for by this section shall be in addition to, and not a limitation on, the authority provided for in any other section of this code.

Added Stats 1972 ch 1238 § 1. Amended Stats 1973 ch 632 § 1; Stats 2d Ex Sess 1975 ch 1 § 2; Stats 1982 ch 517 § 1.

§125.6. UNLAWFUL DISCRIMINATION BY LICENSEES

(a) (1) With regard to an applicant, every person who holds a license under the provisions of this code is subject to disciplinary action under the disciplinary provisions of this code applicable to that person if, because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code, he or she refuses to perform the licensed activity or aids or incites the refusal to perform that licensed activity by another licensee, or if, because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code, he or she makes any discrimination, or restriction in the performance of the licensed activity.

(2) Nothing in this section shall be interpreted to prevent a physician or health care professional licensed pursuant to Division 2 (commencing with Section 500) from considering any of the characteristics of a patient listed in subdivision (b) or (e) of Section 51 of the Civil Code if that consideration is medically necessary and for the sole purpose of determining the appropriate diagnosis or treatment of the patient.

(3) Nothing in this section shall be interpreted to apply to discrimination by employers with regard to employees or prospective employees, nor shall this section authorize action against any club license issued pursuant to Article 4 (commencing with Section 23425) of Chapter 3 of Division 9 because of discriminatory membership policy.

(4) The presence of architectural barriers to an individual with physical disabilities that conform to applicable state or local building codes and regulations shall not constitute discrimination under this section.

(b)(1) Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to permit an individual to participate in, or benefit from, the licensed activity of the licensee where that individual poses a direct threat to the health or safety of others. For this purpose, the term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

(2) Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to perform a licensed activity for which he or she is not qualified to perform.

(c)(1) "Applicant," as used in this section, means a person applying for licensed services provided by a person licensed under this code.

(2) "License," as used in this section, includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code.

Added Stats 1974 ch 1350 § 1. Amended Stats 1977 ch 293 § 1; Stats 1980 ch 191 § 1; Stats 1992 ch 913 § 2 (AB 1077); Stats 2007 ch 568 § 2 (AB 14), effective January 1, 2008.

§125.7. RESTRAINING ORDERS

In addition to the remedy provided for in Section 125.5, the superior court for the county in which any licensee licensed under Division 2 (commencing with

Section 500), or any initiative act referred to in that division, has engaged or is about to engage in any act that constitutes a violation of a chapter of this code administered or enforced by a board referred to in Division 2 (commencing with Section 500), may, upon a petition filed by the board and accompanied by an affidavit or affidavits in support thereof and a memorandum of points and authorities, issue a temporary restraining order or other appropriate order restraining the licensee from engaging in the business or profession for which the person is licensed or from any part thereof, in accordance with this section.

(a) If the affidavits in support of the petition show that the licensee has engaged or is about to engage in acts or omissions constituting a violation of a chapter of this code and if the court is satisfied that permitting the licensee to continue to engage in the business or profession for which the license was issued will endanger the public health, safety, or welfare, the court may issue an order temporarily restraining the licensee from engaging in the profession for which he or she is licensed.

(b) The order may not be issued without notice to the licensee unless it appears from facts shown by the affidavits that serious injury would result to the public before the matter can be heard on notice.

(c) Except as otherwise specifically provided by this section, proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(d) When a restraining order is issued pursuant to this section, or within a time to be allowed by the superior court, but in any case not more than 30 days after the restraining order is issued, an accusation shall be filed with the board pursuant to Section 11503 of the Government Code or, in the case of a licensee of the State Department of Health Services, with that department pursuant to Section 100171 of the Health and Safety Code. The accusation shall be served upon the licensee as provided by Section 11505 of the Government Code. The licensee shall have all of the rights and privileges available as specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, if the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request and a decision within 15 days of the date the decision is received from the administrative law judge, or the court may nullify the restraining order previously issued. Any restraining order issued pursuant to this section shall be dissolved by operation of law at the time the board's decision is subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) The remedy provided for in this section shall be in addition to, and not a limitation upon, the authority provided by any other provision of this code.

Added Stats 1977 ch 292 § 1. Amended Stats 1982 ch 517 § 2; Stats 1994 ch 1206 § 3 (SB 1775); Stats 1997 ch 220 § 1 (SB 68), effective August 4, 1997; Stats 1998 ch 878 § 1.5 (SB 2239).

§125.8. TEMPORARY ORDER RESTRAINING LICENSEE ENGAGED OR ABOUT TO ENGAGE IN VIOLATION OF LAW

In addition to the remedy provided for in Section 125.5, the superior court for the county in which any licensee licensed under Division 3 (commencing with Section 5000) or Chapter 2 (commencing with Section 18600) or Chapter 3 (commencing with Section 19000) of Division 8 has engaged or is about to engage in any act which constitutes a violation of a chapter of this code administered or enforced by a board referred to in Division 3 (commencing with Section 5000) or Chapter 2 (commencing with Section 18600) or Chapter 3 (commencing with Section 19000) of Division 8 may, upon a petition filed by the board and accompanied by an affidavit or affidavits in support thereof and a memorandum of points and authorities, issue a temporary restraining order or other appropriate order restraining the licensee from engaging in the business or profession for which the person is licensed or from any part thereof, in accordance with the provisions of this section.

(a) If the affidavits in support of the petition show that the licensee has engaged or is about to engage in acts or omissions constituting a violation of a chapter of this code and if the court is satisfied that permitting the licensee to continue to engage in the business or profession for which the license was issued will endanger the public health, safety, or welfare, the court may issue an order temporarily restraining the licensee from engaging in the profession for which he is licensed.

(b) Such order may not be issued without notice to the licensee unless it appears from facts shown by the affidavits that serious injury would result to the public before the matter can be heard on notice.

(c) Except as otherwise specifically provided by this section, proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(d) When a restraining order is issued pursuant to this section, or within a time to be allowed by the superior court, but in any case not more than 30 days after the restraining order is issued, an accusation shall be filed with the board pursuant to Section 11503 of the Government Code. The accusation shall be served upon the licensee as provided by Section 11505 of the Government Code. The licensee shall have all of the rights and privileges available as specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code; however, if the licensee requests a hearing on the accusation, the board must provide the licensee with a hearing within 30 days of the

request and a decision within 15 days of the date of the conclusion of the hearing, or the court may nullify the restraining order previously issued. Any restraining order issued pursuant to this section shall be dissolved by operation of law at such time the board's decision is subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

Added Stats 1977 ch 443 § 1. Amended Stats 1982 ch 517 § 3.

§125.9. SYSTEM FOR ISSUANCE OF CITATIONS TO LICENSEES; CONTENTS; FINES

(a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), and Chapter 11.6 (commencing with Section 7590) of Division 3, any board, bureau, or commission within the department, the board created by the Chiropractic Initiative Act, and the Osteopathic Medical Board of California, may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

(1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.

(2) Whenever appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

(3) In no event shall the administrative fine assessed by the board, bureau, or commission exceed five thousand dollars ($5,000) for each inspection or each investigation made with respect to the violation, or five thousand dollars ($5,000) for each violation or count if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the board, bureau, or commission shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations.

(4) A citation or fine assessment issued pursuant to a citation shall inform the licensee that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board, bureau, or commission within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(5) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

(c) The system may contain the following provisions:

(1) A citation may be issued without the assessment of an administrative fine.

(2) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act.

(d) Notwithstanding any other provision of law, if a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

(e) Administrative fines collected pursuant to this section shall be deposited in the special fund of the particular board, bureau, or commission.

Added Stats 1986 ch 1379 § 2. Amended Stats 1987 ch 1088 § 1; Stats 1991 ch 521 § 1 (SB 650); Stats 1995 ch 381 § 4 (AB 910), effective August 4, 1995, ch 708 § 1 (SB 609). Amended Stats 2000 ch 197 § 1 (SB 1636); Stats 2001 ch 309 § 1 (AB 761), ch 728 § 1.2 (SB 724); Stats 2003 ch 788 § 1 (SB 362).

§126. SUBMISSION OF REPORTS TO GOVERNOR

Notwithstanding any other provision of this code, any board, commission, examining committee, or other similarly constituted agency within the department required prior to the effective date of this section to submit reports to the Governor under any provision of this code shall not be required to submit such reports.

Added Stats 1967 ch 660 § 1.

§127. SUBMISSION OF REPORTS TO DIRECTOR

Notwithstanding any other provision of this code, the director may require such reports from any board, commission, examining committee, or other similarly constituted agency within the department as he deems reasonably necessary on any phase of their operations.

Added Stats 1967 ch 660 § 2.

§128. SALE OF EQUIPMENT, SUPPLIES, OR SERVICES FOR USE IN VIOLATION OF LICENSING REQUIREMENTS

Notwithstanding any other provision of law, it is a misdemeanor to sell equipment, supplies, or services to any person with knowledge that the equipment, supplies, or services are to be used in the performance of a service or contract in violation of the licensing requirements of this code.

The provisions of this section shall not be applicable to cash sales of less than one hundred dollars ($100). For the purposes of this section, "person" includes, but is not limited to, a company, partnership, limited liability company, firm, or corporation.

For the purposes of this section, "license" includes certificate or registration.

A violation of this section shall be punishable by a fine of not less than one thousand dollars ($1,000) and by imprisonment in the county jail not exceeding six months.

Added Stats 1971 ch 1052 § 1. Amended Stats 1994 ch 1010 § 1 (SB 2053).

§128.5. REDUCTION OF LICENSE FEES IN EVENT OF SURPLUS FUNDS

(a) Notwithstanding any other provision of law, if at the end of any fiscal year, an agency within the Department of Consumer Affairs, except the agencies referred to in subdivision (b), has unencumbered funds in an amount that equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount that will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

(b) Notwithstanding any other provision of law, if at the end of any fiscal year, the California Architects Board, the Board of Behavioral Sciences, the Veterinary Medical Board, the Court Reporters Board of California, the Medical Board of California, the Board of Vocational Nursing and Psychiatric Technicians, or the Bureau of Security and Investigative Services has unencumbered funds in an amount that equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount that will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

Added Stats 1972 ch 938 § 2, effective August 16, 1972, as B & P C § 128. Amended Stats 1973 ch 863 § 3. Amended and Renumbered by Stats 1978 ch 1161§ 4. Amended Stats 1987 ch 850 § 3; Stats 1989 ch 886 § 2; Stats 1993 ch 1263 § 2 (AB 936); Stats 1994 ch 26 § 5 (AB 1807), effective March 30, 1994; Stats 1995 ch 60 § 2 (SB 42), effective July 6, 1995; Stats 1997 ch 759 § 2 (SB 827). Amended Stats 2000 ch 1054 § 1 (SB 1863); Stats 2009 ch 308 § 3 (SB 819), effective January 1, 2010.

§129. HANDLING OF COMPLAINTS; REPORTS TO LEGISLATURE

(a) As used in this section, "board" means every board, bureau, commission, committee and similarly constituted agency in the department which issues licenses.

(b) Each board shall, upon receipt of any complaint respecting a licentiate thereof, notify the complainant of the initial administrative action taken on his complaint within 10 days of receipt. Each board shall thereafter notify the complainant of the final action taken on his complaint. There shall be a notification made in every case in which the complainant is known. If the complaint is not within the jurisdiction of the board or if the board is unable to dispose satisfactorily of the complaint, the board shall transmit the complaint together with any evidence or information it has concerning the complaint to the agency, public or private, whose authority in the opinion of the board will provide the most effective means to secure the relief sought. The board shall notify the complainant of such action and of any other means which may be available to the complainant to secure relief.

(c) The board shall, when the board deems it appropriate, notify the person against whom the complaint is made of the nature of the complaint, may request appropriate relief for the complainant, and may meet and confer with the complainant and the licentiate in order to mediate the complaint. Nothing in this subdivision shall be construed as authorizing or requiring any board to set or to modify any fee charged by a licentiate.

(d) It shall be the continuing duty of the board to ascertain patterns of complaints and to report on all actions taken with respect to such patterns of complaints to the director and to the Legislature at least once a year. The board shall evaluate those complaints dismissed for lack of jurisdiction or no violation and recommend to the director and to the Legislature at least once a year such statutory changes as it deems necessary to implement the board' s functions and responsibilities under this section.

(e) It shall be the continuing duty of the board to take whatever action it deems necessary, with the approval of the director, to inform the public of its functions under this section.

Added Stats 1972 ch 1041 § 1.

§130. TERMS OF OFFICE OF AGENCY MEMBERS

(a) Notwithstanding any other provision of law, the term of office of any member of an agency designated in subdivision (b) shall be for a term of four years expiring on June 1.

(b) Subdivision (a) applies to the following boards or committees:

(1) The Medical Board of California.
(2) The California Board of Podiatric Medicine.
(3) The Physical Therapy Board of California.
(4) The Board of Registered Nursing.

(5) The Board of Vocational Nursing and Psychiatric Technicians.
(6) The State Board of Optometry.
(7) The California State Board of Pharmacy.
(8) The Veterinary Medical Board.
(9) The California Architects Board.
(10) The Landscape Architect Technical Committee.
(11) The Board for Professional Engineers and Land Surveyors.
(12) The Contractors' State License Board.
(13) The State Board of Guide Dogs for the Blind.
(14) The Board of Behavioral Sciences.
(15) The Court Reporters Board of California.
(16) The State Athletic Commission.
(17) The Osteopathic Medical Board of California.
(18) The Respiratory Care Board of California.
(19) The Acupuncture Board.
(20) The Board of Psychology.

Added Stats 1969 ch 465 § 1. Amended Stats 1971 ch 716 § 8; Stats 1978 ch 1161§ 5; Stats 1983 ch 150 § 2; Stats 1986 ch 655 § 1; Stats 1987 ch 850 § 4; Stats 1989 ch 886 § 3; Stats 1990 ch 1256 § 2 (AB 2649); Stats 1991 ch 359 § 2 (AB 1332); Stats 1994 ch 26 § 6 (AB 1807), effective March 30, 1994, ch 1274 § 1.3 (SB 2039); Stats 1995 ch 60 § 3 (SB 42), effective July 6, 1995; Stats 1997 ch 759 § 3 (SB 827). Amended Stats 1998 ch 59 § 4 (AB 969), ch 970 § 1 (AB 2802), ch 971 § 1 (AB 2721); Stats 2000 ch 1054 § 2 (SB 1863); Stats 2001 ch 159 § 3 (SB 662); Stats 2009-2010 4th Ex Sess ch 18 § 2 (AB 20XXXX), effective October 23, 2009.

§131. MAXIMUM NUMBER OF TERMS

Notwithstanding any other provision of law, no member of an agency designated in subdivision (b) of Section 130 or member of a board, commission, committee, or similarly constituted agency in the department shall serve more than two consecutive full terms.

Added Stats 1970 ch 1394 § 1, operative July 1, 1971. Amended Stats 1987 ch 850 § 5.

§132. REQUIREMENTS FOR INSTITUTION OR JOINDER OF LEGAL ACTION BY STATE AGENCY AGAINST OTHER STATE OR FEDERAL AGENCY

No board, commission, examining committee, or any other agency within the department may institute or join any legal action against any other agency within the state or federal government without the permission of the director.

Prior to instituting or joining in a legal action against an agency of the state or federal government, a board, commission, examining committee, or any other agency within the department shall present a written request to the director to do so.

Within 30 days of receipt of the request, the director shall communicate his or her approval or denial of the request and his or her reasons for approval or denial to the requesting agency in writing. If the director does not act within 30 days, the request shall be deemed approved.

A requesting agency within the department may override the director's denial of its request to institute or join a legal action against a state or federal agency by a two-thirds vote of the members of the board, commission, examining committee, or other agency, which vote shall include the vote of at least one public member of that board, commission, examining committee, or other agency.

Added Stats 1990 ch 285 § 1 (AB 2984).

§134. PRORATION OF LICENSE FEES

When the term of any license issued by any agency in the department exceeds one year, initial license fees for licenses which are issued during a current license term shall be prorated on a yearly basis.

Added Stats 1974 ch 743 § 1. Amended Stats 1978 ch 1161 § 6.

§135. REEXAMINATION OF APPLICANTS

No agency in the department shall, on the basis of an applicant's failure to successfully complete prior examinations, impose any additional limitations, restrictions, prerequisites, or requirements on any applicant who wishes to participate in subsequent examinations except that any examining agency which allows an applicant conditional credit for successfully completing a divisible part of an examination may require that an applicant be reexamined in those parts successfully completed if such applicant has not successfully completed all parts of the examination within a required period of time established by the examining agency. Nothing in this section, however, requires the exemption of such applicant from the regular fees and requirements normally associated with examinations.

Added Stats 1974 ch 743 § 2.

§136. NOTIFICATION OF CHANGE OF ADDRESS; PUNISHMENT FOR FAILURE TO COMPLY

(a) Each person holding a license, certificate, registration, permit, or other authority to engage in a profession or occupation issued by a board within the department shall notify the issuing board at its principal office of any change in his or her mailing address within 30 days after the change, unless the board has specified by regulations a shorter time period.

(b) Except as otherwise provided by law, failure of a licentiate to comply with the requirement in subdivision (a) constitutes grounds for the issuance of a citation and administrative fine, if the board has the authority to issue citations and administrative fines.

Added Stats 1994 ch 26 § 7 (AB 1807), effective March 30, 1994.

§137. REGULATIONS REQUIRING INCLUSION OF LICENSE NUMBERS IN ADVERTISING, ETC.

Any agency within the department may promulgate regulations requiring licensees to include their license

numbers in any advertising, soliciting, or other presentments to the public.

However, nothing in this section shall be construed to authorize regulation of any person not a licensee who engages in advertising, solicitation, or who makes any other presentment to the public on behalf of a licensee. Such a person shall incur no liability pursuant to this section for communicating in any advertising, soliciting, or other presentment to the public a licensee's license number exactly as provided to him by the licensee or for failure to communicate such number if none is provided to him by the licensee.

Added Stats 1974 ch 743 § 3.

§138. NOTICE THAT PRACTIONER IS LICENSED; EVALUATION OF LICENSING EXAMINATION

Every board in the department, as defined in Section 22, shall initiate the process of adopting regulations on or before June 30, 1999, to require its licentiates, as defined in Section 23.8, to provide notice to their clients or customers that the practitioner is licensed by this state. A board shall be exempt from the requirement to adopt regulations pursuant to this section if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner's status as a licensee of this state.

Added Stats 1998 ch 879 § 1 (SB 2238). Amended Stats 1999 ch 67 § 1 (AB 1105), effective July 6, 1999.

§139. POLICY FOR EXAMINATION DEVELOPMENT AND VALIDATION AND OCCUPATIONAL ANALYSIS

(a) The Legislature finds and declares that occupational analyses and examination validation studies are fundamental components of licensure programs. It is the intent of the Legislature that the policy developed by the department pursuant to subdivision (b) be used by the fiscal, policy, and sunset review committees of the Legislature in their annual reviews of these boards, programs, and bureaus.

(b) Notwithstanding any other provision of law, the department shall develop, in consultation with the boards, programs, bureaus, and divisions under its jurisdiction, and the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners, a policy regarding examination development and validation, and occupational analysis. The department shall finalize and distribute this policy by September 30, 1999, to each of the boards, programs, bureaus, and divisions under its jurisdiction and to the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. This policy shall be submitted in draft form at least 30 days prior to that date to the appropriate fiscal, policy, and sunset review committees of the Legislature for review. This policy shall address, but shall not be limited to, the following issues:

(1) An appropriate schedule for examination validation and occupational analyses, and circumstances under which more frequent reviews are appropriate.

(2) Minimum requirements for psychometrically sound examination validation, examination development, and occupational analyses, including standards for sufficient number of test items.

(3) Standards for review of state and national examinations.

(4) Setting of passing standards.

(5) Appropriate funding sources for examination validations and occupational analyses.

(6) Conditions under which boards, programs, and bureaus should use internal and external entities to conduct these reviews.

(7) Standards for determining appropriate costs of reviews of different types of examinations, measured in terms of hours required.

(8) Conditions under which it is appropriate to fund permanent and limited term positions within a board, program, or bureau to manage these reviews.

(c) Every regulatory board and bureau, as defined in Section 22, and every program and bureau administered by the department, the Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners, shall submit to the director on or before December 1, 1999, and on or before December 1 of each subsequent year, its method for ensuring that every licensing examination administered by or pursuant to contract with the board is subject to periodic evaluation. The evaluation shall include (1) a description of the occupational analysis serving as the basis for the examination; (2) sufficient item analysis data to permit a psychometric evaluation of the items; (3) an assessment of the appropriateness of prerequisites for admittance to the examination; and (4) an estimate of the costs and personnel required to perform these functions. The evaluation shall be revised and a new evaluation submitted to the director whenever, in the judgment of the board, program, or bureau, there is a substantial change in the examination or the prerequisites for admittance to the examination.

(d) The evaluation may be conducted by the board, program, or bureau, the Office of Professional Examination Services of the department, the Osteopathic Medical Board of California, or the State Board of Chiropractic Examiners or pursuant to a contract with a qualified private testing firm. A board, program, or bureau that provides for development or administration of a licensing examination pursuant to contract with a public or private entity may rely on an

occupational analysis or item analysis conducted by that entity. The department shall compile this information, along with a schedule specifying when examination validations and occupational analyses shall be performed, and submit it to the appropriate fiscal, policy, and sunset review committees of the Legislature by September 30 of each year. It is the intent of the Legislature that the method specified in this report be consistent with the policy developed by the department pursuant to subdivision (b).

Added Stats 1999 ch 67 § 2 (AB 1105), effective July 6, 1999. Amended Stats 2009 ch 307 § 1 (SB 821), effective January 1, 2010.

§140. DISCIPLINARY ACTION; LICENSEE'S FAILURE TO RECORD CASH TRANSACTIONS IN PAYMENT OF EMPLOYEE WAGES

Any board, as defined in Section 22, which is authorized under this code to take disciplinary action against a person who holds a license may take disciplinary action upon the ground that the licensee has failed to record and preserve for not less than three years, any and all cash transactions involved in the payment of employee wages by a licensee. Failure to make these records available to an authorized representative of the board may be made grounds for disciplinary action. In any action brought and sustained by the board which involves a violation of this section and any regulation adopted thereto, the board may assess the licensee with the actual investigative costs incurred, not to exceed two thousand five hundred dollars ($2,500). Failure to pay those costs may result in revocation of the license. Any moneys collected pursuant to this section shall be deposited in the respective fund of the board.

Added Stats 1984 ch 1490 § 2, effective September 27, 1984.

§141. DISCIPLINARY ACTION BY FOREIGN JURISDICTION; GROUNDS OR DISCIPLINARY ACTION BY STATE LICENSING BOARD

(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

Added Stats 1994 ch 1275 § 2 (SB 2101).

§142. AUTHORITY TO SYNCHRONIZE RENEWAL DATES OF LICENSES; ABANDONMENT DATE FOR APPLICATION; DELINQUENCY FEE

This section shall apply to the bureaus and programs under the direct authority of the director, and to any board that, with the prior approval of the director, elects to have the department administer one or more of the licensing services set forth in this section.

(a) Notwithstanding any other provision of law, each bureau and program may synchronize the renewal dates of licenses granted to applicants with more than one license issued by the bureau or program. To the extent practicable, fees shall be prorated or adjusted so that no applicant shall be required to pay a greater or lesser fee than he or she would have been required to pay if the change in renewal dates had not occurred.

(b) Notwithstanding any other provision of law, the abandonment date for an application that has been returned to the applicant as incomplete shall be 12 months from the date of returning the application.

(c) Notwithstanding any other provision of law, a delinquency, penalty, or late fee shall be assessed if the renewal fee is not postmarked by the renewal expiration date.

Added Stats 1998 ch 970 § 2 (AB 2802).

§143. PROOF OF LICENSE AS CONDITION OF BRINGING ACTION FOR COLLECTION OF COMPENSATION

(a) No person engaged in any business or profession for which a license is required under this code governing the department or any board, bureau, commission, committee, or program within the department, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract for which a license is required without alleging and proving that he or she was duly licensed at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person.

(b) The judicial doctrine of substantial compliance shall not apply to this section.

(c) This section shall not apply to an act or contract that is considered to qualify as lawful practice of a licensed occupation or profession pursuant to Section 121.

Added Stats 1990 ch 1207 § 1.5 (AB 3242).

§144. REQUIREMENT OF FINGERPRINTS FOR CRIMINAL RECORD CHECKS; APPLICABILITY

(a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following:
(1) California Board of Accountancy.
(2) State Athletic Commission.
(3) Board of Behavioral Sciences.
(4) Court Reporters Board of California.
(5) State Board of Guide Dogs for the Blind.
(6) California State Board of Pharmacy.
(7) Board of Registered Nursing.
(8) Veterinary Medical Board.
(9) Registered Veterinary Technician Committee.
(10) Board of Vocational Nursing and Psychiatric Technicians.
(11) Respiratory Care Board of California.
(12) Hearing Aid Dispensers Advisory Commission.
(13) Physical Therapy Board of California.
(14) Physician Assistant Committee of the Medical Board of California.
(15) Speech-Language Pathology and Audiology Board.
(16) Medical Board of California.
(17) State Board of Optometry.
(18) Acupuncture Board.
(19) Cemetery and Funeral Bureau.
(20) Bureau of Security and Investigative Services.
(21) Division of Investigation.
(22) Board of Psychology.
(23) The California Board of Occupational Therapy.
(24) Structural Pest Control Board.
(25) Contractors' State License Board.
(26) Bureau of Naturopathic Medicine.
(27) The Professional Fiduciaries Bureau.

(c) The provisions of paragraph (24) of subdivision (b) shall become operative on July 1, 2004. The provisions of paragraph (25) of subdivision (b) shall become operative on the date on which sufficient funds are available for the Contractors' State License Board and the Department of Justice to conduct a criminal history record check pursuant to this section or on July 1, 2005, whichever occurs first.

Added Stats 1997 ch 758 § 2 (SB 1346). Amended Stats 2000 ch 697 § 1.2 (SB 1046), operative January 1, 2001; Stats 2001 ch 159 § 4 (SB 662), ch 687 § 2 (AB 1409) (ch 687 prevails); Stats 2002 ch 744 § 1 (SB 1953), ch 825 § 1 (SB 1952); Stats 2003 ch 485 § 2 (SB 907), ch 789 § 1 (SB 364), ch 874 § 1 (SB 363); Stats 2004 ch 909 § 1.2 (SB 136), effective September 30, 2004; Stats 2009 ch 308 § 4 (SB 819), effective January 1, 2010.

CHAPTER 1.5: UNLICENSED ACTIVITY ENFORCEMENT

§145. LEGISLATIVE FINDINGS AND DECLARATIONS

The Legislature finds and declares that:

(a) Unlicensed activity in the professions and vocations regulated by the Department of Consumer Affairs is a threat to the health, welfare, and safety of the people of the State of California.

(b) The law enforcement agencies of the state should have sufficient, effective, and responsible means available to enforce the licensing laws of the state.

(c) The criminal sanction for unlicensed activity should be swift, effective, appropriate, and create a strong incentive to obtain a license.

Added Stats 1992 ch 1135 § 2 (SB 2044).

§148. ESTABLISHMENT OF ADMINISTRATIVE CITATION SYSTEM

Any board, bureau, or commission within the department may, in addition to the administrative citation system authorized by Section 125.9, also establish, by regulation, a similar system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. The administrative citation system authorized by this section shall meet the requirements of Section 125.9 and may not be applied to an unlicensed person who is otherwise exempted from the provisions of the applicable licensing act. The establishment of an administrative citation system for unlicensed activity does not preclude the use of other enforcement statutes for unlicensed activities at the discretion of the board, bureau, or commission.

Added Stats 1992 ch 1135 § 2 (SB 2044).

CHAPTER 2: THE DIRECTOR OF CONSUMER AFFAIRS

§150. DESIGNATION

The department is under the control of a civil executive officer who is known as the Director of Consumer Affairs.

Enacted Stats 1937. Amended Stats 1971 ch 716 § 9.

§151. APPOINTMENT AND TENURE; SALARY AND TRAVELING EXPENSES

The director is appointed by the Governor and holds office at the Governor's pleasure. The director shall receive the annual salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code, and his or her necessary traveling expenses.

Enacted Stats 1937. Amended Stats 1943 ch 1029 § 1; Stats 1945 ch 1185 § 2; Stats 1947 ch 1442 § 1; Stats 1951 ch 1613 § 14; Stats 1984 ch 144 § 2, ch 268 § 0.1, effective June 30, 1984; Stats 1985 ch 106 § 1.

§152. DEPARTMENTAL ORGANIZATION

For the purpose of administration, the re-registration and clerical work of the department is organized by the director, subject to the approval of the Governor, in such manner as he deems necessary properly to segregate and conduct the work of the department.

Enacted Stats 1937.

§152.5. EXTENSION OF RENEWAL DATES

For purposes of distributing the re-registration work of the department uniformly throughout the year as nearly as practicable, the boards in the department may, with the approval of the director, extend by not more than six months the date fixed by law for the renewal of any license, certificate or permit issued by them, except that in such event any renewal fee which may be involved shall be prorated in such manner that no person shall be required to pay a greater or lesser fee than would have been required had the change in renewal dates not occurred.

Added Stats 1959 ch 1707 § 1.

§152.6. ESTABLISHMENT OF LICENSE PERIODS AND RENEWAL DATES

Notwithstanding any other provision of this code, each board within the department shall, in cooperation with the director, establish such license periods and renewal dates for all licenses in such manner as best to distribute the renewal work of all boards throughout each year and permit the most efficient, and economical use of personnel and equipment. To the extent practicable, provision shall be made for the proration or other adjustment of fees in such manner that no person shall be required to pay a greater or lesser fee than he would have been required to pay if the change in license periods or renewal dates had not occurred.

As used in this section "license" includes "certificate," "permit," "authority," "registration," and similar indicia of authority to engage in a business or profession, and "board" includes "board," "commission," "committee," and an individual who is authorized to renew a license.

Added Stats 1968 ch 1248 § 1.

§153. INVESTIGATIONS

The director may investigate the work of the several boards in his department and may obtain a copy of all records and full and complete data in all official matters in possession of the boards, their members, officers, or employees, other than examination questions prior to submission to applicants at scheduled examinations.

Enacted Stats 1937.

§153.5. INTERIM EXECUTIVE OFFICER

In the event that a newly authorized board replaces an existing or a previous board, the director may appoint an interim executive officer for the board who shall serve temporarily until the new board appoints a permanent executive officer.

Added Stats 2002 ch 1079 § 1 (SB 1244), effective September 29, 2002.

§154. MATTER RELATING TO EMPLOYEES OF BOARDS

Any and all matters relating to employment, tenure or discipline of employees of any board, agency or commission, shall be initiated by said board, agency or commission, but all such actions shall, before reference to the State Personnel Board, receive the approval of the appointing power.

To effect the purposes of Division 1 of this code and each agency of the department, employment of all personnel shall be in accord with Article XXIV of the Constitution, the law and rules and regulations of the State Personnel Board. Each board, agency or commission, shall select its employees from a list of eligibles obtained by the appointing power from the State Personnel Board. The person selected by the board, agency or commission to fill any position or vacancy shall thereafter be reported by the board, agency or commission, to the appointing power.

Enacted Stats 1937. Amended Stats 1945 ch 1276 § 4.

§154.2. AUTHORITY TO EMPLOY INDIVIDUALS TO PERFORM INVESTIGATIVE SERVICES OR TO SERVE AS EXPERTS

(a) The healing arts boards within Division 2 (commencing with Section 500) may employ individuals, other than peace officers, to perform investigative services.

(b) The healing arts boards within Division 2 (commencing with Section 500) may employ individuals to serve as experts.

Added Stats 2010 ch 719 § 1 (SB 856), effective October 19, 2010.

§154.5. LEGAL ASSISTANCE OF EXPERTS AIDING IN INVESTIGATIONS OF LICENSEES

If a person, not a regular employee of a board under this code, including the Board of Chiropractic Examiners and the Osteopathic Medical Board of California, is hired or under contract to provide expertise to the board in the evaluation of an applicant or the conduct of a licensee, and that person is named as a defendant in a civil action arising out of the evaluation or any opinions rendered, statements made, or testimony given to the board or its representatives, the board shall provide for representation required to defend the defendant in that civil action. The board shall not be liable for any judgment rendered against the person. The Attorney General shall be utilized in the action and his or her services shall be a charge against the board.

Added Stats 1986 ch 1205 § 1, as B & P C § 483. Amended and Renumbered by Stats 1987 ch 850 § 8. Amended Stats 1991 ch 359 § 3 (AB 1332).

§155. EMPLOYMENT OF INVESTIGATORS; INSPECTORS AS EMPLOYEES OR UNDER CONTRACT

(a) In accordance with Section 159.5, the director may employ such investigators, inspectors, and deputies as are necessary properly to investigate and prosecute all violations of any law, the enforcement of which is charged to the department or to any board, agency, or commission in the department.

(b) It is the intent of the Legislature that inspectors used by boards, bureaus, or commissions in the department shall not be required to be employees of the Division of Investigation, but may either be employees of, or under contract to, the boards, bureaus, or commissions. Contracts for services shall be consistent with Article 4.5 (commencing with Section 19130) of Chapter 6 of Part 2 of Division 5 of Title 2 of the Government Code. All civil service employees currently employed as inspectors whose functions are transferred as a result of this section shall retain their positions, status, and rights in accordance with Section 19994.10 of the Government Code and the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

(c) Nothing in this section limits the authority of, or prohibits, investigators in the Division of Investigation in the conduct of inspections or investigations of any licensee, or in the conduct of investigations of any officer or employee of a board or the department at the specific request of the director or his or her designee.

Enacted Stats 1937. Amended Stats 1945 ch 1276 § 5; Stats 1971 ch 716 § 10; Stats 1985 ch 1382 § 1.

§156. CONTRACTUAL AUTHORITY

(a) The director may, for the department and at the request and with the consent of a board within the department on whose behalf the contract is to be made, enter into contracts pursuant to Chapter 3 (commencing with Section 11250) of Part 1 of Division 3 of Title 2 of the Government Code or Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code for and on behalf of any board within the department.

(b) In accordance with subdivision (a), the director may, in his or her discretion, negotiate and execute contracts for examination purposes which include provisions which hold harmless a contractor where liability resulting from a contract between a board in the department and the contractor is traceable to the state or its officers, agents, or employees.

Added Stats 1953 ch 864 § 1. Amended Stats 1984 ch 144 § 3; Stats 1988 ch 1448 § 1.

§156.1. RETENTION OF RECORDS BY PROVIDERS OF SERVICES RELATED TO TREATMENT OF ALCOHOL OR DRUG IMPAIRMENT

(a) Notwithstanding any other provision of law, individuals or entities contracting with the department or any board within the department for the provision of services relating to the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs shall retain all records and documents pertaining to those services until such time as these records and documents have been reviewed for audit by the department. These records and documents shall be retained for three years from the date of the last treatment or service rendered to that licentiate, after which time the records and documents may be purged and destroyed by the contract vendor. This provision shall supersede any other provision of law relating to the purging or destruction of records pertaining to those treatment and rehabilitation programs.

(b) Unless otherwise expressly provided by statute or regulation, all records and documents pertaining to services for the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs provided by any contract vendor to the department or

to any board within the department shall be kept confidential and are not subject to discovery or subpoena.

(c) With respect to all other contracts for services with the department or any board within the department other than those set forth in subdivision (a), the director or chief deputy director may request an examination and audit by the department's internal auditor of all performance under the contract. For this purpose, all documents and records of the contract vendor in connection with such performance shall be retained by such vendor for a period of three years after final payment under the contract. Nothing in this section shall affect the authority of the State Auditor to conduct any examination or audit under terms of Section 8543.7 of the Government Code.

Added Stats 1991 ch 654 § 3 (AB 1893). Amended Stats 2003 ch 107 § 1 (AB 569); Stats 2010 ch 517 § 1 (SB 1172), effective January 1, 2011.

§156.5. LEASES OF EXAMINATION OR MEETING PURPOSES

The director may negotiate and execute for the department and for its component agencies, rental agreements for short-term hiring of space and furnishings for examination or meeting purposes. The director may, in his or her discretion, negotiate and execute contracts for that space which include provisions which hold harmless the provider of the space where liability resulting from use of the space under the contract is traceable to the state or its officers, agents, or employees. Notwithstanding any other provision of law, the director may, in his or her discretion, advance payments as deposits to reserve and hold examination or meeting space. Any such agreement is subject to the approval of the legal office of the Department of General Services.

Added Stats 1967 ch 1235 § 1. Amended Stats 1988 ch 1448 § 1.5.

§157. EXPENSES IN CRIMINAL PROSECUTION AND UNPROFESSIONAL CONDUCT PROCEEDINGS

Expenses incurred by any board or on behalf of any board in any criminal prosecution or unprofessional conduct proceeding constitute proper charges against the funds of the board.

Added Stats 1937 ch 474.

§158. REFUNDS TO APPLICANTS

With the approval of the Director of Consumer Affairs, the boards and commissions comprising the department or subject to its jurisdiction may make refunds to applicants who are found ineligible to take the examinations or whose credentials are insufficient to entitle them to certificates or licenses.

Notwithstanding any other provision of law any application fees, license fees or penalties imposed and collected illegally, by mistake, inadvertence, or error shall be refunded. Claims authorized by the department shall be filed with the State Controller, and the Controller shall draw his warrant against the fund of the agency in payment of such refund.

Added Stats 1937 ch 474. Amended Stats 1945 ch 1378 § 1; Stats 1971 ch 716 § 11.

§159. ADMINISTRATION OF OATHS

The members and the executive officer of each board, agency, bureau, division, or commission have power to administer oaths and affirmations in the performance of any business of the board, and to certify to official acts.

Added Stats 1947 ch 1350 § 5.

§159.5. DIVISION OF INVESTIGATION; TRANSFER AGENCY PERSONNEL

There is in the department the Division of Investigation. The division is in the charge of a person with the title of chief of the division.

Except as provided in Section 160, investigators who have the authority of peace officers, as specified in subdivision (a) of Section 160 and in subdivision (a) of Section 830.3 of the Penal Code, shall be in the division and shall be appointed by the director.

Added Stats 1971 ch 716 § 12. Amended Stats 1985 ch 1382 § 2; Stats 2010 ch 719 § 2 (SB 856), effective January 19, 2010.

§160. PEACE OFFICER STATUS OF INVESTIGATORS

(a) The Chief and all investigators of the Division of Investigation of the department and all investigators of the Medical Board of California and the Dental Board of California have the authority of peace officers while engaged in exercising the powers granted or performing the duties imposed upon them or the division in investigating the laws administered by the various boards comprising the department or commencing directly or indirectly any criminal prosecution arising from any investigation conducted under these laws. All persons herein referred to shall be deemed to be acting within the scope of employment with respect to all acts and matters set forth in this section.

(b) The Division of Investigation of the department, the Medical Board of California, and the Dental Board of California may employ individuals, who are not peace officers, to provide investigative services.

Added Stats 1968 ch 1222 § 24. Amended Stats 1971 ch 716 § 13; Stats 2d Ex Sess 1975 ch 2 § 1, effective September 24, 1975, operative December 12, 1975; Stats 1979 ch 573 § 1; Stats 1989 ch 886 § 4; Stats 2010 ch 719 § 3 (SB 856), effective January 19, 2010.

§161. SALE OF COPIES OF PUBLIC RECORDS

The department, or any board in the department, may sell copies of any part of its respective public

records, or compilations, extracts, or summaries of information contained in its public records, at a charge sufficient to pay the actual cost thereof. Such charge, and the conditions under which sales may be made, shall be determined by the director with the approval of the Department of General Services.

Added Stats 1949 ch 704 § 1. Amended Stats 1963 ch 590 § 1; Stats 1965 ch 371 § 9.

§162. EVIDENTIARY EFFECT OF CERTIFICATE OF RECORDS OFFICER AS TO LICENSE, ETC.

The certificate of the officer in charge of the records of any board in the department that any person was or was not on a specified date, or during a specified period of time, licensed, certified or registered under the provisions of law administered by the board, or that the license, certificate or registration of any person was revoked or under suspension, shall be admitted in any court as prima facie evidence of the facts therein recited.

Added Stats 1949 ch 355 § 1.

§163. FEE FOR CERTIFICATION OF RECORDS, ETC.

Except as otherwise expressly provided by law, the department and each board in the department shall charge a fee of two dollars ($2) for the certification of a copy of any record, document, or paper in its custody or for the certification of any document evidencing the content of any such record, document or paper.

Added Stats 1961 ch 1858 § 1. Amended Stats 1963 ch 590 § 2.

§163.5. DELINQUENCY FEES; REINSTATEMENT FEES

Except as otherwise provided by law, the delinquency, penalty, or late fee for any licensee within the Department of Consumer Affairs shall be 50 percent of the renewal fee for such license in effect on the date of the renewal of the license, but not less than twenty-five dollars ($25) nor more than one hundred fifty dollars ($150).

A delinquency, penalty, or late fee shall not be assessed until 30 days have elapsed from the date that the licensing agency mailed a notice of renewal to the licensee at the licensee's last known address of record. The notice shall specify the date for timely renewal, and that failure to renew in a timely fashion shall result in the assessment of a delinquency, penalty, or late fee.

In the event a reinstatement or like fee is charged for the reinstatement of a license, the reinstatement fee shall be 150 percent of the renewal fee for such license in effect on the date of the reinstatement of the license, but not more than twenty-five dollars ($25) in excess of the renewal fee, except that in the event that such a fee is fixed by statute at less than 150 percent of the renewal fee and less than the renewal fee plus twenty-five dollars ($25), the fee so fixed shall be charged.

Added Stats 1974 ch 743 § 4. Amended Stats 1985 ch 587 § 1.

§164. FORM AND CONTENT OF LICENSE, CERTIFICATE, PERMIT, OR SIMILAR INDICIA OF AUTHORITY

The form and content of any license, certificate, permit, or similar indicia of authority issued by any agency in the department, including any document evidencing renewal of a license, certificate, permit, or similar indicia of authority, shall be determined by the director after consultation with and consideration of the views of the agency concerned.

Added Stats 1971 ch 716 § 15. Amended Stats 1987 ch 850 § 6.

§165. PROHIBITION AGAINST SUBMISSION OF FISCAL IMPACT ANALYSIS RELATING TO PENDING LEGISLATION WITHOUT PRIOR SUBMISSION TO DIRECTOR FOR COMMENT

Notwithstanding any other provision of law, no board, bureau, committee, commission, or program in the Department of Consumer Affairs shall submit to the Legislature any fiscal impact analysis relating to legislation pending before the Legislature until the analysis has been submitted to the Director of Consumer Affairs, or his or her designee, for review and comment. The boards, bureaus, committees, commissions, and programs shall include the comments of the director when submitting any fiscal impact analysis to the Legislature. This section shall not be construed to prohibit boards, bureaus, committees, commissions, and programs from responding to direct requests for fiscal data from Members of the Legislature or their staffs. In those instances it shall be the responsibility of boards, bureaus, committees, commissions, and programs to also transmit that information to the director, or his or her designee, within five working days.

Added Stats 1984 ch 268 § 0.2, effective June 30, 1984.

§166. DEVELOPMENT OF GUIDELINES FOR MANDATORY CONTINUING EDUCATION PROGRAMS

The director shall, by regulation, develop guidelines to prescribe components for mandatory continuing education programs administered by any board within the department.

(a) The guidelines shall be developed to ensure that mandatory continuing education is used as a means to create a more competent licensing population, thereby enhancing public protection. The guidelines shall require mandatory continuing education programs to address, at least, the following:

(1) Course validity.
(2) Occupational relevancy.
(3) Effective presentation.
(4) Actual attendance.
(5) Material assimilation.
(6) Potential for application.

(b) The director shall consider educational principles, and the guidelines shall prescribe mandatory continuing education program formats to include, but not be limited to, the following:
(1) The specified audience.
(2) Identification of what is to be learned.
(3) Clear goals and objectives.
(4) Relevant learning methods (participatory, hands-on, or clinical setting).
(5) Evaluation, focused on the learner and the assessment of the intended learning outcomes (goals and objectives).

(c) Any board within the department that, after January 1, 1993, proposes a mandatory continuing education program for its licensees shall submit the proposed program to the director for review to assure that the program contains all the elements set forth in this section and complies with the guidelines developed by the director.

(d) Any board administering a mandatory continuing education program that proposes to amend its current program shall do so in a manner consistent with this section.

(e) Any board currently administering a mandatory continuing education program shall review the components and requirements of the program to determine the extent to which they are consistent with the guidelines developed under this section. The board shall submit a report of their findings to the director. The report shall identify the similarities and differences of its mandatory continuing education program. The report shall include any board-specific needs to explain the variation from the director's guidelines.

(f) Any board administering a mandatory continuing education program, when accepting hours for credit which are obtained out of state, shall ensure that the course for which credit is given is administered in accordance with the guidelines addressed in subdivision (a).

(g) Nothing in this section or in the guidelines adopted by the director shall be construed to repeal any requirements for continuing education programs set forth in any other provision of this code.

Added Stats 1992 ch 1135 § 2.2 (SB 2044). Amended Stats 1994 ch 146 § 1 (AB 3601).

CHAPTER 3: FUNDS OF THE DEPARTMENT

§201. LEVY FOR ADMINISTRATIVE EXPENSES

A charge for the estimated administrative expenses of the department, not to exceed the available balance in any appropriation for any one fiscal year, may be levied in advance on a pro rata share basis against any of the funds of any of the boards, bureaus, commissions, divisions, and agencies, at the discretion of the director and with the approval of the Department of Finance.

Enacted Stats 1937. Amended Stats 1947 ch 1350 § 4; Stats 1965 ch 371 § 10; Stats 1974 ch 1221 § 1.

§206. DISHONORED CHECK TENDERED FOR PAYMENT OF FINE, FEE, OR PENALTY

Notwithstanding any other provision of law, any person tendering a check for payment of a fee, fine, or penalty that was subsequently dishonored, shall not be granted a license, or other authority that they were seeking, until the applicant pays the amount outstanding from the dishonored payment together with the applicable fee, including any delinquency fee. The board may require the person whose check was returned unpaid to make payment of all fees by cashier's check or money order.

Added Stats 1994 ch 26 § 12 (AB 1807), effective March 30, 1994.

§207. APPROPRIATION REQUIRED

(a) Notwithstanding any other provision of law, the money in any fund described in Section 205 that is attributable to administrative fines, civil penalties, and criminal penalties imposed by a regulating entity, or cost recovery by a regulating entity from enforcement actions and case settlements, shall not be continuously appropriated. The money in each fund that is not continuously appropriated shall be available for expenditure as provided in this code only upon appropriation by the Legislature.

(b) Notwithstanding any other provision of law, the annual Budget Act may appropriate, in a single budget item for each individual fund described in paragraphs (1) to (40), inclusive, of subdivision (a) of Section 205, the entire amount available for expenditure in the budget year for that fund. That appropriation may include funds that are continuously appropriated and funds that are not continuously appropriated.

Added Stats 2002 ch 682 § 1 (SB 2018).

CHAPTER 4: CONSUMER AFFAIRS

ARTICLE 3: POWERS AND DUTIES

§310. DIRECTOR'S POWERS AND DUTIES

The director shall have the following powers and it shall be his duty to:

(a) Recommend and propose the enactment of such legislation as necessary to protect and promote the interests of consumers.

(b) Represent the consumer's interests before federal and state legislative hearings and executive commissions.

(c) Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of consumers.

(d) Study, investigate, research, and analyze matters affecting the interests of consumers.

(e) Hold public hearings, subpoena witnesses, take testimony, compel the production of books, papers, documents, and other evidence, and call upon other state agencies for information.

(f) Propose and assist in the creation and development of consumer education programs.

(g) Promote ethical standards of conduct for business and consumers and undertake activities to encourage public responsibility in the production, promotion, sale and lease of consumer goods and services.

(h) Advise the Governor and Legislature on all matters affecting the interests of consumers.

(i) Exercise and perform such other functions, powers and duties as may be deemed appropriate to protect and promote the interests of consumers as directed by the Governor or the Legislature.

(j) Maintain contact and liaison with consumer groups in California and nationally.

Added Stats 1970 ch 1394 § 3, operative July 1, 1971. Amended Stats 1975 ch 1262 § 4.

§312. REPORT TO GOVERNOR AND LEGISLATURE

The director shall submit to the Governor and the Legislature on or before January 1, 2003, and annually thereafter, a report of programmatic and statistical information regarding the activities of the department and its constituent entities. The report shall include information concerning the director's activities pursuant to Section 326, including the number and general patterns of consumer complaints and the action taken on those complaints.

Added Stats 1970 ch 1394 § 3, operative July 1, 1971. Amended Stats 1975 ch 1262 § 5. Amended Stats 1998 ch 829 § 1 SB 1652); Stats 2002 ch 405 § 3 (AB 2973).

§313.1. COMPLIANCE WITH SECTION AS REQUIREMENT FOR EFFECTIVENESS OF SPECIFIED RULES OF REGULATIONS; SUBMISSION OF RECORDS; AUTHORITY FOR DISAPPROVAL

(a) Notwithstanding any other provision of law to the contrary, no rule or regulation, except those relating to examinations and qualifications for licensure, and no fee change proposed or promulgated by any of the boards, commissions, or committees within the department, shall take effect pending compliance with this section.

(b) The director shall be formally notified of and shall be provided a full opportunity to review, in accordance with the requirements of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, and this section, all of the following:

(1) All notices of proposed action, any modifications and supplements thereto, and the text of proposed regulations.

(2) Any notices of sufficiently related changes to regulations previously noticed to the public, and the text of proposed regulations showing modifications to the text.

(3) Final rulemaking records.

(c) The submission of all notices and final rulemaking records to the director and the completion of the director's review, as authorized by this section, shall be a precondition to the filing of any rule or regulation with the Office of Administrative Law. The Office of Administrative Law shall have no jurisdiction to review a rule or regulation subject to this section until after the completion of the director's review and only then if the director has not disapproved it. The filing of any document with the Office of Administrative Law shall be accompanied by a certification that the board, commission, or committee has complied with the requirements of this section.

(d) Following the receipt of any final rulemaking record subject to subdivision (a), the director shall have the authority for a period of 30 days to disapprove a proposed rule or regulation on the ground that it is injurious to the public health, safety, or welfare.

(e) Final rulemaking records shall be filed with the director within the one-year notice period specified in Section 11346.4 of the Government Code. If necessary for compliance with this section, the one-

year notice period may be extended, as specified by this subdivision.

(1) In the event that the one-year notice period lapses during the director's 30-day review period, or within 60 days following the notice of the director's disapproval, it may be extended for a maximum of 90 days.

(2) If the director approves the final rulemaking record or declines to take action on it within 30 days, the board, commission, or committee shall have five days from the receipt of the record from the director within which to file it with the Office of Administrative Law.

(3) If the director disapproves a rule or regulation, it shall have no force or effect unless, within 60 days of the notice of disapproval, (A) the disapproval is overridden by a unanimous vote of the members of the board, commission, or committee, and (B) the board, commission, or committee files the final rulemaking record with the Office of Administrative Law in compliance with this section and the procedures required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) Nothing in this section shall be construed to prohibit the director from affirmatively approving a proposed rule, regulation, or fee change at any time within the 30-day period after it has been submitted to him or her, in which event it shall become effective upon compliance with this section and the procedures required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Added Stats 1972 ch 1251 § 1, as B & P C § 313. Amended and Renumbered by Stats 1973 ch 40 § 1, effective May 10, 1973. Amended Stats 1984 ch 144 § 4; Stats 1991 ch 654 § 4 (AB 1893); Stats 1992 ch 1289 § 2 (AB 2743); Stats 1994 ch 26 § 13 (AB 1807), effective March 30, 1994.

§313.2. ADOPTION OF REGULATIONS IN CONFORMANCE WITH AMERICANS WITH DISABILITIES ACT

The director shall adopt regulations to implement, interpret, and make specific the provisions of the Americans with Disabilities Act (P.L. 101-336), as they relate to the examination process for professional licensing and certification programs under the purview of the department.

Added Stats 1992 ch 1289 § 3 (AB 2743).

ARTICLE 3.6: UNIFORM STANDARDS REGARDING SUBSTANCE-ABUSING HEALING ARTS LICENSEES

§315. ESTABLISHMENT OF SUBSTANCE ABUSE COORDINATION COMMITTEE; MEMBERS; DUTIES

(a) For the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department's healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Alcohol and Drug Programs. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.

(b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

(c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:

(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

(2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in paragraph (1) and any treatment recommended by the evaluator described in paragraph (1) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

(3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.

(4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the

specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

(5) Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

(7) Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

(8) Procedures to be followed when a licensee tests positive for a banned substance.

(9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

(10) Specific consequences for major violations and minor violations. In particular, the committee shall consider the use of a "deferred prosecution" stipulation similar to the stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.

(11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.

(12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

(13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.

(14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

(16) Measurable criteria and standards to determine whether each board's method of dealing with substance abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

Added Stats 2008 ch 548 § 3 (SB 1441), effective January 1, 2009. Amended Stats 2009 ch 140 § 1 (AB 1164), effective January 1, 2010.

§315.2. CEASE PRACTICE ORDER

(a) A board, as described in Section 315, shall order a licensee of the board to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program.

(b) An order to cease practice under this section shall not be governed by the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A cease practice order under this section shall not constitute disciplinary action.

(d) This section shall have no effect on the Board of Registered Nursing pursuant to Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2.

Added Stats 2010 ch 517 § 2 (SB 1172), effective January 1, 2011.

§315.4. CEASE PRACTICE ORDER FOR VIOLATION OF PROBATION OR DIVERSION PROGRAM

(a) A board, as described in Section 315, may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and
authorized under Section 315.

(b) An order to cease practice under this section shall not be governed by the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A cease practice order under this section shall not constitute disciplinary action.

(d) This section shall have no effect on the Board of Registered Nursing pursuant to Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2.

Added Stats 2010 ch 517 § 3 (SB 1172), effective January 1, 2011.

ARTICLE 4: REPRESENTATION OF CONSUMERS

§320. INTERVENTION IN ADMINISTRATIVE OR JUDICIAL PROCEEDINGS

Whenever there is pending before any state commission, regulatory agency, department, or other state agency, or any state or federal court or agency, any matter or proceeding which the director finds may affect substantially the interests of consumers within California, the director, or the Attorney General, may intervene in such matter or proceeding in any appropriate manner to represent the interests of consumers. The director, or any officer or employee designated by the director for that purpose, or the Attorney General, may thereafter present to such agency, court, or department, in conformity with the rules of practice and procedure thereof, such evidence and argument as he shall determine to be necessary, for the effective protection of the interests of consumers.

Added Stats 1970 ch 1394 § 3, operative July 1, 1971. Amended Stats 1975 ch 1262 § 8.

§321. COMMENCEMENT OF LEGAL PROCEEDINGS

Whenever it appears to the director that the interests of the consumers of this state are being damaged, or may be damaged, by any person who engaged in, or intends to engage in, any acts or practices in violation of any law of this state, or any federal law, the director or any officer or employee designated by the director, or the Attorney General, may commence legal proceedings in the appropriate forum to enjoin such acts or practices and may seek other appropriate relief on behalf of such consumers.

Added Stats 1975 ch 1262 § 9.

ARTICLE 5: CONSUMER COMPLAINTS

§325. ACTIONABLE COMPLAINTS

It shall be the duty of the director to receive complaints from consumers concerning (a) unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in the conduct of any trade or commerce; (b) the production, distribution, sale, and lease of any goods and services undertaken by any person which may endanger the public health, safety, or welfare; (c) violations of provisions of this code relating to businesses and professions licensed by any agency of the department, and regulations promulgated pursuant thereto; and (d) other matters consistent with the purposes of this chapter, whenever appropriate.

Added Stats 1970 ch 1394 § 3, operative July 1, 1971.

§326. PROCEEDINGS ON RECEIPT OF COMPLAINT

(a) Upon receipt of any complaint pursuant to Section 325, the director may notify the person against whom the complaint is made of the nature of the complaint and may request appropriate relief for the consumer.

(b) The director shall also transmit any valid complaint to the local, state or federal agency whose authority provides the most effective means to secure the relief.

The director shall, if appropriate, advise the consumer of the action taken on the complaint and of any other means which may be available to the consumer to secure relief.

(c) If the director receives a complaint or receives information from any source indicating a probable violation of any law, rule, or order of any regulatory agency of the state, or if a pattern of complaints from consumers develops, the director shall transmit any complaint he or she considers to be valid to any appropriate law enforcement or regulatory agency and any evidence or information he or she may have concerning the probable violation or pattern of complaints or request the Attorney General to undertake appropriate legal action. It shall be the continuing duty of the director to discern patterns of complaints and to ascertain the nature and extent of action taken with respect to the probable violations or pattern of complaints.

Added Stats 1970 ch 1394 § 3, operative July 1, 1971. Amended Stats 1978 ch 1161 § 8; Stats 1989 ch 1360 § 1.

CHAPTER 6: PUBLIC MEMBERS

§450. QUALIFICATIONS GENERALLY

In addition to the qualifications provided in the respective chapters of this code, a public member or a lay member of any board shall not be, nor shall he have been within the period of five years immediately preceding his appointment, any of the following:

(a) An employer, or an officer, director, or substantially full-time representative of an employer or group of employers, of any licentiate of such board, except that this shall not preclude the appointment of a person which maintains infrequent employer status with such licentiate, or maintains a client, patient, or customer relationship with any such licentiate which does not constitute more than 2 percent of the practice or business of the licentiate.

(b) A person maintaining a contractual relationship with a licentiate of such board, which would constitute more than 2 percent of the practice or business of any such licentiate, or an officer, director, or substantially full-time representative of such person or group of persons.

(c) An employee of any licentiate of such board, or a representative of such employee, except that this shall not preclude the appointment of a person who maintains an infrequent employee relationship or a person rendering professional or related services to a licentiate if such employment or service does not constitute more than 2 percent of the employment or practice of the member of the board.

Added Stats 1961 ch 2232 § 2.

§450.2. AVOIDING CONFLICT OF INTEREST

In order to avoid a potential for a conflict of interest, a public member of a board shall not:

(a) Be a current or past licensee of that board.

(b) Be a close family member of a licensee of that board.

Added Stats 2002 ch 1150 § 1.2 (SB 1955).

§450.3. CONFLICTING PECUNIARY INTERESTS

No public member shall either at the time of his appointment or during his tenure in office have any financial interest in any organization subject to regulation by the board, commission or committee of which he is a member.

Added Stats 1972 ch 1032 § 1.

§450.5. PRIOR INDUSTRIAL AND PROFESSIONAL PURSUITS

A public member, or a lay member, at any time within five years immediately preceding his or her appointment, shall not have been engaged in pursuits which lie within the field of the industry or profession, or have provided representation to the industry or profession, regulated by the board of which he or she is a member, nor shall he or she engage in those pursuits or provide that representation during his or her term of office.

Added Stats 1961 ch 2232 § 2. Amended Stats 2003 ch 563 § 2 (AB 827).

§450.6. AGE

Notwithstanding any other section of law, a public member may be appointed without regard to age so long as the public member has reached the age of majority prior to appointment.

Added Stats 1976 ch 1188 § 1.3.

451. DELEGATION OF DUTIES

If any board shall as a part of its functions delegate any duty or responsibility to be performed by a single member of such board, such delegation shall not be made solely to any public member or any lay member of the board in any of the following instances:

(a) The actual preparation of, the administration of, and the grading of, examinations.

(b) The inspection or investigation of licentiates, the manner or method of practice or doing business, or their place of practice or business.

Nothing in this section shall be construed as precluding a public member or a lay member from participating in the formation of policy relating to the scope of the activities set forth in subdivisions (a) and (b) or in the approval, disapproval or modification of the action of its individual members, nor preclude such member from participating as a member of a subcommittee consisting of more than one member of the board in the performance of any duty.

Added Stats 1961 ch 2232 § 2.

§452. “BOARD”

"Board," as used in this chapter, includes a board, advisory board, commission, examining committee, committee or other similarly constituted body exercising powers under this code.

Added Stats 1961 ch 2232 § 2. Amended Stats 1976 ch 1188 § 1.5.

§453. TRAINING AND ORIENTATION PROGRAM FOR NEW BOARD MEMBERS

Every newly appointed board member shall, within one year of assuming office, complete a training and orientation program offered by the department regarding, among other things, his or her functions, responsibilities, and obligations as a member of a board. The department shall adopt regulations

necessary to establish this training and orientation program and its content.

Added Stats 2002 ch 1150 § 1.4 (SB 1955).

CHAPTER 7: LICENSEE

§460. POWERS OF LOCAL GOVERNMENT ENTITIES

(a) No city or county shall prohibit a person or group of persons, authorized by one of the agencies in the Department of Consumer Affairs by a license, certificate, or other such means to engage in a particular business, from engaging in that business, occupation, or profession or any portion thereof.

(b) No city, county, or city and county shall prohibit a healing arts professional licensed with the state under Division 2 (commencing with Section 500) from engaging in any act or performing any procedure that falls within the professionally recognized scope of practice of that licensee.

(1) This subdivision shall not be construed to prohibit the enforcement of a local ordinance in effect prior to January 1, 2010, related to any act or procedure that falls within the professionally recognized scope of practice of a healing arts professional licensed under Division 2 (commencing with Section 500).

(2) This subdivision shall not be construed to prevent a city, county, or city and county from adopting or enforcing any local ordinance governing zoning, business licensing, or reasonable health and safety requirements for establishments or businesses of a healing arts professional licensed under Division 2 (commencing with Section 500).

(c) Nothing in this section shall prohibit any city, county, or city and county from levying a business license tax solely for revenue purposes, nor any city or county from levying a license tax solely for the purpose of covering the cost of regulation.

Added Stats 1967 ch 1095 § 1. Amended Stats 1971 ch 716 § 24; Stats 2009 ch 16 § 1 (SB 762), effective January 1, 2010.

§461. ASKING APPLICANT TO REVEAL ARREST RECORD PROHIBITED

No public agency, state or local, shall, on an initial application form for any license, certificate or registration, ask for or require the applicant to reveal a record of arrest that did not result in a conviction or a plea of nolo contendere. A violation of this section is a misdemeanor.

This section shall apply in the case of any license, certificate or registration provided for by any law of this state or local government, including, but not limited to, this code, the Corporations Code, the Education Code, and the Insurance Code.

Added Stats 1975 ch 883 § 1.

§462. INACTIVE CATEGORY OF LICENSURE

(a) Any of the boards, bureaus, commissions, or programs within the department may establish, by regulation, a system for an inactive category of licensure for persons who are not actively engaged in the practice of their profession or vocation.

(b) The regulation shall contain the following provisions:

(1) The holder of an inactive license issued pursuant to this section shall not engage in any activity for which a license is required.

(2) An inactive license issued pursuant to this section shall be renewed during the same time period in which an active license is renewed. The holder of an inactive license need not comply with any continuing education requirement for renewal of an active license.

(3) The renewal fee for a license in an active status shall apply also for a renewal of a license in an inactive status, unless a lesser renewal fee is specified by the board.

(4) In order for the holder of an inactive license issued pursuant to this section to restore his or her license to an active status, the holder of an inactive license shall comply with all the following:

(A) Pay the renewal fee.

(B) If the board requires completion of continuing education for renewal of an active license, complete continuing education equivalent to that required for renewal of an active license, unless a different requirement is specified by the board.

(c) This section shall not apply to any healing arts board as specified in Section 701

Added Stats 1994 ch 26 § 14 (AB 1807), effective March 30, 1994.

DIVISION 1.2 JOINT COMMITTEE ON BOARDS, COMMISSIONS, AND CONSUMER PROTECTION

CHAPTER 1 REVIEW OF BOARDS UNDER THE DEPARTMENT OF CONSUMER AFFAIRS

§473. JOINT COMMITTEE ON BOARDS, COMMISSIONS, AND CONSUMER PROTECTION ESTABLISHED; MEMBERS; POWERS AND DUTIES; STAFF; TERMINATION [SECTION REPEALED 2011.]

Added Stats 1994 ch 908 § 5 (SB 2036). Amended Stats 1998 ch 991 § 2 (SB 1980); Stats 2003 ch 874 § 2 (SB 363); Stats 2004 ch 33 § 3 (AB 1467), effective April 13, 2004. Repealed Stats 2010 ch 670 § 3 (AB 2130), effective January 1, 2011.

§473.1. APPLICATION OF DIVISION [SECTION REPEALED 2011.]

Added Stats 1994 ch 908 § 5 (SB 2036). Amended Stats 1997 ch 78 § 3.5 (AB 71). Amended Stats 2000 ch 393 § 1 (SB 2028); Stats 2002 ch 825 § 2 (SB 1952); Stats 2003 ch 789 § 3 (SB 364). Repealed Stats 2010 ch 670 § 3 (AB 2130), effective January 1, 2011.

§473.2. SUBMISSION OF ANALYSIS AND REPORT TO COMMITTEE [SECTION REPEALED 2011.]

Added Stats 1994 ch 908 § 5 (SB 2036). Amended Stats 2000 ch 393 § 4 (SB 2028); Stats 2003 ch 789 § 4 (SB 364); Stats 2004 ch 33 § 5 (AB 1467), effective April 13, 2004.

§473.3. PUBLIC HEARINGS PRIOR TO TERMINATION, CONTINUATION, OR REESTABLISHMENT OF ANY BOARD; REVIEW OF BUREAU FOR PRIVATE POSTSECONDARY AND VOCATIONAL EDUCATION AND BUREAU OF AUTOMOTIVE REPAIR [SECTION REPEALED 2011.]

Added Stats 1994 ch 908 § 5 (SB 2036). Amended Stats 1997 ch 78 § 3.7 (AB 71). Amended Stats 2000 ch 393 § 5 (SB 2028); Stats 2001 ch 399 § 1 (AB 1720); Stats 2003 ch 789 § 5 (SB 364); Stats 2004 ch 33 § 6 (AB 1467), effective April 13, 2004. Repealed Stats 2010 ch 670 § 3 (AB 2130), effective January 1, 2011.

§473.4. EVALUATION OF BOARDS AND REGULATORY PROGRAMS; DETERMINATION OF NEED FOR CONTINUED EXISTENCE [SECTION REPEALED 2011.]

Added Stats 1994 ch 908 § 5 (SB 2036). Amended Stats 2004 ch 33 § 7 (AB 1467), effective April 13, 2004. Repealed Stats 2010 ch 670 § 3 (AB 2130), effective January 1, 2011.

§473.5. REPORT [SECTION REPEALED 2011.]

Added Stats 1994 ch 908 § 5 (SB 2036). Amended Stats 2000 ch 393 § 6 (SB 2028); Stats 2004 ch 33 § 8 (AB 1467), effective April 13, 2004. Repealed Stats 2010 ch 670 § 3 (AB 2130), effective January 1, 2011.

§473.6. REFERRAL OF PROPOSALS TO CREATE NEW LICENSURE CATEGORIES, CHANGE REQUIREMENTS, OR CREATE NEW LICENSING BOARD TO JOINT COMMITTEE [SECTION REPEALED 2011.]

Added Stats 1997 ch 759 § 7 (SB 827). Amended Stats 2002 ch 1012 § 2 (SB 2025), effective September 27, 2002; Stats 2004 ch 33 § 9 (AB 1467), effective April 13, 2004, ch 909 § 1.5 (SB 136), effective September 30, 2004. Repealed Stats 2010 ch 670 § 3 (AB 2130), effective January 1, 2011.

DIVISION 1.5 DENIAL, SUSPENSION AND REVOCATION OF LICENSES

CHAPTER 1 GENERAL PROVISIONS

§475. APPLICABILITY OF DIVISION

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

Added Stats 1972 ch 903 § 1. Amended Stats 1974 ch 1321 § 1; Stats 1992 ch 1289 § 5 (AB 2743).

§476. EXEMPTIONS

Nothing in this division shall apply to the licensure or registration of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3, or pursuant to Division 9 (commencing with Section 23000) or pursuant to Chapter 5 (commencing with Section 19800) of Division 8.

Added Stats 1972 ch 903 § 1. Amended Stats 1983 ch 721 § 1.

§477. “BOARD”; “LICENSE”

As used in this division:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

Added Stats 1972 ch 903 § 1. Amended Stats 1974 ch 1321 § 2; Stats 1983 ch 95 § 1; Stats 1991 ch 654 § 5 (AB 1893).

§478. “APPLICATION”; “MATERIAL”

(a) As used in this division, "application" includes the original documents or writings filed and any other supporting documents or writings including supporting documents provided or filed contemporaneously, or later, in support of the application whether provided or filed by the applicant or by any other person in support of the application.

(b) As used in this division, "material" includes a statement or omission substantially related to the qualifications, functions, or duties of the business or profession.

Added Stats 1992 ch 1289 § 6 (AB 2743).

CHAPTER 2 DENIAL OF LICENSES

§480. GROUNDS FOR DENIAL; EFFECT OF OBTAINING CERTIFICATE OF REHABILITATION

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

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

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

(3)(A) 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.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially

related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, 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 under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code 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 under subdivision (a) of Section 482.

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

Added Stats 1974 ch 1321 § 4. Amended Stats 1976 ch 947 § 1; Stats 1979 ch 876 § 2; Stats 2008 ch 179 § 2 (SB 1498), effective January 1, 2009.

§481. CRIME AND JOB-FITNESS CRITERIA

Each board under the provisions of this code shall 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.

Added Stats 1974 ch 1321 § 6.

§482. REHABILITATION CRITERIA

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

Added Stats 1972 ch 903 § 1. Amended Stats 1974 ch 1321 § 7.

§484. ATTESTATION TO GOOD MORAL CHARACTER OF APPLICANT

No person applying for licensure under this code shall be required to submit to any licensing board any attestation by other persons to his good moral character.

Added Stats 1972 ch 903 § 1. Amended Stats 1974 ch 1321 § 9.

§485. PROCEDURE UPON DENIAL

Upon denial of an application for a license under this chapter or Section 496, the board shall do either of the following:

(a) File and serve a statement of issues in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Notify the applicant that the application is denied, stating (1) the reason for the denial, and (2) that the applicant has the right to a hearing under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code if written request for hearing is made within 60 days after service of the notice of denial. Unless written request for hearing is made within the 60-day period, the applicant's right to a hearing is deemed waived.

Service of the notice of denial may be made in the manner authorized for service of summons in civil actions, or by registered mail addressed to the applicant at the latest address filed by the applicant in writing with the board in his or her application or otherwise. Service by mail is complete on the date of mailing.

Added Stats 1972 ch 903 § 1. Amended Stats 1997 ch 758 § 2.3 (SB 1346).

§486. CONTENTS OF DECISION OR NOTICE

Where the board has denied an application for a license under this chapter or Section 496, it shall, in its decision, or in its notice under subdivision (b) of Section 485, inform the applicant of the following:

(a) The earliest date on which the applicant may reapply for a license which shall be one year from the effective date of the decision, or service of the notice under subdivision (b) of Section 485, unless the board prescribes an earlier date or a later date is prescribed by another statute.

(b) That all competent evidence of rehabilitation presented will be considered upon a reapplication.

Along with the decision, or the notice under subdivision (b) of Section 485, the board shall serve a copy of the criteria relating to rehabilitation formulated under Section 482.

Added Stats 1972 ch 903 § 1. Amended Stats 1974 ch 1321 § 9.5; Stats 1997 ch 758 § 2.4 (SB 1346).

§487. HEARING; TIME

If a hearing is requested by the applicant, the board shall conduct such hearing within 90 days from the date the hearing is requested unless the applicant shall request or agree in writing to a postponement or continuance of the hearing. Notwithstanding the above, the Office of Administrative Hearings may order, or on a showing of good cause, grant a request for, up to 45 additional days within which to conduct a hearing, except in cases involving alleged

examination or licensing fraud, in which cases the period may be up to 180 days. In no case shall more than two such orders be made or requests be granted.

Added Stats 1972 ch 903 § 1. Amended Stats 1974 ch 1321 § 10; Stats 1986 ch 220 § 1, effective June 30, 1986.

§488. HEARING REQUEST

Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the board may take any of the following actions:

(a) Grant the license effective upon completion of all licensing requirements by the applicant.

(b) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(c) Deny the license.

(d) Take other action in relation to denying or granting the license as the board in its discretion may deem proper.

Added Stats 2000 ch 568 § 2 (AB 2888).

§489. DENIAL OF APPLICATION WITHOUT A HEARING

Any agency in the department which is authorized by law to deny an application for a license upon the grounds specified in Section 480 or 496, may without a hearing deny an application upon any of those grounds, if within one year previously, and after proceedings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that agency has denied an application from the same applicant upon the same ground.

Added Stats 1955 ch 1151 § 1, as B & P C § 116. Amended Stats 1978 ch 1161 § 2. Renumbered by Stats 1989 ch 1104 § 1. Amended Stats 1997 ch 758 § 2.5 (SB 1346).

CHAPTER 3 SUSPENSION AND REVOCATION OF LICENSES

§490. GROUNDS FOR SUSPENSION OR REVOCATION; DISCIPLINE FOR SUBSTANTIALLY RELATED CRIMES; CONVICTION; LEGISLATIVE FINDINGS

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted 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.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.

Added Stats 1974 ch 1321 § 13. Amended Stats 1979 ch 876 § 3; Stats 1980 ch 548 § 1; Stats 1992 ch 1289 § 7 (AB 2743); Stats 2008 ch 33 § 2 (SB 797) (ch 33 prevails), ch 179 § 3 (SB 1498), effective June 23, 2008.

§490.5. SUSPENSION OF LICENSE FOR FAILURE TO COMPLY WITH CHILD SUPPORT ORDER

A board may suspend a license pursuant to Section 17520 of the Family Code if a licensee is not in compliance with a child support order or judgment.

Added Stats 1994 ch 906 § 1 (AB 923), operative January 1, 1996. Amended Stats 2010 ch 328 § 3 (SB 1330), effective January 1, 2011.

§491. PROCEDURE UPON SUSPENSION OR REVOCATION

Upon suspension or revocation of a license by a board on one or more of the grounds specified in Section 490, the board shall:

(a) Send a copy of the provisions of Section 11522 of the Government Code to the ex-licensee.

(b) Send a copy of the criteria relating to rehabilitation formulated under Section 482 to the ex-licensee.

Added Stats 1972 ch 903 § 1. Amended Stats 1974 ch 1321 § 14; Stats 1975 ch 678 § 1.

§492. EFFECT OF COMPLETION OF DRUG DIVERSION PROGRAM ON DISCIPLINARY ACTION OR DENIAL OF LICENSE

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

Added Stats 1987 ch 1183 § 1. Amended Stats 1994 ch 26 § 15 (AB 1807), effective March 30, 1994.

§493. EVIDENTIARY EFFECT OF RECORD OF CONVICTION OF CRIME SUBSTANTIALLY RELATED TO LICENSEE'S QUALIFICATIONS, FUNCTIONS, AND DUTIES

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

Added Stats 1961 ch 934 § 1, as B & P C § 117. Amended Stats 1978 ch 1161 § 3. Renumbered by Stats 1989 ch 1104 § 1.3.

§494. INTERIM SUSPENSION OR RESTRICTION ORDER

(a) A board or an administrative law judge sitting alone, as provided in subdivision (h), may, upon petition, issue an interim order suspending any licentiate or imposing license restrictions, including, but not limited to, mandatory biological fluid testing, supervision, or remedial training. The petition shall include affidavits that demonstrate, to the satisfaction of the board, both of the following:

(1) The licentiate has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the licensed activity.

(2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.

(b) No interim order provided for in this section shall be issued without notice to the licentiate unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

(c) Except as provided in subdivision (b), the licentiate shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the board in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the licentiate shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice. The licentiate shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the board to provide a hearing within 20 days following the issuance of the interim order without notice, unless the licentiate waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.

(d) At the hearing on the petition for an interim order, the licentiate may:

(1) Be represented by counsel.

(2) Have a record made of the proceedings, copies of which shall be available to the licentiate upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in Section 11523 of the Government Code.

(3) Present affidavits and other documentary evidence.

(4) Present oral argument.

(e) The board, or an administrative law judge sitting alone as provided in subdivision (h), shall issue a decision on the petition for interim order within five business days following submission of the matter.

The standard of proof required to obtain an interim order pursuant to this section shall be a preponderance of the evidence standard. If the interim order was previously issued without notice, the board shall determine whether the order shall remain in effect, be dissolved, or modified.

(f) The board shall file an accusation within 15 days of the issuance of an interim order. In the case of an interim order issued without notice, the time shall run from the date of the order issued after the noticed hearing. If the licentiate files a Notice of Defense, the hearing shall be held within 30 days of the agency's receipt of the Notice of Defense. A decision shall be rendered on the accusation no later than 30 days after submission of the matter. Failure to comply with any of the requirements in this subdivision shall dissolve the interim order by operation of law.

(g) Interim orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in and for the Counties of Sacramento, San Francisco, Los Angeles, or San Diego. The review of an interim order shall be limited to a determination of whether the board abused its discretion in the issuance of the interim order. Abuse of discretion is established if the respondent board has not proceeded in the manner required by law, or if the court determines that the interim order is not supported by substantial evidence in light of the whole record.

(h) The board may, in its sole discretion, delegate the hearing on any petition for an interim order to an administrative law judge in the Office of Administrative Hearings. If the board hears the noticed petition itself, an administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the board on matters of law. The board shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the petition has been delegated to an administrative law judge, he or she shall sit alone and exercise all of the powers of the board relating to the conduct of the hearing. A decision issued by an administrative law judge sitting alone shall be final when it is filed with the board. If the administrative law judge issues an interim order without notice, he or she shall preside at the noticed hearing, unless unavailable, in which case another administrative law judge may hear the matter. The decision of the administrative law judge sitting alone on the petition for an interim order is final, subject only to judicial review in accordance with subdivision (g).

(i) Failure to comply with an interim order issued pursuant to subdivision (a) or (b) shall constitute a separate cause for disciplinary action against any licentiate, and may be heard at, and as a part of, the noticed hearing provided for in subdivision (f). Allegations of noncompliance with the interim order may be filed at any time prior to the rendering of a decision on the accusation. Violation of the interim order is established upon proof that the licentiate was on notice of the interim order and its terms, and that the order was in effect at the time of the violation. The finding of a violation of an interim order made at the hearing on the accusation shall be reviewed as a part of any review of a final decision of the agency.

If the interim order issued by the agency provides for anything less than a complete suspension of the licentiate from his or her business or profession, and the licentiate violates the interim order prior to the hearing on the accusation provided for in subdivision (f), the agency may, upon notice to the licentiate and proof of violation, modify or expand the interim order.

(j) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section. A certified record of the conviction shall be conclusive evidence of the fact that the conviction occurred. A board may take action under this section notwithstanding the fact that an appeal of the conviction may be taken.

(k) The interim orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law.

(l) In the case of a board, a petition for an interim order may be filed by the executive officer. In the case of a bureau or program, a petition may be filed by the chief or program administrator, as the case may be.

(m) "Board," as used in this section, shall include any agency described in Section 22, and any allied health agency within the jurisdiction of the Medical Board of California. Board shall also include the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. The provisions of this section shall not be applicable to the Medical Board of California, the Board of Podiatric Medicine, or the State Athletic Commission.

Added Stats 1993 ch 840 § 1 (SB 842). Amended Stats 1994 ch 1275 § 4 (SB 2101).

CHAPTER 4 PUBLIC REPROVALS

§495. PUBLIC REPROVAL OF LICENTIATE OR CERTIFICATE HOLDER FOR ACT CONSTITUTING GROUNDS FOR SUSPENSION OR REVOCATION OF LICENSE OR CERTIFICATE; PROCEEDINGS

Notwithstanding any other provision of law, any entity authorized to issue a license or certificate pursuant to this code may publicly reprove a licentiate or certificate holder thereof, for any act that would constitute grounds to suspend or revoke a license or certificate. Any proceedings for public reproval, public reproval and suspension, or public reproval and revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, or, in the case of a licensee or certificate holder under the jurisdiction of the State Department of Health Services, in accordance with Section 100171 of the Health and Safety Code.

Added Stats 1977 ch 886 § 1. Amended Stats 1997 ch 220 § 2 (SB 68), effective August 4, 1997.

CHAPTER 5 EXAMINATION SECURITY

§496. GROUNDS FOR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

A board may deny, suspend, revoke, or otherwise restrict a license on the ground that an applicant or licensee has violated Section 123 pertaining to subversion of licensing examinations.

Added Stats 1989 ch 1022 § 3.

§498. FRAUD, DECEIT OR MISREPRESENTATION AS GROUNDS FOR ACTION AGAINST LICENSE

A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact.

Added Stats 1992 ch 1289 § 8 (AB 2743).

§499. ACTION AGAINST LICENSE BASED ON LICENTIATE'S ACTIONS REGARDING APPLICATION OF ANOTHER

A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee, in support of another person's application for license, knowingly made a false statement of a material fact or knowingly omitted to state a material fact to the board regarding the application.

Added Stats 1992 ch 1289 § 9 (AB 2743).

DIVISION 2 HEALING ARTS

CHAPTER 1 GENERAL PROVISIONS

ARTICLE 1.5 ADVOCACY FOR APPROPRIATE HEALTH CARE

§510. PROTECTION AGAINST RETALIATION FOR PHYSICIANS WHO "ADVOCATE FOR MEDICALLY APPROPRIATE HEALTH CARE"

(a) The purpose of this section is to provide protection against retaliation for health care practitioners who advocate for appropriate health care for their patients pursuant to Wickline v. State of California 192 Cal. App. 3d 1630.

(b) It is the public policy of the State of California that a health care practitioner be encouraged to advocate for appropriate health care for his or her patients. For purposes of this section, "to advocate for appropriate health care" means to appeal a payer's decision to deny payment for a service pursuant to the reasonable grievance or appeal procedure established by a medical group, independent practice association, preferred provider organization, foundation, hospital medical staff and governing body, or payer, or to protest a decision, policy, or practice that the health care practitioner, consistent with that degree of learning and skill ordinarily possessed by reputable health care practitioners with the same license or certification and practicing according to the applicable legal standard of care, reasonably believes impairs the health care practitioner's ability to provide appropriate health care to his or her patients.

(c) The application and rendering by any individual, partnership, corporation, or other organization of a decision to terminate an employment or other contractual relationship with or otherwise penalize a health care practitioner principally for advocating for appropriate health care consistent with that degree of learning and skill ordinarily possessed by reputable health care practitioners with the same license or certification and practicing according to the applicable legal standard of care violates the public policy of this state.

(d) This section shall not be construed to prohibit a payer from making a determination not to pay for a particular medical treatment or service, or the services of a type of health care practitioner, or to prohibit a medical group, independent practice association, preferred provider organization, foundation, hospital medical staff, hospital governing body acting pursuant to Section 809.05, or payer from enforcing reasonable peer review or utilization review protocols or determining whether a health care practitioner has complied with those protocols.

(e)(1) Except as provided in paragraph (2), appropriate health care in a hospital licensed pursuant to Section 1250 of the Health and Safety Code shall be defined by the appropriate hospital committee and approved by the hospital medical staff and the governing body, consistent with that degree of learning and skill ordinarily possessed by reputable health care practitioners with the same license or certification and practicing according to the applicable legal standard of care.

(2) To the extent the issue is under the jurisdiction of the medical staff and its committees, appropriate health care in a hospital licensed pursuant to Section 1250 of the Health and Safety Code shall be defined by the hospital medical staff and approved by the governing body, consistent with that degree of learning and skill ordinarily possessed by reputable health care practitioners with the same license or certification and practicing according to the applicable legal standard of care.

(f) Nothing in this section shall be construed to prohibit the governing body of a hospital from taking disciplinary actions against a health care practitioner as authorized by Sections 809.05, 809.4, and 809.5.

(g) Nothing in this section shall be construed to prohibit the appropriate licensing authority from taking disciplinary actions against a health care practitioner.

(h) For purposes of this section, "health care practitioner" means a person who is described in subdivision (f) of Section 900 and who is either (1) a licentiate as defined in Section 805, or (2) a party to a contract with a payer whose decision, policy, or practice is subject to the advocacy described in subdivision (b), or (3) an individual designated in a contract with a payer whose decision, policy, or practice is subject to the advocacy described in subdivision (b), where the individual is granted the right to appeal denials of payment or authorization for treatment under the contract.

(i) Nothing in this section shall be construed to revise or expand the scope of practice of any health care practitioner, or to revise or expand the types of health care practitioners who are authorized to obtain medical staff privileges or to submit claims for reimbursement to payers.

(j) The protections afforded health care practitioners by this section shall be in addition to the protections available under any other law of this state.

Added Stats 1994 ch 1119 § 1 (AB 3390).

§511. PROSCRIPTION ON PAYMENT TO HEALTH CARE PRACTITIONER TO DENY, LIMIT, OR DELAY SERVICES

(a) No subcontract between a physician and surgeon, physician and surgeon group, or other licensed health care practitioner who contracts with a health care service plan or health insurance carrier, and another physician and surgeon, physician and surgeon group, or licensed health care practitioner, shall contain any incentive plan that includes a specific payment made, in any type or form, to a physician and surgeon, physician and surgeon group, or other licensed health care practitioner as an inducement to deny, reduce, limit, or delay specific, medically necessary, and appropriate services covered under the contract with the health care service plan or health insurance carrier and provided with respect to a specific enrollee or groups of enrollees with similar medical conditions.

(b) Nothing in this section shall be construed to prohibit subcontracts that contain incentive plans that involve general payments such as capitation payments or shared risk agreements that are not tied to specific medical decisions involving specific enrollees or groups of enrollees with similar medical conditions.

Added Stats 1996 ch 1014 § 1 (AB 2649).

§511.1. DISCLOSURE RELATING TO HEALTH CARE PROVIDER'S PARTICIPATION IN NETWORK; DISCLOSURES BY CONTRACTING AGENT CONVEYING ITS LIST OF CONTRACTED HEALTH CARE PROVIDERS AND REIMBURSEMENT RATES; ELECTION BY PROVIDER TO BE EXCLUDED FROM LIST; DEMONSTRATION BY PAYOR OF ENTITLEMENT TO PAY CONTRACTED RATE

(a) In order to prevent the improper selling, leasing, or transferring of a health care provider's contract, it is the intent of the Legislature that every arrangement that results in a payor paying a health care provider a reduced rate for health care services based on the health care provider's participation in a network or panel shall be disclosed to the provider in advance and that the payor shall actively encourage beneficiaries to use the network, unless the health care provider agrees to provide discounts without that active encouragement.

(b) Beginning July 1, 2000, every contracting agent that sells, leases, assigns, transfers, or conveys its list of contracted health care providers and their contracted reimbursement rates to a payor, as defined in subparagraph (A) of paragraph (3) of subdivision (d), or another contracting agent shall, upon entering or renewing a provider contract, do all of the following:

(1) Disclose whether the list of contracted providers may be sold, leased, transferred, or conveyed to other payors or other contracting agents, and specify whether those payors or contracting agents include workers' compensation insurers or automobile insurers.

(2) Disclose what specific practices, if any, payors utilize to actively encourage a payor's beneficiaries to use the list of contracted providers when obtaining medical care that entitles a payor to claim a contracted rate. For purposes of this paragraph, a payor is deemed to have actively encouraged its beneficiaries to use the list of contracted providers if one of the following occurs:

(A) The payor's contract with subscribers or insureds offers beneficiaries direct financial incentives to use the list of contracted providers when obtaining medical care. "Financial incentives" means reduced copayments, reduced deductibles, premium discounts directly attributable to the use of a provider panel, or financial penalties directly attributable to the nonuse of a provider panel.

(B) The payor provides information directly to its beneficiaries, who are parties to the contract, or, in the case of workers' compensation insurance, the employer, advising them of the existence of the list of contracted providers through the use of a variety of advertising or marketing approaches that supply the names, addresses, and telephone numbers of contracted providers to beneficiaries in advance of their selection of a health care provider, which approaches may include, but are not limited to, the use of provider directories, or the use of toll-free telephone numbers or internet web site addresses supplied directly to every beneficiary. However, internet web site addresses alone shall not be deemed to satisfy the requirements of this subparagraph. Nothing in this subparagraph shall prevent contracting agents or payors from providing only listings of providers located within a reasonable geographic range of a beneficiary.

(3) Disclose whether payors to which the list of contracted providers may be sold, leased, transferred, or conveyed may be permitted to pay a provider's contracted rate without actively encouraging the payors' beneficiaries to use the list of contracted providers when obtaining medical care. Nothing in this subdivision shall be construed to require a payor to actively encourage the payor's beneficiaries to use the list of contracted providers when obtaining medical care in the case of an emergency.

(4) Disclose, upon the initial signing of a contract, and within 30 calendar days of receipt of a written request from a provider or provider panel, a payor summary of all payors currently eligible to claim a provider's contracted rate due to the provider's and payor's respective written agreements with any contracting agent.

(5) Allow providers, upon the initial signing, renewal, or amendment of a provider contract, to decline to be included in any list of contracted providers that is sold, leased, transferred, or conveyed to payors that do not actively encourage the payors' beneficiaries to use the list of contracted providers when obtaining medical care as described in paragraph (2). Each provider's election under this paragraph shall be binding on the contracting agent with which the provider has the contract and on any other contracting agent that buys, leases, or otherwise obtains the list of contracted providers. A provider shall not be excluded from any list of contracted providers that is sold, leased, transferred, or conveyed to payors that actively encourage the payors' beneficiaries to use the list of contracted providers when obtaining medical care, based upon the provider's refusal to be included on any list of contracted providers that is sold, leased, transferred, or conveyed to payors that do not actively encourage the payors' beneficiaries to use the list of contracted providers when obtaining medical care.

(6) Nothing in this subdivision shall be construed to impose requirements or regulations upon payors, as defined in subparagraph (A) of paragraph (3) of subdivision (d).

(c) Beginning July 1, 2000, a payor, as defined in subparagraph (B) of paragraph (3) of subdivision (d), shall do all of the following:

(1) Provide an explanation of benefits or explanation of review that identifies the name of the plan or network that has a written agreement signed by the provider whereby the payor is entitled, directly or indirectly, to pay a preferred rate for the services rendered.

(2) Demonstrate that it is entitled to pay a contracted rate within 30 business days of receipt of a written request from a provider who has received a claim payment from the payor. The failure of a payor to make the demonstration within 30 business days shall render the payor responsible for the amount that the payor would have been required to pay pursuant to the contract between the payor and the beneficiary, which amount shall be due and payable within 10 business days of receipt of written notice from the provider, and shall bar the payor from taking any future discounts from that provider without the provider's express written consent until the payor can demonstrate to the provider that it is entitled to pay a contracted rate as provided in this paragraph. A payor shall be deemed to have demonstrated that it is entitled to pay a contracted rate if it complies with either of the following:

(A) Discloses the name of the network that has a written agreement with the provider whereby the provider agrees to accept discounted rates, and describes the specific practices the payor utilizes to comply with paragraph (2) of subdivision (b).

(B) Identifies the provider's written agreement with a contracting agent whereby the provider agrees to be included on lists of contracted providers sold, leased, transferred, or conveyed to payors that do not actively encourage beneficiaries to use the list of contracted providers pursuant to paragraph (5) of subdivision (b).

(d) For the purposes of this section, the following terms have the following meanings:

(1) "Beneficiary" means:

(A) For workers' compensation insurance, an employee seeking health care services for a work-related injury.

(B) For automobile insurance, those persons covered under the medical payments portion of the insurance contract.

(C) For group or individual health services covered through a health care service plan contract, including a specialized health care service plan contract, or a policy of disability insurance that covers hospital, medical, or surgical benefits, a subscriber, an enrollee, a policyholder, or an insured.

(2) "Contracting agent" means a third-party administrator or trust not licensed under the Health and Safety Code, the Insurance Code, or the Labor Code, a self-insured employer, a preferred provider organization, or an independent practice association, while engaged, for monetary or other consideration, in the act of selling, leasing, transferring, assigning, or conveying, a provider or provider panel to provide health care services to beneficiaries. For purposes of this section, a contracting agent shall not include a health care service plan, including a specialized health care service plan, an insurer licensed under the Insurance Code to provide disability insurance that covers hospital, medical, or surgical benefits, automobile insurance, or workers' compensation insurance, or a self-insured employer.

(3) (A) For purposes of subdivision (b), "payor" means a health care service plan, including a specialized health care service plan, an insurer licensed under the Insurance Code to provide disability insurance that covers hospital, medical, or surgical benefits, automobile insurance, workers' compensation insurance, or a self-insured employer that is responsible to pay for health care services provided to beneficiaries.

(B) For purposes of subdivision (c), "payor" means only those entities that provide coverage for hospital, medical, or surgical benefits that are not regulated under the Health and Safety Code, the Insurance Code, or the Labor Code.

(4) "Payor summary" means a written summary that includes the payor's name and the type of plan, including, but not limited to, a group health plan, an automobile insurance plan, and a workers' compensation insurance plan.

(5) "Provider" means any of the following:

(A) Any person licensed or certified pursuant to this division.

(B) Any person licensed pursuant to the Chiropractic Initiative Act or the Osteopathic Initiative Act.

(C) Any person licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code.

(D) A clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(E) Any entity exempt from licensure pursuant to Section 1206 of the Health and Safety Code.

(e) This section shall become operative on July 1, 2000.

Added Stats 1999 ch 545 § 1 (SB 559), operative July 1, 2000. Amended Stats 2000 ch 1069 § 1 (SB 1732).

§511.3. RIGHTS AND OBLIGATIONS OF PROVIDER UPON SALE, LEASE OR TRANSFER OF HEALTH PROVIDERS CONTRACT TO PAYOR

(a) When a contracting agent sells, leases, or transfers a health provider's contract to a payor, the rights and obligations of the provider shall be governed by the underlying contract between the health care provider and the contracting agent.

(b) For purposes of this section, the following terms shall have the following meanings:

(1) "Contracting agent" has the meaning set forth in paragraph (2) of subdivision (d) of Section 511.1.

(2) "Payor" has the meaning set forth in paragraph (3) of subdivision (d) of Section 511.1.

Added Stats 2003 ch 203 § 1 (AB 175). Amended Stats 2004 ch 183 § 1 (AB 3082).

§511.4. INFORMATION PROVIDED IN ELECTRONIC FORMAT

(a) A contracting agent, as defined in paragraph (2) of subdivision (d) of Section 511.1, shall beginning July 1, 2006, prior to contracting, annually thereafter on or before the contract anniversary date, and, in addition, upon the contracted provider's written request, disclose to contracting providers all of the following information in an electronic format:

(1) The amount of payment for each service to be provided under the contract, including any fee schedules or other factors or units used in determining the fees for each service. To the extent that reimbursement is made pursuant to a specified fee schedule, the contract shall incorporate that fee schedule by reference, including the year of the schedule. For any proprietary fee schedule, the contract shall include sufficient detail that payment amounts related to that fee schedule can be accurately predicted.

(2) The detailed payment policies and rules and nonstandard coding methodologies used to adjudicate claims, which shall, unless otherwise prohibited by state law, do all of the following:

(A) When available, be consistent with Current Procedural Terminology (CPT), and standards accepted by nationally recognized medical societies and organizations, federal regulatory bodies, and major credentialing organizations.

(B) Clearly and accurately state what is covered by any global payment provisions for both professional and institutional services, any global payment provisions for all services necessary as part of a course of treatment in an institutional setting, and any other global arrangements, such as per diem hospital payments.

(C) At a minimum, clearly and accurately state the policies regarding all of the following:

(i) Consolidation of multiple services or charges and payment adjustments due to coding changes.

(ii) Reimbursement for multiple procedures.

(iii) Reimbursement for assistant surgeons.

(iv) Reimbursement for the administration of immunizations and injectable medications.

(v) Recognition of CPT modifiers.

(b) The information disclosures required by this section shall be in sufficient detail and in an understandable format that does not disclose proprietary trade secret information or violate copyright law or patented processes, so that a reasonable person with sufficient training, experience, and competence in claims processing can determine the payment to be made according to the terms of the contract.

(c) A contracting agent may disclose the fee schedules mandated by this section through the use of a Web site, so long as it provides written notice to the contracted provider at least 45 days prior to implementing a Web site transmission format or posting any changes to the information on the Web site.

Added Stats 2005 ch 441 § 2 (SB 634), effective January 1, 2006.

§512. CONTRACT TO RESTRICT HEALTH CARE PROVIDER'S ADVERTISING

(a) Except as provided in subdivisions (b) and (c), no contract that is issued, amended, renewed, or delivered on or after January 1, 1999, between any person or entity, including, but not limited to, any group of physicians and surgeons, any medical group, any independent practice association (IPA), or any preferred provider organization (PPO), and a health

care provider shall contain provisions that prohibit, restrict, or limit the health care provider from advertising.

(b) Nothing in this section shall be construed to prohibit the establishment of reasonable guidelines in connection with the activities regulated pursuant to this division, including those to prevent advertising that is, in whole or in part, untrue, misleading, deceptive, or otherwise inconsistent with this division or the rules and regulations promulgated thereunder. For advertisements mentioning a provider's participation in a plan or product line of any person or entity, nothing in this section shall be construed to prohibit requiring each advertisement to contain a disclaimer to the effect that the provider's services may be covered for some, but not all, plans or product lines of that person or entity, or that the person or entity may cover some, but not all, provider services.

(c) Nothing in this section is intended to prohibit provisions or agreements intended to protect service marks, trademarks, trade secrets, or other confidential information or property. If a health care provider participates on a provider panel or network as a result of a direct contractual arrangement with a person or entity, including, but not limited to, any group of physicians and surgeons, any medical group, any independent practice association, or any preferred provider organization, that, in turn, has entered into a direct contractual arrangement with another person or entity, pursuant to which enrollees, subscribers, insureds, and other beneficiaries of that other person or entity may receive covered services from the health care provider, then nothing in this section is intended to prohibit reasonable provisions or agreements in the direct contractual arrangement between the health care provider and the person or entity that protect the name or trade name of the other person or entity or require that the health care provider obtain the consent of the person or entity prior to the use of the name or trade name of the person or entity in any advertising by the health care provider.

(d) Nothing in this section shall be construed to impair or impede the authority of any state department to regulate advertising, disclosure, or solicitation pursuant to this division.

Added Stats 1998 ch 523 § 2 (SB 1951).

ARTICLE 2 EYEGLASSES

§525. WHEN SHATTER-RESISTANT MATERIALS REQUIRED

No dispensing optician, optometrist, or physician and surgeon shall dispense, prescribe, or sell any eyeglasses for use of a person whose sight is limited to one eye, a person who is a member of the California Highway Patrol or of a county sheriff's office, a city policeman, a person who is a fireman employed by the fire department of a city, county, or fire protection district and who normally wears such glasses for on-duty employment, or a person who is under 18 years of age, unless such eyeglasses are made with case-hardened lenses, with lenses made of laminated glass, with lenses made of resin material, or with lenses made of any other material resistant to shattering and which shall not be installed in frames manufactured of flammable material.

Added Stats 1963 ch 1380 § 1. Amended Stats 1969 ch 1337 § 1.

§526. SCIENTER AS ELEMENT OF OFFENSE

A dispensing optician, optometrist, or physician and surgeon shall not be subject to disciplinary action under this article unless he is informed by the person obtaining the eyeglasses, or of his own personal knowledge knows, that the eyeglasses are for a person whose sight is limited to one eye, a person who is a member of the California Highway Patrol or of a county sheriff's office, a city policeman, or a fireman employed by the fire department of a city, county, or fire protection district, or a person who is under 18 years of age.

A dispensing optician, optometrist or physician and surgeon is not required under this article to make any independent investigation of the occupation of the person for whom eyeglasses are intended or as to whether or not the sight of such person is limited to one eye.

Added Stats 1963 ch 1380 § 1. Amended Stats 1969 ch 1337 § 2.

§527. DISCIPLINARY ACTION

Any dispensing optician, optometrist, or physician and surgeon who violates this article is subject to disciplinary action by the board which issues his certificate to engage in practice.

Added Stats 1963 ch 1380 § 1.

ARTICLE 4 FRAUDS OF MEDICAL RECORDS

§580. SALE OR BARTER OF DEGREE, CERTIFICATE, OR TRANSCRIPT

No person, company, or association shall sell or barter or offer to sell or barter any medical degree, podiatric degree, or osteopathic degree, or chiropractic degree, or any other degree which is required for licensure, certification, or registration under this division, or any degree, certificate, transcript, or any other writing, made or purporting to be made pursuant to any laws regulating the licensing and registration or issuing of a certificate to physicians and surgeons, podiatrists, osteopathic physicians, chiropractors, persons lawfully engaged in any other system or mode of treating the sick or afflicted, or to any other person licensed, certified, or registered under this division.

Enacted Stats 1937. Amended Stats 1939 ch 269 § 1; Stats 1961 ch 215 § 1; Stats 1986 ch 220 § 2, effective June 30, 1986.

§581. PURCHASE OR FRAUDULENT ALTERATION OF DIPLOMA OR OTHER WRITINGS

No person, company, or association shall purchase or procure by barter or by any unlawful means or method, or have in possession any diploma, certificate, transcript, or any other writing with intent that it shall be used as evidence of the holder's qualifications to practice as a physician and surgeon, osteopathic physician, podiatrist, any other system or mode of treating the sick or afflicted, as provided in the Medical Practice Act, Chapter 5 (commencing with Section 2000), or to practice as any other licentiate under this division or in any fraud of the law regulating this practice or, shall with fraudulent intent, alter in a material regard, any such diploma, certificate, transcript, or any other writing.

Enacted Stats 1937. Amended Stats 1937 ch 446; Stats 1961 ch 215 § 1.5; Stats 1984 ch 144 § 5; Stats 1986 ch 220 § 3, effective June 30, 1986.

§582. USE OF ILLEGALLY OBTAINED, ALTERED, OR COUNTERFEIT DIPLOMA, CERTIFICATE, OR TRANSCRIPT

No person, company, or association shall use or attempt to use any diploma, certificate, transcript, or any other writing which has been purchased, fraudulently issued, illegally obtained, counterfeited, or materially altered, either as a certificate or as to character or color of certificate, to practice as a physician and surgeon, podiatrist, osteopathic physician, or a chiropractor, or to practice any other system or mode of treating the sick or afflicted, as provided in the Medical Practice Act, Chapter 5 (commencing with Section 2000) or to practice as any other licentiate under this division.

Enacted Stats 1937. Amended Stats 1961 ch 215 § 2; Stats 1984 ch 144 § 6; Stats 1986 ch 220 § 4, effective June 30, 1986.

§583. FALSE STATEMENTS IN DOCUMENTS OR WRITINGS

No person shall in any document or writing required of an applicant for examination, license, certificate, or registration under this division, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, willfully make a false statement in a material regard.

Enacted Stats 1937. Amended Stats 1984 ch 144 § 7; Stats 1986 ch 220 § 5, effective June 30, 1986.

§584. VIOLATION OF EXAMINATION SECURITY; IMPERSONATION

No person shall violate the security of any examination, as defined in subdivision (a) of Section 123, or impersonate, attempt to impersonate, or solicit the impersonation of, another in any examination for a license, certificate, or registration to practice as provided in this division, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or under any other law providing for the regulation of any other system or method of treating the sick or afflicted in this state.

Enacted Stats 1937. Amended Stats 1984 ch 144 § 8; Stats 1986 ch 220 § 6, effective June 30, 1986; Stats 1989 ch 1022 § 5.

§585. PUNISHMENT

Any person, company, or association violating the provisions of this article is guilty of a felony and upon conviction thereof shall be punishable by a fine of not less than two thousand dollars ($2,000) nor more than six
thousand dollars ($6,000), or by imprisonment in the state prison. The enforcement remedies provided under this article are not exclusive and shall not preclude the use of any other criminal, civil, or administrative remedy.

Enacted Stats 1937. Amended Stats 1976 ch 1139 § 1, operative July 1, 1977; Stats 1983 ch 1092 § 2, effective September 27, 1983, operative January 1, 1984; Stats 1986 ch 220 § 7, effective June 30, 1986.

ARTICLE 6 UNEARNED REBATES, REFUNDS, AND DISCOUNTS

§650. REBATES FOR PATIENT REFERRALS

(a) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or

acceptance by any person licensed under this division or the Chiropractic Initiative Act of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest, or coownership in or with any person to whom these patients, clients, or customers are referred is unlawful.

(b) The payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual arrangement shall not be unlawful if the consideration is commensurate with the value of the services furnished or with the fair rental value of any premises or equipment leased or provided by the recipient to the payer.

(c) The offer, delivery, receipt, or acceptance of any consideration between a federally qualified health center, as defined in Section 1396d(l)(2)(B) of Title 42 of the United States Code, and any individual or entity providing goods, items, services, donations, loans, or a combination thereof to the health center entity pursuant to a contract, lease, grant, loan, or other agreement, if that agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center, shall be permitted only to the extent sanctioned or permitted by federal law.

(d) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2 of this code, it shall not be unlawful for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic (including entities exempt from licensure pursuant to Section 1206 of the Health and Safety Code), or health care facility solely because the licensee has a proprietary interest or coownership in the laboratory, pharmacy, clinic, or health care facility, provided, however, that the licensee's return on investment for that proprietary interest or coownership shall be based upon the amount of the capital investment or proportional ownership of the licensee which ownership interest is not based on the number or value of any patients referred. Any referral excepted under this section shall be unlawful if the prosecutor proves that there was no valid medical need for the referral.

(e) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2 of this code, it shall not be unlawful to provide nonmonetary remuneration, in the form of hardware, software, or information technology and training services, as described in subsections (x) and (y) of Section 1001.952 of Title 42 of the Code of Federal Regulations, as amended October 4, 2007, as published in the Federal Register (72 Fed. Reg. 56632 and 56644), and subsequently amended versions.

(f) "Health care facility" means a general acute care hospital, acute psychiatric hospital, skilled nursing facility, intermediate care facility, and any other health facility licensed by the State Department of Public Health under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(g) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in a county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding fifty thousand dollars ($50,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison or by imprisonment in the state prison and a fine of fifty thousand dollars ($50,000).

Added Stats 1949 ch 899 § 1. Amended Stats 1971 ch 1568 § 1; Stats 1973 ch 142 § 5, effective June 30, 1973, operative July 1, 1973, ch 924 § 1, operative July 1, 1974; Stats 1975 ch 303 § 1; Stats 1977 ch 1252 § 4, operative July 1, 1978; Stats 1981 ch 610 § 1; Stats 1990 ch 1532 § 1 (SB 2365). Amended Stats 2000 ch 843 § 1 (AB 2594); Stats 2001 ch 728 § 1.4 (SB 724); Stats 2006 ch 698 § 1 (AB 225), ch 772 § 1.5 (AB 2282), effective January 1, 2007; Stats 2007 ch 130 § 1 (AB 299), effective January 1, 2008, ch 483 § 1 (SB 1039), effective January 1, 2008 (ch 483 prevails); Stats 2008 ch 179 § 4 (SB 1498) effective January 1, 2009, ch 290 § 1 (AB 55), effective September 25, 2008 (ch 290 prevails); Stats 2009 ch 140 § 2 (AB 1164), effective January 1, 2010.

§650.01. UNLAWFUL REFERRALS; DEFINITIONS

(a) Notwithstanding Section 650, or any other provision of law, it is unlawful for a licensee to refer a person for laboratory, diagnostic nuclear medicine, radiation oncology, physical therapy, physical rehabilitation,
psychometric testing, home infusion therapy, or diagnostic imaging goods or services if the licensee or his or her immediate family has a financial interest with the person or in the entity that receives the referral.

(b) For purposes of this section and Section 650.02, the following shall apply:

(1) "Diagnostic imaging" includes, but is not limited to, all X-ray, computed axial tomography, magnetic resonance imaging nuclear medicine, positron emission tomography, mammography, and ultrasound goods and services.

(2) A "financial interest" includes, but is not limited to, any type of ownership interest, debt, loan, lease, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or other form of direct or indirect payment, whether in money or otherwise, between a licensee and a person or entity to whom the licensee refers a person for a good or service specified in subdivision (a). A financial interest also exists if there is an indirect financial relationship

between a licensee and the referral recipient including, but not limited to, an arrangement whereby a licensee has an ownership interest in an entity that leases property to the referral recipient. Any financial interest transferred by a licensee to any person or entity or otherwise established in any person or entity for the purpose of avoiding the prohibition of this section shall be deemed a financial interest of the licensee. For purposes of this paragraph, "direct or indirect payment" shall not include a royalty or consulting fee received by a physician and surgeon who has completed a recognized residency training program in orthopedics from a manufacturer or distributor as a result of his or her research and development of medical devices and techniques for that manufacturer or distributor. For purposes of this paragraph, "consulting fees" means those fees paid by the manufacturer or distributor to a physician and surgeon who has completed a recognized residency training program in orthopedics only for his or her ongoing services in making refinements to his or her medical devices or techniques marketed or distributed by the manufacturer or distributor, if the manufacturer or distributor does not own or control the facility to which the physician is referring the patient. A "financial interest" shall not include the receipt of capitation payments or other fixed amounts that are prepaid in exchange for a promise of a licensee to provide specified health care services to specified beneficiaries. A "financial interest" shall not include the receipt of remuneration by a medical director of a hospice, as defined in Section 1746 of the Health and Safety Code, for specified services if the arrangement is set out in writing, and specifies all services to be provided by the medical director, the term of the arrangement is for at least one year, and the compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value, and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between parties.

(3) For the purposes of this section, "immediate family" includes the spouse and children of the licensee, the parents of the licensee, and the spouses of the children of the licensee.

(4) "Licensee" means a physician as defined in Section 3209.3 of the Labor Code.

(5) "Licensee's office" means either of the following:

(A) An office of a licensee in solo practice.

(B) An office in which services or goods are personally provided by the licensee or by employees in that office, or personally by independent contractors in that office, in accordance with other provisions of law. Employees and independent contractors shall be licensed or certified when licensure or certification is required by law.

(6) "Office of a group practice" means an office or offices in which two or more licensees are legally organized as a partnership, professional corporation, or not-for-profit corporation, licensed pursuant to subdivision (a) of Section 1204 of the Health and Safety Code, for which all of the following apply:

(A) Each licensee who is a member of the group provides substantially the full range of services that the licensee routinely provides, including medical care, consultation, diagnosis, or treatment through the joint use of shared office space, facilities, equipment, and personnel.

(B) Substantially all of the services of the licensees who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group, except in the case of a multispecialty clinic, as defined in subdivision (l) of Section 1206 of the Health and Safety Code, physician services are billed in the name of the multispecialty clinic and amounts so received are treated as receipts of the multispecialty clinic.

(C) The overhead expenses of, and the income from, the practice are distributed in accordance with methods previously determined by members of the group.

(c) It is unlawful for a licensee to enter into an arrangement or scheme, such as a cross-referral arrangement, that the licensee knows, or should know, has a principal purpose of ensuring referrals by the licensee to a particular entity that, if the licensee directly made referrals to that entity, would be in violation of this section.

(d) No claim for payment shall be presented by an entity to any individual, third party payer, or other entity for a good or service furnished pursuant to a referral prohibited under this section.

(e) No insurer, self-insurer, or other payer shall pay a charge or lien for any good or service resulting from a referral in violation of this section.

(f) A licensee who refers a person to, or seeks consultation from, an organization in which the licensee has a financial interest, other than as prohibited by subdivision (a), shall disclose the financial interest to the patient, or the parent or legal guardian of the patient, in writing, at the time of the referral or request for consultation.

(1) If a referral, billing, or other solicitation is between one or more licensees who contract with a multispecialty clinic pursuant to subdivision (l) of Section 1206 of the Health and Safety Code or who conduct their practice as members of the same professional corporation or partnership, and the services are rendered on the same physical premises, or under the same professional corporation or partnership name, the requirements of this subdivision

may be met by posting a conspicuous disclosure statement at the registration area or by providing a patient with a written disclosure statement.

(2) If a licensee is under contract with the Department of Corrections or the California Youth Authority, and the patient is an inmate or parolee of either respective department, the requirements of this subdivision shall be satisfied by disclosing financial interests to either the Department of Corrections or the California Youth Authority.

(g) A violation of subdivision (a) shall be a misdemeanor. The Medical Board of California shall review the facts and circumstances of any conviction pursuant to subdivision (a) and take appropriate disciplinary action if the licensee has committed unprofessional conduct. Violations of this section may also be subject to civil penalties of up to five thousand dollars ($5,000) for each offense, which may be enforced by the Insurance Commissioner, Attorney General, or a district attorney. A violation of subdivision (c), (d), or (e) is a public offense and is punishable upon conviction by a fine not exceeding fifteen thousand dollars ($15,000) for each violation and appropriate disciplinary action, including revocation of professional licensure, by the Medical Board of California or other appropriate governmental agency.

(h) This section shall not apply to referrals for services that are described in and covered by Sections 139.3 and 139.31 of the Labor Code.

(i) This section shall become operative on January 1, 1995.

Added Stats 1993 ch 1237 § 2 (AB 919). Amended Stats 1995 ch 221 § 1 (AB 1864), ch 749 § 1 (AB 1177), effective October 10, 1995; Stats 1996 ch 817 § 1 (AB 2443).

§650.02. EXCEPTIONS TO REFERRAL PROHIBITION

The prohibition of Section 650.01 shall not apply to or restrict any of the following:

(a) A licensee may refer a patient for a good or service otherwise prohibited by subdivision (a) of Section 650.01 if the licensee's regular practice is located where there is no alternative provider of the service within either 25 miles or 40 minutes traveling time, via the shortest route on a paved road. If an alternative provider commences furnishing the good or service for which a patient was referred pursuant to this subdivision, the licensee shall cease referrals under this subdivision within six months of the time at which the licensee knew or should have known that the alternative provider is furnishing the good or service. A licensee who refers to or seeks consultation from an organization in which the licensee has a financial interest under this subdivision shall disclose this interest to the patient or the patient's parents or legal guardian in writing at the time of referral.

(b) A licensee, when the licensee or his or her immediate family has one or more of the following arrangements with another licensee, a person, or an entity, is not prohibited from referring a patient to the licensee, person, or entity because of the arrangement:

(1) A loan between a licensee and the recipient of the referral, if the loan has commercially reasonable terms, bears interest at the prime rate or a higher rate that does not constitute usury, is adequately secured, and the loan terms are not affected by either party's referral of any person or the volume of services provided by either party.

(2) A lease of space or equipment between a licensee and the recipient of the referral, if the lease is written, has commercially reasonable terms, has a fixed periodic rent payment, has a term of one year or more, and the lease payments are not affected by either party's referral of any person or the volume of services provided by either party.

(3) Ownership of corporate investment securities, including shares, bonds, or other debt instruments that may be purchased on terms generally available to the public and that are traded on a licensed securities exchange or NASDAQ, do not base profit distributions or other transfers of value on the licensee's referral of persons to the corporation, do not have a separate class or accounting for any persons or for any licensees who may refer persons to the corporation, and are in a corporation that had, at the end of the corporation's most recent fiscal year, or on average during the previous three fiscal years, stockholder equity exceeding seventy-five million dollars ($75,000,000).

(4) Ownership of shares in a regulated investment company as defined in Section 851(a) of the federal Internal Revenue Code, if the company had, at the end of the company's most recent fiscal year, or on average during the previous three fiscal years, total assets exceeding seventy-five million dollars ($75,000,000).

(5) A one-time sale or transfer of a practice or property or other financial interest between a licensee and the recipient of the referral if the sale or transfer is for commercially reasonable terms and the consideration is not affected by either party's referral of any person or the volume of services provided by either party.

(6) A personal services arrangement between a licensee or an immediate family member of the licensee and the recipient of the referral if the arrangement meets all of the following requirements:

(A) It is set out in writing and is signed by the parties.

(B) It specifies all of the services to be provided by the licensee or an immediate family member of the licensee.

(C) The aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement.

(D) A person who is referred by a licensee or an immediate family member of the licensee is informed in writing of the personal services arrangement that includes information on where a person may go to file a complaint against the licensee or the immediate family member of the licensee.

(E) The term of the arrangement is for at least one year.

(F) The compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value, and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties.

(G) The services to be performed under the arrangement do not involve the counseling or promotion of a business arrangement or other activity that violates any state or federal law.

(c)(1) A licensee may refer a person to a health facility, as defined in Section 1250 of the Health and Safety Code, or to any facility owned or leased by a health facility, if the recipient of the referral does not compensate the licensee for the patient referral, and any equipment lease arrangement between the licensee and the referral recipient complies with the requirements of paragraph (2) of subdivision (b).

(2) Nothing shall preclude this subdivision from applying to a licensee solely because the licensee has an ownership or leasehold interest in an entire health facility or an entity that owns or leases an entire health facility.

(3) A licensee may refer a person to a health facility for any service classified as an emergency under subdivision (a) or (b) of Section 1317.1 of the Health and Safety Code.

(4) A licensee may refer a person to any organization that owns or leases a health facility licensed pursuant to subdivision (a), (b), or (f) of Section 1250 of the Health and Safety Code if the licensee is not compensated for the patient referral, the licensee does not receive any payment from the recipient of the referral that is based or determined on the number or value of any patient referrals, and any equipment lease arrangement between the licensee and the referral recipient complies with the requirements of paragraph (2) of subdivision (b). For purposes of this paragraph, the ownership may be through stock or membership, and may be represented by a parent holding company that solely owns or controls both the health facility organization and the affiliated organization.

(d) A licensee may refer a person to a nonprofit corporation that provides physician services pursuant to subdivision (l) of Section 1206 of the Health and Safety Code if the nonprofit corporation is controlled through membership by one or more health facilities or health facility systems and the amount of compensation or other transfer of funds from the health facility or nonprofit corporation to the licensee is fixed annually, except for adjustments caused by physicians joining or leaving the groups during the year, and is not based on the number of persons utilizing goods or services specified in Section 650.01.

(e) A licensee compensated or employed by a university may refer a person for a physician service, to any facility owned or operated by the university, or to another licensee employed by the university, provided that the facility or university does not compensate the referring licensee for the patient referral. In the case of a facility that is totally or partially owned by an entity other than the university, but that is staffed by university physicians, those physicians may not refer patients to the facility if the facility compensates the referring physicians for those referrals.

(f) The prohibition of Section 650.01 shall not apply to any service for a specific patient that is performed within, or goods that are supplied by, a licensee's office, or the office of a group practice. Further, the provisions of Section 650.01 shall not alter, limit, or expand a licensee's ability to deliver, or to direct or supervise the delivery of, in-office goods or services according to the laws, rules, and regulations governing his or her scope of practice.

(g) The prohibition of Section 650.01 shall not apply to cardiac rehabilitation services provided by a licensee or by a suitably trained individual under the direct or general supervision of a licensee, if the services are provided to patients meeting the criteria for Medicare reimbursement for the services.

(h) The prohibition of Section 650.01 shall not apply if a licensee is in the office of a group practice and refers a person for services or goods specified in Section 650.01 to a multispecialty clinic, as defined in subdivision (l) of Section 1206 of the Health and Safety Code.

(i) The prohibition of Section 650.01 shall not apply to health care services provided to an enrollee of a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(j) The prohibition of Section 650.01 shall not apply to a request by a pathologist for clinical diagnostic laboratory tests and pathological examination services, a request by a radiologist for diagnostic radiology services, or a request by a radiation

oncologist for radiation therapy if those services are furnished by, or under the supervision of, the pathologist, radiologist, or radiation oncologist pursuant to a consultation requested by another physician.

(k) This section shall not apply to referrals for services that are described in and covered by Sections 139.3 and 139.31 of the Labor Code.

(l) This section shall become operative on January 1, 1995.

Added Stats 1993 ch 1237 § 3 (AB 919). Amended Stats 1995 ch 221 § 2 (AB 1864); Stats 1996 ch 817 § 2 (AB 2443). Amended Stats 2002 ch 309 § 1 (SB 1907).

§651. DISSEMINATION OF FALSE OR MISLEADING INFORMATION CONCERNING PROFESSIONAL SERVICES OR PRODUCTS; PERMISSIBLE ADVERTISING

(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

(1) Contains a misrepresentation of fact.

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

(3) (A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents "before" and "after" views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any "before" and "after" views (i) shall be comparable in presentation so that the results are not distorted by favorable poses, lighting, or other features of presentation, and (ii) shall contain a statement that the same "before" and "after" results may not occur for all patients.

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

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

(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

(7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.

(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, "as low as," "and up," "lowest prices," or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

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

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing,

medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

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

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

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

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

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

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

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

(5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields.

(i) For the purposes of this section, a dentist licensed under Chapter 4 (commencing with Section 1600) may not hold himself or herself out as a specialist, or advertise membership in or specialty recognition by an accrediting organization, unless the practitioner has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation, is eligible for examination by a national specialty board recognized by the American Dental Association, or is a diplomate of a national specialty board recognized by the American Dental Association.

(ii) A dentist licensed under Chapter 4 (commencing with Section 1600) shall not represent to the public or advertise accreditation either in a specialty area of practice or by a board not meeting the requirements of clause (i) unless the dentist has attained membership in or otherwise been credentialed by an accrediting organization that is recognized by the board as a bona fide organization for that area of dental practice. In order to be recognized by the board as a bona fide accrediting organization for a specific area of dental practice other than a specialty area of dentistry authorized under clause (i), the organization shall condition membership or credentialing of its members upon all of the following:

(I) Successful completion of a formal, full-time advanced education program that is affiliated with or sponsored by a university based dental school and is beyond the dental degree at a graduate or postgraduate level.

(II) Prior didactic training and clinical experience in the specific area of dentistry that is greater than that of other dentists.

(III) Successful completion of oral and written examinations based on psychometric principles.

(iii) Notwithstanding the requirements of clauses (i) and (ii), a dentist who lacks membership in or certification, diplomate status, other similar credentials, or completed advanced training approved as bona fide either by an American Dental Association recognized accrediting organization or by the board, may announce a practice emphasis in any other area of dental practice only if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement that he or she is a general dentist.

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

(B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board certified" in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified"

in the statement. For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicant's education, training, and experience. For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon's licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty. The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.

(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine,or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii),or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant's education, training, and experience. For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

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

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

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

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

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

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

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

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

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

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

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) or any other section of this code.

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

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

(i) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

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

(k) A physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) by the Medical Board of California who knowingly and intentionally violates this section may be cited and assessed an administrative fine not to exceed ten thousand dollars ($10,000) per event. Section 125.9 shall govern the issuance of this citation and fine except that the fine limitations prescribed in paragraph (3) of subdivision (b) of Section 125.9 shall not apply to a fine under this subdivision.

Added Stats 1955 ch 1050 § 1. Amended Stats 1972 ch 1361 § 1; Stats 1979 ch 653 § 2; Stats 1983 ch 691 § 1; Stats 1990 ch 1660 § 1 (SB 2036), operative January 1, 1993; Stats 1992 ch 783 § 1 (AB 2180). Amended Stats 1998 ch 736 § 2 (SB 1981); Stats 1999 ch 631 § 1 (SB 450), ch 856 § 2 (SB 836); Stats 2000 ch 135 § 1 (AB 2539); Stats 2002 ch 313 § 1 (AB 1026).

§651.3. HEALTH CARE SERVICE PLAN INFORMATION AND ADVERTISING; PROHIBITION AGAINST CONTRACTING ENTITY DERIVING PROFIT FROM PLAN

(a) Any labor organization, bona fide employee group or bona fide employee association having contracted health care services from a health care service plan under the Knox-Keene Health Care Service Plan Act of 1975 (commencing with Section 1340 of the Health and Safety Code) may inform its members as to the benefits available and the charges therefor.

(b) Any new or revised written advertising or solicitation, or any form of evidence of coverage adopted by a health care service plan under the Knox-Keene Health Care Service Plan Act of 1975 (commencing with Section 1340 of the Health and Safety Code) for distribution to members pursuant to subdivision (a) shall comply with the provisions of the Knox-Keene Health Care Service Plan Act of 1975 and the regulations thereunder.

(c) Any labor organization, bona fide employee group or bona fide employee association, contracting for a health care service plan under this section, shall not derive any profit from such plan.

Nothing contained in this section shall be construed as authorizing a provider of medical assistance, including a prepaid health plan, under the Medi-Cal Act or the Waxman-Duffy Prepaid Health Plan Act to advertise in violation of any of the provisions of such acts and regulations developed thereto.

Added Stats 1961 ch 199 § 1. Amended Stats 1969 ch 1158 § 1; Stats 1970 ch 1271 § 1; Stats 1974 ch 766 § 1; 1975 ch 56 § 1, effective May 3, 1975; Stats 1976 ch 536 § 1; Stats 1978 ch 1161 § 16; Stats 1979 ch 653 § 4; Stats 1981 ch 662 § 1.

§652. VIOLATIONS BY LICENSEES

Violation of this article in the case of a licensed person constitutes unprofessional conduct and grounds for suspension or revocation of his or her license by the board by whom he or she is licensed, or if a license has been issued in connection with a place of business, then for the suspension or revocation of the place of business in connection with which the violation occurs. The proceedings for suspension or revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and each board shall have all the powers granted therein. However, in the case of a

licensee of the State Department of Health Services, the proceedings shall be conducted in accordance with Section 110171 of the Health and Safety Code. In addition, any violation constitutes a misdemeanor as to any and all persons offering, delivering, receiving, accepting, or participating in any rebate, refund, commission, preference, patronage dividend, unearned discount, or consideration, whether or not licensed under this division, and is punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding two thousand five hundred dollars ($2,500), or by both the imprisonment and fine.

Added Stats 1949 ch 899 § 1. Amended Stats 1976 ch 1125 § 1; Stats 1994 ch 1206 § 5 (SB 1775); Stats 1997 ch 220 § 3 (SB 68), effective August 4, 1997.

§652.5. VIOLATION OF ARTICLE

Except as otherwise provided in this article, any violation of this article constitutes a misdemeanor as to any and all persons, whether or not licensed under this division, and is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both the imprisonment and fine.

Added Stats 1969 ch 1158 § 2. Amended Stats 1976 ch 1125 § 2; Stats 1994 ch 1206 § 6 (SB 1775).

§653. “PERSON”

The word "person" as used in this article includes an individual, firm, partnership, association, corporation, limited liability company, or cooperative association.

Added Stats 1949 ch 899 § 1. Amended Stats 1994 ch 1010 § 3 (SB 2053).

§654. LICENSEES’ CO-OWNERSHIP ARRANGEMENTS

No person licensed under Chapter 5 (commencing with Section 2000) of this division may have any membership, proprietary interest or coownership in any form in or with any person licensed under Chapter 5.5 (commencing with Section 2550) of this division to whom patients, clients or customers are referred or any profit-sharing arrangements.

Added Stats 1949 ch 899 § 1. Amended Stats 1963 ch 1303 § 1; Stats 1979 ch 688 § 1.

§654.2. REFERRALS TO ORGANIZATION IN WHICH LICENSEE OR FAMILY HAS SIGNIFICANT BENEFICIAL INTEREST; REQUIRED DISCLOSURE STATEMENT

(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to charge, bill, or otherwise solicit payment from a patient on behalf of, or refer a patient to, an organization in which the licensee, or the licensee's immediate family, has a significant beneficial interest, unless the licensee first discloses in writing to the patient, that there is such an interest and advises the patient that the patient may choose any organization for the purpose of obtaining the services ordered or requested by the licensee.

(b) The disclosure requirements of subdivision (a) may be met by posting a conspicuous sign in an area which is likely to be seen by all patients who use the facility or by providing those patients with a written disclosure statement. Where referrals, billings, or other solicitations are between licensees who contract with multispecialty clinics pursuant to subdivision (l) of Section 1206 of the Health and Safety Code or who conduct their practice as members of the same professional corporation or partnership, and the services are rendered on the same physical premises, or under the same professional corporation or partnership name, the requirements of subdivision (a) may be met by posting a conspicuous disclosure statement at a single location which is a common area or registration area or by providing those patients with a written disclosure statement.

(c) On and after July 1, 1987, persons licensed under this division or under any initiative act referred to in this division shall disclose in writing to any third-party payer for the patient, when requested by the payer, organizations in which the licensee, or any member of the licensee's immediate family, has a significant beneficial interest and to which patients are referred. The third-party payer shall not request this information from the provider more than once a year.

Nothing in this section shall be construed to serve as the sole basis for the denial or delay of payment of claims by third party payers.

(d) For the purposes of this section, the following terms have the following meanings:

(1) "Immediate family" includes the spouse and children of the licensee, the parents of the licensee and licensee's spouse, and the spouses of the children of the licensee.

(2) "Significant beneficial interest" means any financial interest that is equal to or greater than the lesser of the following:

(A) Five percent of the whole.

(B) Five thousand dollars ($5,000).

(3) A third-party payer includes any health care service plan, self-insured employee welfare benefit plan, disability insurer, nonprofit hospital service plan, or private group or indemnification insurance program.

A third party payer does not include a prepaid capitated plan licensed under the Knox-Keene Health Care Service Plan Act of 1975 or Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(e) This section shall not apply to a "significant beneficial interest" which is limited to ownership of a building where the space is leased to the organization at the prevailing rate under a straight lease agreement or to any interest held in publicly traded stocks.

(f) (1) This section does not prohibit the acceptance of evaluation specimens for proficiency testing or referral of specimens or assignment from one clinical laboratory to another clinical laboratory, either licensed or exempt under this chapter, if the report indicates clearly the name of the laboratory performing the test.

(2) This section shall not apply to relationships governed by other provisions of this article nor is this section to be construed as permitting relationships or interests that are prohibited by existing law on the effective date of this section.

(3) The disclosure requirements of this section shall not be required to be given to any patient, customer, or his or her representative, if the licensee, organization, or entity is providing or arranging for health care services pursuant to a prepaid capitated contract with the State Department of Health Services.

Added Stats 1984 ch 639 § 1. Amended Stats 1985 ch 1542 § 1; Stats 1986 ch 881§ 1.

§655. PROHIBITION OF BUSINESS ARRANGEMENTS BETWEEN OPTOMETRISTS AND OPTICIANS OR PERSONS IN OPTICAL PRODUCT BUSINESS

(a) No person licensed under Chapter 7 (commencing with Section 3000) of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, with any person licensed under Chapter 5.5 (commencing with Section 2550) of this division.

(b) No person licensed under Chapter 5.5 (commencing with Section 2550) of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit sharing arrangement in any form directly or indirectly with any person licensed under Chapter 7 (commencing with Section 3000) of this division.

(c) No person licensed under Chapter 7 (commencing with Section 3000) of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, either by stock ownership, interlocking directors, trusteeship, mortgage, trust deed, or otherwise with any person who is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products.

Any violation of this section constitutes a misdemeanor as to such person licensed under Chapter 7 (commencing with Section 3000) of this division and as to any and all persons, whether or not so licensed under this division, who participate with such licensed person in a violation of any provision of this section.

Added Stats 1969 ch 1333 § 1. Amended Stats 1979 ch 975 § 1, operative January 1, 1983.

§655.5. PROCEDURE FOR BILLING FOR SERVICES PERFORMED BY OUTSIDE LABORATORY

(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division, or any clinical laboratory, or any health facility when billing for a clinical laboratory of the facility, to charge, bill, or otherwise solicit payment from any patient, client, or customer for any clinical laboratory service not actually rendered by the person or clinical laboratory or under his, her or its direct supervision unless the patient, client, or customer is apprised at the first time of the charge, billing, or solicitation of the name, address, and charges of the clinical laboratory performing the service. The first such written charge, bill, or other solicitation of payment shall separately set forth the name, address, and charges of the clinical laboratory concerned and shall clearly show whether or not the charge is included in the total of the account, bill, or charge. This subdivision shall be satisfied if the required disclosures are made to the third-party payer of the patient, client, or customer. If the patient is responsible for submitting the bill for the charges to the third-party payer, the bill provided to the patient for that purpose shall include the disclosures required by this section. This subdivision shall not apply to a clinical laboratory of a health facility or a health facility when billing for a clinical laboratory of the facility nor to a person licensed under this division or under any initiative act referred to in this division if the standardized billing form used by the facility or person requires a summary entry for all clinical laboratory charges. For purposes of this subdivision, "health facility" has the same meaning as defined in Section 1250 of the Health and Safety Code.

(b) Commencing July 1, 1994, a clinical laboratory shall provide to each of its referring providers, upon request, a schedule of fees for services provided to patients of the referring provider. The schedule shall be provided within two working days after the clinical laboratory receives the request. For the purposes of this subdivision, a "referring provider" means any provider who has referred a patient to the clinical laboratory in the preceding six-month period. Commencing July 1, 1994, a clinical laboratory that provides a list of laboratory services to a referring provider or to a potential referring provider shall

include a schedule of fees for the laboratory services listed.

(c) It is also unlawful for any person licensed under this division or under any initiative act referred to in this division to charge additional charges for any clinical laboratory service that is not actually rendered by the licensee to the patient and itemized in the charge, bill, or other solicitation of payment. This section shall not be construed to prohibit any of the following:

(1) Any itemized charge for any service actually rendered to the patient by the licensee.

(2) Any summary charge for services actually rendered to a patient by a health facility, as defined in Section 1250 of the Health and Safety Code, or by a person licensed under this division or under any initiative act referred to in this division if the standardized billing form used by the facility or person requires a summary entry for all clinical laboratory charges.

(d) As used in this section, the term "any person licensed under this division" includes a person licensed under paragraph (1) of subdivision (a) of Section 1265, all wholly owned subsidiaries of the person, a parent company that wholly owns the person, and any subsidiaries wholly owned by the same parent that wholly owns the person. "Wholly owned" means ownership directly or through one or more subsidiaries. This section shall not apply to billings by a person licensed under paragraph (1) of subdivision (a) of Section 1265 when the person licensed under paragraph (1) of subdivision (a) of Section 1265 bills for services performed by any laboratory owned or operated by the person licensed under paragraph (1) of subdivision (a) of Section 1265.

(e) This section shall not apply to any person or clinical laboratory who or which contracts directly with a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code, if the services are to be provided to members of the plan on a prepaid basis and without additional charge or liability on account thereof.

(f) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison.

(g) (1) Notwithstanding subdivision (f), a violation of this section by a physician and surgeon for a first offense shall be subject to the exclusive remedy of reprimand by the Medical Board of California if the transaction that is the subject of the violation involves a charge for a clinical laboratory service that is less than the charge would have been if the clinical laboratory providing the service billed a patient, client, or customer directly for the clinical laboratory service, and if that clinical laboratory charge is less than the charge listed in the clinical laboratory's schedule of fees pursuant to subdivision (b).

(2) Nothing in this subdivision shall be construed to permit a physician and surgeon to charge more than he or she was charged for the laboratory service by the clinical laboratory providing the service unless the additional charge is for service actually rendered by the physician and surgeon to the patient.

Added Stats 1970 ch 658 § 1. Amended Stats 1978 ch 1161 § 18; Stats 1981 ch 610 § 3; Stats 1992 ch 85 § 2 (SB 664); Stats 1993 ch 304 § 2 (AB 179), effective August 25, 1993, ch 593 § 1.5 (AB 2046); Stats 1996 ch 1035 § 1 (AB 2588). Amended Stats 2000 ch 251 § 1 (AB 2423).

§656. INJUNCTIONS

Whenever any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, a violation of this article, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining the conduct on application of the State Board of Optometry, the Medical Board of California, the Osteopathic Medical Board of California, the Attorney General, or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

The remedy provided for in this section shall be in addition to, and not a limitation upon, the authority provided by any other provision of this code.

Added Stats 1969 ch 1158 § 3. Amended Stats 1978 ch 1161 § 19; Stats 1982 ch 517 § 4; Stats 1989 ch 886 § 8; Stats 1991 ch 359 § 4 (AB 1332); Stats 1994 ch 1206 § 7 (SB 1775).

§657. LEGISLATIVE FINDINGS AND DECLARATIONS; DISCOUNTS FOR PROMPT PAYMENT OF HEALTH OR MEDICAL CLAIMS

(a) The Legislature finds and declares all of the following:

(1) Californians spend more than one hundred billion dollars ($100,000,000,000) annually on health care.

(2) In 1994, an estimated 6.6 million of California's 32 million residents did not have any health insurance and were ineligible for Medi-Cal.

(3) Many of California's uninsured cannot afford basic, preventative health care resulting in these residents relying on emergency rooms for urgent health care, thus driving up health care costs.

(4) Health care should be affordable and accessible to all Californians.

(5) The public interest dictates that uninsured Californians have access to basic, preventative health care at affordable prices.

(b) To encourage the prompt payment of health or medical care claims, health care providers are hereby expressly authorized to grant discounts in health or medical care claims when payment is made promptly within time limits prescribed by the health care providers or institutions rendering the service or treatment.

(c) Notwithstanding any provision in any health care service plan contract or insurance contract to the contrary, health care providers are hereby expressly authorized to grant discounts for health or medical care provided to any patient the health care provider has reasonable cause to believe is not eligible for, or is not entitled to, insurance reimbursement, coverage under the Medi-Cal program, or coverage by a health care service plan for the health or medical care provided. Any discounted fee granted pursuant to this section shall not be deemed to be the health care provider's usual, customary, or reasonable fee for any other purposes, including, but not limited to, any health care service plan contract or insurance contract.

(d) "Health care provider," as used in this section, means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

Added Stats 1985 ch 263 § 2. Amended Stats 1998 ch 20 § 1 (SB 1255), effective April 14, 1998.

ARTICLE 7.5 HEALTH CARE PRACTITIONERS

§680. HEALTH CARE PRACTITIONER'S DISCLOSURE OF NAME AND LICENSE STATUS

(a) Except as otherwise provided in this section, a health care practitioner shall disclose, while working, his or her name and practitioner's license status, as granted by this state, on a name tag in at least 18-point type. A health care practitioner in a practice or an office, whose license is prominently displayed, may opt to not wear a name tag. If a health care practitioner or a licensed clinical social worker is working in a psychiatric setting or in a setting that is not licensed by the state, the employing entity or agency shall have the discretion to make an exception from the name tag requirement for individual safety or therapeutic concerns. In the interest of public safety and consumer awareness, it shall be unlawful for any person to use the title "nurse" in reference to himself or herself and in any capacity, except for an individual who is a registered nurse or a licensed vocational nurse, or as otherwise provided in Section 2800. Nothing in this section shall prohibit a certified nurse assistant from using his or her title.

(b) Facilities licensed by the State Department of Social Services, the State Department of Mental Health, or the State Department of Health Services shall develop and implement policies to ensure that health care practitioners providing care in those facilities are in compliance with subdivision (a). The State Department of Social Services, the State Department of Mental Health, and the State Department of Health Services shall verify through periodic inspections that the policies required pursuant to subdivision (a) have been developed and implemented by the respective licensed facilities.

(c) For purposes of this article, "health care practitioner" means any person who engages in acts that are the subject of licensure or regulation under this division or under any initiative act referred to in this division.

Added Stats 1998 ch 1013 § 1 (AB 1439). Amended Stats 1999 ch 411 § 1 (AB 1433); Stats 2000 ch 135 § 2 (AB 2539).

§680.5. ADDITIONAL DISCLOSURES OF SPECIFIED INFORMATION; APPLICABILITY

(a) (1) A health care practitioner licensed under Division 2 (commencing with Section 500) shall communicate to a patient his or her name, state-granted practitioner license type, and highest level of academic degree, by one or both of the following methods:

(A) In writing at the patient's initial office visit.

(B) In a prominent display in an area visible to patients in his or her office.

(2) An individual licensed under Chapter 6 (commencing with Section 2700) or Chapter 9 (commencing with Section 4000) is not required to disclose the highest level of academic degree he or she holds.

(b) A person licensed under Chapter 5 (commencing with Section 2000) or under the Osteopathic Act, who is certified by (1) an American Board of Medical Specialties member board, (2) a board or association with requirements equivalent to a board described in paragraph (1) approved by that person's medical licensing authority, or (3) a board or association with an Accreditation Council for Graduate Medical

Education approved postgraduate training program that provides complete training in the person's specialty or subspecialty, shall disclose the name of the board or association by either method described in subdivision (a).

(c) A health care practitioner who chooses to disclose the information required by subdivisions (a) and (b) pursuant to subparagraph (A) of paragraph (1) of subdivision (a) shall present that information in at least 24-point type in the following format:

HEALTH CARE PRACTITIONER INFORMATION
1. Name and license..... .
2. Highest level of academic degree..... .
3. Board certification (ABMS/MBC)..... .

(d) This section shall not apply to the following health care practitioners:

(1) A person who provides professional medical services to enrollees of a health care service plan that exclusively contracts with a single medical group in a specific geographic area to provide or arrange for professional medical services for the enrollees of the plan.

(2) A person who works in a facility licensed under Section 1250 of the Health and Safety Code or in a clinical laboratory licensed under Section 1265.

(3) A person licensed under Chapter 3 (commencing with Section 1200), Chapter 7.5 (commencing with Section 3300), Chapter 8.3 (commencing with Section 3700), Chapter 11 (commencing with Section 4800), Chapter 13 (commencing with Section 4980), or Chapter 14 (commencing with Section 4990.1).

(e) A health care practitioner, who provides information regarding health care services on an Internet Web site that is directly controlled or administered by that health care practitioner or his or her office personnel, shall prominently display on that Internet Web site the information required by this section.

Added Stats 2010 ch 436 § 1 (AB 583), effective January 1, 2011.

§683. REPORTING NAME AND LICENSE NUMBER OF LICENSEE PROHIBITED FROM PRACTICING

(a) A board shall report, within 10 working days, to the State Department of Health Care Services the name and license number of a person whose license has been revoked, suspended, surrendered, made inactive by the licensee, or placed in another category that prohibits the licensee from practicing his or her profession. The purpose of the reporting requirement is to prevent reimbursement by the state for Medi-Cal and Denti-Cal services provided after the cancellation of a provider's professional license.

(b) "Board," as used in this section, means the Dental Board of California, the Medical Board of California, the Board of Psychology, the State Board of Optometry, the California State Board of Pharmacy, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, and the California Board of Occupational Therapy.

Added Stats 2004 ch 351 § 1 (AB 3023). Amended Stats 2009 ch 308 § 7 (SB 819), effective January 1, 2010.

§685. CITATION OF HEALTH CARE PRACTITIONER IN DEFAULT OF EDUCATION LOAN

(a) (1) A board may cite and fine a currently licensed health care practitioner if he or she is in default on a United States Department of Health and Human Services education loan, including a Health Education Assistance Loan.

(2) Each board that issues citations and imposes fines shall retain the money from these fines for deposit into its appropriate fund.

(b) The board may deny a license to an applicant to be a health care practitioner or deny renewal of a license if he or she is in default on a United States Department of Health and Human Services education loan, including a Health Education Assistance Loan, until the default is cleared or until the applicant or licensee has made satisfactory repayment arrangements.

(c) In determining whether to issue a citation and the amount of the fine to a health care practitioner or to deny a license to an applicant to be a health care practitioner or to deny the renewal of a license, a board shall take into consideration the following:

(1) The population served by the health care practitioner.

(2) The health care practitioner's economic status.

(d) For purposes of this section, the following terms shall have the following meanings:

(1) "Board" means a licensing board or agency having jurisdiction of a licensee, but does not include the Board of Chiropractic Examiners.

(2) "Health care practitioner" means a person licensed or certified pursuant to this division or licensed pursuant to the Osteopathic Initiative Act.

(e) This section shall become operative on July 1, 2003.

Added Stats 2002 ch 683 § 1 (SB 2019), operative July 1, 2003.

ARTICLE 8 SELECTION OF HEALING ARTS PRACTITIONER

§690. PATIENT'S SELECTION OF OPTOMETRIST OR PHYSICIAN RENDERING VISION CARE UNDER STATE-SUPPORTED PROGRAMS

(a) Except as provided in Section 4601 of the Labor Code and Section 2627 of the Unemployment Insurance Code, neither the administrators, agents, or employees of any program supported, in whole or in part, by funds of the State of California, nor any state agency, county, or city of the State of California, nor any officer, employee, agent, or governing board of a state agency, county, or city in the performance of its, his, or her duty, duties, function, or functions, shall prohibit any person, who is entitled to vision care that may be rendered by either an optometrist or a physician and surgeon within the scope of his or her license, from selecting a duly licensed member of either profession to render the service, provided the member has not been removed or suspended from participation in the program for cause.

(b) Whenever any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, a violation of this section, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining the conduct on application of the Attorney General, the district attorney of the county, or any person aggrieved.

For purposes of this subdivision, "person aggrieved" means the person who seeks the particular medical or optometric services mentioned in this section, or the holder of any certificate who is discriminated against in violation of this section.

(c) Nothing contained in this section shall prohibit any agency operating a program of services, including, but not limited to, a program established pursuant to Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, from preparing lists of healing arts licensees and requiring patients to select a licensee on the list as a condition to payment by the program for the services, except that if the lists are established and a particular service may be performed by either a physician and surgeon or an optometrist the list shall contain a sufficient number of licensees so as to assure the patients an adequate choice.

Added Stats 1967 ch 1515 § 1. Amended Stats 1996 ch 1023 § 1 (SB 1497), effective September 29, 1996; Stats 2006 ch 538 § 1 (SB 1852), effective January 1, 2007.

ARTICLE 9 INACTIVE LICENSE

§700. LEGISLATIVE INTENT

It is the intent of the Legislature to establish in this article an inactive category of health professionals' licensure. Such inactive licenses or certificates are intended to allow a person who has a license or certificate in one of the healing arts, but who is not actively engaged in the practice of his or her profession, to maintain licensure or certification in a nonpracticing status.

Added Stats 1977 ch 410 § 1, effective August 27, 1977.

§701. ISSUANCE

Each healing arts board referred to in this division shall issue, upon application and payment of the normal renewal fee, an inactive license or certificate to a current holder of an active license or certificate whose license or certificate is not suspended, revoked, or otherwise punitively restricted by that board.

As used in this article, "board" refers to any healing arts board, division, or examining committee which licenses or certifies health professionals.

Added Stats 1977 ch 410 § 1, effective August 27, 1977.

§702. HOLDING PROHIBITED FROM ENGAGING IN ACTIVE LICENSE ACTIVITY

The holder of an inactive healing arts license or certificate issued pursuant to this article shall not engage in any activity for which an active license or certificate is required.

Added Stats 1977 ch 410 § 1, effective August 27, 1977.

§703. RENEWAL; FEES

An inactive healing arts license or certificate issued pursuant to this article shall be renewed during the same time period at which an active license or certificate is renewed. In order to renew a license or certificate issued pursuant to this article, the holder thereof need not comply with any continuing education requirement for renewal of an active license or certificate.

The renewal fee for a license or certificate in an active status shall apply also for renewal of a license or certificate in an inactive status.

Added Stats 1977 ch 410 § 1, effective August 27, 1977.

§704. RESTORATION TO ACTIVE STATUS

In order for the holder of an inactive license or certificate issued pursuant to this article to restore his

or her license or certificate to an active status, the holder of an inactive license or certificate shall comply with all the following:

(a) Pay the renewal fee; provided, that the renewal fee shall be waived for a physician and surgeon who certifies to the Medical Board of California that license restoration is for the sole purpose of providing voluntary, unpaid service to a public agency, not-for-profit agency, institution, or corporation which provides medical services to indigent patients in medically underserved or critical-need population areas of the state.

(b) If the board requires completion of continuing education for renewers of an active license or certificate, complete continuing education equivalent to that required for a single license renewal period.

Added Stats 1977 ch 410 § 1, effective August 27, 1977. Amended Stats 1999 ch 631 § 2 (SB 450).

ARTICLE 10 FEDERAL PERSONNEL

§710. APPLICABILITY OF SKILLS OBTAINED IN ARMED SERVICES TO SATISFYING PROFESSIONAL REQUIREMENTS

It is the policy of the State of California that, consistent with high quality health care services, persons with skills, knowledge and experience obtained in the armed services of the United States should be permitted to apply such learning and contribute to the health manpower needs of the state at the maximum level of responsibility and skill for which they are qualified.

To this end, the rules and regulations of boards under this division shall provide for methods of evaluating education, training, and experience obtained in military service if such training is applicable to the requirements of that profession.

Added Stats 1969 ch 1592 § 1.

§715. LICENSES TO PRACTICE IN STATE

Unless otherwise required by federal law or regulation, no board under this division which licenses dentists, physicians and surgeons, podiatrists, or nurses may require a person to obtain or maintain any license to practice a profession or render services in the State of California if one of the following applies:

(a) The person practicing a profession or rendering services does so exclusively as an employee of a department, bureau, office, division, or similarly constituted agency of the federal government, and provides medical services exclusively on a federal reservation or at any facility wholly supported by and maintained by the United States government.

(b) The person practicing a profession or rendering services does so solely pursuant to a contract with the federal government on a federal reservation or at any facility wholly supported and maintained by the United States government.

(c) The person practicing a profession or rendering services does so pursuant to, or as a part of a program or project conducted or administered by a department, bureau, office, division, or similarly constituted agency of the federal government which by federal statute expressly exempts persons practicing a profession or rendering services as part of the program or project from state laws requiring licensure

Added Stats 1983 ch 239 § 2. Amended Stats 1986 ch 220 § 7.5, effective June 30, 1986.

§716. DENIAL OF LICENSE; DISCIPLINARY ACTION AGAINST HOLDER OF STATE LICENSE

Notwithstanding any other provision of law, a board under this division may deny issuance of a license to an applicant or take disciplinary action against the holder of a California license for acts or omissions committed by the applicant or licensee in the course of professional practice or rendering services described in Section 715 if both of the following apply:

(a) The acts or omissions committed by the applicant or licensee constituted grounds for denial or discipline pursuant to the laws of this state governing licensees or applicants for licensure for the profession or vocation in question.

(b) The acts or omissions constituting the basis for denial or discipline by the agency were not authorized, exempted or rendered inconsistent by federal statute.

Added Stats 1983 ch 239 § 3.

§717. CONSTRUCTION OF ARTICLE

This article is not intended to address the scope of practice of a dentist, physician and surgeon, or nurse licensed under this division, and nothing in this article shall be construed to restrict, expand, alter, or modify the existing scope of practice established by federal statute or regulation.

Added Stats 1983 ch 239 § 4.

§718. PARTICIPATING IN RESIDENCY, FELLOWSHIP OR CLINICAL TRAINING PROGRAM

A physician and surgeon who is not licensed in this state but who is a commissioned officer on active duty in the medical corps of any branch of the armed forces of the United States may engage in the practice

of medicine as part of a residency, fellowship, or clinical training program if all the following conditions are met:

(a) The residency, fellowship, or clinical training program is conducted by a branch of the armed forces of the United States at a health facility on a federal reservation and limited in enrollment to military physicians on active duty in the medical corps of a branch of the armed forces of the United States.

(b) The residency, fellowship, or clinical training program, as part of its program, contracts with or affiliates with a similar program in or at a health facility not on a federal reservation to offer specific courses or training not available at the facility located on the federal reservation.

(c) The officers enrolled in the residency, fellowship, or clinical training program restrict their practice only to patients who are seen as part of their duties in the program.

(d) The compensation received by the officers enrolled in the residency, fellowship, or clinical training program is limited to their regular pay and allowances as commissioned officers.

(e) The officers enrolled in the training programs or portions of training programs not conducted on a federal
reservation shall register with the Division of Licensing of the Medical Board of California on a form provided by the division.

Added Stats 1988 ch 1182 § 1. Amended Stats 1989 ch 886 § 9.

ARTICLE 10.5 UNPROFESSIONAL CONDUCT

§725. EXCESSIVE PRESCRIBING OR TREATMENT; TREATMENT FOR INTRACTABLE PAIN

(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist, or audiologist.

(b) Any person who engages in repeated acts of clearly excessive prescribing or administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than six hundred dollars ($600), or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and imprisonment.

(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or administering dangerous drugs or prescription controlled substances shall not be subject to disciplinary action or prosecution under this section.

(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section for treating intractable pain in compliance with Section 2241.5.

Added Stats 1979 ch 348 § 2. Amended Stats 1984 ch 769 § 1. Stats 1998 ch 984 § 1 (AB 2305); Stats 2006 ch 350 § 2 (AB 2198), ch 659 § 1.5 (SB 1475), effective January 1, 2007; Stats 2007 ch 130 § 2 (AB 299), effective January 1, 2008.

§726. COMMISSION OF ACT OF SEXUAL ABUSE OR MISCONDUCT WITH PATIENT OR CLIENT

The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

Added Stats 1979 ch 955 § 1, as B & P C § 730. Renumbered by Stats 1981 ch 714 § 3. Amended Stats 1983 ch 928 § 1; Stats 1993 ch 1072 § 1 (SB 743).

§727. APPLICABILITY OF EVIDENCE CODE PROVISIONS

The provisions of subdivision (2) of Section 1103 of the Evidence Code shall apply in disciplinary proceedings brought against a licensee for acts in violation of Section 726.

Added Stats 1979 ch 955 § 1, as B & P C § 731. Amended and Renumbered by Stats 1981 ch 714 § 4.

§731. VIOLATIONS AT WORK AS UNPROFESSIONAL CONDUCT

(a) Any person licensed, certified, registered, or otherwise subject to regulation pursuant to this division who engages in, or who aids or abets in, a violation of Section 266h, 266i, 315, 316, or 318 of, or subdivision (a) or (b) of Section 647 of, the Penal Code occurring in the work premises of, or work area

under the direct professional supervision or control of, that person, shall be guilty of unprofessional conduct. The license, certification, or registration of that person shall be subject to denial, suspension, or revocation by the appropriate regulatory entity under this division.

(b) In addition to any penalty provided under any other provision of law, a violation of subdivision (a) shall subject the person to a civil penalty in an amount not to exceed two thousand five hundred dollars ($2,500) for the first offense, and not to exceed five thousand dollars ($5,000) for each subsequent offense, which may be assessed and recovered in a civil action brought by any district attorney. If the action is brought by a district attorney, the penalty recovered shall be paid to the treasurer of the county in which the judgment was entered.

Added Stats 1998 ch 971 § 2 (AB 2721).

§733. HEALTH CARE LICENTIATE REQUIRED TO DISPENSE DRUGS AND DEVICES PURSUANT TO LAWFUL ORDER OR PRESCRIPTION; SPECIFIED EXCEPTIONS; VIOLATIONS AS UNPROFESSIONAL CONDUCT

(a) No licentiate shall obstruct a patient in obtaining a prescription drug or device that has been legally prescribed or ordered for that patient. A violation of this section constitutes unprofessional conduct by the licentiate and shall subject the licentiate to disciplinary or administrative action by his or her licensing agency.

(b) Notwithstanding any other provision of law, a licentiate shall dispense drugs and devices, as described in subdivision (a) of Section 4024, pursuant to a lawful order or prescription unless one of the following circumstances exists:

(1) Based solely on the licentiate's professional training and judgment, dispensing pursuant to the order or the prescription is contrary to law, or the licentiate determines that the prescribed drug or device would cause a harmful drug interaction or would otherwise adversely affect the patient's medical condition.

(2) The prescription drug or device is not in stock. If an order, other than an order described in Section 4019, or prescription cannot be dispensed because the drug or device is not in stock, the licentiate shall take one of the following actions:

(A) Immediately notify the patient and arrange for the drug or device to be delivered to the site or directly to the patient in a timely manner.

(B) Promptly transfer the prescription to another pharmacy known to stock the prescription drug or device that is near enough to the site from which the prescription or order is transferred, to ensure the patient has timely access to the drug or device.

(C) Return the prescription to the patient and refer the patient.

The licentiate shall make a reasonable effort to refer the patient to a pharmacy that stocks the prescription drug or device that is near enough to the referring site to ensure that the patient has timely access to the drug or device.

(3) The licentiate refuses on ethical, moral, or religious grounds to dispense a drug or device pursuant to an order or prescription. A licentiate may decline to dispense a prescription drug or device on this basis only if the licentiate has previously notified his or her employer, in writing, of the drug or class of drugs to which he or she objects, and the licentiate's employer can, without creating undue hardship, provide a reasonable accommodation of the licentiate's objection. The licentiate's employer shall establish protocols that ensure that the patient has timely access to the prescribed drug or device despite the licentiate's refusal to dispense the prescription or order. For purposes of this section, "reasonable accommodation" and "undue hardship" shall have the same meaning as applied to those terms pursuant to subdivision (l) of Section 12940 of the Government Code.

(c) For the purposes of this section, "prescription drug or device" has the same meaning as the definition in Section 4022.

(d) The provisions of this section shall apply to the drug therapy described in Section 4052.3.

(e) This section imposes no duty on a licentiate to dispense a drug or device pursuant to a prescription or order without payment for the drug or device, including payment directly by the patient or through a third-party payer accepted by the licentiate or payment of any required copayment by the patient.

(f) The notice to consumers required by Section 4122 shall include a statement that describes patients' rights relative to the requirements of this section.

Added Stats 2005 ch 417 § 2 (SB 644), effective January 1, 2006. Amended Stats 2006 ch 487 § 1 (AB 2583), effective January 1, 2007; Stats 2009 ch 308 § 8 (SB 819), effective January 1, 2010.

ARTICLE 11 PROFESSIONAL REPORTING

§800. CENTRAL FILES OF LICENSEES' INDIVIDUAL HISTORICAL RECORDS

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

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

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

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

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

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

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

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

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

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

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

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

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

Added Stats 2d Ex Sess 1975 ch 1 § 2.3. Amended Stats 2d Ex Sess 1975 ch 2 § 1.005, effective September 24, 1975, operative December 12, 1975; Stats 1976 ch 1185 § 1; Stats 1980 ch 1313 § 1; Stats 1987 ch 721 § 1; Stats 1989 ch 354 § 1, ch 886 § 10 (ch 354 prevails); Stats 1991 ch 359 § 5 (AB 1332), ch 1091 § 1 (AB 1487) (ch 359 prevails); Stats 1994 ch 26 § 15.5 (AB 1807), effective March 30, 1994; Stats 1995 ch 5 § 1 (SB 158), ch 60 § 6 (SB 42), effective July 6, 1995, ch 708 § 1.5 (SB 609); Stats 1997 ch 759 § 9 (SB 827). Stats 1999 ch 252 § 1 (AB 352), ch 655 § 2 (SB 1308); Stats 2002 ch 1085 § 1 (SB 1950), ch 1150 § 2.5 (SB 1955); Stats 2006 ch 659 § 2 (SB 1475), effective January 1, 2007; Stats 2009 ch 308 § 9 (SB 819), effective January 1, 2010; Stats 2010 ch 505 § 1 (SB 700), effective January 1, 2011.

§801. INSURERS' REPORTS OF MALPRACTICE SETTLEMENTS OR ARBITRATION AWARDS; INSURED'S WRITTEN CONSENT TO SETTLEMENT

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

(b) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral Sciences as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

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

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

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

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

Added Stats 2d Ex Sess 1975 ch 1 § 2.3. Amended Stats 1979 ch 923 § 1; Stats 1989 ch 398 § 1, ch 886 § 11 (ch 398 prevails); Stats 1991 ch 359 § 6 (AB 1332), ch 1091 § 2 (AB 1487) (ch 359 prevails); Stats 1994 ch 468 § 1 (AB 559), ch 1206 § 8 (SB 1775); Stats 1995 ch 5 § 2 (SB 158); Stats 1997 ch 359 § 1 (AB 103). Amended Stats 2002 ch 1085 § 2 (SB 1950). Stats 2004 ch 467 § 1 (SB 1548); Stats 2006 ch 223 § 3 (SB 1438) (ch 223 prevails), effective January 1, 2007, ch 538 § 2 (SB 1852); Stats 2009 ch 308 § 10 (SB 819), effective January 1, 2010.

§801.1. REPORT OF SETTLEMENT OR ARBITRATION AWARD WHERE STATE OR LOCAL GOVERNMENT ACTS AS SELF-INSURER IN CASES OF NEGLIGENCE, ERROR, OMISSION IN PRACTICE, OR RENDERING OF UNAUTHORIZED SERVICES RESULTING IN DEATH OR PERSONAL INJURY

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

(b) Every state or local governmental agency that self-insures a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a

complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

Added Stats 1995 ch 708 § 2 (SB 609). Amended Stats 2002 ch 1085 § 3 (SB 1950); Stats 2006 ch 223 § 5 (SB 1438), effective January 1, 2007.

§802. REPORTS OF MALPRACTICE SETTLEMENTS OR ARBITRATION AWARDS INVOLVING UNINSURED LICENSEES; PENALTIES FOR NONCOMPLIANCE

(a) Every settlement, judgment, or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a person who holds a license, certificate, or other similar authority from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act) who does not possess professional liability insurance as to that claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties, be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if the person is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the licensee or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars ($50) or more than five hundred dollars ($500). Knowing and intentional failure to comply with this section or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance, is a public offense punishable by a fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

(b) Every settlement, judgment, or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by negligence, error, or omission in practice, or by the unauthorized rendering of professional services, by a marriage and family therapist or clinical social worker licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) who does not possess professional liability insurance as to that claim shall within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if he or she is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make a complete report. Failure of the marriage and family therapist or clinical social worker or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars ($50) nor more than five hundred dollars ($500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section or to hinder or impede any other person in that compliance, is a public offense punishable by a fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

Added Stats 2d Ex Sess 1975 ch 1 § 2.3. Amended Stats 1979 ch 923 § 2; Stats 1989 ch 398 § 2; Stats 1997 ch 359 § 2 (AB 103). Stats 2001 ch 728 § 1.5 (SB 724); Stats 2002 ch 1085 § 4 (SB 1950). Stats 2005 ch 674 § 4 (SB 231), effective January 1, 2006; Stats 2006 ch 223 § 6 (SB 1438), effective January 1, 2007.

§803. REPORT OF CRIME OR LIABILITY FOR DEATH OR INJURY ON PART OF SPECIFIED LICENSEES TO LICENSING AGENCY

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

services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license, certificate, or other similar authority.

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

Added Stats 1993 ch 1267 § 4 (SB 916). Amended Stats 1995 ch 708 § 4 (SB 609); Stats 1997 ch 359 § 3 (AB 103). Amended Stats 2001 ch 728 § 2 (SB 724). Stats 2005 ch 216 § 3 (AB 268), effective January 1, 2006; Stats 2006 ch 223 § 9 (SB 1438), effective January 1, 2007.

§803.5. NOTICE TO BOARD OF FILING CHARGING LICENSEE WITH FELONY; TRANSMITTAL OF COPY OF CONVICTION

(a) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, or other appropriate allied health board, and the clerk of the court in which the charges have been filed, of any filings against a licensee of that board charging a felony immediately upon obtaining information that the defendant is a licensee of the board. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license from one of the boards described above.

(b) The clerk of the court in which a licensee of one of the boards is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the applicable board.

Added Stats 1990 ch 1597 § 3 (SB 2375). Amended Stats 1993 ch 1267 § 6 (SB 916); Stats 1994 ch 1206 § 12 (SB 1775); Stats 1995 ch 708 § 6 (SB 609). Amended Stats 2000 ch 867 § 4 (SB 1988). Stats 2005 ch 216 § 4 (AB 268), effective January 1, 2006; Stats 2006 ch 223 § 13 (SB 438), effective January 1, 2007.

§803.6. TRANSMITTAL OF FELONY PRELIMINARY HEARING TRANSCRIPT CONCERNING LICENSEE TO BOARD; TRANSMITTAL OF PROBATION REPORT

(a) The clerk of the court shall transmit any felony preliminary hearing transcript concerning a defendant licensee to the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, or other appropriate allied health board, as applicable, where the total length of the transcript is under 800 pages and shall notify the appropriate board of any proceeding where the transcript exceeds that length.

(b) In any case where a probation report on a licensee is prepared for a court pursuant to Section 1203 of the Penal Code, a copy of that report shall be transmitted by the probation officer to the board.

Added Stats 1990 ch 1597 § 4 (SB 2375). Amended Stats 1993 ch 1267 § 7 (SB 916). Amended Stats 2005 ch 216 § 5 (AB 268), effective January 1, 2006.

§804. FORM AND CONTENT OF REPORT

(a) Any agency to whom reports are to be sent under Section 801, 801.1, 802, or 803, may develop a prescribed form for the making of the reports, usage of which it may, but need not, by regulation, require in all cases.

(b) A report required to be made by Sections 801, 801.1, or 802 shall be deemed complete only if it includes the following information: (1) the name and last known business and residential addresses of every plaintiff or claimant involved in the matter, whether or not each plaintiff or claimant recovered anything; (2) the name and last known business and residential addresses of every physician or provider of health care services who was claimed or alleged to have acted improperly, whether or not that person was a named defendant and whether or not any recovery or judgment was had against that person; (3) the name, address, and principal place of business of every insurer providing professional liability insurance as to any person named in (2), and the insured's policy number; (4) the name of the court in which the action or any part of the action was filed along with the date of filing and docket number of each action; (5) a brief description or summary of the facts upon which each claim, charge or judgment rested including the date of occurrence; (6) the names and last known business and residential addresses of every person who acted as counsel for any party in the litigation or negotiations, along with an identification of the party whom said person represented; (7) the date and amount of final judgment or settlement; and (8) any other information the agency to whom the reports are to be sent may, by regulation, require.

(c) Every person named in the report, who is notified by the board within 60 days of the filing of the report, shall maintain for the period of three years from the filing of the report any records he or she has as to the matter in question and shall make those available upon request to the agency with which the report was filed.

Added Stats 2d Ex Sess 1975 ch 1 § 2.3. Amended Stats 2d Ex Sess 1975 ch 2 § 1.01, effective September 24, 1975, operative December 12, 1975; Stats 1994 ch 1206 § 13 (SB 1775); Stats 1995 ch 708 § 7 (SB 609); Stats 206 ch 223 § 14 (SB 1438), effective January 1, 2007.

ARTICLE 12 INSURANCE FRAUD

§810. GROUNDS FOR DISCIPLINARY ACTION AGAINST HEALTH CARE PROFESSIONAL

(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code.

(c) (1) It shall constitute cause for automatic suspension of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has been convicted of any felony involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance, or has been convicted of any felony involving Medi-Cal fraud committed by the licensee or certificate holder in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program, pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to determine whether or not the license or certificate shall be suspended, revoked, or some other disposition shall be considered, including, but not limited to, revocation with the opportunity to petition for reinstatement, suspension, or other limitations on the license or certificate as the board deems appropriate.

(2) It shall constitute cause for automatic suspension and for revocation of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has more than one conviction of any felony arising out of separate prosecutions involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance, or in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to revoke the license or certificate and an order of revocation shall be issued unless the board finds mitigating circumstances to order some other disposition.

(3) It is the intent of the Legislature that paragraph (2) apply to a licensee or certificate holder who has one or more convictions prior to January 1, 2004, as provided in this subdivision.

(4) Nothing in this subdivision shall preclude a board from suspending or revoking a license or certificate pursuant to any other provision of law.

(5) "Board," as used in this subdivision, means the Dental Board of California, the Medical Board of California, the Board of Psychology, the State Board of Optometry, the California State Board of Pharmacy, the Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners.

(6) "More than one conviction," as used in this subdivision, means that the licensee or certificate holder has one or more convictions prior to January 1, 2004, and at least one conviction on or after that date, or the licensee or certificate holder has two or more convictions on or after January 1, 2004. However, a licensee or certificate holder who has one or more convictions prior to January 1, 2004, but who has no convictions and is currently licensed or holds a certificate after that date, does not have "more than one conviction" for the purposes of this subdivision.

(d) As used in this section, health care professional means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act.

Added Stats 1978 ch 174 § 1, effective May 31, 1978. Amended Stats 1991 ch 116 § 1 (SB 1218); Stats 1997 ch 758 § 2.6 (SB 1346). Stats 2003 ch 595 § 1(SB 359), ch 659 § 1.5 (AB 747). Stats 2004 ch 333 § 1 (AB 2835).

ARTICLE 12.5 MENTAL ILLNESS OR PHYSICAL ILLNESS

§820. EXAMINATION OF LICENTIATE FOR MENTAL ILLNESS OR PHYSICAL ILLNESS AFFECTING COMPETENCY

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

Added Stats 1982 ch 1183 § 1. Amended Stats 1989 ch 1104 § 1.7.

§821. EFFECT OF LICENTIATE'S FAILURE TO COMPLY WITH ORDER FOR EXAMINATION

The licentiate's failure to comply with an order issued under Section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate or license.

Added Stats 1982 ch 1183 § 1.

§822. ACTION BY LICENSING AGENCY

If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

(a) Revoking the licentiate's certificate or license.

(b) Suspending the licentiate's right to practice.

(c) Placing the licentiate on probation.

(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

Added Stats 1982 ch 1183 § 1.

§823. REINSTATEMENT OF LICENTIATE

Notwithstanding any other provisions of law, reinstatement of a licentiate against whom action has been taken pursuant to Section 822 shall be governed by the procedures in this article. In reinstating a certificate or license which has been revoked or suspended under Section 822, the licensing agency may impose terms and conditions to be complied with by the licentiate after the certificate or license has been reinstated. The authority of the licensing agency to impose terms and conditions includes, but is not limited to, the following:

(a) Requiring the licentiate to obtain additional professional training and to pass an examination upon the completion of the training.

(b) Requiring the licentiate to pass an oral, written, practical, or clinical examination, or any combination thereof to determine his or her present fitness to engage in the practice of his or her profession.

(c) Requiring the licentiate to submit to a complete diagnostic examination by one or more physicians and surgeons or psychologists appointed by the licensing agency. If the licensing agency requires the licentiate to submit to such an examination, the licensing agency shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons or psychologists of the licentiate's choice.

(d) Requiring the licentiate to undergo continuing treatment. (e) Restricting or limiting the extent, scope or type of practice of the licentiate.

Added Stats 1982 ch 1183 § 1.

§824. OPTIONS OPEN TO LICENSING AGENCY WHEN PROCEEDING AGAINST LICENTIATE

The licensing agency may proceed against a licentiate under either Section 820, or 822, or under both sections.

Added Stats 1982 ch 1183 § 1.

§826. FORMAT OF PROCEEDINGS UNDER SECTIONS 821 AND 822; RIGHTS AND POWERS

The proceedings under Sections 821 and 822 shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the licensing agency and the licentiate shall have all the rights and powers granted therein.

Added Stats 1982 ch 1183 § 1.

§827. AUTHORITY OF LICENSING AGENCY TO CONVENE IN CLOSED SESSION

Notwithstanding the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to public meetings, the licensing agency may convene in closed session to consider any evidence relating to the licentiate's mental or physical illness

obtained pursuant to the proceedings under Section 820. The licensing agency shall only convene in closed session to the extent that it is necessary to protect the privacy of a licentiate.

Added Stats 1982 ch 1183 § 1.

§828. DETERMINATION OF INSUFFICIENT, EVIDENCE TO BRING ACTION AGAINST LICENTIATE; EFFECT ON RECORDS OF PROCEEDINGS

If the licensing agency determines, pursuant to proceedings conducted under Section 820, that there is insufficient evidence to bring an action against the licentiate pursuant to Section 822, then all licensing agency records of the proceedings, including the order for the examination, investigative reports, if any, and the report of the physicians and surgeons or psychologists, shall be kept confidential and are not subject to discovery or subpoena. If no further proceedings are conducted to determine the licentiates fitness to practice during a period of five years from the date of the determination by the licensing agency of the proceeding pursuant to Section 820, then the licensing agency shall purge and destroy all records pertaining to the proceedings. If new proceedings are instituted during the five-year period against the licentiate by the licensing agency, the records, including the report of the physicians and surgeons or psychologists, may be used in the proceedings and shall be available to the respondent pursuant to the provisions of Section 11507.6 of the Government Code.

Added Stats 1982 ch 1183 § 1.

ARTICLE 13 STANDARDS FOR LICENSURE OR CERTIFICATION

§850. DELEGATION OF LICENSING STANDARDS; PROHIBITIONS

No healing arts licensing board or examining committee under the Department of Consumer Affairs shall by regulation require an applicant for licensure or certification to be a member of, to be certified by, to be eligible to be certified or registered by, or otherwise meet the standards of a specified private voluntary association or professional society except as provided for in this article.

Added Stats 1978 ch 1106 § 1.

§851. AUTHORIZED DELEGATION OF HEALING ARTS LICENSING STANDARDS

A healing arts licensure board or examining committee may by regulation require an applicant for licensure or certification to meet the standards of a specified private voluntary association or professional society when either of the following conditions is met:

(a) There is direct statutory authority or requirement that the board or examining committee utilize the standards of the specified private voluntary association or professional society; or

(b) The board or examining committee specifies in the regulation the amount of education, training, experience, examinations, or other requirements of the private voluntary association or professional society, which standards shall be consistent with the provisions of law regulating such licensees, and the board or examining committee adopts such standards in public hearing. The board or examining committee may, by regulation, require an applicant to successfully complete an examination conducted by or created by a relevant national certification association, testing firm, private voluntary association, or professional society. Nothing in this section authorizes the Medical Board of California to limit the licensure of physicians and surgeons by specialty.

Added Stats 1978 ch 1106 § 1. Amended Stats 1989 ch 886 § 15.

CHAPTER 1.5 EXEMPTION FROM LICENSURE

§900. REQUIREMENTS FOR EXEMPTION; IMMUNITY FROM LIABILITY

(a) Nothing in this division applies to a health care practitioner licensed in another state or territory of the United States who offers or provides health care for which he or she is licensed, if the health care is provided only during a state of emergency as defined in subdivision (b) of Section 8558 of the Government Code, which emergency overwhelms the response capabilities of California health care practitioners and only upon the request of the Director of the Emergency Medical Services Authority.

(b) The director shall be the medical control and shall designate the licensure and specialty health care practitioners required for the specific emergency and shall designate the areas to which they may be deployed.

(c) Health care practitioners shall provide, upon request, a valid copy of a professional license and a

photograph identification issued by the state in which the practitioner holds licensure before being deployed by the director.

(d) Health care practitioners deployed pursuant to this chapter shall provide the appropriate California licensing authority with verification of licensure upon request.

(e) Health care practitioners providing health care pursuant to this chapter shall have immunity from liability for services rendered as specified in Section 8659 of the Government Code.

(f) For the purposes of this section, "health care practitioner" means any person who engages in acts which are the subject of licensure or regulation under this division or under any initiative act referred to in this division.

(g) For purposes of this section, "director" means the Director of the Emergency Medical Services Authority who shall have the powers specified in Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

Added Stats 1989 ch 97 § 2, effective July 7, 1989. Amended Stats 2010 ch 270 § 1 (AB 2699), effective January 1, 2011.

§901. (REPEALED JANUARY 1, 2014) EXEMPTION FROM LICENSURE REQUIREMENTS FOR SERVICES PROVIDED UNDER ENUMERATED CIRCUMSTANCES; PRIOR AUTHORIZATION; STEPS NECESSARY FOR SPONSORING ENTITY; REPORT; LIST OF HEALTH CARE PRACTITIONERS PROVIDING HEALTH CARE SERVICES UNDER THIS SECTION; COMPLIANCE

(a) For purposes of this section, the following provisions apply:

(1) "Board" means the applicable healing arts board, under this division or an initiative act referred to in this division, responsible for the licensure or regulation in this state of the respective health care practitioners.

(2) "Health care practitioner" means any person who engages in acts that are subject to licensure or regulation under this division or under any initiative act referred to in this division.

(3) "Sponsored event" means an event, not to exceed 10 calendar days, administered by either a sponsoring entity or a local government, or both, through which health care is provided to the public without compensation to the health care practitioner.

(4) "Sponsoring entity" means a nonprofit organization organized pursuant to Section 501(c)(3) of the Internal Revenue Code or a community-based organization.

(5) "Uninsured or underinsured person" means a person who does not have health care coverage, including private coverage or coverage through a program funded in whole or in part by a governmental entity, or a person who has health care coverage, but the coverage is not adequate to obtain those health care services offered by the health care practitioner under this section.

(b) A health care practitioner licensed or certified in good standing in another state, district, or territory of the United States who offers or provides health care services for which he or she is licensed or certified is exempt from the requirement for licensure if all of the following requirements are met:

(1) Prior to providing those services, he or she:

(A) Obtains authorization from the board to participate in the sponsored event after submitting to the board a copy of his or her valid license or certificate from each state in which he or she holds licensure or certification and a photographic identification issued by one of the states in which he or she holds licensure or certification. The board shall notify the sponsoring entity, within 20 calendar days of receiving a request for authorization, whether that request is approved or denied, provided that, if the board receives a request for authorization less than 20 days prior to the date of the sponsored event, the board shall make reasonable efforts to notify the sponsoring entity whether that request is approved or denied prior to the date of that sponsored event.

(B) Satisfies the following requirements:

(i) The health care practitioner has not committed any act or been convicted of a crime constituting grounds for denial of licensure or registration under Section 480 and is in good standing in each state in which he or she holds licensure or certification.

(ii) The health care practitioner has the appropriate education and experience to participate in a sponsored event, as determined by the board.

(iii) The health care practitioner shall agree to comply with all applicable practice requirements set forth in this division and the regulations adopted pursuant to this division.

(C) Submits to the board, on a form prescribed by the board, a request for authorization to practice without a license, and pays a fee, in an amount determined by the board by regulation, which shall be available, upon appropriation, to cover the cost of developing the authorization process and processing the request.

(2) The services are provided under all of the following circumstances:

(A) To uninsured or underinsured persons.

(B) On a short-term voluntary basis, not to exceed a 10-calendar-day period per sponsored event.

(C) In association with a sponsoring entity that complies with subdivision (c).

(D) Without charge to the recipient or to a third party on behalf of the recipient.

(c) The board may deny a health care practitioner authorization to practice without a license if the health care practitioner fails to comply with the requirements of this section or for any act that would be grounds for denial of an application for licensure.

(d) A sponsoring entity seeking to provide, or arrange for the provision of, health care services under this section shall do both of the following:

(1) Register with each applicable board under this division for which an out-of-state health care practitioner is participating in the sponsored event by completing a registration form that shall include all of the following:

(A) The name of the sponsoring entity.

(B) The name of the principal individual or individuals who are the officers or organizational officials responsible for the operation of the sponsoring entity.

(C) The address, including street, city, ZIP Code, and county, of the sponsoring entity's principal office and each individual listed pursuant to subparagraph (B).

(D) The telephone number for the principal office of the sponsoring entity and each individual listed pursuant to subparagraph (B).

(E) Any additional information required by the board.

(2) Provide the information listed in paragraph (1) to the county health department of the county in which the health care services will be provided, along with any additional information that may be required by that department.

(e) The sponsoring entity shall notify the board and the county health department described in paragraph (2) of subdivision (d) in writing of any change to the information required under subdivision (d) within 30 calendar days of the change.

(f) Within 15 calendar days of the provision of health care services pursuant to this section, the sponsoring entity shall file a report with the board and the county health department of the county in which the health care services were provided. This report shall contain the date, place, type, and general description of the care provided, along with a listing of the health care practitioners who participated in providing that care.

(g) The sponsoring entity shall maintain a list of health care practitioners associated with the provision of health care services under this section. The sponsoring entity shall maintain a copy of each health care practitioner's current license or certification and shall require each health care practitioner to attest in writing that his or her license or certificate is not suspended or revoked pursuant to disciplinary proceedings in any jurisdiction. The sponsoring entity shall maintain these records for a period of at least five years following the provision of health care services under this section and shall, upon request, furnish those records to the board or any county health department.

(h) A contract of liability insurance issued, amended, or renewed in this state on or after January 1, 2011, shall not exclude coverage of a health care practitioner or a sponsoring entity that provides, or arranges for the provision of, health care services under this section, provided that the practitioner or entity complies with this section.

(i) Subdivision (b) shall not be construed to authorize a health care practitioner to render care outside the scope of practice authorized by his or her license or certificate or this division.

(j) (1) The board may terminate authorization for a health care practitioner to provide health care services pursuant to this section for failure to comply with this section, any applicable practice requirement set forth in this division, any regulations adopted pursuant to this division, or for any act that would be grounds for discipline if done by a licensee of that board.

(2) The board shall provide both the sponsoring entity and the health care practitioner with a written notice of termination including the basis for that termination. The health care practitioner may, within 30 days after the date of the receipt of notice of termination, file a written appeal to the board. The appeal shall include any documentation the health care practitioner wishes to present to the board.

(3) A health care practitioner whose authorization to provide health care services pursuant to this section has been terminated shall not provide health care services pursuant to this section unless and until a subsequent request for authorization has been approved by the board. A health care practitioner who provides health care services in violation of this paragraph shall be deemed to be practicing health care in violation of the applicable provisions of this division, and be subject to any applicable administrative, civil, or criminal fines, penalties, and other sanctions provided in this division.

(k) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(l) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

Added Stats 2010 ch 270 § 2 (AB 2699), effective January 1, 2011, repealed January 1, 2014.

CHAPTER 5 MEDICINE

ARTICLE 3 LICENSE REQUIRED AND EXEMPTIONS

§2074. EMPLOYMENT OF OPHTHALMOLOGIST BY OPTOMETRIST

Nothing in this chapter shall prohibit the employment of a licensed physician and surgeon practicing in the specialty of ophthalmology by an optometrist licensed under the provisions of Chapter 7 (commencing with Section 3000) or by an optometric corporation certificated under that chapter.

Added Stats 1980 ch 1313 § 2.

CHAPTER 5.4 PRESCRIPTION LENSES

§2540. MEASURE OF RANGE OF VISION; DETERMINE PRESCRIPTION OF LENSES

No person other than a physician and surgeon or optometrist may measure the powers or range of human vision or determine the accommodative and refractive status of the human eye or the scope of its functions in general or prescribe ophthalmic devices.

Added Stats 1959 ch 2073 § 2. Amended Stats 1985 ch 1139 § 1; Stats 2006 ch 148 § 2 (AB 1382), effective January 1, 2007.

§2541. PRESCRIPTION OPHTHALMIC DEVICE DEFINED

A prescription ophthalmic device includes each of the following:

(a) Any spectacle or contact lens ordered by a physician and surgeon or optometrist, that alters or changes the visual powers of the human eye.

(b) Any contact lens described in paragraph (1) of subdivision (n) of Section 520 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 360j and following).

(c) Any plano contact lens that is marketed or offered for sale in this state. "Plano contact lens" means a zero-power or noncorrective contact lens intended to change the appearance of the normal eye in a decorative fashion.

Added Stats 1959 ch 2073 § 2. Amended Stats 1985 ch 1139 § 2; Stats 2006 ch 148 § 3 (AB 1382), effective January 1, 2007.

§2541.1. SPECTACLE LENS PRESCRIPTION REQUIREMENTS

(a) A spectacle lens prescription shall include all of the following:

(1) The dioptric power of the lens. When the prescription needed by the patient has not changed since the previous examination, the prescriber may write on the prescription form "copy lenses currently worn" instead.

(2) The expiration date of the prescription.

(3) The date of the issuance of the prescription.

(4) The name, address, telephone number, prescriber's license number, and signature of the prescribing optometrist or physician and surgeon.

(5) The name of the person to whom the prescription is issued.

(b) The expiration date of a spectacle lens prescription shall not be less than two to four years from the date of issuance unless the patient's history or current circumstances establish a reasonable probability of changes in the patient's vision of sufficient magnitude to necessitate reexamination earlier than two years, or presence or probability of visual abnormalities related to ocular or systemic disease indicates, the need for reexamination of the patient earlier than two years. In no circumstances shall the expiration date be shorter than the period of time recommended by the prescriber for reexamination of the patient. Establishing an expiration date that is not consistent with this section shall be regarded as unprofessional conduct by the board that issued the prescriber's certificate to practice.

(c) The prescriber of a spectacle lens shall orally inform the patient of the expiration date of a spectacle lens prescription at the time the prescription is issued. The expiration date of a prescription may be extended by the prescriber and transmitted by telephone, electronic mail, or any other means of communication. An oral prescription for a spectacle lens shall be reduced to writing and a copy of that writing shall be sent to the prescriber prior to the delivery of the lenses to the person to whom the prescription is issued.

(d) A prescriber of a spectacle lens shall abide by the rules pertaining to spectacle lens prescriptions and eye examinations adopted by the Federal Trade Commission found in Part 456 of Title 16 of the Code of Federal Regulations.

(e) An expired prescription may be filled if all of the following conditions exist:

(1) The patient's spectacles are lost, broken, or damaged to a degree that renders them unusable.

(2) Upon dispensing a prescription pursuant to this subdivision, the person dispensing shall recommend that the patient return to the optometrist or physician and surgeon who issued the prescription for an eye examination and provide the prescriber with a written notification of the prescription that was filled.

Added Stats 1998 ch 8 § 1 (AB 255).

§2541.2. RELEASE OF CONTACT LENS PRESCRIPTION TO PATIENT; EXPIRATION DATE OF PRESCRIPTION; VIOLATION OF SECTION UNPROFESSIONAL CONDUCT

(a) (1) The expiration date of a contact lens prescription shall not be less than one to two years from the date of issuance, unless the patient's history or current circumstances establish a reasonable probability of changes in the patient's vision of sufficient magnitude to necessitate reexamination earlier than one year, or the presence or probability of visual abnormalities related to ocular or systemic disease indicate the need for reexamination of the patient earlier than one year. If the expiration date of a prescription is less than one year, the health-related reasons for the limitation shall be documented in the patient's medical record. In no circumstances shall the prescription expiration date be less than the period of time recommended by the prescriber for reexamination of the patient.

(2) For the purposes of this subdivision, the date of issuance is the date the patient receives a copy of the prescription.

(3) Establishing an expiration date that is not consistent with this section shall be regarded as unprofessional conduct by the board that issued the prescriber's license to practice.

(b) Upon completion of the eye examination or, if applicable, the contact lens fitting process for a patient as described in subdivision (f), a prescriber or a registered dispensing optician shall provide the patient with a copy of the patient's contact lens prescription signed by the prescriber, unless the prescription meets the standards set forth in subdivision (c).

(c) A prescriber shall retain professional discretion regarding the release of the contact lens prescription for patients who wear the following types of contact lenses:

(1) Rigid gas permeables.

(2) Bitoric gas permeables.

(3) Bifocal gas permeables.

(4) Keratoconus lenses.

(5) Custom designed lenses that are manufactured for an individual patient and are not mass produced.

(d) If a patient places an order with a contact lens seller other than a physician and surgeon, an optometrist, or a registered dispensing optician, the prescriber or his or her authorized agent shall, upon request of the contact lens seller and in the absence of the actual prescription, attempt to promptly confirm the information contained in the prescription through direct communication with the contact lens seller.

(e) The contact lens prescription shall include sufficient information for the complete and accurate filling of a prescription, including, but not limited to, the power, the material or manufacturer or both, the base curve or appropriate designation, the diameter when appropriate, and an appropriate expiration date. When a provider prescribes a private label contact lens for a patient, the prescription shall include the name of the manufacturer, the trade name of the private label brand, and, if applicable, the trade name of the equivalent national brand.

(f) The contact lens fitting process begins after the initial comprehensive eye examination, and includes an examination to determine the lens specifications, an initial evaluation of the fit of the lens on the patient's eye, except in the case of a renewal prescription of an established patient, and follow-up examinations that are medically necessary, and ends when the prescriber or registered dispensing optician determines that an appropriate fit has been achieved, or in the case of a prescription renewal for an established patient, the prescriber determines that there is no change in the prescription.

(g) The payment of professional fees for the eye exam, fitting, and evaluation may be required prior to the release of the prescription, but only if the prescriber would have required immediate payment from the patient had the examination revealed that no ophthalmic goods were required. A prescriber or registered dispensing optician shall not charge the patient any fee as a condition to releasing the prescription to the patient. A prescriber may charge an additional fee for verifying ophthalmic goods dispensed by another seller if the additional fee is imposed at the time the verification is performed.

(h) A prescriber shall not condition the availability of an eye examination, a contact lens fitting, or the release of a contact lens prescription on a requirement that the patient agree to purchase contact lenses from that prescriber. A registered dispensing optician shall not condition the availability of a contact lens fitting on a requirement that the patient agrees to purchase contact lenses from that registered dispensing optician.

(i) A prescriber or a registered dispensing optician shall not place on the contact lens prescription, deliver

to the patient, or require a patient to sign a form or notice waiving or disclaiming the liability or responsibility of the prescriber or registered dispensing optician for the accuracy of the ophthalmic goods and services dispensed by another seller. This prohibition against waivers and disclaimers shall not impose liability on a prescriber or registered dispensing optician for the ophthalmic goods and services dispensed by another seller pursuant to the prescriber's prescription.

(j) The willful failure or refusal of a prescriber to comply with the provisions of this section shall constitute grounds for professional discipline, including, but not limited to, the imposition of a fine or the suspension or revocation of the prescriber's license. The Medical Board of California and the State Board of Optometry shall adopt regulations, to implement this subdivision, including, but not limited to, standards for processing complaints each receives regarding this subdivision.

(k) For the purposes of this section, "prescriber" means a physician and surgeon or an optometrist.

(l) Nothing in this section shall be construed to expand the scope of practice of a registered dispensing optician as defined in Sections 2542, 2543, and Chapter 5.5 (commencing with Section 2550).

Added Stats 2002 ch 814 § 1 (AB 2020).

§2541.3. QUALITY STANDARDS FOR PRESCRIPTION OPHTHALMIC DEVICES; ENFORCEMENT

(a) The State Department of Public Health, the State Board of Optometry and the Division of Licensing and Division of Medical Quality of the Medical Board of California shall prepare and adopt quality standards and adopt regulations relating to prescription ophthalmic devices, including, but not limited to, lenses, frames, and contact lenses. In promulgating these rules and regulations, the department and the boards shall adopt the current standards of the American National Standards Institute regarding ophthalmic materials. Nothing in this section shall prohibit the department and the boards from jointly adopting subsequent standards that are equivalent or more stringent than the current standards of the American National Standards Institute regarding ophthalmic materials.

(b) No individual or group that deals with prescription ophthalmic devices, including, but not limited to, distributors, dispensers, manufacturers, laboratories, optometrists, or ophthalmologists shall sell, dispense, or furnish any prescription ophthalmic device that does not meet the minimum standards set by the State Department of Public Health, the State Board of Optometry, or the Division of Licensing and Division of Medical Quality of the Medical Board of California.

(c) Any violation of the regulations adopted by the State Department of Public Health, the State Board of Optometry, or the Division of Licensing and Division of Medical Quality of the Medical Board of California pursuant to this section shall be a misdemeanor.

(d) Any optometrist, ophthalmologist, or dispensing optician who violates the regulations adopted by the State Department of Public Health, the State Board of Optometry, or the Division of Licensing and Division of Medical Quality of the Medical Board of California pursuant to this section shall be subject to disciplinary action by his or her licensing board.

(e) The State Board of Optometry or the Division of Licensing and Division of Medical Quality of the Medical Board of California may send any prescription ophthalmic device to the State Department of Public Health for testing as to whether or not the device meets established standards adopted pursuant to this section, which testing shall take precedence over any other prescription ophthalmic device testing being conducted by the department. The department may conduct the testing in its own facilities or may contract with any other facility to conduct the testing.

Added Stats 1975 ch 754 § 1. Amended Stats 1977 ch 1054 § 1; Stats 1978 ch 429 § 12, effective July 17, 1978, operative July 1, 1978; Stats 1989 ch 886 § 39; Stats 1993 ch 1267 § 37 (SB 916); Stats 2006 ch 148 § 4 (AB 1382), effective January 1, 2007; Stats 2007 ch 483 § 4 (SB 1039), effective January 1, 2008.

§2541.6. PURCHASE OF PRESCRIPTION OPHTHALMIC DEVICES WITH STATE FUNDS

No prescription ophthalmic device that does not meet the standards adopted by the State Department of Public Health, the State Board of Optometry, or the Division of Licensing and Division of Medical Quality of the Medical Board of California under Section 2541.3 shall be purchased with state funds.

Added Stats 1975 ch 754 § 2. Amended Stats 1977 ch 1054 § 2; Stats 1978 ch 429 § 13, effective July 17, 1978, operative July 1, 1978; Stats 1989 ch 886 § 40; Stats 1993 ch 1267 § 38 (SB 916); Stats 2006 ch 148 § 5 (AB 1382), effective January 1, 2007; Stats 2007 ch 483 § 5 (SB 1039), effective January 1, 2008.

§2542. DUTIES OF REGISTERED DISPENSING OPTICIANS

A registered dispensing optician shall fit, adjust, or dispense contact lenses, including plano contact lenses, only on the valid prescription of a physician and surgeon or optometrist, and acting on the advice, direction, and responsibility of the physician and surgeon or optometrist. The optician shall also comply with the requirements of Section 2560. A registered dispensing optician shall not fit a contact lens or lenses, or a plano contact lens or lenses, unless the prescription specifically refers to and authorizes

contact lenses. A registered dispensing optician shall not fit a generic type of contact lens or mode of wear for a contact lens contrary to the type or mode, if any, referred to in the prescription.

Added Stats 1959 ch 2073 § 2. Amended Stats 1978 ch 957 § 1; Stats 1982 ch 418 § 1.5; Stats 1985 ch 1139 § 3.

§2543. DISPENSATION OR FURNISHING OF LENSES; DECEPTIVE MARKETING

(a) Except as provided in the Nonresident Contact Lens Seller Registration Act (Chapter 5.45 (commencing with Section 2546), the right to dispense, sell or furnish prescription ophthalmic devices at retail or to the person named in a prescription is limited exclusively to licensed physicians and surgeons, licensed optometrists, and registered dispensing opticians as provided in this division. This section shall not be construed to affect licensing requirements pursuant to Section 111615 of the Health and Safety Code.

(b) It shall be considered a deceptive marketing practice for:

(1) Any licensed physician and surgeon, licensed optometrist, or registered dispensing optician to publish or cause to be published any advertisement or sales presentation relating to contact lenses that represents that contact lenses may be obtained without confirmation of a valid prescription.

(2) Any individual or entity who offers for sale plano contact lenses, as defined in subdivision (c) of Section 2541, to represent by any means that those lenses may be lawfully obtained without an eye examination or confirmation of a valid prescription, or may be dispensed or furnished to a purchaser without complying with the requirements of Section 2562, except as provided in Chapter 5.45 (commencing with Section 2546).

Added Stats 1959 ch 2073 § 2. Amended Stats 1978 ch 916 § 1; Stats 1996 ch 1023 § 10 (SB 1497), effective September 29, 1996. Stats 2002 ch 814 § 2 (AB 2020); Stats 2006 ch 148 § 6 (AB 1382), effective January 1, 2007.

§2544. FITTING OF LENSES; ADDITIONAL PROCEDURES BY ASSISTANT

(a) Notwithstanding any other provision of law, an assistant in any setting where optometry or ophthalmology is practiced who is acting under the direct responsibility and supervision of a physician and surgeon or optometrist may fit prescription lenses. Under the direct responsibility and supervision of an ophthalmologist or optometrist, an assistant in any setting where optometry or ophthalmology is practiced may also do the following:

(1) Prepare patients for examination.

(2) Collect preliminary patient data, including taking a patient history.

(3) Perform simple noninvasive testing of visual acuity, pupils, and ocular motility.

(4) Perform automated visual field testing.

(5) Perform ophthalmic photography and digital imaging.

(6) Perform tonometry.

(7) Perform lensometry.

(8) Perform nonsubjective auto refraction in connection with subjective refraction procedures performed by an ophthalmologist or optometrist.

(9) Administer cycloplegiacs, mydriatics, and topical anesthetics that are not controlled substances, for ophthalmic purposes.

(10) Perform pachymetry, keratometry, A scans, B scans, and electrodiagnostic testing.

(b) For the purposes of this section, "setting" includes, but is not limited to, any facility licensed by the State Department of Public Health or the State Department of Social Services.

(c) Nothing in this section shall be construed to authorize activities that corporations and other artificial legal entities are prohibited from conducting by Section 2400.

Added Stats 1959 ch 2073 § 2. Amended Stats 2000 ch 676 § 2 (SB 929); Stats 2010 ch 604 § 1 (AB 2683), effective January 1, 2011.

§2545. INJUNCTION; FINES

(a) Whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, an offense against this chapter, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining the conduct on application of the State Board of Optometry, the Division of Licensing of the Medical Board of California, the Osteopathic Medical Board of California, the Attorney General, or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(b) (1) Any person who violates any of the provisions of this chapter shall be subject to a fine of not less than one thousand dollars ($1,000) nor more than two thousand five hundred dollars ($2,500) per violation. The fines collected pursuant to this section from licensed physicians and surgeons and registered dispensing opticians shall be available upon appropriation to the Medical Board of California for the purposes of administration and enforcement. The fines collected pursuant to this section from licensed optometrists shall be deposited into the Optometry Fund and shall be available upon appropriation to the

State Board of Optometry for the purposes of administration and enforcement.

(2) The Medical Board of California and the State Board of Optometry shall adopt regulations implementing this section and shall consider the following factors, including, but not limited to, applicable enforcement penalties, prior conduct, gravity of the offense, and the manner in which complaints will be processed.

(3) The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Added Stats 1961 ch 428 § 1. Amended Stats 1976 ch 1185 § 86; Stats 1982 ch 517 § 7; Stats 1989 ch 886 § 41; Stats 1991 ch 359 § 26 (AB 1332); Stats 1993 ch 1267 § 39 (SB 916). Amended Stats 2002 ch 814 § 3 (AB 2020).

CHAPTER 5.45 NONRESIDENT CONTACT LENS

§2546. CITATION OF ACT

This act may be cited as the "Nonresident Contact Lens Seller Registration Act."

Added Stats 1995 ch 853 § 1 (SB 640).

§2546.1. REQUIREMENT OF REGISTRATION

(a) On and after January 1, 1997, no person located outside California shall ship, mail, or deliver in any manner, contact lenses at retail to a patient at a California address unless registered with the Division of Licensing of the Medical Board of California.

(b) With regard to any person subject to registration pursuant to this section, only replacement contact lenses provided pursuant to a valid prescription as described in Section 2546.6 may be shipped, mailed, or delivered directly to a patient.

Added Stats 1995 ch 853 § 1 (SB 640).

§2546.2. “DIVISION”

All references in this chapter to the division shall mean the Medical Board of California.

Added Stats 1995 ch 853 § 1 (SB 640). Amended Stats 2007 ch 678 § 28 (AB 253), effective January 1, 2008.

§2546.3. POWERS OF DIVISION

The division may adopt, amend, or repeal any rules and regulations that are reasonably necessary to carry out this chapter.

Added Stats 1995 ch 853 § 1 (SB 640).

§2546.4. APPLICATION FOR REGISTRATION

Application for registration as a nonresident contact lens seller shall be made on forms prescribed by the division, accompanied by the fee prescribed by this chapter, and shall bear the signature of the individual, or individuals if a co-partnership, or the president or secretary if a corporation, and shall contain the name under which the person proposes to do business, location of the business, and the designation of an agent for service of process in California. The board shall be notified within 30 days of any change of name, location of business, corporate officer, or agent of service.

Added Stats 1995 ch 853 § 1 (SB 640).

§2546.5. QUALIFICATIONS FOR REGISTRATION

In order to obtain and maintain registration, a nonresident contact lens seller shall:

(a) Be in good standing and either registered or otherwise authorized in the state in which the selling facility is located and from which the contact lenses are sold.

(b) Comply with all directions and requests for information made by the board as authorized under this chapter.

(c) Maintain records of contact lenses shipped, mailed, or delivered to patients in California for a period of at least three years.

(d) Provide a toll-free telephone service for responding to patient questions and complaints during the applicant's regular hours of operation, but in no event less than six days per week and 40 hours per week. The toll-free number shall be included in literature provided with each mailed contact lens prescription. All questions relating to eye care for the lens prescribed shall be referred back to the contact lens prescriber.

(e) Provide the following or a substantially equivalent written notification to the patient whenever contact lenses are supplied:

WARNING: IF YOU ARE HAVING ANY UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE, OR REDNESS, REMOVE YOUR LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR LENSES AGAIN.

(f) Disclose in any price advertisement any required membership fees, enrollment fees, and indicate that shipping costs may apply unless the advertisement specifically and clearly states otherwise.

(g) Provide a toll-free telephone number, facsimile line, and electronic mail address that are dedicated to prescribers and their authorized agents for the purposes of confirmation of contact lens prescriptions. These numbers, along with an electronic mail address, shall be included in any communication with the prescriber when requesting confirmation of a contact lens prescription.

(h) It shall be considered a deceptive marketing practice for any nonresident contact lens seller to publish or cause to be published any advertisement or sales presentation relating to contact lenses representing that contact lenses may be obtained without confirmation of a valid prescription.

Added Stats 1995 ch 853 § 1 (SB 640). Amended Stats 2002 ch 814 § 4 (AB 2020).

§2546.6. WRITTEN PRESCRIPTION OR CONFIRMATION OF PRESCRIPTION REQUIRED FOR SALE OF CONTACT LENSES

(a) Contact lenses may be sold only upon receipt of a written prescription or a copy of a written prescription and may be sold in quantities consistent with the prescription's established expiration date and the standard packaging of the manufacturer or vendor. If the written prescription or a copy of it is not available to the seller, the seller shall confirm the prescription by direct communication with the prescriber or his or her authorized agent prior to selling, shipping, mailing, or delivering any lens, and maintain a record of the communication. A prescription shall be deemed confirmed upon the occurrence of one of the following:

(1) The prescriber or the prescriber's agent confirms the prescription by communication with the seller.

(2) The prescriber fails to communicate with the seller by 2 p.m. of the next business day after the seller requests confirmation, or the prescriber fails to communicate with the seller by the next business day on or before the same time of day that the seller requested confirmation, whichever is sooner. For purposes of this paragraph, "business day" means each day except a Sunday or a federal holiday.

(b) If a prescriber communicates with a seller before the time period described in paragraph (2) of subdivision (a) elapses and informs the seller that the contact lens prescription is invalid, the seller shall not fill the prescription. The prescriber shall specify in the communication with the seller the basis for invalidating the prescription.

(c) A seller shall not alter any of the specifications of a contact lens prescription other than the color or substitute a different manufacturer, brand, or other physical property of the lens. Notwithstanding the provisions of this subdivision, if the contact lens is manufactured by a company, but sold under multiple private labels by that same company to individual providers, the seller may fill the prescription with a contact lens manufactured by that company if the contact lens prescription and the related parameters are not substituted, changed, or altered for a different manufacturer or brand.

Added Stats 1995 ch 853 § 1 (SB 640). Amended Stats 2002 ch 814 § 5 (AB 2020).

§2546.7. VIOLATIONS; PROCEEDINGS

(a) A certificate may be denied, suspended, revoked, or otherwise subjected to discipline for any of the following:

(1) Incompetence, gross negligence, or repeated similar negligent acts performed by the registrant or any employee of the registrant.

(2) An act of dishonesty or fraud.

(3) Committing any act or being convicted of a crime constituting grounds for denial of licensure or registration under Section 480.

(4) Any violation of Section 2546.5 or 2546.6.

(b) The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the division shall have all powers granted therein.

Added Stats 1995 ch 853 § 1 (SB 640).

§2546.8. TERMS OF REGISTRATION; RENEWAL

Every registration issued to a nonresident contact lens seller shall expire 24 months after the initial date of issuance. To renew an unexpired registration, the registrant shall, before the time at which the license would otherwise expire, apply for renewal on a form prescribed by the division, and pay the renewal fee prescribed by this chapter.

Added Stats 1995 ch 853 § 1 (SB 640).

§2546.9. FEE SCHEDULE

The amount of fees prescribed in connection with the registration of nonresident contact lens sellers is that established by the following schedule:

(a) The initial registration fee shall be one hundred dollars ($100).

(b) The renewal fee shall be one hundred dollars ($100).

(c) The delinquency fee shall be twenty-five dollars ($25).

(d) The fee for replacement of a lost, stolen, or destroyed registration shall be twenty-five dollars ($25).

(e) The fees collected pursuant to this chapter shall be deposited in the Dispensing Opticians Fund, and

shall be available, upon appropriation, to the Medical Board of California for the purposes of this chapter.

Added Stats 1995 ch 853 § 1 (SB 640). Amended Stats 2000 ch 836 § 17 (SB 1554).

§2546.10. VIOLATIONS; FINES

(a) Any person who violates any of the provisions of this chapter shall be subject to a fine of not less than one thousand dollars ($1,000) nor more than two thousand five hundred dollars ($2,500) per violation. The fines collected pursuant to this section shall be available upon appropriation to the Medical Board of California for the purposes of administration and enforcement.

(b) The Medical Board of California shall adopt regulations implementing this section and shall consider the following factors, including, but not limited to, applicable enforcement penalties, prior conduct, gravity of the offense, and the manner in which complaints will be processed.

(c) The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Added Stats 2002 ch 814 § 6 (AB 2020).

CHAPTER 5.5 REGISTERED DISPENSING OPTICIANS

ARTICLE 1 GENERAL PROVISIONS

§2550. RIGHT TO PRACTICE

Individuals, corporations, and firms engaged in the business of filling prescriptions of physicians and surgeons licensed by the Division of Licensing of the Medical Board of California or optometrists licensed by the State Board of Optometry for prescription lenses and kindred products, and, as incidental to the filling of those prescriptions, doing any or all of the following acts, either singly or in combination with others, taking facial measurements, fitting and adjusting those lenses and fitting and adjusting spectacle frames, shall be known as dispensing opticians and shall not engage in that business unless registered with the Division of Licensing of the Medical Board of California.

Added Stats 1986 ch 773 § 2, operative January 1, 1988. Amended Stats 1989 ch 886 § 42; Stats 1990 ch 1190 § 1 (AB 3627); Stats 1993 ch 1267 § 40 (SB 916).

§2550.1. REFERENCE TO BOARD OR BOARD OF MEDICAL EXAMINERS AS REFERENCE TO MEDICAL BOARD OF CALIFORNIA

All references in this chapter to the board or the Board of Medical Examiners or division shall mean the Medical Board of California.

Added Stats 1976 ch 1185 § 88. Amended Stats 1978 ch 916 § 2; Stats 1989 ch 886 § 43; Stats 1993 ch 1267 § 41 (SB 916); Stats 2007 ch 678 § 29 (AB 253), effective January 1, 2008.

§2551. APPLICATIONS AND FEES

Individuals, corporations, and firms shall make application for registration and shall not engage in that business prior to being issued a certificate of registration. Application for that registration shall be on forms prescribed by the board, shall bear the signature of the individual, or general partners if a partnership, or the president or secretary if a corporation, and shall contain the name under which he or she, they or it proposes to do business and the business address. Separate applications shall be made for each place of business and each application must be accompanied by the application fee prescribed by Section 2565.

Added Stats 1939 ch 955 § 1. Amended Stats 1941 ch 521 § 1; Stats 1957 ch 1531 § 1; Stats 1961 ch 1280 § 2, operative October 1, 1961; Stats 1968 ch 493 § 1; Stats 1990 ch 1190 § 2 (AB 3627).

§2552. CONTENTS AND VERIFICATION OF APPLICATIONS

Each application shall be verified under oath by the person required to sign the application and shall designate the name, address, and business telephone number of the applicant's employee who will be responsible for handling customer inquiries and complaints with respect to the business address for which registration is applied.

The applicant shall furnish such additional information or proof, oral or written, which the division may request, including information and proof relating to the provisions of Division 1.5 (commencing with Section 475).

The division shall promptly notify any applicant if, as of the 30th day following the submission of an application under this chapter, the application and supporting documentation are not substantially complete and in proper form. The notification shall be in writing, shall state specifically what documents or other information are to be supplied by the applicant to the board, and shall be sent to the applicant by certified or registered mail. Within 30 days of the

applicant's submission of the requested documents or information to the board, the board shall notify the applicant by certified or registered mail if the board requires additional documents or information. This section shall become operative on January 1, 1988.

Added Stats 1986 ch 773 § 4, operative January 1, 1988.

§2553. REGISTRATION OF APPLICANTS; DISPLAY OF CERTIFICATES

If the board, after investigation, approves the application, it shall register the applicant and issue to the applicant a certificate of dispensing optician. A separate certificate of registration shall be required for each address where the business is to be conducted.

A certificate authorizes the applicant, its agents and employees acting therefor to engage in the business defined in Section 2550 provided that the fitting and adjusting of spectacle lenses is performed in compliance with Article 1.5 (commencing with Section 2559.1) and the fitting and adjusting of contact lenses is performed in compliance with Article 2 (commencing with Section 2560).

Each certificate shall be at all times displayed in a conspicuous place at the certified place of business. The certificate shall not be transferable, but on application to the division there may be registered a change of address of the certificate. This section shall become operative on January 1, 1988.

Added Stats 1986 ch 773 § 6, operative January 1, 1988.

§2553.5. LOCATIONS FOR FITTING AND ADJUSTING OF SPECTACLE LENSES AND FRAMES; DISCLOSURE OF REGISTRANT'S REGULAR BUSINESS ADDRESS

(a) A registered dispensing optician may fit and adjust spectacle lenses and frames or take facial measurements in any of the following locations:

(1) A health facility as defined in Section 1250 of the Health and Safety Code for a person admitted to that facility or an employee of that facility.

(2) A business location as defined in subdivision (f) for an employee or independent contractor of the person operating the business at that location.

(3) Any certified place of business pursuant to Section 2553.

(b) A registered dispensing optician who fits and adjusts spectacle lenses at a health facility or business location shall provide to the patient written information disclosing the registrant' s regular business address, certificate of registration number, phone number, and the name and phone number of the person designated by the licensee to receive complaints and inquiries, as specified in Section 2554.

(c) Nothing in this section shall be deemed to permit a registered dispensing optician or registered contact lens dispenser to fit or adjust contact lenses at a health facility or at a business location, as defined in subdivision (f).

(d) A registered spectacle lens dispenser may fit and adjust spectacle lenses at a health facility or at a business location, as defined in subdivision (f), only if he or she is in personal attendance at a certified place of business pursuant to Section 2553 at least 40 percent of his or her regular working hours each week.

(e) A registered spectacle lens dispenser who fits and adjusts spectacle lenses at a health facility or at a business location, as defined in subdivision (f), other than on a temporary basis, shall maintain an emergency patient response system. This system shall consist of a telephone answering machine or service or a telephone paging device and the registered spectacle lens dispenser shall respond to patient inquiries received through the emergency system within 24 hours excluding weekends and holidays.

(f) "Business location" means the place at which any business employs more than 25 persons at any single business address, but shall not include a health facility, as defined in Section 1250 of the Health and Safety Code, or a certified place of business as specified in Section 2553.

(g) This section shall not affect the requirements regarding fitting and adjusting as set forth in Sections 2559.1 and 2560.

Added Stats 1990 ch 1190 § 3 (AB 3627). Amended Stats 1993 ch 240 § 1 (SB 136).

§2553.6. EFFECT OF INTERMINGLING PROPRIETARY INTERESTS

The board shall deny any application for registration under this chapter if any person licensed under Chapter 5 (commencing with Section 2000), for whom the applicant, in accordance with Section 2550, proposes to fill any prescription, has any proprietary interest, or has designated or arranged for any other person to have any proprietary interest in or with the applicant.

The board may, in accordance with Section 2555, suspend, revoke, or refuse to renew the certificate of any individual or firm under this chapter, if such individual or firm, after the effective date of this section, fills, or has filled, while holding a certificate issued pursuant to this chapter, any prescription issued by any person licensed under Chapter 5 (commencing with Section 2000) who has any proprietary interest, or has designated or arranged for any other person to have any proprietary interest, in or with such individual or firm.

Such penalties shall be in addition to, and not to the exclusion of, any other remedies or penalties provided by law.

"Proprietary interest," for the purposes of this

section, means any membership, coownership, stock ownership, legal or beneficial interest, any other proprietary interest, or profit-sharing arrangement, designated or arranged or held, directly or indirectly in any form, in or with any individual or firm applying for registration or registered under this chapter, except stock ownership in a corporation which is listed on a stock exchange regulated by the Securities and Exchange Commission if the stock is acquired in a transaction conducted through such stock exchange.

This section shall apply only to a dispensing optician required to be registered pursuant to Chapter 5.5 (commencing with Section 2550) and shall not be construed to modify Section 2557, or to affect the fitting of prescription lenses by an assistant pursuant to Section 2544.

Added Stats 1968 ch 1118 § 1.

§2554. DESIGNATION OF EMPLOYEE RESPONSIBLE FOR HANDLING CUSTOMER COMPLAINTS

Each registrant shall conspicuously and prominently display at each registered location the name of the registrant's employee who is currently designated to handle customer inquiries and complaints and the telephone number where he or she may be reached during business hours.

This section shall become operative on January 1, 1988.

Added Stats 1986 ch 773 § 8, operative January 1, 1988.

§2555. SUSPENSION AND REVOCATION OF CERTIFICATES

Certificates issued hereunder may in the discretion of the division be suspended or revoked or subjected to terms and conditions of probation for violating or attempting to violate this chapter, Chapter 5.4 (commencing with Section 2540) or any regulation adopted under this chapter or, Chapter 5.4 (commencing with Section 2540), or Section 651, 654, or 655, or for incompetence, gross negligence, or repeated similar negligent acts performed by the registrant or by an employee of the registrant. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the division shall have all the powers granted therein.

Added Stats 1939 ch 955 § 1. Amended Stats 1945 ch 896 § 3; Stats 1978 ch 1161 § 157; Stats 1982 ch 418 § 6; Stats 1989 ch 433 § 1.

§2555.1. DISCIPLINARY ACTION UPON CONVICTION OF CHARGE RELATED TO QUALIFICATIONS, FUNCTIONS, AND DUTIES OF DISPENSING OPTICIAN

In the discretion of the Division of Licensing, a certificate issued hereunder may be suspended or revoked if an individual certificate holder or persons having any proprietary interest who will engage in dispensing operations, have been convicted of a crime substantially related to the qualifications, functions and duties of a dispensing optician. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a dispensing optician is deemed to be a conviction within the meaning of this article. The board may order the certificate suspended or revoked, or may decline to issue a certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

The proceeding under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

This section shall become operative on January 1, 1988.

Added Stats 1986 ch 773 § 10. Amended Stats 1993 ch 1267 § 42 (SB 916).

§2556. UNLAWFUL PRACTICES

It is unlawful to do any of the following: to advertise the furnishing of, or to furnish, the services of a refractionist, an optometrist, or a physician and surgeon; to directly or indirectly employ or maintain on or near the premises used for optical dispensing, a refractionist, an optometrist, a physician and surgeon, or a practitioner of any other profession for the purpose of any examination or treatment of the eyes; or to duplicate or change lenses without a prescription or order from a person duly licensed to issue the same.

Added Stats 1939 ch 955 § 1. Amended Stats 1979 ch 653 § 9.

§2556.5. USE OF “DISPENSING OPTICIAN”

Any person who holds himself out as a "dispensing optician" or "registered dispensing optician" or who uses any other term or letters indicating or implying that he is registered and holds a certificate under the terms of this law without having at the time of so doing a valid, unrevoked certificate, as provided in this chapter, is guilty of a misdemeanor.

Added Stats 1953 ch 1144 § 1.

§2557. EXEMPT PRACTITIONERS; EXEMPT SALES

This chapter shall not affect any person licensed as an optometrist under Chapter 7 of Division II of this code, or any physician and surgeon licensed under Chapter 5 of Division II of this code. Such exemption shall not apply to any optometrist or physician and surgeon exclusively engaged in the business of filling prescriptions for physicians and surgeons. This chapter does not prohibit the sale of goggles, sun glasses, colored glasses, or occupational protective eye devices if they do not have refractive values nor do the provisions of this chapter prohibit the sale of complete ready-to-wear eyeglasses as merchandise.

Added Stats 1939 ch 955 § 1.

§2558. PUNISHMENT FOR MISDEMEANOR VIOLATIONS; RULE-MAKING AUTHORITY

Any person who violates any of the provisions of this chapter is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not less than 10 days nor more than one year, or by a fine of not less than two hundred dollars ($200) nor more than one thousand dollars ($1,000) or by both such fine and imprisonment.

The Division of Licensing of the Medical Board of California may adopt, amend, or repeal, in accordance with the Administrative Procedure Act, any regulations as are reasonably necessary to carry out this chapter.

Added Stats 1939 ch 955 § 1. Amended Stats 1957 ch 2084 § 3; Stats 1978 ch 1161 § 159; Stats 1983 ch 1092 § 8, effective September 27, 1983, operative January 1, 1984; Stats 1989 ch 886 § 44; Stats 1993 ch 1267 § 43 (SB 916).

§2559. INJUNCTIONS

Whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of any provision of this chapter, or Chapter 5.4 (commencing with Section 2540), the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining such conduct on application of the Division of Licensing of the Medical Board of California, the Attorney General or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

Added Stats 1971 ch 921 § 1. Amended Stats 1978 ch 1161 § 160; Stats 1982 ch 517 § 8; Stats 1989 ch 886 § 45; Stats 1993 ch 1267 § 44 (SB 916).

ARTICLE 1.5 SPECTACLE LENS DISPENSING

§2559.1. RIGHT TO PRACTICE

On and after January 1, 1988, no individual may fit and adjust spectacle lenses unless the registration requirement of Section 2550 is complied with, and unless (1) the individual is a duly registered spectacle lens dispenser as provided in Section 2559.2 or (2) the individual performs the fitting and adjusting under the direct responsibility and supervision of a duly registered spectacle lens dispenser whose certificate of registration is then conspicuously and prominently displayed on the premises. A supervising registered dispenser shall be on the registered premises when an unregistered technician fits and adjusts spectacle lenses, allowing for usual and customary absences including illness and vacation.

Added Stats 1986 ch 773 § 12, operative January 1, 1988.

§2559.2. APPLICATIONS; REGISTRATION OF APPLICANTS; DISPLAY OF CERTIFICATE

(a) An individual shall apply for registration as a registered spectacle lens dispenser on forms prescribed by the division. The division shall register an individual as a registered spectacle lens dispenser upon satisfactory proof that the individual has passed the registry examination of the American Board of Opticianry or any successor agency to that board. In the event the division should determine, after hearing, that the registry examination is not appropriate to determine entry level competence as a spectacle lens dispenser or is not designed to measure specific job performance requirements, the division may thereafter prescribe or administer a written examination that meets those specifications. If an applicant for renewal has not engaged in the full-time or substantial part-time practice of fitting and adjusting spectacle lenses within the last five years then the division may require the applicant to take and pass the examination referred to in this section as a condition of registration. Any examination prescribed or administered by the division shall be given at least twice each year on dates publicly announced at least 90 days before the examination dates. The division is authorized to contract for administration of an examination.

(b) The division may deny registration where there are grounds for denial under the provisions of Division 1.5 (commencing with Section 475).

(c) The division shall issue a certificate to each qualified individual stating that the individual is a registered spectacle lens dispenser.

(d) Any individual who had been approved as a manager of dispensing operations of a registered dispensing optician under the provisions of Section 2552 as it existed before January 1, 1988, and who

had not been subject to any disciplinary action under the provisions of Section 2555.2 shall be exempt from the examination requirement set forth in this section and shall be issued a certificate as a registered spectacle lens dispenser, provided an application for that certificate is filed with the division on or before December 31, 1989.

(e) A registered spectacle lens dispenser is authorized to fit and adjust spectacle lenses at any place of business holding a certificate of registration under Section 2553 provided that the certificate of the registered spectacle lens dispenser is displayed in a conspicuous place at the place of business where he or she is fitting and adjusting.

Added Stats 1986 ch 773 § 12, operative January 1, 1988. Amended Stats 1987 ch 525 § 1, effective September 11, 1987; Stats 1994 ch 26 § 43 (AB 1807), effective March 30, 1994.

§2559.3. SUSPENSION AND REVOCATION OF CERTIFICATES

A certificate issued to a registered spectacle lens dispenser may, in the discretion of the division, be suspended or revoked for violating or attempting to violate any provision of this chapter or any regulation adopted under this chapter, or for incompetence, gross negligence, or repeated similar negligent acts performed by the certificate holder. A certificate may also be suspended or revoked if the individual certificate holder has been convicted of a felony as provided in Section 2555.1.

Any proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the division shall have all the powers granted therein.

Added Stats 1986 ch 773 § 12, operative January 1, 1988.

§2559.4. APPLICATION OF ARTICLE

This article shall not apply to an assistant fitting spectacle lenses pursuant to Section 2544 if the assistant is acting under the direct responsibility and supervision of a physician and surgeon or optometrist who engages in the practice of fitting spectacle lenses for his or her patients.

Added Stats 1986 ch 773 § 12, operative January 1, 1988. Amended Stats 2010 ch 604 § 3 (AB 2683), effective January 1, 2011.

§2559.5. OPERATIVE DATE

This article shall become operative on January 1, 1988. However, the division may, prior to that date, accept and process applications, including the collection of fees, and perform other functions necessary to implement this article.

Added Stats 1986 ch 773 § 12, operative January 1, 1988. Amended Stats 1987 ch 525 § 2, effective September 11, 1987.

§2559.6. UNPROFESSIONAL CONDUCT

No spectacle lens prescription that is issued on or after January 1, 1999, shall be dispensed unless the prescription meets the requirements of Section 2541.1. No spectacle lens prescription shall be dispensed after the expiration date of the prescription unless authorized pursuant to subdivision (e) of Section 2541.1. A person violating this section shall not be guilty of a misdemeanor pursuant to Section 2558. A violation of this section shall be considered unprofessional conduct by the board that issued the dispenser's certificate to practice. A registered dispensing optician may defend this proceeding by establishing that the expiration date of the prescription was not established consistent with Section 2541.1. Nothing in this section shall be construed to authorize a registered dispensing optician to fill a prescription after the expiration date or to make any judgment regarding the appropriateness of the expiration date.

Added Stats 1998 ch 8 § 2 (AB 255).

ARTICLE 2 CONTACT LENS DISPENSING

§2560. REGISTRATION; TRAINEES

No individual may fit and adjust contact lenses, including plano contact lenses, unless the registration requirement of Section 2550 is complied with, and unless (a) the individual is a duly registered contact lens dispenser as provided in Section 2561 or (b) the individual performs the fitting and adjusting under the direct responsibility and supervision of a duly registered contact lens dispenser who is then present on the registered premises. In no event shall a registered contact lens dispenser supervise more than three contact lens dispenser trainees.

Added Stats 1982 ch 418 § 8. Amended Stats 1985 ch 1139 § 4; Stats 1994 ch 26 § 44 (AB 1807), effective March 30, 1994.

§2561. QUALIFICATIONS FOR REGISTRATION; DENIAL OF REGISTRATION

An individual shall apply for registration as a registered contact lens dispenser on forms prescribed by the division. The division shall register an individual as a registered contact lens dispenser upon satisfactory proof that the individual has passed the contact lens registry examination of the National Committee of Contact Lens Examiners or any successor agency to that committee. In the event the division should ever find after hearing that the registry examination is not appropriate to determine entry level

competence as a contact lens dispenser or is not designed to measure specific job performance requirements, the division may thereafter from time to time prescribe or administer a written examination that meets those specifications. If an applicant for renewal has not engaged in the full-time or substantial part-time practice of fitting and adjusting contact lenses within the last five years then the division may require the applicant to take and pass the examination referred to in this section as a condition of registration. Any examination administered by the division shall be given at least twice each year on dates publicly announced at least 90 days before the examination dates. The division is authorized to contract with the National Committee of Contact Lens Examiners or any successor agency to that committee to provide that the registry examination is given at least twice each year on dates publicly announced at least 90 days before the examination dates. The division may deny registration where there are grounds for denial under the provisions of Division 1.5 (commencing with Section 475).

The division shall issue a certificate to each qualified individual stating that the individual is a registered contact lens dispenser.

A registered contact lens dispenser may use that designation, but shall not hold himself or herself out in advertisements or otherwise as a specialist in fitting and adjusting contact lenses.

Added Stats 1982 ch 418 § 8. Amended Stats 1994 ch 26 § 45 (AB 1807), effective March 30, 1994. Amended Stats 2000 ch 836 § 18 (SB 1554).

§2562. EVALUATION BY PRESCRIBING PHYSICIAN

Upon satisfactory completion of the fitting of contact lenses, but in no event more than 60 days after receipt of the prescription, a registered contact lens dispenser shall direct the person named in the prescription to return to the prescribing physician and surgeon or optometrist for an evaluation.

Added Stats 1982 ch 418 § 8.

§2563. SUSPENSION OR REVOCATION OF CERTIFICATE

A certificate issued to a registered contact lens dispenser may in the discretion of the division be suspended or revoked for violating or attempting to violate any provision of this chapter or any regulation adopted under this chapter, or for incompetence, gross negligence, or repeated similar negligent acts performed by the certificate holder. A certificate may also be suspended or revoked if the individual certificate holder has been convicted of a felony as provided in Section 2555.1.

Any proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the division shall have all the powers granted therein.

Added Stats 1982 ch 418 § 8.

§2564. ASSISTANT FITTING CONTACT LENSES UNDER SUPERVISION OF PHYSICIAN OR OPTOMETRIST

The provisions of this article shall not apply to an assistant fitting contact lenses while acting under the direct responsibility and supervision of a physician and surgeon or optometrist who engages in the practice of fitting contact lenses for his or her patients under Section 2544.

Added Stats 1982 ch 418 § 8. Amended Stats 2010 ch 604 § 4 (AB 2683), effective January 1, 2011.

§2564.5. HANDWASHING FACILITIES

A registered dispensing optician fitting contact lenses shall maintain accessible handwashing facilities on the premises and those facilities shall be used before each fitting of contact lenses.

Added Stats 1982 ch 418 § 8.

§2564.6. COMPLIANCE WITH § 2541.2

A registered dispensing optician shall comply with the applicable provisions of Section 2541.2.

Added Stats 2002 ch 814 § 7 (AB 2020).

CHAPTER 7 OPTOMETRY

ARTICLE 1 GENERAL PROVISIONS

§3000. OPTOMETRY PRACTICE ACT

This chapter constitutes the chapter on optometry. It shall be known and may be cited as the Optometry Practice Act.

Added Stats 2004 ch 426 § 2 (AB 2464).

§3001. "OPHTHALMIC LENS"

As used in this chapter, an ophthalmic lens is any lens which has a spherical, cylindrical or prismatic power or value.

Added Stats 1937 ch 423.

§3002. "TRIAL FRAME" OR "TEST LENS"

As used in this chapter, a trial frame or test lens is any frame or lens used in testing the eye, which is not sold and is not for sale to clients.

Added Stats 1937 ch 423.

§3003. "OPTOMETRIST"

As used in this chapter, "optometrist" means a person who is licensed to practice optometry in this state under the authority of this chapter.

Added Stats 2004 ch 426 § 3 (AB 2464).

§3004. "BOARD"

As used in this chapter, "board" means the State Board of Optometry.

Added Stats 2004 ch 426 § 3 (AB 2464).

§3005. "PLACE OF PRACTICE"

As used in this chapter, "place of practice" means any location where optometry is practiced.

Added Stats 2004 ch 426 § 3 (AB 2464).

§3006. "ADVERTISE"

As used in this chapter, the term "advertise" and any of its variants include the use of a newspaper, magazine, or other publication, book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, tag, window display, store sign, radio announcement, or any other means or methods now or hereafter employed to bring to the attention of the public the practice of optometry or the prescribing, fitting, or sale, in connection therewith, of lenses, frames, or other accessories or appurtenances.

Added Stats 2004 ch 426 § 6 (AB 2464).

§3007. "RETENTION OF RECORDS"

An optometrist shall retain a patient's records for a minimum of seven years from the date he or she completes treatment of the patient. If the patient is a minor, the patient's records shall be retained for a minimum of seven years from the date he or she completes treatment of the patient and at least until the patient reaches 19 years of age.

Added Stats 2007 ch 276 § 1 (AB 986), effective January 1, 2008.

ARTICLE 2 ADMINISTRATION

§3010.1. PRIORITY OF BOARD; PROTECTION OF THE PUBLIC

Protection of the public shall be the highest priority for the State Board of Optometry in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Added Stats 2002 ch 107 § 13 (AB 269).

§3010.5. (REPEALED JANUARY 1, 2014) STATE BOARD OF OPTOMETRY; MEMBERSHIP AND QUORUM; AUTHORITY

(a) There is in the Department of Consumer Affairs a State Board of Optometry in which the enforcement of this chapter is vested. The board consists of 11 members, five of whom shall be public members.

Six members of the board shall constitute a quorum.

(b) The board shall, with respect to conducting investigations, inquiries, and disciplinary actions and proceedings, have the authority previously vested in the board as created pursuant to Section 3010. The board may enforce any disciplinary actions undertaken by that board.

(c) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

Added Stats 2002 ch 1150 § 16 (SB 1955), as B & P C § 3010.1. Amended Stats 2003 ch 789 § 13 (SB 364). Amended and renumbered by Stats 2004 ch 909 § 6, effective September 29, 2004; Stats 2006 ch 658 § 52 (SB 1476), effective January 1, 2007, inoperative July 1, 2010, repealed January 1, 2011; Stats 2009 ch 270 § 6 (AB 1071), effective January 1, 2010, repealed January 1, 2013; Stats 2010 ch 695.§ 12 (SB 294), effective January 1, 2011, repealed January 1, 2014.

§3011. QUALIFICATIONS; LIMIT OF CONSECUTIVE TERMS

Members of the board, except the public members, shall be appointed only from persons who are registered optometrists of the State of California and actually engaged in the practice of optometry at the time of appointment or who are members of the faculty of a school of optometry. The public members shall not be a licentiate of the board or of any other board under this division or of any board referred to in

Sections 1000 and 3600.

No person, including the public members, shall be eligible to membership in the board who is a stockholder in or owner of or a member of the board of trustees of any school of optometry or who shall be financially interested, directly or indirectly, in any concern manufacturing or dealing in optical supplies at wholesale.

No person, including the public members, shall serve as a member of the board for more than two consecutive terms.

A member of the faculty of a school of optometry may be appointed to the board; however, no more than two faculty members of schools of optometry may be on the board at any one time. Faculty members of the board shall not serve as public members.

Added Stats 1937 ch 423. Amended Stats 1955 ch 1602 § 1; Stats 1961 ch 1821 § 29; Stats 1976 ch 1188 § 21; Stats 1978 ch 1161 § 211; Stats 1982 ch 437 § 1.

§3013. TERMS, VACANCIES AND APPOINTMENT OF MEMBERS

(a) Each member of the board shall hold office for a term of four years, and shall serve until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.

(b) Vacancies occurring shall be filled by appointment for the unexpired term.

(c) The Governor shall appoint three of the public members and the six members qualified as provided in Section 3011. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(d) No board member serving between January 1, 2000, and June 1, 2002, inclusive, shall be eligible for reappointment.

(e) For initial appointments made on or after January 1, 2003, one of the public members appointed by the Governor and two of the professional members shall serve terms of one year. One of the public members appointed by the Governor and two of the professional members shall serve terms of three years. The remaining public member appointed by the Governor and the remaining two professional members shall serve terms of four years. The public members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall each serve for a term of four years.

Added Stats 1937 ch 423. Amended Stats 1945 ch 289 § 2; Stats 1955 ch 1602 § 2; Stats 1961 ch 1821 § 30; Stats 1976 ch 1189 § 12; Stats 1978 ch 1161 § 212; Stats 1982 ch 676 § 15. Amended Stats 2002 ch 1150 § 17 (SB 1955); Stats 2004 ch 426 § 8 (AB 2464).

§3014. OFFICERS

The board shall elect from its membership a president, a vice president, and a secretary who shall hold office for one year or until the election and qualification of a successor.

Added Stats 1937 ch 423. Amended Stats 1974 ch 1122 § 1. Amended Stats 2004 ch 426 § 9 (AB 2464).

§3014.6. (REPEALED JANUARY 1, 2014) APPOINTMENT OF EXECUTIVE OFFICER

(a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

Added Stats 2002 ch 1150 § 19 (SB 1955). Amended Stats 2003 ch 789 § 14 (SB 364); Stats 2004 ch 909 § 7 (SB 136), effective September 29, 2004; Stats 2006 ch 658 § 53 (SB 1476), effective January 1, 2007, inoperative July 1, 2010, repealed January 1, 2011, Stats 2009 ch 270 § 7 (AB 1071), effective January 1, 2010, repealed January 1, 2013; Stats 2010 ch 695 § 13 (SB 294), effective January 1, 2011, repealed January 1, 2014.

§3016. PER DIEM AND EXPENSES

Each member of the board shall receive a per diem and expenses as provided in Section 103.

Added Stats 1937 ch 423. Amended Stats 1955 ch 984 § 1, ch 1602 § 3; Stats 1959 ch 1645 § 15; Stats 1967 ch 535 § 3. Amended Stats 2004 ch 426 § 11 (AB 2464).

§3017. MEETINGS

The board shall hold regular meetings every calendar quarter. Special meetings shall be held upon request of a majority of the members of the board or upon the call of the president.

Added Stats 1937 ch 423. Amended Stats 2004 ch 426 § 12 (AB 2464).

§3018. RECORD OF LICENSEES, PROCEEDINGS AND MEETINGS

The board shall keep an accurate record of all of its licensees, proceedings, and meetings.

Added Stats 1937 ch 423. Amended Stats 2004 ch 426 § 13 (AB 2464).

§3019. RECORDS OF PROSECUTIONS AND APPLICATIONS

The board shall keep a record of all prosecutions for violations of this chapter and of all applications for licensure and examination.

Added Stats 1937 ch 423. Amended Stats 2004 ch 426 § 14 (AB 2464).

§3023. ACCREDITATION OF SCHOOLS

For the purposes of this chapter, the board shall accredit schools, colleges, and universities in or out of this state providing optometric education, that it finds giving a sufficient program of study for the preparation of optometrists.

Added Stats 1937 ch 423. Amended Stats 1945 ch 816 § 1; Stats 1971 ch 1791 § 1; Stats 1978 ch 872 § 1. Amended Stats 2004 ch 426 § 18 (AB 2464).

§3024. DENIAL, REVOCATION OR SUSPENSION OF CERTIFICATES

The board may grant or refuse to grant certificates of registration as provided in this chapter and may revoke or suspend the certificate of registration of any optometrist for any of the causes specified in this chapter.

It shall have the power to administer oaths and to take testimony in the exercise of these functions.

Added Stats 1937 ch 423.

§3025. RULE-MAKING AUTHORITY

The board may make and promulgate rules and regulations governing procedure of the board, the admission of applicants for examination for certificates of registration as optometrists, and the practice of optometry. All such rules and regulations shall be in accordance with and not inconsistent with the provisions of this chapter. Such rules and regulations shall be adopted, amended, or repealed in accordance with the provisions of the Administrative Procedure Act.

Added Stats 1937 ch 423. Amended Stats 1957 ch 2084 § 9.

§3025.1. RULES AND REGULATIONS REGARDING EDUCATIONAL REQUIREMENTS

The board may adopt rules and regulations that are, in its judgment, reasonable and necessary to ensure that optometrists have the knowledge to adequately protect the public health and safety by establishing educational requirements for admission to the examinations for licensure.

Added Stats 2004 ch 426 § 20 (AB 2464). Amended Stats 2010 ch 653 § 12 (SB 1489), effective January 1, 2011.

§3025.2. RULES AND REGULATIONS REGARDING ACCREDITATION

The board may adopt rules and regulations that are, in its judgment, reasonable and necessary to ensure that optometrists have the knowledge to adequately protect the public health and safety by governing its accreditation of schools, colleges, and universities that provide optometric education. In promulgating these rules and regulations, or in extending accreditation, the board may, to the extent that it deems consistent with the purposes of this chapter, recognize, accept, or adopt the advice, recommendation, accreditation, or approval of a nationally recognized accrediting agency or organization.

Added Stats 2004 ch 426 § 21 (AB 2464).

§3025.5. HEALTH AND SAFETY REGULATIONS

The board may adopt regulations prescribing minimum standards governing the optometric services offered or performed, the equipment, or the sanitary conditions, in all offices for the practice of optometry, which are necessary to protect the health and safety of persons availing themselves of the services offered or performed in such offices.

Added Stats 1963 ch 1464 § 1.

§3025.6. ADOPTION OF REGULATIONS

The board may adopt regulations clarifying the level of training and the level of supervision of assistants.

Added Stats 2002 ch 1150 § 20 (SB 1955).

§3025.7. AUTHORITY OF BOARD TO ADOPT RULES AND REGULATIONS REGARDING PRICE FIXING OR ADVERTISING COMMODITIES

Except as provided in Sections 3102 and 3103, nothing contained in Section 651.3 shall be construed as authorizing the board to adopt, amend, or repeal rules and regulations relating to price fixing or advertising of commodities.

Added Stats 2004 ch 426 § 22 (AB 2464). Amended Stats 2005 ch 393 § 1 (AB 488), effective January 1, 2006.

§3026. SEAL; OFFICE

The board may adopt and use a common seal and establish a permanent office or offices.

Added Stats 1937 ch 423.

§3027. EXECUTIVE OFFICER AND OTHER ASSISTANCE

The board shall employ an executive officer and other necessary assistance in the carrying out of the provisions of this chapter.

The executive officer shall perform the duties delegated by the board and shall be responsible to it for the accomplishment of those duties. The executive officer shall not be a member of the board. With the approval of the Director of Finance, the board shall fix the salary of the executive officer. The executive officer shall be entitled to traveling and other necessary expenses in the performance of his duties.

Added Stats 1937 ch 423. Amended Stats 1971 ch 716 § 48; Stats 1974 ch 1122 § 2. Amended Stats 2004 ch 426 § 24 (AB 2464).

§3028. ATTORNEY GENERAL AS LEGAL COUNSEL FOR BOARD

The Attorney General shall act as the legal counsel

for the board and his or her services shall be a charge against it.

Added Stats 2004 ch 426 § 26 (AB 2464).

ARTICLE 3 ADMISSION TO PRACTICE

§3040. MISREPRESENTATION OF REGISTRATION STATUS; PRIMA FACIE EVIDENCE

It is unlawful for a person to engage in the practice of optometry or to display a sign or in any other way to advertise or hold himself or herself out as an optometrist without having first obtained a certificate of registration from the board under the provisions of this chapter or under the provisions of any former act relating to the practice of optometry. The practice of optometry includes the performing or controlling of any acts set forth in Section 3041.

In any prosecution for a violation of this section, the use of test cards, test lenses, or of trial frames is prima facie evidence of the practice of optometry.

Added Stats 1937 ch 423. Amended Stats 1978 ch 872 § 2. Stats 2004 ch 426 § 28 (AB 2464).

§3041. ACTS CONSTITUTING PRACTICE OF OPTOMETRY

(a) The practice of optometry includes the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services, and is the doing of any or all of the following:

(1) The examination of the human eye or eyes, or its or their appendages, and the analysis of the human vision system, either subjectively or objectively.

(2) The determination of the powers or range of human vision and
the accommodative and refractive states of the human eye or eyes, including the scope of its or their functions and general condition.

(3) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training, or orthoptics.

(4) The prescribing of contact and spectacle lenses for, or the fitting or adaptation of contact and spectacle lenses to, the human eye, including lenses that may be classified as drugs or devices by
any law of the United States or of this state.

(5) The use of topical pharmaceutical agents for the purpose of the examination of the human eye or eyes for any disease or pathological condition.

(b) (1) An optometrist who is certified to use therapeutic pharmaceutical agents, pursuant to Section 3041.3, may also diagnose and treat the human eye or eyes, or any of its or their appendages, for all of the following conditions:

(A) Through medical treatment, infections of the anterior segment and adnexa, excluding the lacrimal gland, the lacrimal drainage system, and the sclera in patients under 12 years of age.

(B) Ocular allergies of the anterior segment and adnexa.

(C) Ocular inflammation, nonsurgical in cause except when comanaged with the treating physician and surgeon, limited to inflammation resulting from traumatic iritis, peripheral corneal inflammatory keratitis, episcleritis, and unilateral nonrecurrent nongranulomatous idiopathic iritis in patients over 18 years of age. Unilateral nongranulomatous idiopathic iritis recurring within one year of the initial occurrence shall be referred to an ophthalmologist. An optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if a patient has a recurrent case of episcleritis within one year of the initial occurrence. An optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if a patient has a recurrent case of peripheral corneal inflammatory keratitis within one year of the initial occurrence.

(D) Traumatic or recurrent conjunctival or corneal abrasions and erosions.

(E) Corneal surface disease and dry eyes.

(F) Ocular pain, nonsurgical in cause except when comanaged with the treating physician and surgeon, associated with conditions optometrists are authorized to treat.

(G) Pursuant to subdivision (f), glaucoma in patients over 18 years of age, as described in subdivision (j).

(2) For purposes of this section, "treat" means the use of therapeutic pharmaceutical agents, as described in subdivision (c), and the procedures described in subdivision (e).

(c) In diagnosing and treating the conditions listed in subdivision (b), an optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may use all of the following therapeutic pharmaceutical agents:

(1) Pharmaceutical agents as described in paragraph (5) of subdivision (a), as well as topical miotics.

(2) Topical lubricants.

(3) Antiallergy agents. In using topical steroid medication for the treatment of ocular allergies, an

optometrist shall consult with an ophthalmologist if the patient's condition worsens 21 days after diagnosis.

(4) Topical and oral antiinflammatories. In using steroidmedication for:

(A) Unilateral nonrecurrent nongranulomatous idiopathic iritis or episcleritis, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after the diagnosis, or if the patient's condition has not resolved three weeks after diagnosis. If the patient is still receiving medication for these conditions six weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist or appropriate physician and surgeon.

(B) Peripheral corneal inflammatory keratitis, excluding Moorens and Terriens diseases, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after diagnosis.

(C) Traumatic iritis, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after diagnosis and shall refer the patient to an ophthalmologist or appropriate physician and surgeon if the patient's condition has not resolved one week after diagnosis.

(5) Topical antibiotic agents.

(6) Topical hyperosmotics.

(7) Topical and oral antiglaucoma agents pursuant to the certification process defined in subdivision (f).

(A) The optometrist shall refer the patient to an ophthalmologist if requested by the patient or if angle closure glaucoma develops.

(B) If the glaucoma patient also has diabetes, the optometrist shall consult with the physician treating the patient's diabetes in developing the glaucoma treatment plan and shall inform the physician in writing of any changes in the patient's glaucoma medication.

(8) Nonprescription medications used for the rational treatment of an ocular disorder.

(9) Oral antihistamines.

(10) Prescription oral nonsteroidal antiinflammatory agents.

(11) Oral antibiotics for medical treatment of ocular disease.

(A) If the patient has been diagnosed with a central corneal ulcer and the central corneal ulcer has not improved 48 hours after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(B) If the patient has been diagnosed with preseptal cellulitis or dacryocystitis and the condition has not improved 48 hours after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(12) Topical and oral antiviral medication for the medical treatment of the following: herpes simplex viral keratitis, herpes simplex viral conjunctivitis, and periocular herpes simplex viral dermatitis; and varicella zoster viral keratitis, varicella zoster viral conjunctivitis, and periocular varicella zoster viral dermatitis.

(A) If the patient has been diagnosed with herpes simplex keratitis or varicella zoster viral keratitis and the patient's condition has not improved seven days after diagnosis, the optometrist shall refer the patient to an ophthalmologist. If a patient's condition has not resolved three weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(B) If the patient has been diagnosed with herpes simplex viral conjunctivitis, herpes simplex viral dermatitis, varicella zoster viral conjunctivitis, or varicella zoster viral dermatitis, and if the patient's condition worsens seven days after diagnosis, the optometrist shall consult with an ophthalmologist. If the patient's condition has not resolved three weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(13) Oral analgesics that are not controlled substances.

(14) Codeine with compounds and hydrocodone with compounds as listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and the United States Uniform Controlled Substances Act (21 U.S.C. Sec. 801 et seq.). The use of these agents shall be limited to three days, with a referral to an ophthalmologist if the pain persists.

(d) In any case where this chapter requires that an optometrist consult with an ophthalmologist, the optometrist shall maintain a written record in the patient's file of the information provided to the ophthalmologist, the ophthalmologist's response, and any other relevant information. Upon the consulting ophthalmologist's request and with the patient's consent, the optometrist shall furnish a copy of the record to the ophthalmologist.

(e) An optometrist who is certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may also perform all of the following:

(1) Corneal scraping with cultures.

(2) Debridement of corneal epithelia.

(3) Mechanical epilation.

(4) Venipuncture for testing patients suspected of having diabetes.

(5) Suture removal, with prior consultation with the treating physician and surgeon.

(6) Treatment or removal of sebaceous cysts by expression.

(7) Administration of oral fluorescein to patients suspected as having diabetic retinopathy.

(8) Use of an auto-injector to counter anaphylaxis.

(9) Ordering of smears, cultures, sensitivities, complete blood count, mycobacterial culture, acid fast stain, urinalysis, and X-rays necessary for the diagnosis of conditions or diseases of the eye or adnexa. An optometrist may order other types of images subject to prior consultation with an ophthalmologist or appropriate physician and surgeon.

(10) Punctal occlusion by plugs, excluding laser, diathermy, cryotherapy, or other means constituting surgery as defined in this chapter.

(11) The prescription of therapeutic contact lenses, including lenses or devices that incorporate a medication or therapy the optometrist is certified to prescribe or provide.

(12) Removal of foreign bodies from the cornea, eyelid, and conjunctiva with any appropriate instrument other than a scalpel or needle. Corneal foreign bodies shall be nonperforating, be no deeper than the midstroma, and require no surgical repair upon removal.

(13) For patients over 12 years of age, lacrimal irrigation and dilation, excluding probing of the nasal lacrimal tract. The board shall certify any optometrist who graduated from an accredited school of optometry before May 1, 2000, to perform this procedure after submitting proof of satisfactory completion of 10 procedures under the supervision of an ophthalmologist as confirmed by the ophthalmologist. Any optometrist who graduated from an accredited school of optometry on or after May 1, 2000, shall be exempt from the certification requirement contained in this paragraph.

(f) The board shall grant a certificate to an optometrist certified pursuant to Section 3041.3 for the treatment of glaucoma, as described in subdivision (j), in patients over 18 years of age after the optometrist meets the following applicable requirements:

(1) For licensees who graduated from an accredited school of optometry on or after May 1, 2008, submission of proof of graduation from that institution.

(2) For licensees who were certified to treat glaucoma under this section prior to January 1, 2009, submission of proof of completion of that certification program.

(3) For licensees who have substantially completed the certification requirements pursuant to this section in effect between January 1, 2001, and December 31, 2008, submission of proof of completion of those requirements on or before December 31, 2009. "Substantially completed" means both of the following:

(A) Satisfactory completion of a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma.

(B) Treatment of 50 glaucoma patients with a collaborating ophthalmologist for a period of two years for each patient that will conclude on or before December 31, 2009.

(4) For licensees who completed a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma, submission of proof of satisfactory completion of the case management requirements for certification established by the board pursuant to Section 3041.10.

(5) For licensees who graduated from an accredited school of optometry on or before May 1, 2008, and not described in paragraph (2), (3), or (4), submission of proof of satisfactory completion of the requirements for certification established by the board pursuant to Section 3041.10.

(g) Other than for prescription ophthalmic devices described in subdivision (b) of Section 2541, any dispensing of a therapeutic pharmaceutical agent by an optometrist shall be without charge.

(h) The practice of optometry does not include performing surgery. "Surgery" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or laser means. "Surgery" does not include those procedures specified in subdivision (e). Nothing in this section shall limit an optometrist's authority to utilize diagnostic laser and ultrasound technology within his or her scope of practice.

(i) An optometrist licensed under this chapter is subject to the provisions of Section 2290.5 for purposes of practicing telemedicine.

(j) For purposes of this chapter, "glaucoma" means either of the following:

(1) All primary open-angle glaucoma.

(2) Exfoliation and pigmentary glaucoma.

(k) In an emergency, an optometrist shall stabilize, if possible, and immediately refer any patient who has an acute attack of angle closure to an ophthalmologist.

Added Stats 1976 ch 418 § 2. Amended Stats 1989 ch 886 § 61; Stats 1995 ch 279 § 18 (AB 1471); Stats 1996 ch 13 § 6 (SB 668), effective February 21, 1996. Amended Stats 2000 ch 676 § 3 (SB 929); Stats 2007 ch 507 § 2 (AB 1224), effective January 1, 2008; Stats 2008 ch 352 § 1 (SB 1406), effective January 1, 2009; Stats 2009 ch 140 § 11 (AB 1164), effective January 1, 2010.

§3041.1. STANDARD OF CARE IN DIAGNOSING OR TREATING EYE DISEASE

With respect to the practices set forth in subdivisions (b), (d), and (e) of Section 3041, optometrists

diagnosing or treating eye disease shall be held to the same standard of care to which physicians and surgeons and osteopathic physicians and surgeons are held.

Added Stats 2004 ch 426 § 29 (AB 2464).

§3041.2. EDUCATIONAL AND EXAMINATION REQUIREMENTS FOR LICENSURE AND USE OF PHARMACEUTICAL AGENTS

(a) The State Board of Optometry shall by regulation, establish educational and examination requirements for licensure to insure the competence of optometrists to practice pursuant to subdivision (a) of Section 3041. Satisfactory completion of the educational and examination requirements shall be a condition for the issuance of an original certificate of registration under this chapter, on and after January 1, 1980. Only those optometrists who have successfully completed educational and examination requirements as determined by the State Board of Optometry shall be permitted the use of pharmaceutical agents specified by subdivision (a) of Section 3041.

(b) Nothing in this section shall authorize an optometrist issued an original certificate under this chapter before January 1, 1996, to use or prescribe therapeutic pharmaceutical agents specified in subdivision (d) of Section 3041 without otherwise meeting the requirements of Section 3041.3.

Added Stats 1976 ch 418 § 4. Amended Stats 1989 ch 886 § 6; Stats 1995 ch 279 § 19 (AB 1471); Stats 1996 ch 13 § 8 (SB 668), effective February 20, 1996.

§3041.3. CERTIFICATE REQUIREMENTS

(a) In order to be certified to use therapeutic pharmaceutical agents and authorized to diagnose and treat the conditions listed in subdivisions (b), (d), and (e) of Section 3041, an optometrist shall apply for a certificate from the board and meet all requirements imposed by the board.

(b) The board shall grant a certificate to use therapeutic pharmaceutical agents to any applicant who graduated from a California accredited school of optometry prior to January 1, 1996, is licensed as an optometrist in California, and meets all of the following requirements:

(1) Satisfactorily completes a didactic course of no less than 80 classroom hours in the diagnosis, pharmacological, and other treatment and management of ocular disease provided by either an accredited school of optometry in California or a recognized residency review committee in ophthalmology in California.

(2) Completes a preceptorship of no less than 65 hours, during a period of not less than two months nor more than one year, in either an ophthalmologist's office or an optometric clinic. The training received during the preceptorship shall be on the diagnosis, treatment, and management of ocular, systemic disease. The preceptor shall certify completion of the preceptorship. Authorization for the ophthalmologist to serve as a preceptor shall be provided by an accredited school of optometry in California, or by a recognized residency review committee in ophthalmology, and the preceptor shall be licensed as an ophthalmologist in California, board-certified in ophthalmology, and in good standing with the Medical Board of California. The individual serving as the preceptor shall schedule no more than three optometrist applicants for each of the required 65 hours of the preceptorship program. This paragraph shall not be construed to limit the total number of optometrist applicants for whom an individual may serve as a preceptor, and is intended only to ensure the quality of the preceptorship by requiring that the ophthalmologist preceptor schedule the training so that each applicant optometrist completes each of the 65 hours of the preceptorship while scheduled with no more than two other optometrist applicants.

(3) Successfully completes a minimum of 20 hours of self-directed education.

(4) Passes the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" examination or, in the event this examination is no longer offered, its equivalent, as determined by the State Board of Optometry.

(5) Passes the examination issued upon completion of the 80-hour didactic course required under paragraph (1) and provided by the accredited school of optometry or residency program in ophthalmology.

(6) When any or all of the requirements contained in paragraph (1), (4), or (5) have been satisfied on or after July 1, 1992, and before January 1, 1996, an optometrist shall not be required to fulfill the satisfied requirements in order to obtain certification to use therapeutic pharmaceutical agents. In order for this paragraph to apply to the requirement contained in paragraph (5), the didactic examination that the applicant successfully completed shall meet equivalency standards, as determined by the board.

(7) Any optometrist who graduated from an accredited school of optometry on or after January 1, 1992, and before January 1, 1996, shall not be required to fulfill the requirements contained in paragraphs (1), (4), and (5). (c) The board shall grant a certificate to use therapeutic pharmaceutical agents to any applicant who graduated from a California accredited school of optometry on or after January 1, 1996, who is licensed as an optometrist in California, and who meets all of the following requirements:

(1) Passes the National Board of Examiners in Optometry's national board examination, or its equivalent, as determined by the State Board of Optometry.

(2) Of the total clinical training required by a school of optometry's curriculum, successfully completed at least 65 of those hours on the diagnosis, treatment, and management of ocular, systemic disease.

(3) Is certified by an accredited school of optometry as competent in the diagnosis, treatment, and management of ocular, systemic disease to the extent authorized by this section.

(4) Is certified by an accredited school of optometry as having completed at least 10 hours of experience with a board-certified ophthalmologist.

(d) The board shall grant a certificate to use therapeutic pharmaceutical agents to any applicant who is an optometrist who obtained his or her license outside of California if he or she meets all of the requirements for an optometrist licensed in California to be certified to use therapeutic pharmaceutical agents.

(1) In order to obtain a certificate to use therapeutic pharmaceutical agents, any optometrist who obtained his or her license outside of California and graduated from an accredited school of optometry prior to January 1, 1996, shall be required to fulfill the requirements set forth in subdivision (b). In order for the applicant to be eligible for the certificate to use therapeutic pharmaceutical agents, the education he or she received at the accredited out-of-state school of optometry shall be equivalent to the education provided by any accredited school of optometry in California for persons who graduate before January 1, 1996. For those out-of-state applicants who request that any of the requirements contained in subdivision (b) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.

(2) In order to obtain a certificate to use therapeutic pharmaceutical agents, any optometrist who obtained his or her license outside of California and who graduated from an accredited school of optometry on or after January 1, 1996, shall be required to fulfill the requirements set forth in subdivision (c). In order for the applicant to be eligible for the certificate to use therapeutic pharmaceutical agents, the education he or she received by the accredited out-of-state school of optometry shall be equivalent to the education provided by any accredited school of optometry for persons who graduate on or after January 1, 1996. For those out-of-state applicants who request that any of the requirements contained in subdivision (c) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.

(3) The State Board of Optometry shall decide all issues relating to the equivalency of an optometrist's education or training under this subdivision.

Added Stats 1996 ch 13 § 9 (SB 668), effective February 21, 1996. Amended Stats 1996 ch 40 § 2 (SB 890), effective May 6, 1996; Stats 1997 ch 17 § 6 (SB 947); Stats 2008 ch 33 § 7 (SB 797), effective June 23, 2008.

§3042. SPECIFIED ACTS NOT PROHIBITED; DISPENSING LENSES WITHOUT PRESCRIPTION NOT LAWFUL

The provisions of this chapter do not prevent a licensed physician and surgeon from treating or fitting glasses to the human eye, or from doing any act within the practice of optometry, or a licensed physician and surgeon or optometrist from filling prescriptions or orders, nor do they prevent the replacing, duplicating or repairing of ophthalmic lenses, frames, or fittings by persons qualified to write or fill prescriptions or orders under the provisions of this chapter, nor prevent the doing of the mechanical work upon those lenses, frames, or fittings by an assistant, nor prevent an assistant acting under the responsibility and direction of a physician and surgeon or an optometrist from using any optical device in connection with ocular exercises, vision training, or orthoptics, or acts set forth in Section 2544.

It is unlawful for a person to dispense, replace, or duplicate an ophthalmic lens without a prescription or order from a licensed physician and surgeon or optometrist.

Added Stats 1937 ch 423. Amended Stats 1949 ch 1161 § 2; Stats 1959 ch 2073 § 1. Amended Stats 2004 ch 426 § 30 (AB 2464).

§3042.5. STUDENT AND INSTRUCTOR EXEMPTIONS

(a) The practice of persons actually enrolled as undergraduate or graduate students of optometry in the clinical departments of schools or colleges of optometry accredited by the board shall be exempt from the provisions of this chapter; provided, however, that such practice shall be entirely confined to the operations of the clinical department of the accredited school or college of optometry and shall be carried on only in pursuing the study of optometry.

(b) The board may grant, for specified periods, exemption from the provisions of this chapter to any person who is licensed in another state or country and who is employed as a clinician or instructor by an accredited school or college of optometry. Such exemption from the provisions of this chapter shall extend only to practice which is conducted for educational purposes and which is confined to the clinical department of the accredited school or college employing the person to whom the exemption is granted.

Added Stats 1955 ch 110 § 1.

§3043. EXEMPT SALES

The provisions of this chapter do not prohibit the sale of goggles, sun glasses, colored glasses or occupational eye-protective devices if they do not have refractive values nor do the provisions of this chapter prohibit the sale of complete ready to wear eyeglasses as merchandise by any person not holding himself out as competent to examine, test or prescribe for the human eye or its refractive errors.

Added Stats 1937 ch 423.

§3044. APPLICATION FOR EXAMINATION AND LICENSURE; FEE

A person over the age of 18 years desiring to engage in the practice of optometry in this state may file an application for examination and an application for licensure. The application shall be accompanied by the fee required by this chapter.

Added Stats 1937 ch 423. Amended Stats 1947 ch 514 § 1; Stats 1957 ch 1770 § 1; Stats 1971 ch 1748 § 7; Stats 1978 ch 1161 § 215. Amended Stats 2004 ch 426 § 31 (AB 2464).

§3045. VERIFICATION AND CONTENTS OF APPLICATIONS

Applications shall be verified by the oath of the applicant and shall contain information and evidence satisfactory to the board showing the eligibility of the applicant.

Added Stats 1937 ch 423. Amended Stats 2004 ch 426 § 32 (AB 2464).

§3046. ELIGIBILITY REQUIREMENTS FOR LICENSURE

In order to obtain a license to practice optometry in California, an applicant shall have graduated from an accredited school of optometry, passed the required examinations for licensure, and not have met any of the grounds for denial established in Section 480. The proceedings under this section shall be in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Added Stats 2004 ch 426 § 33 (AB 2464). Amended Stats 2010 ch 653 § 13 (SB 1489), effective January 1, 2011.

§3051. EVIDENCE OF EDUCATION IN DETECTION OF CHILD, ALCOHOLISM, AND SUBSTANCE DEPENDENCY

All applicants for examination for a certificate of registration in accordance with the educational and examination requirements adopted pursuant to Section 3023.1 shall show the board by satisfactory evidence that he or she has received education in child abuse detection and the detection of alcoholism and other chemical substance dependency. This section shall apply only to applicants who matriculate in a school of optometry on or after September 1, 1997.

Added Stats 1997 ch 556 § 1 (SB 461).

§3053. EXAMINATION SUBJECTS

All examinations shall be practical in character, designed to ascertain applicants' fitness to practice the profession of optometry and conducted in the English language. The board may by rule or regulation accept the examination given by other agencies or organizations which it deems equivalent to the examination required to determine an applicant's fitness to practice optometry.

Added Stats 1937 ch 423. Amended Stats 1965 ch 1211 § 1; Stats 1971 ch 1791 § 8; Stats 1978 ch 872 § 8.

§3054. PASSING GRADES; RE-EXAMINATION

The passing grades for the licensure examination shall be based on psychometrically sound principles of establishing minimum qualifications and levels of competency. If an applicant fails to pass any section of the examination, he or she may be examined in any succeeding examination held during the next five years only in those sections in which he or she failed to obtain a passing grade.

Added Stats 1937 ch 423. Amended Stats 1965 ch 1211 § 2; Stats 1971 ch 1791 § 9; Stats 1973 ch 567 § 1; Stats 1978 ch 1161 § 216; Stats 1979 ch 788 § 1. Amended Stats 2004 ch 426 § 37 (AB 2464).

§3055. ISSUANCE OF LICENSE; RENEWAL

The board shall issue a license to an applicant who meets the requirements of this chapter, including the payment of the prescribed licensure, certification, or renewal fee, and who meets any other requirement in accordance with state law. A license or certificate issued under the chapter shall be subject to renewal as prescribed by the board and shall expire unless renewed in that manner. The board may provide for the late renewal of a license or certificate as provided for in Section 163.5.

Added Stats 2004 ch 426 § 39 (AB 2464).

§3056. CERTIFICATE OF REGISTRATION; QUALIFICATIONS; EXPIRATION; “IN GOOD STANDING”

(a) The board may issue a license to practice optometry to a person who meets all of the following qualifications:

(1) Has a degree as a doctor of optometry issued by an accredited school or college of optometry.

(2) Is currently licensed in another state.

(3) Is currently a full-time faculty member of an accredited California school or college of optometry and has served in that capacity for a period of at least five continuous years.

(4) Has attained, at an accredited California school or college of optometry, the academic rank of professor, associate professor, or clinical professor, except that the status of adjunct or affiliated faculty member shall not be deemed sufficient.

(5) Has successfully passed the board's jurisprudence examination.

(6) Is in good standing, with no past or pending malpractice awards or judicial or administrative actions.

(7) Has met the minimum continuing education requirements set forth in Section 3059 for the current and preceding year.

(8) Has met the requirements of Section 3041.3 regarding the use of therapeutic pharmaceutical agents under subdivision (e) of Section 3041.

(9) Has never had his or her license to practice optometry revoked or suspended.

(10) Is not subject to denial based on any of the grounds listed in Section 480.

(11) Pays an application fee in an amount equal to the application fee prescribed by the board pursuant to Section 3152.

(12) Files an application on a form prescribed by the board.

(b) Any license issued pursuant to this section shall expire as provided in Section 3146, and may be renewed as provided in this chapter, subject to the same conditions as other licenses issued under this chapter.

(c) The term "in good standing," as used in this section, means that a person under this section:

(1) Is not currently under investigation nor has been charged with an offense for any act substantially related to the practice of optometry by any public agency, nor entered into any consent agreement or subject to an administrative decision that contains conditions placed by an agency upon a person's professional conduct or practice, including any voluntary surrender of license, nor been the subject of an adverse judgment resulting from the practice of optometry that the board determines constitutes evidence of a pattern of incompetence or negligence.

(2) Has no physical or mental impairment related to drugs or alcohol, and has not been found mentally incompetent by a physician so that the person is unable to undertake the practice of optometry in a manner consistent with the safety of a patient or the public.

Added Stats 1994 ch 403 § 1 (SB 1399). Amended Stats 2006 ch 302 § 1 (SB 579), effective January 1, 2007.

§3057. REQUIREMENTS FOR LICENSE; EXCEPTIONS; EXPIRATION; "IN GOOD STANDING"

(a) The board may issue a license to practice optometry to a person who meets all of the following requirements:

(1) Has a degree as a doctor of optometry issued by an accredited school or college of optometry.

(2) Has successfully passed the licensing examination for an optometric license in another state.

(3) Submits proof that he or she is licensed in good standing as of the date of application in every state where he or she holds a license, including compliance with continuing education requirements.

(4) Submits proof that he or she has been in active practice in a state in which he or she is licensed for a total of at least 5,000 hours in five of the seven consecutive years immediately preceding the date of his or her application under this section.

(5) Is not subject to disciplinary action as set forth in subdivision (h) of Section 3110. If the person has been subject to disciplinary action, the board shall review that action to determine if it presents sufficient evidence of a violation of this chapter to warrant the submission of additional information from the person or the denial of the application for licensure.

(6) Has furnished a signed release allowing the disclosure of information from the Healthcare Integrity and Protection Data Bank and, if applicable, the verification of registration status with the federal Drug Enforcement Administration. The board shall review this information to determine if it presents sufficient evidence of a violation of this chapter to warrant the submission of additional information from the person or the denial of the application for licensure.

(7) Has never had his or her license to practice optometry revoked or suspended.

(8) Is not subject to denial of an application for licensure based on any of the grounds listed in Section 480.

(9) Has met the minimum continuing education requirements set forth in Section 3059 for the current and preceding year.

(10) Has met the certification requirements of Section 3041.3 to use therapeutic pharmaceutical agents under subdivision (e) of Section 3041.

(11) Submits any other information as specified by the board to the extent it is required for licensure by examination under this chapter.

(12) Files an application on a form prescribed by the board, with an acknowledgment by the person executed under penalty of perjury and automatic forfeiture of license, of the following:

(A) That the information provided by the person to the board is true and correct, to the best of his or her knowledge and belief.

(B) That the person has not been convicted of an offense involving conduct that would violate Section 810.

(13) Pays an application fee in an amount equal to the application fee prescribed pursuant to subdivision (a) of Section 3152.

(14) Has successfully passed the board's jurisprudence examination.

(b) If the board finds that the competency of a candidate for licensure pursuant to this section is in question, the board may require the passage of a written, practical, or clinical exam or completion of additional continuing education or coursework.

(c) In cases where the person establishes, to the board's satisfaction, that he or she has been displaced by a federally declared emergency and cannot relocate to his or her state of practice within a reasonable time without economic hardship, the board is authorized to do both of the following:

(1) Approve an application where the person's time in active practice is less than that specified in paragraph (4) of subdivision (a), if a sufficient period in active practice can be verified by the board and all other requirements of subdivision (a) are satisfied by the person.

(2) Reduce or waive the fees required by paragraph (13) of subdivision (a).

(d) Any license issued pursuant to this section shall expire as provided in Section 3146, and may be renewed as provided in this chapter, subject to the same conditions as other licenses issued under this chapter.

(e) The term "in good standing," as used in this section, means that a person under this section:

(1) Is not currently under investigation nor has been charged with an offense for any act substantially related to the practice of optometry by any public agency, nor entered into any consent agreement or subject to an administrative decision that contains conditions placed by an agency upon a person's professional conduct or practice, including any voluntary surrender of license, nor been the subject of an adverse judgment resulting from the practice of optometry that the board determines constitutes evidence of a pattern of incompetence or negligence.

(2) Has no physical or mental impairment related to drugs or alcohol, and has not been found mentally incompetent by a physician so that the person is unable to undertake the practice of optometry in a manner consistent with the safety of a patient or the public.

Added Stats 2006 ch 302 § 2 (SB 579), effective January 1, 2007. Amended Stats 2007 ch 588 § 38 (SB 1048), effective January 1, 2008.

§3057.5. ELIGIBILITY OF GRADUATES FROM FOREIGN UNIVERSITIES

Notwithstanding any other provision of this chapter, the board shall permit a person who meets all of the following requirements to take the examinations for a certificate of registration as an optometrist:

(a) Is over the age of 18 years.

(b) Is not subject to denial of a certificate under Section 480.

(c) Has a degree as a doctor of optometry issued by a university located outside of the United States.

Added Stats 1987 ch 1473 § 2. Amended Stats 1990 ch 583 § 2 (SB 1104); Stats 1994 ch 26 § 84 (AB 1807), effective March 30, 1994, operative January 1, 1996. Amended Stats 2010 ch 653 § 13 (SB 1489), effective January 1, 2011.

§3059. CONTINUING EDUCATION REQUIREMENTS

(a) It is the intent of the Legislature that the public health and safety would be served by requiring all holders of licenses to practice optometry granted under this chapter to continue their education after receiving their licenses. The board shall adopt regulations that require, as a condition to the renewal thereof, that all holders of licenses submit proof satisfactory to the board that they have informed themselves of the developments in the practice of optometry occurring since the original issuance of their licenses by pursuing one or more courses of study satisfactory to the board or by other means deemed equivalent by the board.

(b) The board may, in accordance with the intent of this section, make exceptions from continuing education requirements for reasons of health, military service, or other good cause.

(c) If for good cause compliance cannot be met for the current year, the board may grant exemption of compliance for that year, provided that a plan of future compliance that includes current requirements as well as makeup of previous requirements is approved by the board.

(d) The board may require that proof of compliance with this section be submitted on an annual or biennial basis as determined by the board.

(e) An optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 shall complete a total of 50 hours of continuing education every two years in order to renew his or her certificate. Thirty-five of the required 50 hours of continuing education shall be on the diagnosis, treatment, and management of ocular disease in any combination of the following areas:

(1) Glaucoma.

(2) Ocular infection.

(3) Ocular inflammation.

(4) Topical steroids.

(5) Systemic medication.

(6) Pain medication.

(f) The board shall encourage every optometrist to take a course or courses in pharmacology and pharmaceuticals as part of his or her continuing education.

(g) The board shall consider requiring courses in child abuse detection to be taken by those licensees whose practices are such that there is a likelihood of contact with abused or neglected children.

(h) The board shall consider requiring courses in elder abuse detection to be taken by those licensees whose practices are such that there is a likelihood of contact with abused or neglected elder persons.

Added Stats 1971 ch 1791 § 10. Amended Stats 1972 ch 1278 § 1; Stats 1974 ch 403 § 1; Stats 1987 ch 770 § 1; Stats 1990 ch 1382 § 1 (AB 881); Stats 1994 ch 578 § 1 (AB 2943); Stats 1996 ch 13 § 10 (SB 668), effective February 20, 1996; Stats 1997 ch 556 § 2 (SB 461). Stats 2000 ch 676 § 5 (SB 929); Stats 2001 ch 159 § 11 (SB 662). Stats 2004 ch 426 § 40 (AB 2464); Stats 2006 ch 302 § 3 (SB 579), effective January 1, 2007.

§3060. DISSEMINATION OF INFORMATION AND EDUCATIONAL MATERIAL ON DETECTION OF CHILD AND ELDER ABUSE AND NEGLECT

The board shall periodically develop and disseminate to all persons licensed to practice optometry information and educational material regarding all of the following:

(a) The detection of child abuse and neglect. The board shall consult with the Office of Child Abuse Prevention in developing the materials distributed pursuant to this subdivision.

(b) The detection of elder abuse and neglect. The board shall consult with the Adult Protective Services Division of the State Department of Social Services in developing the materials distributed pursuant to this subdivision.

Added Stats 1997 ch 556 § 3 (SB 461).

ARTICLE 4 REGISTRATION

§3070. NOTICE OF ADDRESS FOR PRACTICE OF OPTOMETRY; EXEMPTIONS

(a) Before engaging in the practice of optometry, each licensed optometrist shall notify the board in writing of the address or addresses where he or she is to engage, or intends to engage, in the practice of optometry and, also, of any changes in his or her place of practice. The practice of optometry is the performing or the controlling of any of the acts set forth in Section 3041.

(b) A licensed optometrist is not required to provide the notification described in subdivision (a) if he or she engages in the temporary practice of optometry in any of the following settings:

(1) A facility licensed by the State Department of Public Health.

(2) A public institution, including, but not limited to, a school, a community college, and federal, state, and local penal and correctional facilities.

(3) A mobile unit that is operated by a governmental agency or by a nonprofit or charitable organization.

(4) The home of a patient who is not ambulatory.

(5) The practice location of another optometrist that has been reported to the board pursuant to this section if the other optometrist is ill or on a temporary leave or for any other reason approved by the board. The exception under this paragraph is limited to a total period at all temporary practice locations of seven calendar days during a 30-day period and 84 days during a calendar year.

(c) Notwithstanding Section 3075, an optometrist engaging in the temporary practice of optometry at a location described in subdivision (b) shall carry and present upon demand evidence of his or her licensure but shall not be required to post his or her current license or other evidence of current license status issued by the board.

(d) In addition to the information required by Section 3076, a receipt issued to a patient by an optometrist engaging in the temporary practice of optometry at a location described in subdivision (b) shall contain the address of the optometrist's primary practice location and the temporary practice location where the services were provided.

(e) "Temporary practice" shall be defined by the board for purposes of this section.

Added Stats 1937 ch 423. Amended Stats 1979 ch 788 § 3. Amended Stats 2004 ch 426 § 41 (AB 2464); Stats 2007 ch 276 § 2 (AB 986), effective January 1, 2008.

§3070.1. PRACTICE OF OPTOMETRY; REQUIREMENTS TO PRACTICE IN HEALTH FACILITY AND RESIDENTIAL CARE FACILITY

(a) For purposes of this section, the following terms have the following meanings:

(1) "Health facility" means a health facility as defined in Section 1250 of the Health and Safety Code,

exclusive of a hospital defined in subdivision (a) or (b) of that section.

(2) "Residential care facility" means a residential facility, as defined in paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code, licensed by the State Department of Social Services, including, but not limited to, the following:

(A) Adult residential facilities.

(B) Adult residential facilities for persons with special health care needs.

(C) Residential care facilities for the chronically ill.

(D) Residential care facilities for the elderly.

(E) Continuing care retirement communities.

(F) Social rehabilitation facilities.

(b) An optometrist may engage in the practice of optometry at any health facility or residential care facility provided that all of the following requirements are satisfied:

(1) The optometrist maintains a primary business office, separate from the health facility or residential care facility, that meets all of the following requirements:

(A) Is open to the public during normal business hours by telephone and for purposes of billing services or access to patient records.

(B) Is licensed to the optometrist or the employer of the optometrist as a local business with the city or county in which it is located.

(C) Is registered by the optometrist with the Board of Optometry.

(D) Is owned or leased by the optometrist or by the employer of the optometrist.

(E) Is not located in or connected with a residential dwelling.

(2) The optometrist maintains or discloses patient records in the following manner:

(A) Records are maintained and made available to the patient in such a way that the type and extent of services provided to the patient are conspicuously disclosed. The disclosure of records shall be made at or near the time services are rendered and shall be maintained at the primary business office specified in paragraph (1).

(B) The optometrist complies with all federal and state laws and regulations regarding the maintenance and protection of medical records, including, but not limited to, the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 300gg).

(C) Pursuant to Section 3007, the optometrist keeps all necessary records for a minimum of seven years from the date of service in order to disclose fully the extent of services furnished to a patient. Any information included on a printed copy of an original document to a patient shall be certified by the optometrist as being true, accurate, and complete.

(D) If a prescription is issued to a patient, records shall be maintained for each prescription as part of the patient's chart, including all of the following information about the optometrist:

(i) Name.

(ii) Optometrist license number.

(iii) The place of practice and the primary business office.

(iv) Description of the goods and services for which the patient is charged and the amount charged.

(E) A copy of any referral or order requesting optometric services for a patient from the health facility's or residential care facility's administrator, director of social services, the attending physician and surgeon, the patient, or a family member shall be kept in the patient's medical record.

(3) The optometrist possesses and appropriately uses the instruments and equipment required for all optometric services and procedures performed within the health facility or residential care facility.

(c) An optometrist who satisfies all of the requirements in this section for the practice of optometry at a health facility or residential care facility shall not be required to comply with Section 3070 with regard to providing notification to the board of each facility or residential care facility at which he or she practices.

Added Stats 2010 ch 604 § 5 (AB 2683), effective January 1, 2011.

§3075. POSTING OF LICENSE; FEE FOR EVIDENCE OF LICENSURE

An optometrist shall post in each location where he or she practices optometry, in an area that is likely to be seen by all patients who use the office, his or her current license or other evidence of current license status issued by the board. The board may charge a fee as specified in Section 3152 for each issuance of evidence of current licensure.

Added Stats 2004 ch 426 § 43 (AB 2464); Amended Stats 2007 ch 276 § 3 (AB 986), effective January 1, 2008.

§3076. PROVIDING A RECEIPT TO A PATIENT

A licensed optometrist shall deliver to each patient that makes a payment to the practice, excluding insurance copayments and deductibles, a receipt that contains all of the following information:

(a) His or her name.

(b) The number of his or her optometrist license.

(c) His or her place of practice.

(d) A description of the goods and services for which the patient is charged and the amount charged.

Added Stats 1937 ch 423. Amended Stats 2004 ch 426 § 44 (AB 2464); Stats 2005 ch 393 § 2 (AB 488), effective January 1, 2006.

§3077. BRANCH OFFICE LICENSES

As used in this section "office" means any office or other place for the practice of optometry.

(a) No person, singly or in combination with others, may have an office unless he or she is registered to practice optometry under this chapter.

(b) An optometrist, or two or more optometrists jointly, may have one office without obtaining a further license from the board.

(c) On and after October 1, 1959, no optometrist, and no two or more optometrists jointly, may have more than one office unless he or she or they comply with the provisions of this chapter as to an additional office. The additional office, for the purposes of this chapter, constitutes a branch office.

(d) Any optometrist who has, or any two or more optometrists, jointly, who have, a branch office prior to January 1, 1957, and who desire to continue the branch office on or after that date shall notify the board in writing of that desire in a manner prescribed by the board.

(e) On and after January 1, 1957, any optometrist, or any two or more optometrists, jointly, who desire to open a branch office shall notify the board in writing in a manner prescribed by the board.

(f) On and after January 1, 1957, no branch office may be opened or operated without a branch office license. Branch office licenses shall be valid for the calendar year in or for which they are issued and shall be renewable on January 1st of each year thereafter. Branch office licenses shall be issued or renewed only upon the payment of the fee therefor prescribed by this chapter. On or after October 1, 1959, no more than one branch office license shall be issued to any optometrist or to any two or more optometrists, jointly.

(g) Any failure to comply with the provisions of this chapter relating to branch offices or branch office licenses as to any branch office shall work the suspension of the certificate of registration of each optometrist who, individually or with others, has a branch office. A certificate of registration so suspended shall not be restored except upon compliance with those provisions and the payment of the fee prescribed by this chapter for restoration of a certificate of registration after suspension for failure to comply with the provisions of this chapter relating to branch offices.

(h) The holder or holders of a branch office license shall pay the annual renewal fee therefor in the amount required by this chapter between the first day of January and the first day of February of each year. The failure to pay the fee in advance on or before February 1st of each year during the time it is in force shall ipso facto work the suspension of the branch office license. The license shall not be restored except upon written application and the payment of the penalty prescribed by this chapter, and, in addition, all delinquent branch office fees.

(i) Nothing in this chapter shall limit or authorize the board to limit the number of branch offices that are in operation on October 1, 1959, and that conform to this chapter, nor prevent an optometrist from acquiring any branch office or offices of his or her parent. The sale after October 1, 1959, of any branch office shall terminate the privilege of operating the branch office, and no new branch office license shall be issued in place of the license issued for the branch office, unless the branch office is the only one operated by the optometrist or by two or more optometrists jointly. Nothing in this chapter shall prevent an optometrist from owning, maintaining, or operating more than one branch office if he or she is in personal attendance at each of his or her offices 50 percent of the time during which the office is open for the practice of optometry.

(j) The board shall have the power to adopt, amend, and repeal rules and regulations to carry out the provisions of this section.

(k) Notwithstanding any other provision of this section, neither an optometrist nor an individual practice association shall be deemed to have an additional office solely by reason of the optometrist's participation in an individual practice association or the individual practice association's creation or operation. As used in this subdivision, the term "individual practice association" means an entity that meets all of the following requirements:

(1) Complies with the definition of an optometric corporation in Section 3160.

(2) Operates primarily for the purpose of securing contracts with health care service plans or other third-party payers that make available eye/vision services to enrollees or subscribers through a panel of optometrists.

(3) Contracts with optometrists to serve on the panel of optometrists, but does not obtain an ownership interest in, or otherwise exercise control over, the respective optometric practices of those optometrists on the panel.

Nothing in this subdivision shall be construed to exempt an optometrist who is a member of an individual practice association and who practices optometry in more than one physical location, from the requirement of obtaining a branch office license for each of those locations, as required by this section. However, an optometrist shall not be required to obtain a branch office license solely as a result of his or her participation in an individual practice association in which the members of the individual

practice association practice optometry in a number of different locations, and each optometrist is listed as a member of that individual practice association.

Added 1955 ch 1602 § 6, ch 1623 § 2. Amended Stats 1959 ch 2059 § 1; Stats 1996 ch 312 § 1 (SB 1536), effective July 29, 1996; Stats 2006 ch 564 § 1 (AB 2256), effective January 1, 2007.

§3078. USE OF FICTITIOUS NAMES; PERMITS

(a) It is unlawful to practice optometry under a false or assumed name, or to use a false or assumed name in connection with the practice of optometry, or to make use of any false or assumed name in connection with the name of a person licensed pursuant to this chapter. However, the board may issue written permits authorizing an individual optometrist or an optometric group or optometric corporation to use a name specified in the permit in connection with its practice if, and only if, the board finds to its satisfaction all of the following:

(1) The place or establishment, or the portion thereof, in which the applicant or applicants practice, is owned or leased by the applicant or applicants, and the practice conducted at that place or establishment, or portion thereof, is wholly owned and entirely controlled by the applicant or applicants. However, if the applicant or applicants are practicing optometry in a community clinic, as defined in subdivision (a) of Section 1204 of the Health and Safety Code, this subdivision shall not apply.

(2) The name under which the applicant or applicants propose to operate is in the judgment of the board not deceptive or inimical to enabling a rational choice for the consumer public and contains at least one of the following designations: "optometry" or "optometric." However, if the applicant or applicants are practicing optometry in a community clinic, as defined in subdivision (a) of Section 1204 of the Health and Safety Code, this subdivision shall not apply. In no case shall the name under which the applicant or applicants propose to operate contain the name or names of any of the optometrists practicing in the community clinic.

(3) The names of all optometrists practicing at the location designated in the application are displayed in a conspicuous place for the public to see, not only at the location, but also in any advertising permitted by law.

(4) No charges that could result in revocation or suspension of an optometrist's license to practice optometry are pending against any optometrist practicing at the location.

(b) Permits issued under this section by the board shall expire and become invalid unless renewed at the times and in the manner provided in Article 7 (commencing with Section 3145) for the renewal of licenses issued under this chapter.

(c) A permit issued under this section may be revoked or suspended at any time that the board finds that any one of the requirements for original issuance of a permit, other than under paragraph (4) of subdivision (a), is no longer being fulfilled by the individual optometrist, optometric corporation, or optometric group to whom the permit was issued. Proceedings for revocation or suspension shall be governed by the Administrative Procedure Act.

(d) If the board revokes or suspends the license to practice optometry of an individual optometrist or any member of a corporation or group to whom a permit has been issued under this section, the revocation or suspension shall also constitute revocation or suspension, as the case may be, of the permit.

Added Stats 1937 ch 423, as B & P C 3125. Amended Stats 1974 ch 1079 § 1; Stats 1979 ch 788 § 7; Stats 1981 ch 474 § 1. Amended Stats 2004 ch 426 § 45 (AB 2464). Amended and renumbered by Stats 2005 ch 393 § 31 (AB 488), effective January 1, 2006. Amended Stats 2006 ch 538 § 7 (SB 1852), effective January 1, 2007; Stats 2007 ch 276 § 4 (AB 986), effective January 1, 2008.

ARTICLE 5 REVOCATION AND SUSPENSION

§3090. ACTION FOR VIOLATION OF CHAPTER OR REGULATIONS; BOARD POWERS

Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to licenseholders, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board.

Added Stats 2005 ch 393 § 4 (AB 488), effective January 1, 2006.

§3091. CAUSE FOR DENIAL OF LICENSE; PROBATIONARY LICENSE; LICENSE PETITION FOR MODIFICATION OR TERMINATION OF PROBATION

(a) The board may deny an optometrist license to any applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her license; or, the board in its sole discretion, may issue a probationary license to an applicant subject to terms and conditions, including,

but not limited to, any of the following conditions of probation:

(1) Practice limited to a supervised, structured environment in which the licensee's activities shall be supervised by another optometrist licensed by the board.

(2) Total or partial restrictions on drug prescribing privileges for controlled substances.

(3) Continuing medical or psychiatric treatment.

(4) Ongoing participation in a specified rehabilitation program.

(5) Enrollment and successful completion of a clinical training program.

(6) Abstention from the use of alcohol or drugs.

(7) Restrictions against engaging in certain types of optometry practice.

(8) Compliance with all provisions of this chapter.

(9) Any other terms and conditions deemed appropriate by the board.

(b) The board may modify or terminate the terms and conditions imposed on the probationary license if the licensee petitions for modification or termination of terms and conditions of probation. A licensee shall not petition for modification or termination of terms and conditions until one year has passed from the effective date of the decision granting the probationary license.

Added Stats 2005 ch 393 § 6 (AB 488), effective January 1, 2006.

§3092. CONDUCT OF PROCEEDINGS

All proceedings against a licensee for any violation of this chapter or any of the regulations adopted by the board, or against an applicant for licensure for unprofessional conduct or cause, shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) except as provided in this chapter, and shall be prosecuted by the Attorney General's office.

Added Stats 2005 ch 393 § 7 (AB 488), effective January 1, 2006.

§3093. EXAMINATION AS PREREQUISITE TO REINSTATEMENT

Before setting aside the revocation or suspension of any certificate the board may require the applicant to pass the regular examination given for applicants for certificates of registration.

Added Stats 1937 ch 423.

§3094. INJUNCTIONS

In addition to other proceedings provided for in this chapter, whenever any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, an offense against this chapter, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining that conduct on application of the board, the Attorney General, the district attorney of the county, or on application of 10 or more persons holding licenses issued under this chapter.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

Added Stats 1961 ch 147 § 1, as B & P C § 3131. Amended Stats 1969 ch 640 § 1; Stats 1982 ch 517 § 11. Amended and renumbered Stats 2005 ch 393 § 37 (AB 488), effective January 1, 2006.

§3095. SYSTEM FOR ISSUANCE OF CITATIONS AND ASSESSMENT OF ADMINISTRATIVE FINES

In accordance with Section 125.9, the board may establish a system for the issuance of citations, and the assessment of administrative fines, as deemed appropriate by the board.

Added Stats 1983 ch 870 § 1, as B & P C § 3135. Amended Stats 1997 ch 677 § 5 (SB 1347). Renumbered by Stats 2005 ch 393 § 38 (AB 488), effective January 1, 2006.

§3096. CAUSE FOR PROFESSIONAL COMPETENCY EXAMINATION; ADMISSIBILITY OF RESULTS IN SUBSEQUENT PROCEEDING

(a) A licensee may be ordered to undergo a professional competency examination if, after investigation and review by the Board of Optometry, there is reasonable cause to believe that the licensee is unable to practice optometry with reasonable skill and safety to patients. Reasonable cause shall be demonstrated by one or more of the following:

(1) A single incident of gross negligence.

(2) A pattern of inappropriate prescribing.

(3) An act of incompetence or negligence causing death or serious bodily injury.

(4) A pattern of substandard care.

(b) The results of a competency examination shall be admissible as direct evidence and may be considered relevant in any subsequent disciplinary or interim proceeding against the licensee taking the examination, and, assuming those results are determined to be relevant, shall be considered together with other relevant evidence in making a final determination.

Added Stats 1997 ch 556 § 5 (SB 461), as B & P C § 3090.1. Amended and renumbered by Stats 2005 ch 393 § 5 (AB 488), effective January 1, 2006.

§3097. SOLICITING

The sending of a solicitor from house to house or the soliciting from house to house by the holder of an optometrist license constitutes a cause to revoke or suspend his or her license.

Added Stats 1937 ch 423, as B & P C § 3096. Amended and renumbered by Stats 2005 ch 393 § 10 (AB 488), effective January 1, 2006.

§3098. USE OF “DR.” OR “O.D.”

When the holder uses the title of "Doctor" or "Dr." as a prefix to his name, without using the word "optometrist" as a suffix to his name or in connection with it, or, without holding a diploma from an accredited school of optometry, the letters "Opt. D." or "O.D." as a suffix to his name, it constitutes a cause to revoke or suspend his certificate of registration.

Added Stats 1937 ch 423.

§3099. SPECIALIST IN EYE DISEASE

No optometrist shall advertise or otherwise hold himself or herself out to be a specialist in eye disease and the treatment thereof.

Added Stats 1996 ch 13 § 11 (SB 668), effective February 21, 1996, as B & PC § 3096.5. Renumbered by Stats 2005 ch 393 § 11 (AB 488), effective January 1, 2006.

§3100. CLAIMING SPECIAL KNOWLEDGE

The holding out as having a special knowledge of optometry, as defined in this chapter, by the holder of a license, constitutes a cause to revoke or suspend his or her license.

Added Stats 1937 ch 423, as B & P C § 3099. Amended and renumbered by Stats 2005 ch 393 § 15 (AB 488), effective January 1, 2006.

§3101. ADVERTISING WITHOUT CERTIFICATES

It is unlawful to advertise by displaying a sign or otherwise or hold himself or herself out to be an optometrist without having at the time of so doing a valid unrevoked license from the board.

Added Stats 1937 ch 423, as B & P C § 3128. Amended Stats 1978 ch 872 § 12. Amended and renumbered by Stats 2005 ch 393 § 34 (AB 488), effective January 1, 2006.

§3102. PRICE ADVERTISEMENTS

It is unlawful to advertise as being free or without cost the furnishing of optometric services where these services are contingent upon payment or other exchange of consideration for goods or other services offered by the provider, unless that contingency is fully disclosed in the same advertisement.

Added Stats 1937 ch 423, as B & P C § 3129. Amended Stats 1979 ch 653 § 10. Renumbered by Stats 2005 ch 393 § 35 (AB 488), effective January 1, 2006. Amended Stats 2006 ch 302 § 4 (SB 579), effective January 1, 2007.

§3103. ADVERTISING GOGGLES IN MANNER TO SUGGEST OPTOMETRY

It is unlawful to include in any advertisement relating to the sale or disposition of goggles, sunglasses, colored glasses or occupational eye-protective devices, any words or figures that advertise or have a tendency to advertise the practice of optometry.

This section does not prohibit the advertising of the practice of optometry by a registered optometrist in the manner permitted by law.

Added Stats 1939 ch 560 § 1, as B & P C § 3130. Amended and renumbered by Stats 2005 ch 393 § 36 (AB 488), effective January 1, 2006.

§3104. EMPLOYING “CAPPERS” OR “STEERERS”

The employing of what are known as "cappers" or "steerers" to obtain business constitutes unprofessional conduct.

Added Stats 1937 ch 423, as B & P C § 3100. Renumbered Stats 2005 ch 393 § 16 (AB 488), effective January 1, 2006.

§3105. FRAUDULENT ALTERING OR MODIFYING MEDICAL RECORD AS UNPROFESSIONAL CONDUCT; PENALTY

Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct. In addition to any other disciplinary action, the State Board of Optometry may impose a civil penalty of five hundred dollars ($500) for a violation of this section.

Added Stats 1997 ch 556 § 7 (SB 461), as B & P C § 3096.7. Amended and renumbered by Stats 2005 ch 393 § 13 (AB 488), effective January 1, 2006.

§3106. FALSE REPRESENTATIONS OF FACTS AS UNPROFESSIONAL CONDUCT

Knowingly making or signing any certificate or other document directly or indirectly related to the practice of optometry that falsely represents the existence or nonexistence of a state of facts constitutes unprofessional conduct.

Added Stats 1997 ch 556 § 6 (SB 461), as B & P C § 3096.6. Amended and renumbered by Stats 2005 ch 393 § 12 (AB 488), effective January 1, 2006.

§3107. USE OF FRAUDULENTLY ISSUED, COUNTERFEITED, ETC., CERTIFICATES

It is unlawful to use or attempt to use any license issued by the board that has been purchased, fraudulently issued, counterfeited, or issued by mistake, as a valid license.

Added Stats 1937 ch 423, as B & P C § 3124. Amended and renumbered by Stats 2005 ch 393 § 30 (AB 488), effective January 1, 2006.

§3108. HARBORING CONTAGIOUS DISEASES

When the holder is suffering from a contagious or infectious disease, it constitutes a cause to suspend his or her license during the period of continuance of that disease.

Added Stats 1937 ch 423, as B & P C § 3097. Amended Stats 1979 ch 788 § 4. Amended and renumbered by Stats 2005 ch 393 § 14 (AB 488), effective January 1, 2006.

§3109. ACCEPTING EMPLOYMENT FROM NON-LICENSEE; RIGHT OF INCORPORATION

Directly or indirectly accepting employment to practice optometry from any person not having a valid, unrevoked license as an optometrist or from any company or corporation constitutes unprofessional conduct. Except as provided in this chapter, no optometrist may, singly or jointly with others, be incorporated or become incorporated when the purpose or a purpose of the corporation is to practice optometry or to conduct the practice of optometry.

The terms "accepting employment to practice optometry" as used in this section shall not be construed so as to prevent a licensed optometrist from practicing optometry upon an individual patient.

Notwithstanding the provisions of this section or the provisions of any other law, a licensed optometrist may be employed to practice optometry by a physician and surgeon who holds a certificate under this division and who practices in the specialty of ophthalmology or by a health care service plan pursuant to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

Added Stats 1937 ch 423, as B & P C § 3103. Amended Stats 1970 ch 1265 § 1; Stats 1974 ch 874 § 2; Stats 1979 ch 788 § 6. Amended and renumbered by Stats 2005 ch 393 § 19 (AB 488), effective January 1, 2006.

§3110. UNPROFESSIONAL CONDUCT

The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.

(d) Incompetence.

(e) The commission of fraud, misrepresentation, or any act involving dishonesty or corruption, that is substantially related to the qualifications, functions, or duties of an optometrist.

(f) Any action or conduct that would have warranted the denial of a license.

(g) The use of advertising relating to optometry that violates Section 651 or 17500.

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license by another state or territory of the United States, by any other governmental agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(i) Procuring his or her license by fraud, misrepresentation, or mistake.

(j) Making or giving any false statement or information in connection with the application for issuance of a license.

(k) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of an optometrist, in which event the record of the conviction shall be conclusive evidence thereof.

(l) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person applying for a license or holding a license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a license to conduct with safety to the public the practice authorized by the license, or the conviction of a misdemeanor or felony involving the use, consumption, or self administration of any of the substances referred to in this subdivision, or any combination thereof.

(m) Committing or soliciting an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of an optometrist.

(n) Repeated acts of excessive prescribing, furnishing or administering of controlled substances or dangerous drugs specified in Section 4022, or repeated acts of excessive treatment.

(o) Repeated acts of excessive use of diagnostic or therapeutic procedures, or repeated acts of excessive use of diagnostic or treatment facilities.

(p) The prescribing, furnishing, or administering of controlled substances or drugs specified in Section 4022, or treatment without a good faith prior examination of the patient and optometric reason.

(q) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients.

(r) Performing, or holding oneself out as being able to perform, or offering to perform, any professional services beyond the scope of the license authorized by this chapter.

(s) The practice of optometry without a valid, unrevoked, unexpired license.

(t) The employing, directly or indirectly, of any suspended or unlicensed optometrist to perform any work for which an optometry license is required.

(u) Permitting another person to use the licensee's optometry license for any purpose.

(v) Altering with fraudulent intent a license issued by the board, or using a fraudulently altered license, permit certification or any registration issued by the board.

(w) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood borne infectious diseases from optometrist to patient, from patient to patient, or from patient to optometrist. In administering this subdivision, the board shall consider the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood borne pathogens in health care settings. As necessary, the board may consult with the Medical Board of California, the Board of Podiatric Medicine, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

(x) Failure or refusal to comply with a request for the clinical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, unless the licensee is unable to provide the documents within this time period for good cause.

(y) Failure to refer a patient to an appropriate physician in either of the following circumstances:

(1) Where an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician.

(2) As required by subdivision (c) of Section 3041.

Added Stats 2005 ch 393 § 28 (AB 488), effective January 1, 2006.

§3111. VIOLATION OF MOSCONE-KNOX PROFESSIONAL CORPORATION ACT

It is unprofessional conduct and a violation of this chapter for a person licensed under this chapter to violate, attempt to violate, assist in the violation of, or conspire to violate the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this article, or any regulation adopted pursuant to those provisions.

Added Stats 2005 ch 564 § 2 (AB 2256), effective January 1, 2007.

ARTICLE 6 OFFENSES AGAINST THE CHAPTER

§3120. PENALTY FOR VIOLATIONS

Any person who violates any of the provisions of this chapter is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not less than ten days nor more than one year, or by a fine of not less than one hundred dollars nor more than one thousand five hundred dollars, or by both such fine and imprisonment.

Added Stats 1937 ch 423.

§3137. LIMITATIONS PERIODS FOR FILING ACCUSATION FOR VIOLATION OF CHAPTER; TOLLING

(a) Except as otherwise provided in this section, any accusation filed against a licensee pursuant to Section 11503 of the Government Code for the violation of any provision of this chapter shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging fraud or willful misrepresentation is not subject to the limitation in subdivision (a).

(c) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging unprofessional conduct based on incompetence, gross negligence, or repeated negligent acts of the licensee is not subject to the limitation in subdivision (a) upon proof that the licensee intentionally concealed from discovery his or her incompetence, gross negligence, or repeated negligent acts.

(d) If an alleged act or omission involves any conduct described in Section 726 committed on a minor, the 10-year limitations period in subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging conduct described in Section 726 shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging conduct received by the board on and after January 1, 2006.

(f) In any allegation, accusation, or proceeding described in this section, the limitations period in subdivision (a) shall be tolled for the period during which material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

Added Stats 2005 ch 186 § 1 (AB 370), effective January 1, 2006.

ARTICLE 7 REVENUE

§3145. STATE OPTOMETRY FUND

There is the Optometry Fund in the State Treasury. Unless otherwise provided, all money collected under the authority of this chapter shall be paid into this fund. The board shall not maintain a reserve balance in the fund that is greater than six months of the appropriated operating expenses of the board in any fiscal year.

Added Stats 1937 ch 423. Amended Stats 1992 ch 645 § 1 (AB 2566); Stats 1994 ch 1275 § 26 (SB 2101).

§3145.5. DISPOSITION OF ADMINISTRATIVE FINES

Administrative fines collected pursuant to Section 3095 shall be deposited in the Optometry Fund. It is the legislative intent that moneys collected as fines and deposited in the fund be used by the board primarily for enforcement purposes.

Added Stats 1983 ch 870 § 2. Amended Stats 1994 ch 1275 § 27 (SB 2101). Amended Stats 2005 ch 393 § 39 (AB 488), effective January 1, 2006.

§3146. EXPIRATION OF CERTIFICATES; RENEWAL OF UNEXPIRED CERTIFICATES

A license issued under this chapter expires at midnight on the last day of the licenseholder's birth month following its original issuance and thereafter at midnight on the last day of the licenseholder's birth month every two years if not renewed. To renew an unexpired license, the licenseholder shall apply for renewal on a form prescribed by the board and pay the renewal fee prescribed by this chapter.

Added Stats 1937 ch 423. Amended Stats 1961 ch 366 § 4, operative October 1, 1961; Stats 1968 ch 1088 § 2; Stats 1971 ch 1791 § 11, operative January 1, 1973; Stats 1996 ch 328 § 1 (AB 2771). Amended Stats 2005 ch 393 § 40 (AB 488), effective January 1, 2006.

§3147. RENEWAL OF EXPIRED CERTIFICATES

Except as otherwise provided by Section 114, an expired license may be renewed at any time within three years after its expiration by filing an application for renewal on a form prescribed by the board, paying all accrued and unpaid renewal fees, paying any delinquency fees prescribed by the board, and submitting proof of completion of the required number of hours of continuing education for the last two years, as prescribed by the board pursuant to Section 3159. Renewal under this section shall be effective on the date on which all of those requirements are satisfied. If so renewed, the license shall continue as provided in Sections 3146 and 3147.5.

Added Stats 1937 ch 423. Amended Stats 1955 ch 1602 § 8; Stats 1961 ch 366 § 5, operative October 1, 1961; Stats 1968 ch 1088 § 3; Stats 1978 ch 1161 § 221; Stats 1994 ch 1275 § 27.5 (SB 2101). Amended Stats 2001 ch 435 § 9 (SB 349). Amended Stats 2005 ch 393 § 41 (AB 488), effective January 1, 2006; Stats 2010 ch 653 § 15 (SB 1489), effective January 1, 2011.

§3147.5. RENEWAL OF SUSPENDED CERTIFICATES; REINSTATEMENT OF REVOKED CERTIFICATES

A license that has been suspended is subject to expiration and shall be renewed as provided in this article, but renewal does not entitle the holder of a suspended license to engage in the practice of optometry, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

A license that has been revoked is subject to expiration, but it may not be renewed. If a revoked license is reinstated after it has expired, a reinstatement fee of 150 percent of the renewal fee shall be assessed.

Added Stats 1961 ch 366 § 6, operative October 1, 1961. Amended Stats 1968 ch 1088 § 4; Stats 1978 ch 1161 § 222. Amended Stats 2005 ch 393 § 42 (AB 488), effective January 1, 2006.

§3147.6. RESTORATION OF CERTIFICATE FOLLOWING FAILURE TO RENEW WITHIN SPECIFIED PERIOD

Except as otherwise provided by Section 114, a license that is not renewed within three years after its expiration may be restored thereafter, if no fact, circumstance, or condition exists that, if the license were restored, would justify its revocation or

suspension, provided all of the following conditions are met:

(a) The holder of the expired license is not subject to denial of a license under Section 480.

(b) The holder of the expired license applies in writing for its restoration on a form prescribed by the board.

(c) The holder of the expired license pays the fee or fees as would be required of him or her if he or she were then applying for a license for the first time.

(d) The holder of the expired license satisfactorily passes both of the following examinations:

(1) The National Board of Examiners in Optometry's Clinical Skills examination or other clinical examination approved by the board.

(2) The board's jurisprudence examination.

(e) After taking and satisfactorily passing the examinations identified in subdivision (d), the holder of the expired license pays a restoration fee equal to the sum of the license renewal fee in effect on the last regular renewal date for licenses and any delinquency fees prescribed by the board.

Added Stats 1961 ch 366 § 7, operative October 1, 1961. Amended Stats 1968 ch 1088 § 5; Stats 1978 ch 1161 § 223; Stats 1994 ch 26 § 86 (AB 1807), effective March 30, 1994, ch 1275 § 28 (SB 2101). Amended Stats 2005 ch 393 § 43 (AB 488), effective January 1, 2006. Amended Stats 2010 ch 653 § 3 (SB 1489), effective January 1, 2011.

§3147.7. APPLICABILITY OF PROVISIONS TO OUT-OF-STATE LICENSEES

The provisions of Section 3147.6 shall not apply to a person holding a license that has not been renewed within three years of expiration, if the person provides satisfactory proof that he or she holds an active license from another state and meets all of the following conditions:

(a) Is not subject to denial of a license under Section 480.

(b) Applies in writing for restoration of the license on a form prescribed by the board.

(c) Pays all accrued and unpaid renewal fees and any delinquency fees prescribed by the board.

(d) Submits proof of completion of the required number of hours of continuing education for the last two years.

(e) Takes and satisfactorily passes the board's jurisprudence examination.

Added Stats 1968 ch 1088 § 5.5. Amended Stats 1994 ch 26 § 87 (AB 1807), effective March 30, 1994. Amended Stats 2005 ch 393 § 44 (AB 488), effective January 1, 2006; Stats 2010 ch 653 § 17 (SB 1489), effective January 1, 2011.

§3148. DISPOSITION OF RENEWAL FEES

From each fee for the renewal of a license for the biennial renewal of a license, there shall be paid the sum of sixteen dollars ($16) by the Director of Consumer Affairs to the University of California. This sum shall be used at and by the University of California solely for the advancement of optometrical research and the maintenance and support of the department at the university in which the science of optometry is taught.

The balance of each renewal fee shall be paid into the Optometry Fund.

Added Stats 1937 ch 423. Amended Stats 1961 ch 8 § 366, operative October 1, 1961; Stats 1971 ch 716 § 50, ch 1593 § 35, ch 1791 § 12; Stats 1977 ch 1252 § 37, operative July 1, 1978; Stats 1978 ch 429 § 16, effective July 17, 1978, operative July 1, 1978; Stats 1996 ch 328 § 2 (AB 2771). Amended Stats 2005 ch 393 § 45 (AB 488), effective January 1, 2006.

§3150. DISBURSEMENTS OF FUNDS

The department may make all necessary disbursements to carry out the provisions of this chapter.

Added Stats 1937 ch 423. Amended Stats 1984 ch 47 § 21, effective March 21, 1984. Amended Stats 2005 ch 393 § 46 (AB 488), effective January 1, 2006.

§3152. FEE SCHEDULE

The amounts of fees and penalties prescribed by this chapter shall be established by the board in amounts not greater than those specified in the following schedule:

(a) The fee for applicants applying for a license shall not exceed two hundred seventy-five dollars ($275).

(b) The fee for renewal of an optometric license shall not exceed five hundred dollars ($500).

(c) The annual fee for the renewal of a branch office license shall not exceed seventy-five dollars ($75).

(d) The fee for a branch office license shall not exceed seventy-five dollars ($75).

(e) The penalty for failure to pay the annual fee for renewal of a branch office license shall not exceed twenty-five dollars ($25).

(f) The fee for issuance of a license or upon change of name authorized by law of a person holding a license under this chapter shall not exceed twenty-five dollars ($25).

(g) The delinquency fee for renewal of an optometric license shall not exceed fifty dollars ($50).

(h) The application fee for a certificate to perform lacrimal irrigation and dilation shall not exceed fifty dollars ($50).

(i) The application fee for a certificate to treat glaucoma shall not exceed fifty dollars ($50).

(j) The fee for approval of a continuing education

course shall not exceed one hundred dollars ($100).

(k) The fee for issuance of a statement of licensure shall not exceed forty dollars ($40).

(l) The fee for biennial renewal of a statement of licensure shall not exceed forty dollars ($40).

(m) The delinquency fee for renewal of a statement of licensure shall not exceed twenty dollars ($20).

(n) The application fee for a fictitious name permit shall not exceed fifty dollars ($50).

(o) The renewal fee for a fictitious name permit shall not exceed fifty dollars ($50).

(p) The delinquency fee for renewal of a fictitious name permit shall not exceed twenty-five dollars ($25).

Added Stats 1937 ch 423. Amended Stats 1945 ch 288 § 1; Stats 1954 ch 2 § 1; Stats 1955 ch 1602 § 9, ch 1623 § 3; Stats 1961 ch 366 § 9, operative October 1, 1961; Stats 1962 ch 2 § 1; Stats 1968 ch 1088 § 6; Stats 1971 ch 1791 § 13; Stats 1976 ch 602 § 2, effective August 27, 1976; Stats 1992 ch 645 § 2 (AB 2566); Stats 1996 ch 328 § 3 (AB 2771). Amended Stats 2005 ch 393 § 47 (AB 488), effective January 1, 2006; Stats 2007 ch 276 § 5 (AB 986), effective January 1, 2008; Stats 2008 ch 179 § 7 (SB 1498), effective January 1, 2009, ch 352 § 3 (SB 1406, effective January 1, 2009, (ch 352 prevails); Stats 2010 ch 328 § 8 (SB 1330), effective January 1, 2011.

§3152.5. APPLICATION AND RENEWAL FEES

The board may require each applicant for a certificate to use therapeutic pharmaceutical agents, pursuant to Section 3041.3, to pay an application fee, and may require each licenseholder to pay a renewal fee. The application fee and the renewal fee shall not exceed the actual costs to the board of the reviewing and processing of the application for a license or renewal of a license, monitoring the practice by licenseholders, and enforcing the provisions of law governing the use of therapeutic pharmaceutical agents, the diagnosis and treatment of certain conditions, and the performance of certain procedures by persons certified to use therapeutic pharmaceutical agents.

Added Stats 1996 ch 13 § 13 (SB 668), effective February 21, 1996. Amended Stats 2005 ch 393 § 48 (AB 488), effective January 1, 2006.

ARTICLE 8 OPTOMETRIC CORPORATIONS

§3160. RIGHT TO PRACTICE

An optometric corporation is a corporation that is authorized to render professional services, as described in Sections 13401 and 13401.5 of the Corporations Code, if that corporation and its shareholders, officers, directors, and employees rendering professional services who are physicians and surgeons, psychologists, registered nurses, optometrists, or podiatrists are in compliance with the Moscone-Knox Professional Corporation Act as contained in Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code, the provisions of this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs. With respect to an optometric corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the State Board of Optometry.

Added Stats 2006 ch 564 § 4 (AB 2256), effective January 1, 2007.

§3163. CORPORATE NAMES

Except as provided in Section 3125, the name of an optometric corporation and any name or names under which it may be rendering professional services shall contain and be restricted to the name or the last name of one or more of the present, prospective, or former shareholders and shall include the words optometric corporation or wording or abbreviations denoting corporate existence, provided that the articles of incorporation shall be amended to delete the name of a former shareholder from the name of the corporation within two years from the date the former shareholder dies or otherwise ceases to be a shareholder.

Added Stats 1970 ch 1265 § 2. Amended Stats 1974 ch 1079 § 2.

§3164. LICENSURE REQUIREMENT

Except as provided in Sections 13401.5 and 13403 of the Corporations Code, each director, shareholder, and officer of an optometric corporation shall be a licensed person as defined in the Moscone-Knox Professional Corporation Act.

Added Stats 1970 ch 1265 § 2. Amended Stats 1981 ch 621 § 4.

§3165. DISBURSEMENT OF INCOME ATTRIBUTABLE TO DISQUALIFIED SHAREHOLDERS

The income of an optometric corporation attributable to professional services rendered while a shareholder is a disqualified person (as defined in the Moscone-Knox Professional Corporation Act) shall not in any manner accrue to the benefit of such shareholder for his shares in the optometric corporation.

Added Stats 1970 ch 1265 § 2

§3166. UNPROFESSIONAL CONDUCT PROHIBITED

An optometric corporation shall not do or fail to do an act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule, or regulation. In conducting its practice, an optometric corporation shall observe and be bound by statutes, rules, and regulations to the same extent as a person holding a license under Section 3055.

Added Stats 1970 ch 1265 § 2. Amended Stats 2006 ch 564 § 7 (AB 2256), effective January 1, 2007.

§3167. RULE-MAKING AUTHORITY

The board may formulate and enforce rules and regulations to carry out the purposes and objectives of this article, including rules and regulations requiring (a) that the articles of incorporation or bylaws of an optometric corporation shall include a provision whereby the capital stock of such corporation owned by a disqualified person (as defined in the Moscone-Knox Professional Corporation Act), or a deceased person shall be sold to the corporation or to the remaining shareholders of such corporation within such time as such rules and regulations may provide; and (b) that an optometric corporation as a condition of obtaining a certificate pursuant to the Moscone-Knox Professional Corporation Act and this article shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.

Added Stats 1970 ch 1265 § 2.

DIVISION 2 HEALING ARTS

CHAPTER 9 PHARMACY

ARTICLE 2 DEFINITIONS

§4024. "DISPENSE"

(a) Except as provided in subdivision (b), "dispense" means the furnishing of drugs or devices upon a prescription from a physician, dentist, optometrist, podiatrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or upon an order to furnish drugs or transmit a prescription from a certified nurse-midwife, nurse practitioner, physician assistant, naturopathic doctor pursuant to Section 3640.5, or pharmacist acting within the scope of his or her practice.

(b) "Dispense" also means and refers to the furnishing of drugs or devices directly to a patient by a physician, dentist, optometrist, podiatrist, or veterinarian, or by a certified nurse-midwife, nurse practitioner, naturopathic doctor, or physician assistant acting within the scope of his or her practice.

Added Stats 1996 ch 890 § 3 (AB 2802). Amended Stats 1997 ch 549 § 17 (SB 1349). Amended Stats 2005 ch 506 § 7 (AB 302), effective October 4, 2005.

§4025. "DRUG"

"Drug" means any of the following:

(a) Articles recognized in the official United States Pharmacopoeia, official National Formulary or official Homeopathic Pharmacopoeia of the United States, or any supplement of any of them.

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals.

(c) Articles (other than food) intended to affect the structure or any function of the body of humans or other animals. (d) Articles intended for use as a component of any article specified in subdivision (a), (b), or (c).

Added Stats 1996 ch 890 § 3 (AB 2802). Amended Stats 1997 ch 549 § 18 (SB 1349).

§4027. DEFINITIONS OF HEALTH FACILITIES

(a) As used in this chapter, the terms "skilled nursing facility," "intermediate care facility," and other references to health facilities shall be construed with respect to the definitions contained in Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code.

(b) As used in Section 4052.1, "licensed health care facility" means a facility licensed pursuant to Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code or a facility, as defined in Section 1250 of the Health and Safety Code, operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(c) As used in Section 4052.2, "health care facility" means a facility, other than a facility licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code, that is owned or operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of the Health and Safety Code, or by an organization under common ownership or control of the health care service plan; "licensed home health agency" means a private or public organization licensed by the State Department of Public Health pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code, as further defined in Section 1727 of the Health and Safety Code; and "licensed clinic" means a clinic licensed pursuant to Article 1 (commencing with Section 1200) of Chapter 1 of Division 2 of the Health and Safety Code.

(d) "Licensed health care facility" or "facility," as used in Section 4065, means a health facility licensed pursuant to Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code or a facility that is owned or operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or by an organization under common ownership or control with the health care service plan.

Added Stats 1996 ch 890 § 3 (AB 2802). Amended Stats 1998 ch 347 § 1 (SB 440); Stats 2009 ch 308 § 42 (SB 819), effective January 1, 2010.

§4039. DEFINITIONS OF PHYSICIANS AND OTHER PROFESSIONALS

"Physicians," "dentists," "optometrists," "pharmacists," "podiatrists," "veterinarians," "veterinary surgeons," "registered nurses," "naturopathic doctors," and "physician's assistants" are persons authorized by a currently valid and unrevoked license to practice their respective professions in this state. "Physician" means and includes any person holding a valid and unrevoked physician' s and surgeon's certificate or certificate to practice medicine and surgery, issued by the Medical

Board of California or the Osteopathic Medical Board of California, and includes an unlicensed person lawfully practicing medicine pursuant to Section 2065, when acting within the scope of that section.

Added Stats 1996 ch 890 § 3 (AB 2802). Amended Stats 2005 ch 506 § 8 (AB 302), effective October 4, 2005.

§4040. "PRESCRIPTION"; "ELECTRONIC TRANSMISSION PRESCRIPTION"

(a) "Prescription" means an oral, written, or electronic transmission order that is both of the following:

(1) Given individually for the person or persons for whom ordered that includes all of the following:

(A) The name or names and address of the patient or patients.

(B) The name and quantity of the drug or device prescribed and the directions for use.

(C) The date of issue.

(D) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and telephone number of the prescriber, his or her license classification, and his or her federal registry number, if a controlled substance is prescribed.

(E) A legible, clear notice of the condition or purpose for which the drug is being prescribed, if requested by the patient or patients.

(F) If in writing, signed by the prescriber issuing the order, or the certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor who issues a drug order pursuant to Section 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist who issues a drug order pursuant to either Section 4052.1 or 4052.2.

(2) Issued by a physician, dentist, optometrist, podiatrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7 or, if a drug order is issued pursuant to Section 2746.51, 2836.1, 3502.1, or 3460.5, by a certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor licensed in this state, or pursuant to either Section 4052.1 or 4052.2 by a pharmacist licensed in this state.

(b) Notwithstanding subdivision (a), a written order of the prescriber for a dangerous drug, except for any Schedule II controlled substance, that contains at least the name and signature of the prescriber, the name and address of the patient in a manner consistent with paragraph (2) of subdivision (a) of Section 11164 of the Health and Safety Code, the name and quantity of the drug prescribed, directions for use, and the date of issue may be treated as a prescription by the dispensing pharmacist as long as any additional information required by subdivision (a) is readily retrievable in the pharmacy. In the event of a conflict between this subdivision and Section 11164 of the Health and Safety Code, Section 11164 of the Health and Safety Code shall prevail.

(c) "Electronic transmission prescription" includes both image and data prescriptions. "Electronic image transmission prescription" means any prescription order for which a facsimile of the order is received by a pharmacy from a licensed prescriber. "Electronic data transmission prescription" means any prescription order, other than an electronic image transmission prescription, that is electronically transmitted from a licensed prescriber to a pharmacy.

(d) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(e) Nothing in the amendments made to this section (formerly Section 4036) at the 1969 Regular Session of the Legislature shall be construed as expanding or limiting the right that a chiropractor, while acting within the scope of his or her license, may have to prescribe a device.

Added Stats 1996 ch 890 § 3 (AB 2802). Amended Stats 1997 ch 549 § 28 (SB 1349). Amended Stats 1999 ch 749 § 4 (SB 816); Stats 2000 ch 836 § 23.7 (SB 1554); Stats 2001 ch 289 § 4 (SB 298); Stats 2004 ch 191 § 1 (AB 2660); Stats 2005 ch 506 § 9 (AB 302), effective October 4, 2005; Stats 2009 ch 308 § 44 (SB 819), effective January 1, 2010, ch 590 § 1 (SB 470), effective January 1, 2010; Stats 2010 ch 328 § 9 (SB 1330), effective January 1, 2011.

ARTICLE 3 SCOPE OF PRACTICE AND EXEMPTIONS

§4057. CHAPTER INAPPLICABILITY

(a) Except as provided in Sections 4006, 4240, and 4342, this chapter does not apply to the retail sale of nonprescription drugs that are not subject to Section 4022 and that are packaged or bottled in the manufacturer's or distributor's container and labeled in accordance with applicable federal and state drug labeling requirements.

(b) This chapter does not apply to specific dangerous drugs and dangerous devices listed in board regulations, where the sale or furnishing is made to any of the following:

(1) A physician, dentist, podiatrist, pharmacist, medical technician, medical technologist, optometrist, or chiropractor holding a currently valid and unrevoked license and acting within the scope of his or her profession.

(2) A clinic, hospital, institution, or establishment holding a currently valid and unrevoked license or permit under Division 2 (commencing with Section 1200) of the Health and Safety Code, or Chapter 2 (commencing with Section 3300) of Division 3 of, or Part 2 (commencing with Section 6250) of Division 6 of, the Welfare and Institutions Code.

(c) This chapter shall not apply to a home health agency licensed under Chapter 8 (commencing with Section 1725) of, or a hospice licensed under Chapter 8.5 (commencing with Section 1745) of, Division 2 of, the Health and Safety Code, when it purchases, stores, furnishes, or transports specific dangerous drugs and dangerous devices listed in board regulations in compliance with applicable law and regulations including:

(1) Dangerous devices described in subdivision (b) of Section 4022, as long as these dangerous devices are furnished only upon the prescription or order of a physician, dentist, or podiatrist.

(2) Hypodermic needles and syringes.

(3) Irrigation solutions of 50 cubic centimeters or greater.

(d) This chapter does not apply to the storage of devices in secure central or ward supply areas of a clinic, hospital, institution, or establishment holding a currently valid and unrevoked license or permit pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, or pursuant to Chapter 2 (commencing with Section 3300) of Division 3 of, or Part 2 (commencing with Section 6250) of Division 6 of, the Welfare and Institutions Code.

(e) This chapter does not apply to the retail sale of vitamins, mineral products, or combinations thereof or to foods, supplements, or nutrients used to fortify the diet of humans or other animals or poultry and labeled as such that are not subject to Section 4022 and that are packaged or bottled in the manufacturer's or distributor's container and labeled in accordance with applicable federal and state labeling requirements.

(f) This chapter does not apply to the furnishing of dangerous drugs and dangerous devices to recognized schools of nursing. These dangerous drugs and dangerous devices shall not include controlled substances. The dangerous drugs and dangerous devices shall be used for training purposes only, and not for the cure, mitigation, or treatment of disease in humans. Recognized schools of nursing for purposes of this subdivision are those schools recognized as training facilities by the California Board of Registered Nursing.

Added Stats 1996 ch 890 § 3 (AB 2802). Amended Stats 1997 ch 549 § 35 (SB 1349). Amended Stats 1999 ch 655 § 47 (SB 1308).

ARTICLE 7 PHARMACIES

§4124. WARNING

(a) Notwithstanding Section 2543, a pharmacist may dispense replacement contact lenses pursuant to a valid prescription of a physician or optometrist. Nothing in this section authorizes a pharmacist to conduct an examination of the eyes or to fit or adjust contact lenses. For purposes of this section, "replacement contact lenses" means soft contact lenses that require no fitting or adjustment, and that are dispensed as packaged and sealed by the manufacturer.

(b) No replacement contact lenses may be sold or dispensed except pursuant to a prescription that meets all of the following requirements:

(1) Conforms to state and federal statutes and regulations governing those prescriptions and includes the name, address, and state license number of the prescribing practitioner.

(2) Explicitly states an expiration date of not more than one year from the date of the last prescribing examination.

(3) Explicitly states that the prescription is for contact lenses and includes the lens brand name, type, and tint, including all specifications necessary for the ordering of lenses.

(c) The contact lenses that are dispensed shall be the exact contact lenses that have been prescribed, and no substitutions shall be made.

(d) Any pharmacist and pharmacy that dispenses replacement contact lenses shall direct the patient to confer with his or her eyecare practitioner in the event of any eye problem or reaction to the lenses.

(e) Any pharmacist and pharmacy that sells replacement contact lenses shall provide the following or substantially equivalent written notification to the patient whenever contact lenses are supplied:

WARNING: IF YOU ARE HAVING ANY UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE, OR REDNESS, REMOVE YOUR LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR LENSES AGAIN.

(f) Any pharmacy and pharmacist dispensing replacement contact lenses shall be subject to all statutes, regulations, and ordinances governing the advertisement of contact lenses. In addition, any advertisement by a pharmacy or pharmacist that mentions replacement contact lenses shall include within the advertisement all fees, charges, and costs associated with the purchase of the lenses from that pharmacy and pharmacist.

(g) Any pharmacy dispensing replacement contact lenses shall register with the Medical Board of California at the time of initial application for a license or at the time of annual renewal of that license.

(h) All nonresident pharmacies shall maintain records of replacement contact lenses shipped, mailed, or delivered to persons in California for a period of at least three years. The records shall be available for inspection upon request by the board or the Division of Licensing of the Medical Board of California.

(i) The requirements of this section are applicable to nonresident pharmacies as defined in subdivision (a) of Section 4112. A nonresident pharmacy may dispense contact lenses only as provided in this section.

Added Stats 1996 ch 890 § 3 (AB 2802).

ARTICLE 12 PRESCRIBER DISPENSING

§4170. CONDITIONS FOR DISPENSING DRUGS OR DANGEROUS DEVICES; AUTHORITY OF BOARDS TO ENSURE COMPLIANCE

(a) No prescriber shall dispense drugs or dangerous devices to patients in his or her office or place of practice unless all of the following conditions are met:

(1) The dangerous drugs or dangerous devices are dispensed to the prescriber's own patient, and the drugs or dangerous devices are not furnished by a nurse or physician attendant.

(2) The dangerous drugs or dangerous devices are necessary in the treatment of the condition for which the prescriber is attending the patient.

(3) The prescriber does not keep a pharmacy, open shop, or drugstore, advertised or otherwise, for the retailing of dangerous drugs, dangerous devices, or poisons.

(4) The prescriber fulfills all of the labeling requirements imposed upon pharmacists by Section 4076, all of the recordkeeping requirements of this chapter, and all of the packaging requirements of good pharmaceutical practice, including the use of childproof containers.

(5) The prescriber does not use a dispensing device unless he or she personally owns the device and the contents of the device, and personally dispenses the dangerous drugs or dangerous devices to the patient packaged, labeled, and recorded in accordance with paragraph (4).

(6) The prescriber, prior to dispensing, offers to give a written prescription to the patient that the patient may elect to have filled by the prescriber or by any pharmacy.

(7) The prescriber provides the patient with written disclosure that the patient has a choice between obtaining the prescription from the dispensing prescriber or obtaining the prescription at a pharmacy of the patient's choice.

(8) A certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, a physician assistant who functions pursuant to Section 3502.1, or a naturopathic doctor who functions pursuant to Section 3640.5, may hand to a patient of the supervising physician and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon, a manufacturer as defined in this chapter, or a pharmacist.

(b) The Medical Board of California, the State Board of Optometry, the Bureau of Naturopathic Medicine, the Dental Board of California, the Osteopathic Medical Board of California, the Board of Registered Nursing, the Veterinary Medical Board, and the Physician Assistant Committee shall have authority with the California State Board of Pharmacy to ensure compliance with this section, and those boards are specifically charged with the enforcement of this chapter with respect to their respective licensees.

(c) "Prescriber," as used in this section, means a person, who holds a physician's and surgeon's certificate, a license to practice optometry, a license to practice naturopathic medicine, a license to practice dentistry, a license to practice veterinary medicine, or a certificate to practice podiatry, and who is duly registered by the Medical Board of California, the State Board of Optometry, the Bureau of Naturopathic Medicine, the Dental Board of California, the Veterinary Medical Board, or the Board of Osteopathic Examiners of this state.

Added Stats 1996 ch 890 § 3 (AB 2802). Amended Stats 1997 ch 549 § 96 (SB 1349). Amended Stats 1999 ch 914 § 4 (AB 1545); Stats 2001 ch 289 § 8 (SB 298); Stats 2003 ch 250 § 3 (SB 175); Stats 2005 ch 506 § 16 (AB 302), effective October 4, 2005.

§4171. DISPENSING OF SAMPLES; APPLICABILITY OF §4170

(a) Section 4170 shall not prohibit the furnishing of a limited quantity of samples by a prescriber, if the prescriber dispenses the samples to the patient in the package provided by the manufacturer, no charge is made to the patient therefor, and an appropriate record is entered in the patient's chart.

(b) Section 4170 shall not apply to clinics, as defined in subdivision (a) of Section 1204 or subdivision (b) or (c) of Section 1206 of the Health and Safety Code, to programs licensed pursuant to Sections 11876, 11877, and 11877.5 of the Health and Safety Code, or to a prescriber dispensing parenteral

chemotherapeutic agents, biologicals, or delivery systems used in the treatment of cancer.

Added Stats 1996 ch 890 § 3 (AB 2802). Amended Stats 2003 ch 250 § 4 (SB 175).

DIVISION 7 GENERAL BUSINESS REGULATIONS

PART 2 PRESERVATION AND REGULATION OF COMPETITION

CHAPTER 4 UNFAIR TRADE PRACTICES

ARTICLE 1 GENERAL PROVISIONS

§17000. CITATION

This chapter may be cited as the Unfair Practices Act.

Added Stats 1941 ch 526 § 1.

§17001. LEGISLATIVE PURPOSE

The Legislature declares that the purpose of this chapter is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented.

Added Stats 1941 ch 526 § 1.

§17002. CONSTRUCTION

This chapter shall be liberally construed that its beneficial purposes may be subserved.

Added Stats 1941 ch 526 § 1.

CHAPTER 5 ENFORCEMENT

§17200. DEFINITION

As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

Added Stats 1977 ch 299 § 1. Amended Stats 1992 ch 430 § 2 (SB 1586).

§17201. PERSON

As used in this chapter, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

Added Stats 1977 ch 299 § 1.

§17201.5. “BOARD WITHIN THE DEPARTMENT OF CONSUMER AFFAIRS”; “LOCAL CONSUMER AFFAIRS AGENCY”

As used in this chapter:

(a) "Board within the Department of Consumer Affairs" includes any commission, bureau, division, or other similarly constituted agency within the Department of Consumer Affairs.

(b) "Local consumer affairs agency" means and includes any city or county body which primarily provides consumer protection services.

Added Stats 1979 ch 897 § 1.

§17202. SPECIFIC OR PREVENTIVE RELIEF

Notwithstanding Section 3369 of the Civil Code, specific or preventive relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition.

Added Stats 1977 ch 299 § 1.

§17203. INJUNCTIVE RELIEF; COURT ORDERS

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.

Added Stats 1977 ch 299 § 1. Amended Stats 1992 ch 430 § 3 (SB 1586). Amendment approved by voters, Prop. 64 § 2, effective November 3, 2004.

§17206. CIVIL PENALTY FOR VIOLATION OF CHAPTER

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city having a population in excess of 750,000, by any city attorney of any city and county, or, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (e), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. The aforementioned funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.

(d) The Unfair Competition Law Fund is hereby created as a special account within the General Fund in the State Treasury. The portion of penalties that is payable to the General Fund or to the Treasurer recovered by the Attorney General from an action or settlement of a claim made by the Attorney General pursuant to this chapter or Chapter 1 (commencing with Section 17500) of Part 3 shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support investigations and prosecutions of California's consumer protection laws, including implementation of judgments obtained from such prosecutions or investigations and other activities which are in furtherance of this chapter or Chapter 1 (commencing with Section 17500) of Part 3.

(e) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action. Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

(f) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered for the exclusive use by the city attorney for the enforcement of consumer protection laws. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises that were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

Added Stats 1977 ch 299 § 1. Amended Stats 1979 ch 897 § 2; Stats 1991 ch 1195 § 2 (SB 709), ch 1196 § 2 (AB 1755). Amended Stats 1992 ch 430 § 4 (SB 1586); Stats 1997 ch 17 § 11 (SB 947). Amendment approved by voters, Prop. 64 § 4, effective November 3, 2004. Amended Stats 2005 ch 74 § 23 (AB 139), effective July 19, 2005. Stats 2007 ch 17 § 2 (SB 376), effective January 1, 2008.

§17206.1. ADDITIONAL CIVIL PENALTY; ACTS AGAINST SENIOR CITIZENS OR DISABLED PERSONS

(a) (1) In addition to any liability for a civil penalty pursuant to Section 17206, any person who violates this chapter, and the act or acts of unfair competition are perpetrated against one or more senior citizens or disabled persons, may be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which may be assessed and

recovered in a civil action as prescribed in Section 17206.

(2) Subject to subdivision (d), any civil penalty shall be paid as prescribed by subdivisions (b) and (c) of Section 17206.

(b) As used in this section, the following terms have the following meanings:

(1) "Senior citizen" means a person who is 65 years of age or older.

(2) "Disabled person" means any person who has a physical or mental impairment that substantially limits one or more major life activities.

(A) As used in this subdivision, "physical or mental impairment" means any of the following:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. "Physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, and emotional illness.

(B) "Major life activities" means functions such as caring for one' s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) In determining whether to impose a civil penalty pursuant to subdivision (a) and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

(1) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons.

(2) Whether the defendant's conduct caused one or more senior citizens or disabled persons to suffer: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person.

(3) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(d) Any court of competent jurisdiction hearing an action pursuant to this section may make orders and judgments as may be necessary to restore to any senior citizen or disabled person any money or property, real or personal, which may have been acquired by means of a violation of this chapter. Restitution ordered pursuant to this subdivision shall be given priority over recovery of any civil penalty designated by the court as imposed pursuant to subdivision (a), but shall not be given priority over any civil penalty imposed pursuant to subdivision (a) of Section 17206. If the court determines that full restitution cannot be made to those senior citizens or disabled persons, either at the time of judgment or by a future date determined by the court, then restitution under this subdivision shall be made on a pro rata basis depending on the amount of loss.

Added Stats 1988 ch 823 § 1. Amended Stats 2006 ch 538 § 23 (SB 1852), effective January 1, 2007.

§17207. VIOLATION OF INJUNCTION

(a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of that conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of that conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney in any court of competent jurisdiction within his or her jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city, except that if the action was brought by a city attorney of a city and county the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment is entered.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of the reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of the reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

Added Stats 1977 ch 299 § 1. Amended Stats 1979 ch 897 § 3; Stats 1991 ch 1195 § 3 (AB 1755).

§17208. LIMITATION OF ACTIONS

Any action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this section shall be revived by its enactment.

Added Stats 1977 ch 299 § 1.

PART 3 REPRESENTATIONS TO THE PUBLIC

CHAPTER 1 ADVERTISING

ARTICLE 1 FALSE ADVERTISING IN GENERAL

§17500. FALSE OR MISLEADING STATEMENTS GENERALLY

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that imprisonment and fine.

Added Stats 1941 ch 63 § 1. Amended Stats 1955 ch 1358 § 1; Stats 1976 ch 1125 § 4; Stats 1979 ch 492 § 1; Stats 1998 ch 599 § 2.5 (SB 597).

§17500.1. PROHIBITION AGAINST ENACTMENT OF RULE, REGULATION, OR CODE OF ETHICS RESTRICTING OR PROHIBITING ADVERTISING NOT VIOLATIVE OF LAW

Notwithstanding any other provision of law, no trade or professional association, or state agency, state board, or state commission within the Department of Consumer Affairs shall enact any rule, regulation, or code of professional ethics which shall restrict or prohibit advertising by any commercial or professional person, firm, partnership or corporation which does not violate the provisions of Section 17500 of the Business and Professions Code, or which is not prohibited by other provisions of law.

The provisions of this section shall not apply to any rules or regulations heretofore or hereafter formulated pursuant to Section 6076.

Added Stats 1949 ch 186 § 1. Amended Stats 1971 ch 716 § 180; Stats 1979 ch 653 § 12.

§17506.5. "BOARD WITHIN THE DEPARTMENT OF CONSUMER AFFAIRS"; "LOCAL CONSUMER AFFAIRS AGENCY"

As used in this chapter:

(a) "Board within the Department of Consumer Affairs" includes any commission, bureau, division, or other similarly constituted agency within the Department of Consumer Affairs.

(b) "Local consumer affairs agency" means and includes any city or county body which primarily provides consumer protection services.

Added Stats 1979 ch 897 § 4.

ARTICLE 2 PARTICULAR OFFENSES

§17535. OBTAINING INJUNCTIVE RELIEF

Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person, corporation, firm, partnership, joint stock company, or any other association or organization of any practices which violate this chapter, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful.

Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney, county counsel, city attorney, or city prosecutor in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person who has suffered injury in fact and has lost money or property as a result of a violation of this chapter. Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of this section and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.

Added Stats 1941 ch 63 § 1. Amended Stats 1972 ch 244 § 1, ch 711 § 3. Amendment approved by voters, Prop. 64 § 5, effective November 3, 2004.

§17535.5. PENALTY FOR VIOLATION INJUNCTION; PROCEEDINGS; DISPOSITION OF PROCEEDS

(a) Any person who intentionally violates any injunction issued pursuant to Section 17535 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction within his jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall take special precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to

subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

Added Stats 1973 ch 1042 § 1. Amended Stats 1974 ch 712 § 1; Stats 1979 ch 897 § 5.

§17536. PENALTY FOR VIOLATIONS OF CHAPTER; PROCEEDINGS; DISPOSITION OF PROCEEDS

(a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city. The aforementioned funds shall be for the exclusive use by the Attorney General, district attorney, county counsel, and city attorney for the enforcement of consumer protection laws.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality which funds the local agency.

(e) As applied to the penalties for acts in violation of Section 17530, the remedies provided by this section and Section 17534 are mutually exclusive.

Added Stats 1965 ch 827 § 1. Amended Stats 1972 ch 711 § 2, ch 1105 § 2; Stats 1973 ch 752 § 1; Stats 1974 ch 875 § 1; Stats 1979 ch 897 § 6; Stats 1992 ch 430 § 5 (SB 1586). Amendment approved by voters, Prop. 64 § 6, effective November 3, 2004.

§17536.5. NOTICE OF ISSUE IN ACTION BEFORE APPELLATE COURT

If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, each person filing any brief or petition with the court in that proceeding shall serve, within three days of filing with the court, a copy of that brief or petition on the Attorney General, directed to the attention of the Consumer Law Section at a service address designated on the Attorney General's official Web site for service of papers under this section or, if no service address is designated, at the Attorney General's office in San Francisco, California, and on the district attorney of the county in which the lower court action or proceeding was originally filed. Upon the Attorney General's or district attorney's request, each person who has filed any other document, including all or a portion of the appellate record, with the court in addition to a brief or petition shall provide a copy of that document without charge to the Attorney General or the district attorney within five days of the request. The time for service may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted or opinion issued until proof of service of the petition or brief on the Attorney General and district attorney is filed with the court.

Added Stats 1992 ch 385 § 3 (SB 1911). Amended Stats 1998 ch 931 § 10 (SB 2139), effective September 28, 1998. Amended Stats 2004 ch 529 § 5 (AB 1711).

CALIFORNIA CODE OF REGULATIONS

TITLE 16 PROFESSIONAL AND VOCATIONAL REGULATIONS

DIVISION 15 BOARD OF OPTOMETRY

ARTICLE 1 GENERAL PROVISIONS

§1500. LOCATION OF OFFICES

Authority cited: Section 3025, Business and Professions Code. Reference: Section 3026, Business and Professions Code.
History
1. Amendment filed 3-3-78; effective thirtieth day thereafter (Register 78, No. 9.)
2. Repealer filed 10-25-83; effective thirtieth day thereafter (Register 83, No. 44).

§1501. TENSES, GENDER, AND NUMBER

Authority cited: Section 3025, Business and Professions Code. Reference: Section 3025, Business and Professions Code.
History
1. Repealer filed 10-25-83; effective thirtieth day thereafter (Register 83, No. 44).

§1501.1. DEFINITIONS

For the purpose of the rules and regulations contained in this chapter, the following definitions shall apply:

(a) The term "Board" means State Board of Optometry.

(b) The term "code" means, unless otherwise designated, Business and Professions Code.

(c) The term "office," as defined in Section 3077 of the code, means any office or other place for the practice of optometry.

Authority cited: Sections 3025, 3025.5, and 3077, Business and Professions Code. Reference: Section 3077, Business and Professions Code.
History
1. New section filed 1-31-64; effective thirtieth day thereafter (Register 64, No. 3).
2. Amendment of subsection (c) filed 3-3-78; effective thirtieth day thereafter (Register 78, No. 9.)

§1502. DELEGATION OF CERTAIN FUNCTIONS

The power and discretion conferred by law upon the Board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the business-like dispatch of the business of the Board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer.

Authority cited: Section 3025, Business and Professions Code. Reference: Section 3027, Business and Professions Code.
History
1. Amendment filed 12-1-83; effective thirtieth day thereafter (Register 83, No. 49).
2. Amendment filed 3-15-94; operative 4-14-94 (Register 94, No. 11).

ARTICLE 2 LOCATION OF PRACTICE

§1505. NOTIFICATION OF INTENTION TO ENGAGE IN PRACTICE

(a) The notification of intention to engage in the practice of optometry which is required by Section 3070 of the code shall be addressed to the Board at its office in Sacramento.

(b) Such notification of intention to engage in the practice of optometry includes notifying the Board of intention to accept employment to practice optometry, the name or names of the optometrist or optometrists, or those who by law may employ an optometrist and the address or addresses of the office or offices at which the licensee will be employed.

(c) Such notification of intention to engage in the practice of optometry includes notifying the Board prior to the establishment of any office or offices to practice optometry of the intention to establish such office or offices and the location or locations to be occupied.

Authority cited: Section 3025, Business and Professions Code. Reference: Sections 3070 and 3077, Business and Professions Code.

History
1. Amendment filed 1-31-64; effective thirtieth day thereafter (Register 64, No. 3).
2. Amendment filed 3-3-78; effective thirtieth day thereafter (Register 78, No. 9).
3. Amendment filed 12-1-83; effective thirtieth day thereafter (Register 83, No. 49).
4. Change without regulatory effect amending subsection (b) filed 1-6-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 2).

§1506. CERTIFICATES – POSTING

(a) A certificate of registration, i.e., original wall certificate, is an original certificate of registration and license to practice optometry in California granted by the Board to a natural person who has qualified for the same pursuant to the provisions of Chapter 7 of Division 2 of the Code and it may not be assigned or transferred to another person but shall; notwithstanding whether it is replaced by a certification of the issuance of a certificate of registration, i.e., duplicate wall certificate, as provided by subdivision (b) of this section; remain valid and in force unless it is revoked or suspended and not reinstated or it is expired and not renewed or restored.

(b) A certification of the issuance of a certificate of registration is a certification by the Board that the person named thereon to whom it is conveyed is the holder of the certificate of registration designated thereon and shall be issued to such person as prima facie evidence that such person is the holder of such certificate of registration designated thereon and to replace the same or a previous certification of the issuance of a certificate of registration issued to the same person, provided that:

(1) There is furnished proof satisfactory to the Board of a change in name authorized by law of such person or of the loss of, destruction of or severe damage to such certificate of registration or previous certification of the issuance of such certificate of registration.

(2) Such certificate of registration or previous certification of the issuance of such certificate of registration is, unless it is lost or destroyed, surrendered to the Board.

(3) There is payment of the fee prescribed by Section 3152(h) of the code for the issuance of a certification of registration.

(c) The principal place of practice of an optometrist shall be deemed by the Board to be that office, other than his/her branch office or offices, wherein he/she owns, singly or jointly with any others, the practice of optometry, provided however:

(1) Where the optometrist does not own a practice, singly or jointly with any others, but practices optometry in a single office as an employee, that office shall be his/her principal place of practice.

(2) Where the optometrist does not own a practice, singly or jointly with any others, but practices optometry in two or more offices as an employee, he/she shall inform the Board in writing as to which of such offices shall be deemed his/her principal place of practice.

(d) When the optometrist owns, singly or jointly with any others, the practice of optometry in more than one office or is employed to practice optometry in more than one office and it is infeasible to have his/her certificate posted in more than one of such offices, he/she shall have a numbered statement of licensure issued by the Board and signed by its executive officer conspicuously posted in each of such additional offices wherein he/she owns, singly or jointly with any others, the practice of optometry or wherein he/she practices optometry as an employee, provided that:

(1) He/she shall first send a written request to the Board for such statement of licensure or statements of licensure and shall include in such request the exact location of the office wherein it or each of them is to be posted in lieu of his/her certificate.

(2) He/she shall not have a statement of licensure posted in any office other than as authorized by such statement of licensure.

(3) A statement of licensure shall not be altered or assigned.

(4) A statement of licensure is to be immediately surrendered to the Board by the optometrist to whom it is issued upon the occurrence of any of the following:

(A) His/her certificate becomes expired, is suspended or is revoked.

(B) He/she terminates ownership of the practice or his/her employment to practice optometry in the office wherein he/she is authorized by such statement of licensure to post the same in lieu of his/her certificate.

(C) The office wherein he/she is authorized by such statement of licensure to post the same becomes the only office wherein he/she has ownership of the practice and/or practices optometry as an employee.

Authority cited: Section 3025, Business and Professions Code. Reference: Section 3075, Business and Professions Code.
History
1. Amendment filed 6-28-67; effective thirtieth day thereafter(Register 67, No. 26).
2. Amendment filed 8-7-69; effective thirtieth day thereafter (Register 69, No. 32).
3. Amendment filed 3-3-78; effective thirtieth day thereafter (Register 78, No. 9.)
4. Amendment filed 10-25-83; effective thirtieth day thereafter (Register 83, No. 44).

§1507. EXTENDED OPTOMETRIC CLINICAL FACILITIES

(a) As used in this regulation "extended optometric clinical facility" means and includes any clinical facility employed by an approved optometry school for

instruction in optometry which exists outside or beyond the walls, boundaries, or precincts of the primary campus of the approved optometry school, and in which optometric services are rendered.

(b) It is the intent of this section to provide a procedure whereby an extended optometric clinical facility may be identified, qualified and approved by the Board as an adjunct to, and an extension of, the clinical department of an approved optometry school.

(c) Optometric services provided by optometry students at undergraduate and graduate levels in an extended optometric clinical facility shall constitute a part of the optometric education program.

(d) Approved optometry schools shall register extended optometric clinical facilities with the Board. Such registration shall be accompanied with information supplied by the optometry school pertaining to faculty supervision, scope of practice to be rendered, name and location of the facility, date operation will commence, discipline of which such instruction is a part, and a brief description of the equipment and facilities available. The foregoing information shall be supplemented with a copy of the agreement between the approved optometry school or parent university and the affiliated institution establishing the relationship. Any change in the information initially provided to the Board shall be communicated to the Board.

(e) Mobile optometric facilities may only function as a part of a school teaching program as approved by the Board.

(f) The itinerary of the mobile optometric unit must be submitted to the Board with 30 days prior notice.

Authority cited: Sections 3023.1, 3025 and 3077, Business and Professions Code. Reference: Sections 3023, 3023.1 and 3077, Business and Professions Code.
History
1. New section filed 5-11-73; effective thirtieth day thereafter (Register 73, No. 19).
2. Amendment filed 12-1-83; effective thirtieth day thereafter (Register 83, No. 49).

§1507.1. MOBILE OPTOMETRIC FACILITIES

Authority cited: Section 3025, Business and Professions Code. Reference: Sections 3023, 3023.1 and 3077, Business and Professions Code.
History
1. New section filed 5-11-73; effective thirtieth day thereafter (Register 73, No. 19).
2. Repealer filed 10-25-83; effective thirtieth day thereafter (Register 83, No. 44).

ARTICLE 3 PROFESSIONAL RULES

§1510. PROFESSIONAL INEFFICIENCY

Inefficiency in the profession is indicated by the failure to use, or the lack of proficiency in the use of the ophthalmoscope, the retinoscope, the ophthalmometer (or keratometer), tonometer, biomicroscope, any one of the modern refracting instruments such as the phoroptor, refractor, etc., or the phorometer-trial frame containing phoria and duction measuring elements or a multicelled trial frame, trial lenses, and prisms, in the conduct of an ocular examination; the failure to make and keep an accurate record of findings; lack of familiarity with, or neglect to use, a tangent screen or perimeter or campimeter; and the failure to make a careful record of the findings when the need of the information these instruments afford is definitely indicated.

Authority cited: Sections 3025 and 3025.5, Business and Professions Code. Reference: Sections 3025.5 and 3090, Business and Professions Code.
History
1. Amendment filed 12-1-83; effective thirtieth day thereafter (Register 83, No. 49).

§1511. USE OF PREFIX OR SUFFIX

Authority cited: Section 3025, Business and Professions Code. Reference: Section 3098, Business and Professions Code.
History
1. Amendment filed 1-31-64; effective thirtieth day thereafter (Register 64, No. 3).
2. Repealer filed 10-25-83; effective thirtieth day thereafter (Register 83, No. 44).

§1512. REPRESENTATION OF EXCEPTIONAL PROFICIENCY

(a) No title, subtitle, or phrase shall be used which conveys the impression of exceptional proficiency in any phase of optometric practice except as provided in Section 651(h) of the Code.

(b) There shall be no statements in advertising tending to imply that the use of some particular system or procedure in the examination of the eyes and their functions, is superior to or safer than that taught in accredited schools and constituting the legally defined and accepted practice of optometry.

Authority cited: Sections 651 and 3025, Business and Professions Code. Reference: Section 651, Business and Professions Code.
History
1. Amendment filed 10-25-83; effective thirtieth day thereafter (Register 83, No. 44).

§1513. REGISTERED NAME ONLY

All signs, cards, stationery or other advertising must clearly and prominently identify the individual optometrist or optometrists.

Authority cited: Sections 651 and 3025, Business and Professions Code. Reference: Sections 651 and 3125, Business and Professions Code.

History
1. Amendment filed 1-31-64; effective thirtieth day thereafter (Register 64, No. 3).
2. Amendment filed 4-3-75; effective thirtieth day thereafter (Register 75, No. 14).
3. Amendment filed 12-1-83; effective thirtieth day thereafter (Register 83, No. 49).

§1514. RENTING SPACE FROM AND PRACTICING ON PREMISES OF COMMERCIAL (MERCANTILE) CONCERN

Where an optometrist rents or leases space from and practices optometry on the premises of a commercial (mercantile) concern, all of the following conditions shall be met:

(a) The practice shall be owned by the optometrist and in every phase be under his/her exclusive control. The patient records shall be the sole property of the optometrist and free from any involvement with a person unlicensed to practice optometry. The optometrist shall make every effort to provide for emergency referrals.

(b) The rented space shall be definite and apart from space occupied by other occupants of the premises.

(c) All signs, advertising, and display shall likewise be separate and distinct from that of the other occupants and have the optometrist's name and the word "optometrist" prominently displayed in connection therewith.

(d) There shall be no legends as "Optical Department," "Optometrical Department," "Optical Shoppe," or others of similar import, displayed on any part of the premises or in any advertising.

(e) There shall be no linking of the optometrist's name, or practice, in advertising or in any other manner with that of the commercial (mercantile) concern from whom he/she is leasing space.

Authority cited: Sections 3025 and 3025.5, Business and Professions Code. Reference: Sections 651 and 3025, Business and Professions Code.
History
1. Amendment filed 12-1-83; effective thirtieth day thereafter (Register 83, No. 49).

§1515. ADVERTISING OF SERVICES

Authority cited: Section 651, Business and Professions Code. Reference: Sections 651, 651.3, 3129 and 17500, Business and Professions Code
History
1. Amendment filed 3-3-78; effective thirtieth day thereafter (Register 78, No. 9.)
2. New subsection (c) filed 2-15-80; effective thirtieth day thereafter (Register 80, No. 7).
3. Amendment filed 12-1-83; effective thirtieth day thereafter (Register 83, No. 49).
4. Change without regulatory effect repealing section filed 3-13-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 11).

§1516. CRITERIA FOR REHABILITATION

(a) When considering the denial of a certificate of registration under Section 480 of the Code, the Board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a certificate of registration, will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

(b) When considering the suspension or revocation of a certificate of registration on the grounds that the registrant has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

(c) When considering a petition for reinstatement of a certificate of registration under Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria of rehabilitation specified in subsection (b).

Authority cited: Sections 3023, 3023.1 and 3025, Business and Professions Code. Reference: Sections 475, 480, 481 and 482, Business and Professions Code; and Section 11522, Government Code.
History
1. New section filed 5-11-73; effective thirtieth day thereafter (Register 73, No. 19).
2. Amendment filed 2-4-75 as an emergency; effective upon filing (Register 75, No. 6).
3. Certificate of Compliance filed 3-28-75 (Register 75, No. 13).

4. Amendment filed 10-25-83; effective thirtieth day thereafter (Register 83, No. 44).

§1517. SUBSTANTIAL RELATIONSHIP CRITERIA

For the purpose of denial, suspension, or revocation of the certificate of registration of an optometrist pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be considered to be substantially related to the qualifications, functions, and duties of an optometrist if to a substantial degree it evidences present or potential unfitness of an optometrist to perform the functions authorized by his/her certificate of registration in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

(a) Any violation of the provisions of Article 2, Chapter 1, Division 2 of the Code (Sections 525 et seq. of the Code).

(b) Any violation of the provisions of Article 6, Chapter 1, Division 2 of the Code (Sections 650 et. seq. of the Code) except Sections 651.4 and 654.

(c) Any violation of the provisions of Chapter 5.4, Division 2 of the Code (Sections 2540 et seq. of the Code).

(d) Any violation of the provisions of Chapter 7, Division 2 of the Code (Sections 3000 et seq. of the Code).

Authority cited: Section 3025, Business and Professions Code. Reference: Sections 475, 480, 481 and 482, Business and Professions Code.

History

1. New section filed 2-4-75 as an emergency; effective upon filing (Register 75, No. 6).
2. Certificate of Compliance filed 3-28-75 (Register 75, No. 13).
3. Amendment filed 10-25-83; effective thirtieth day thereafter (Register 83, No. 44).

§1518. FICTITIOUS OR GROUP NAMES

(a) Applications for a permit to use a fictitious or group name shall be submitted on a form provided by the Board containing such information as is required therein, and accompanied by the initial permit fee of $50.00. The permit shall be renewed annually with a renewal fee of $50 due on January 31 each year. Failure to renew a fictitious name permit in a timely manner will result in a $25 delinquency fee added to the renewal fee.

(b) No permit shall be issued authorizing the use of a name which is deceptive or inimical to enabling a rational choice for the consumer public and which does not contain at least one of the following designations: "optometry" or "optometric." In considering whether a name is deceptive or inimical to enabling a rational choice for the consumer public the Board may consider, among other things, whether it has a tendency to deceive the public or is so similar to a name previously authorized in the same geographical area as to be deceptive or misleading.

(c) When an optometrist or optometrists acquire the ownership in an optometric practice of another optometrist or other optometrists, the successor optometrist or optometrists may use in connection with such practice the name or names of the predecessor optometrist or optometrists for a reasonable time not in excess of two years thereafter providing:

(1) The acquisition of the ownership in the practice of the predecessor optometrist or optometrists includes permission to use his/her or their names.

(2) The acquisition of the ownership includes the active patient records and prescription files of the practice.

(3) In any signs, professional cards, envelopes, billheads, letterheads, or advertising of any nature, the name or names of the successor optometrist or optometrists shall appear first and be followed by the term "succeeding," "successor to," or "formerly" and then the name or names of the predecessor optometrist or optometrists which shall not appear in letters larger than the letters in the name or names of the successor optometrist or optometrists.

Authority cited: Section 3078, Business and Professions Code. Reference: Sections 3078, 3152 and 3163, Business and Professions Code.

History

1. New section filed 3-3-78; effective thirtieth day thereafter (Register 78, No. 9).
2. Amendment of subsection (b) and repealer of subsections (c) and (d) filed 2- 15-80; effective thirtieth day thereafter (Register 80, No. 7).
3. Amendment filed 12-1-83; effective thirtieth day thereafter (Register 83, No. 49).
4. Amendment of subsection (a) and Note filed 2-8-2011; operative 3-10-11 (Register 2011, No. 6).

§1519. OPHTHALMIC DEVICE STANDARDS

The minimum quality standards for prescription ophthalmic devices sold, dispensed or furnished by licensed optometrists shall be the 1972 standards of the American National Standards Institute Z80.1 and Z80.2.

Authority cited: Section 2541.3, Business and Professions Code. Reference: Section 2541.3, Business and Professions Code.

History

1. New section filed 11-17-76; effective thirtieth day thereafter (Register 76, No. 47).

ARTICLE 4 SANITARY AND/OR HYGIENIC FACILITIES – STANDARDS GOVERNING SERVICES

§1520. INFECTION CONTROL GUIDELINES

(a) Optometrists and staff, which also includes assistants in the office of an optometrist, must comply with all the applicable Standard Precautions.

(b) Standard Precautions combine the major features of Universal Precautions and Body Substance Isolation and are based on the principle that all blood, body fluids, secretions, excretions (except sweat), non-intact skin, and mucus membranes may contain transmissible infectious agents. All contact with these substances is treated as if known to be infectious for Human Immunodeficiency Virus (HIV), Hepatitis, and other transmissible infectious agents. Standard Precautions are also intended to protect patients by ensuring that optometric staff do not carry infectious agents to patients on their hands or via equipment used when providing optometric services. Standard Precautions must be used in the care of all patients, regardless of suspected or confirmed infection status, and in all settings wherein optometric services are provided. Standard Precautions include:

(1) Proper Hand Hygiene

(A) Each office shall have a hand washing facility that is entirely within the confines of the premises or space occupied by such office and not elsewhere, and which shall be for the exclusive use of the optometrist or optometrists practicing in such office and his/her or their assistants and patients and shall not be used by other persons.

(B) For the purpose of this section, a hand washing facility is a facility affording, at minimum, the following:

1. A wash basin or sink with hot and cold running water which complies with Title 24, California Administrative Code, Part 5 (commencing with Section P100).

2. Liquid hand washing detergent in a dispensing device.

3. Single service sanitary towels in a dispensing device or a sanitary hot-air blower hand drying apparatus.

(C) Hand washing facilities shall be maintained in a condition of cleanliness and good repair.

(D) The optometrists and staff shall maintain at all times a high standard of cleanliness and personal hygiene in order to ensure proper patient care.

(E) The optometrists and staff shall avoid unnecessary touching of face, nose, and surfaces in close proximity to the patient to prevent both contamination of clean hands from environmental surfaces and transmission of pathogens from contaminated hands to surfaces, when providing optometric services.

(F) When hands are visibly soiled, hands shall be washed with soap and water for a 20-second scrub and 10-second rinse or an antimicrobial hand wash. If hands are not visibly soiled, an acceptable alternative of hand decontamination is with an alcohol-based hand rub (except in cases of spores, as described below).

(G) Hands shall be washed or decontaminated as follows:

1. Before having direct contact with any patient, immediately after a procedure (such as eye examinations or other procedures involving contact with tears), and in between patients.

2. After removing gloves, ensure that hands will not carry potential infectious material that might have penetrated through unrecognized cuts or lacerations in the gloves, or that could contaminate the hands during glove removal.

3. Artificial fingernails or extenders shall not be worn if duties include direct contact with patients at high risk for infection and associated adverse outcomes.

(H) After each patient session ends, hands must be washed with soap and water or an antimicrobial hand wash if contact with spores (including but not limited to C.difficileorBacillus anthracis) is likely to have occurred. The physical action of washing and rinsing hands in such circumstances is required because alcohols, chlorhexidine, iodophors, and other antiseptic agents have poor activity against spores.

(I) If an optometrist or staff member has exudative lesions or weeping dermatitis of the hand, direct patient care and the handling of patient care equipment by the person with the condition must stop until the condition resolves.

(2) Use of Personal Protective Equipment

(A) The optometrists and staff must routinely use gloves to prevent skin exposure when anticipating direct contact with blood or body fluids, mucous membranes, nonintact skin, and other potentially infectious material or surfaces soiled with such fluids.

(B) The optometrists and staff shall discard gloves after contact with each patient to prevent transmission of infectious material.

(C) The optometrists and staff shall change gloves if patient interaction involves touching portable computer keyboards or other mobile equipment that is transported from room to room.

(D) The optometrists and staff shall not reuse gloves.

(E) The optometrists and staff must wear masks, gloves and protective eye wear in situations where blood, respiratory secretions, or contaminated fluids may be sprayed or splashed into the eyes of an

optometrist or staff member.

(F) The optometrists and staff must wear masks, gloves and protective eye wear if the optometrist, staff or patient is known or suspected to have a pathogen, which can be transmitted by airborne, contact or droplet routes. If an optometrist or staff member is infected with a pulmonary or other disease that is transmitted by airborne, contact or droplet routes, then that optometrist or staff member must wear a mask, gloves and protective eyewear to protect the patient.

(G) Protective eyewear must be washed and disinfected between each patient or when visibly soiled.

(3) Handling of Sharp Instruments

(A) Precautions must be taken in order to prevent injuries caused by needles, scalpels, and other sharp instruments or devices when:

1. Performing procedures, including but not limited to venipuncture;

2. Cleaning used instruments;

3. Disposing of used needles; and

4. Handling sharp instruments after procedures.

(B) To prevent needle stick injuries, optometrists and staff shall be instructed in the proper handling of needles, including but not limited to when needles must not be recapped, or purposely bent or broken by hand, removed from disposable syringes, or otherwise manipulated by hand.

(C) Optometrists and staff must be instructed to place disposable syringes and needles, scalpel blades and other sharp items in puncture resistant containers following their use. Puncture resistant containers shall be provided and shall be located as close as practical to the area where needles and syringes are in use.

(D) Pursuant to Cal/OSHA's Bloodborne Pathogens Standard, Title 8, Cal. Code Regs., Section 5193, employers governed by this rule must establish, maintain, review and update at least annually and whenever necessary their Exposure Control Plan to reflect changes in technology that eliminate or reduce exposure to bloodborne pathogens, and establish and maintain a Sharps Injury Log. This rule applies to all employers with employees who have occupational exposure to blood or other potentially infectious materials.

(E) Optometrists and staff shall adhere to all federal and state requirements for handling of sharp instruments (including but not limited to the Medical Waste Management Act, California Health and Safety Code sections 117600-118360).

(4) Disinfection Requirements

(A) Germicides and/or disinfectants must be used in order to eliminate most of all pathogenic microorganisms from inanimate objects, such as medical devices or equipment. If there are questions on how to disinfect a particular medical device, the office may contact the manufacturer of the product.

(B) Contact lenses and carrying cases used in trial and follow-up fittings shall be handled in the following manner:

1. Discarding the trial contact lenses is recommended. This procedure however is inapplicable to rigid gas permeable and non-disposable hydrogel trial contact lenses.

2. Disinfecting between each fitting by one of the following regimens:

a. U.S. Food and Drug Administration (FDA) approved chemical disinfection system appropriate for the contact lens type.

b. Heat disinfection.

(C) When using eye drops, optometrists and assistants shall not permit the bottle tip to come into direct contact with the patient's tears or conjunctiva. If the tip touches the patient, the bottle shall be discarded.

(D) Optometrists and staff shall follow employer-established policies and procedures for routine and targeted cleaning of environmental surfaces as indicated by the service-delivery setting, the level of patient contact, and degree of soiling.

(E) Optometrists and staff shall clean and disinfect surfaces that are likely to be contaminated with pathogens, especially those in close proximity to the patient and frequently touched surfaces in the patient care environment.

(c) Optometrists and staff shall comply with all minimum standards for infection control practices issued by local, state, and federal governmental agencies in response to emergency health and safety situations.

Authority Cited:
Sections 3010.1, 3025, 3025.5 and 3110, Business and Professions Code. Reference: Sections 2544, 2564.5, 3025.5, 3025.6 and 3110, Business and Professions Code.

History:
1. New Article 4 (Section 1520) filed 131-63; effective thirtieth day thereafter (Register 64. No. 3).
2. Amendment of subsection (d) filed 3-3-78; effective thirtieth day thereafter (Register 78, No. 9.)
3. Amendment filed 12-1-83; effective thirtieth day thereafter (Register 83, No. 49).
4. Amendment of section heading, section and Note filed 12-20-2010; operative 1-19-2011 (Register 2010, No. 52).

ARTICLE 5 APPLICATION FOR LICENSURE EXAMINATION

§1523. LICENSURE EXAMINATION REQUIREMENTS

(a)(1) Application for licensure as an optometrist shall be made on a form prescribed by the Board (Form 39A-1. Rev. 7-09), which is hereby incorporated by reference, and shall show that the applicant is at least 18 years of age.

(2) Application for licensure by an out of state licensed optometrist as defined in Business and Professions Code Section 3057, shall be made on forms prescribed by the Board (Form OLA-2, Rev. 11/07 and Form LBC-4, rev. 2/07), which are hereby incorporated by reference, and shall show that the applicant is at least 18 years of age.

(b) An application shall be accompanied by the following:

(1) The fees fixed by the Board pursuant to Section 1524 in this Article.

(2) Satisfactory evidence of graduation from an accredited school or college of optometry approved by the Board.

(3) One classifiable set of fingerprints on a form provided by the Board.

(c) An incomplete application shall be returned to the applicant together with a statement setting forth the reason(s) for returning the application and indicating the amount of money, if any, which will be refunded.

(d) Each applicant must achieve passing grades in all Board required examination before being granted a license to practice optometry.

(e) Permission to take the California Laws and Regulations Examination (CLRE) shall be granted to those applicants who have submitted a paid application.

(f) Licensure shall be contingent on the applicants passing the Clinical Skills portion of the National Board of Examiners in Optometry examination as provided in Section 1531 in this Article and passing the CLRE.

(g) Admission into the examinations shall not limit the Board's authority to seek from an applicant additional information deemed necessary to evaluate the applicant's qualifications for licensure.

Authority cited: Sections 3025, 3044, 3045 and 3057, Business and Professions Code. Reference: Sections 3044, 3045 and 3057, Business and Professions Code.
History
1. New article 5 (sections 1523-1524) and section filed 5-12-97; operative 6-11-97 (Register 97, No. 20). For prior history, see Register 83, No. 44.
2. Amendment of section heading, redesignation of subsection (a) as new subsection (a)(1) and new subsection (a)(2), amendment of subsections (b)- (b)(1) and amendment of Note filed 11-7-2007; operative 11-7-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 45).
3. Amendment filed 2-8-2011; operative 3-10-2011 (Register 2011, No. 6).

§1524. FEES

The following fees are established:

(a) Application fee for certificate of registration as an optometrist by examination.....$275

(b) Biennial renewal of a certificate of registration as an optometrist……..$425

(c) Delinquency fee for failing to renew a certificate of registration timely……..$50

(d) Application fee for a branch office license…….$75

(e) Annual renewal of a branch office license…….$75

(f) Penalty fee for failure to renew a branch office license timely…….$25

(g) Issuance fee for a certificate of registration or upon change of name of person holding a certificate of registration…….$25

(h) Application fee for a fictitious name permit…...$50

(i) Annual renewal of a fictitious name permit…….$50

(1) Delinquency fee for failure to renew a fictitious name permit timely…….$25

(j) Application fee for a statement of licensure…...$40

(1) Biennial renewal of a statement of licensure….$40

(2) Penalty fee for failure to renew a statement of licensure timely…….$20

(k) Application fee for a certificate to use therapeutic pharmaceutical agents…….....$25

(l) Application fee for approval of a continuing education course……...$50

(m) Application fee for a certificate to treat primary open angle glaucoma……...$35

(n) Application fee for a certificate to perform lacrimal irrigation and dilation…….$25

Authority cited: Sections 3025, 3044, 3075, 3152 and 3152.5, Business and Professions Code. Reference: Sections 3075, 3078, 3152 and 3152.5, Business and Professions Code.
History
1. New section filed 5-12-97; operative 6-11-97 (Register 97, No. 20).
2. Amendment of subsections (b)-(e) and (h)-(i), new subsections (i)(1), (j)(1)-(2) and (l)-(n) and amendment of Note filed 4-28-2009; operative 4-28-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 18).

§ 1525. OPTOMETRIST LICENSE RENEWAL

(a) A license issued pursuant to Business and Professions Code Section 3055 expires at midnight on the last day of the licensee's birth month following its

original issuance and thereafter at midnight on the last day of the licensee's birth month every two years if not renewed.

(b) A renewal for licensure as an optometrist shall be made on a form prescribed by the Board (Form R1POPT, Rev. 3-10), which is hereby incorporated by reference, and shall be accompanied by the fee specified in Section 1524 and filed with the Board at its office in Sacramento.

(c) Failure to provide all of the information required by this section renders any application for renewal incomplete and not eligible for renewal.

(d) Failure of a licensee to comply with subdivision (b) is grounds for disciplinary action by the board against the license.

Authority cited: Sections 3010.1, 3010.5, 3024 and 3025, Business and Professions Code. Reference: Sections 3055, 3056, 3059 and 3110, Business and Professions Code; and Section 11105, Penal Code.
History:
1. New article 5.1 (sections 1525-1525.2) and section filed 6-21-2010; operative 6-21-2010 pursuant to Government Code section 11343.4 (Register 2010, No. 26).

§ 1525.1. FINGERPRINT REQUIREMENTS

(a) As a condition of renewal for a licensee who was initially licensed prior to January 1, 1998, or for whom an electronic record of the submission of fingerprints no longer exists, such licensee shall furnish to the Department of Justice a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal criminal offender record information search conducted through the Department of Justice.

(1) The licensee shall pay any costs for furnishing the fingerprints to the Department of Justice and conducting the searches.

(2) A licensee shall certify when applying for renewal whether his or her fingerprints have been furnished to the Department of Justice in compliance with this section.

(3) This requirement is waived if the license is renewed in an inactive status, or if the licensee is actively serving in the military outside the country. The board shall not return a license to active status until the licensee has complied with subsection (a).

(4) A licensee shall retain, for at least three years from the renewal date, either a receipt showing the electronic transmission of his or her fingerprints to the Department of Justice or a receipt evidencing that the licensee's fingerprints were taken.

(b) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been convicted of any violation of the law in this or any other state and, the United States, and its territories, military court, or other country, omitting traffic infractions under $300 not involving alcohol, dangerous drugs, or controlled substances.

(c) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been denied a license or had a license disciplined by another licensing authority of this state, of another state, of any agency of the federal government, or of another country.

(d) Failure to comply with the requirements of this section renders any application for renewal incomplete and the license will not be renewed until the licensee demonstrates compliance with all requirements.

(e) Failure to furnish a full set of fingerprints to the Department of Justice as required by this section on or before the date required for renewal of a license is grounds for discipline by the Board.

(f) As a condition of petitioning the board for reinstatement of a revoked or surrendered license or registration, an applicant shall comply with subsection (a).

Authority cited:
Sections 144, 3010.1, 3010.5, 3024 and 3025, Business and Professions Code. Reference: Section 3110, Business and Professions Code; and Section 11105, Penal Code.
History:
1. New section filed 6-21-2010; operative 6-21-2010 pursuant to Government Code section 11343.4 (Register 2010, No. 26).

ARTICLE 6 EXAMINATIONS

§1526. PROOF OF CARDIOPULMONARY RESUSCITATION CERTIFICATION (CPR)

Authority cited: Sections 3025 and 3053, Business and Professions Code. Reference: Sections 3023.1, 3053 and 3059, Business and Professions Code.
History
1. New section filed 2-21-89; operative 3-23-89 (Register 89, No. 10).
2. Repealer filed 5-8-96; operative 6-7-96 (Register 96, No. 19).

§1530. EXAMINATION RESULTS

Authority cited: Sections 3025, 3053 and 3054, Business and Professions Code. Reference: Sections 3053 and 3054, Business and Professions Code.
History
1. New Article 6 (Sections 1530-1535) filed 5-4-67 as an emergency; effective upon filing (Register 67, No. 18).
2. Article 6 (Sections 1530 through 1535) refiled 6-28-67; effective thirtieth day thereafter (Register 67, No. 26).
3. Amendment of subsections (d) and (e) filed 1-24-80; effective thirtieth day thereafter (Register 80, No. 4).

4. Amendment filed 10-25-83; effective thirtieth day thereafter (Register 83, No. 44).
5. Repealer and new section filed 5-8-96; operative 6-7-96 (Register 96, No.19).
6. Change without regulatory effect repealing section filed 3-14-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 11).

§1530.1. QUALIFICATIONS OF FOREIGN GRADUATES

Applicants who meet the requirements of Section 3057.5 of the Code shall be admitted to the examination upon furnishing satisfactory evidence that the course of instruction completed is reasonably equivalent, as determined by the Board, to the course of instruction given by a school accredited by the Board; provided, however, that an applicant who is unable to furnish satisfactory evidence of equivalency may take those courses or subjects, in an accredited school or in another program of instruction acceptable to the Board, which would remedy areas of deficiency.

Authority cited: Sections 3023.1 and 3025, Business and Professions Code. Reference: Sections 3023.1, 3025, 3047, 3050 and 3057.5, Business and Professions Code.
History
1. New section filed 7-26-72 as an emergency; effective upon filing (Register 72, No. 31).
2. Certificate of Compliance filed 11-22-72 (Register 72, No. 48). 3. Repealer of subsection (d) filed 1-24-80; effective thirtieth day thereafter (Register 80, No. 4
4. Amendment filed 12-1-83; effective thirtieth day thereafter (Register 83, No. 49).
5. Amendment filed 5-6-86; effective thirtieth day thereafter (Register 86, No. 19).

§1531. LICENSURE EXAMINATION

(a) The licensure examinations are composed of:

Section I – Applied Basic Science written cognitive examination approved by the Board and developed by the National Board of Examiners in Optometry (NBEO).

Section II - Patient Assessment and Management/Treatment and Management of Ocular Disease examination developed by the NBEO.

Section III – Clinical Skills Examination developed by the NBEO.

Section IV - California Laws and Regulations Examination developed and administered by the Board or its contractor.

(b) All examinations for licensure developed by the NBEO and the Board prior to January 2010 may be accepted on a case by case basis in the evaluation of an applicant's qualifications for licensure.

Authority cited: Sections 3025, 3041.2 and 3053, Business and Professions Code. Reference: Sections 3041.2 and 3053, Business and Professions Code.
History
1. Amendment filed 11-22-77; effective thirtieth day thereafter (Register 77, No. 48).
2. Amendment filed 5-20-83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 21).
3. Amendment filed 8-9-84; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 84, No. 32).
4. Amendment of subsection (d) filed 2-21-89; operative 3-23-89 (Register 89, No. 10).
5. Amendment of section heading, section and Note filed 5-8-96; operative 6-7-96 (Register 96, No. 19).
6. Amendment of section and Note filed 6-24-97; operative 7-24-97 (Register 97, No. 26).
7. Amendment filed 1-28-2002; operative 1-28-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 5).
8. Amendment filed 2-8-2011; operative 3-10-2011 (Register 2011, No. 6).

§1532. RE-EXAMINATION

An applicant who has failed to pass either section II of the National Board of Examiners in Optometry (NBEO) examination or the California Laws and Regulations Examination after a period of five consecutive calendar years from the date of the first examination, must retake sections II and III of the NBEO examination and the California Laws and Regulations Examination.

Authority cited: Section 3025, Business and Professions Code. Reference: Section 3054, Business and Professions Code.
History
1. Amendment filed 4-3-75; effective thirtieth day thereafter (Register 75, No. 14).
2. Editorial correction (Register 75, No. 30).
3. Amendment of subsection (b) filed 1-24-80; effective thirtieth day thereafter (Register 80, No. 4).
4. Amendment filed 12-1-83; effective thirtieth day thereafter (Register 83, No. 49).
5. Amendment of subsections (a) and (b) filed 5-8-96; operative 6-7-96 (Register 96, No. 19).
6. Amendment filed 6-24-97; operative 7-24-97 (Register 97, No. 26).
7. Amendment of section and Note filed 2-8-2011; operative 3-10-2011 (Register 2011, No. 6).

§1533. RE-SCORING OF CALIFORNIA LAWS AND REGULATIONS EXAMINATION

Any person who fails to pass the California Laws and Regulations Examination may request that the examination be re-scored by the Board. The request shall be submitted in writing and mailed to the principal office of the Board. The request shall be postmarked no later than 75 days after the date the examination results are mailed.

Authority cited: Section 3025, Business and Professions Code. Reference: Section 3054, Business and Professions Code.
History
1. Amendment filed 12-1-83; effective thirtieth day thereafter (Register 83, No. 49).
2. Amendment filed 2-21-89; operative 3-23-89 (Register 89, No. 10).
3. Amendment of first paragraph and subsections (a), (b), (d), (f) and (g) filed 5-8-96; operative 6-7-96 (Register 96, No. 19).
4. Amendment of section heading and first paragraph and repealer of subsections (a)-(i) filed 7-5-2001; operative 8-4-2001 (Register 2001, No.27).
5. Amendment of section heading, section and Note filed 2-8-2011; operative 3-10-2011 (Register 2011, No. 6).

§1533.1. EXAMINATION APPEALS

Authority cited: Section 3025, Business and Professions Code. Reference: Section 3025, Business and Professions Code.
History
1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 41).
2. Repealer filed 4-25-2001; operative 5-25-2001 (Register 2001, No. 17).

§1534. NATIONAL BOARD OF EXAMINERS IN OPTOMETRY (NBO)

Authority cited: Section 3025, Business and Professions Code. Reference: Section 3053, Business and Professions Code.
History
1. Amendment of subsection (c) filed 1-24-80; effective thirtieth day thereafter (Register 80, No. 4).
2. Repealer filed 10-25-83; effective thirtieth day thereafter (Register 83, No. 44).

§1535. EXAMINATION REQUIREMENTS

Authority cited: Sections 3025, 3041.2 and 3053, Business and Professions Code. Reference: Sections 3041.2 and 3053, Business and Professions Code.
History
1. Amendment filed 8-7-69; effective thirtieth day thereafter (Register 69, No. 32).
2. Amendment filed 11-22-77; effective thirtieth day thereafter (Register 77, No. 48).
3. Amendment filed 4-20-81; effective thirtieth day thereafter (Register 81, No. 17).
4. Amendment filed 5-20-83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 21).
5. Amendment filed 2-21-89; operative 3-23-89 (Register 89, No. 10).
6. Editorial correction of printing error of HISTORY No. 5 filing date (Register 89, No. 20).
7. Amendment of section heading and former subsection (a), and repealer of subsection designations and former section (b) filed 5-8-96; operative 6-7-96 (Register 96, No. 19).
8. Repealer filed 6-24-97; operative 7-24-97 (Register 97, No. 26).

ARTICLE 6.5 CONTINUING OPTOMETRIC EDUCATION

§1536. CONTINUING OPTOMETRIC EDUCATION; PURPOSE AND REQUIREMENTS

(a) Except as otherwise provided in Section 1536(b), each licensee shall complete 40 hours of formal continuing optometric education course work within the two years immediately preceding the renewal deadline. Such course work shall be subject to Board approval. No more than eight hours of course work shall be in the area of patient care management. Courses dealing with business management shall not be approved.

(b) An optometrist certified to use therapeutic pharmaceutical agents pursuant to Business and Professions Code Section 3041.3 shall complete a total of 50 hours of continuing education every two years in order to renew his or her certificate. Thirty-five of the required 50 hours of continuing education shall be on the diagnosis, treatment and management of ocular disease and consistent with Business and Professions Code section 3059, subdivision (f).

(c) Up to 20 hours of required biennial course work may be accomplished by using any or all of the following alternative methods:

(1) Documented and accredited self study through correspondence or an electronic medium.

(2) Teaching of continuing optometric education courses if attendance at such course would also qualify for such credit, providing none are duplicate courses within the two-year period.

(3) Writing articles that have been published in optometric journals, magazines or newspapers, pertaining to the practice of optometry (or in other scientific, learned, refereed journals on topics pertinent to optometry), providing no articles are duplicates. One hour of credit will be granted for each full page of printing or the equivalent thereof.

(d) A credit hour is defined as one classroom hour, usually a 50-minute period, but no less than that.

(e) Continuing optometric education programs which are approved as meeting the required standards of the Board include the following:

(1) Continuing optometric education offerings officially sponsored or accredited by any accredited school or college of optometry.

(2) Continuing optometric education offerings of any national or state affiliate of the American Optometric Association, the American Academy of Optometry, or the Optometric Extension Program.

(3) Continuing optometric education offerings approved by the Association of Regulatory Boards of Optometry known as COPE (Council on Optometric Practitioner Education).

(f) Other educational programs approved by the Board as meeting the criteria as set forth in (g) below, after submission of a program, schedule, topical outline of subject matter, and curriculum vitae of all instructors involved, to the Executive Officer of the Board not less than 45 days prior to the date of the program. The Board may, upon application of any licensee and for good cause shown, waive the requirement for submission of advance information and request for prior approval. Nothing herein shall permit the Board to approve of an educational program which has not complied with the criteria set forth in paragraph (g) below.

(g) The criteria for judging and approving education programs by the Board for continuing optometric

education credit will be determined on the following basis:

(1) Whether the program is likely to contribute to the advancement of professional skill and knowledge in the practice of optometry.

(2) Whether the speakers, lecturers and others participating in the presentation are recognized by the Board as being qualified in their field.

(3) Whether the proposed course is open to all optometrists licensed in this State.

(4) Whether the provider of any mandatory continuing education course agrees to maintain and furnish to the Board and/or attending licensee such records of course content and attendance as the Board requires, for a period of at least three years from the date of course presentation.

(h) Proof of attendance at continuing education programs shall be provided in a form and manner specified in writing by the Board and distributed to all licensed optometrists in this state. Certification of attendance at continuing education courses shall be submitted by the licensee to the Executive Officer or his/her designee upon request, and shall contain the following minimal information:

(1) The name of the sponsoring organization.
(2) The name, signature, practice address, and license number of the attending licensee.
(3) The subject or title of the educational program.
(4) The number of hours in actual attendance.
(5) The date of the educational program.
(6) The location of the educational program.
(7) The name(s) of the course instructor(s).
(8) Such other evidence of course content or attendance as the Board may deem necessary.
Use of a Board-specified certificate form is recommended for any educational programs approved by the Board pursuant to the above. Such forms will be furnished by the Executive Officer on request.

(i) The following licensees shall be exempt from the requirements of this section.

(1) Any licensee serving in the regular armed forces of the United States during any part of the 24 months immediately preceding the annual license renewal date.

(2) Those licensees as the Board, in its discretion, determines were unable to attend sufficient hours of continuing optometric education courses due to illness, incapacity, or other unavoidable circumstances.

(3) Any licensee who is renewing an active license for the first time, if he/she graduated less than one year from the date of initial licensure.

(j) The Board may conduct an audit of any licensee's attendance at continuing education programs as a means of verifying compliance with this section.

(k) As a condition of license renewal, all licensees are required to maintain current certification in cardiopulmonary resuscitation (CPR) from the American Red Cross, American Heart Association, or other association approved by the Board. Training required for the CPR certificate shall not be credited toward the requirements of subdivision (a). Exemptions will be made for licensees as the Board, in its discretion, determines were unable to maintain current CPR certification due to physical impairment, illness, incapacity, or other unavoidable circumstances.

Authority cited: Sections 3023.1 and 3059, Business and Professions Code. Reference: Section 3059, Business and Professions Code.
History
1. New section filed 2-21-89; operative 3-23-89 (Register 89, No. 10).
2. Amendment of subsections (a) and (d), new subsection (d)(3), and amendment of subsections (e), (f), (f)(2), (f)(4), (g), (g)(8), (h)(2), (h)(3) and (i), and new subsection (j) and amendment of Note filed 5-8-96; operative 6-7-96 (Register 96, No. 19).
3. Amendment filed 12-22-2004; operative 1-21-2005 (Register 2004, No. 52).

ARTICLE 7 OPTOMETRIC CORPORATIONS

§1540. CITATION OF RULES

Authority cited: Sections 3025 and 3167, Business and Professions Code. Reference: Section 3025, Business and Professions Code.
History
1. New Article 7 (# 1540 through 1550) filed 9-27-71; effective thirtieth day thereafter (Register 71, No. 40).
2. Repealer filed 10-25-83; effective thirtieth day thereafter (Register 83, No. 44).

§1541. DEFINITIONS

Authority cited: Section 3167, Business and Professions Code. Reference: Section 13410, Corporations Code.
History
1. Change without regulatory effect repealing Section 1541 (Register 88, No.15).

§1542. PROFESSIONAL RELATIONSHIPS, RESPONSIBILITIES, AND CONDUCT NOT AFFECTED

Authority cited: Section 3167, Business and Professions Code. Reference: Section 13410, Corporations Code.
History
1. Change without regulatory effect repealing Section 1542 (Register 88, No.15).

§1543. OFFICE FOR FILING

Authority cited: Sections 3025 and 3167, Business and Professions Code. Reference: Section 3025, Business and Professions Code.
History
1. Repealer filed 10-25-83; effective thirtieth day thereafter (Register 83, No. 44).

§1544. APPLICATION; REVIEW OF REFUSAL TO APPROVE

(a) An applicant corporation shall file with the Board an application for Certificate of Registration on a form furnished by the Board, which shall be signed and verified by an officer of the corporation who is a licensed person and be accompanied by a fee not to exceed two hundred dollars ($200).

(b) The Board, within a reasonable time after an application for registration is submitted to it, shall either approve the application and issue a Certificate of Registration or refuse to approve the application and notify the applicant corporation of the reasons therefor.

(c) The Board may delegate to its executive officer, or other official or employee of the Board, its authority under Section 3161, Business and Professions Code, to review and approve applications for registration and to issue Certificates of Registration.

(d) Any applicant corporation whose application has been disapproved by the Board may request a hearing pursuant to Government Code Section 11504. The hearing shall be conducted pursuant to the Administrative Procedure Act (Government Code Sections 11502-11528).

(e) No applicant corporation shall hold itself out or engage in nor shall it render any professional services unless and until a Certificate of Registration has been issued.

Authority cited: Section 3167, Business and Professions Code. Reference: Sections 3160-3167, Business and Professions Code; and Section 13401, Corporations Code.
History
1. Amendment of subsections (a) and (c) filed 2-2-79; effective thirtieth day thereafter (Register 79, No. 5).
2. Change without regulatory effect of NOTE (Register 88, No. 15).

§1545. REQUIREMENTS FOR ISSUANCE OF CERTIFICATE OF REGISTRATION

Authority cited: Sections 3025 and 3167, Business and Professions Code. Reference: Section 3025, Business and Professions Code.
History
1. Repealer filed 10-25-83; effective thirtieth day thereafter (Register 83, No. 44).

§1546. NAME OF CORPORATION

(a) Except as provided in Section 1518, the name of the corporation shall contain and be restricted to:

(1) The name or last name of one or more of the present, prospective, or former shareholders, and

(2) One of the following designations denoting corporate existence: "Optometric Corporation," "Optometry Corporation," "Corporation," "Professional Corporation," "Prof. Corp.," "Corp.," "Incorporated," "Inc.," "Optometric Corp.," "Optometry Corp.," "Professional Optometric Corporation," "Professional Optometry Corporation," "Professional Optometric Corp.," or "Professional Optometry Corp.."

(b) The letters "Opt.D." or "O.D." or the word "optometrist" may be used in the corporate name providing that any person using such designation shall be the holder of a diploma from an accredited school of optometry. Some examples of such usage are: "Doctor John Doe, O.D., Inc." or "Dr. James Smith, O.D. and Dr. John Doe, O.D., Optometric Corporation."

Authority cited: Sections 3025 and 3167, Business and Professions Code. Reference: Sections 3098 and 3163, Business and Professions Code.
History
1. Amendment filed 4-3-75; effective thirtieth day thereafter (Register 75, No. 14
2. Amendment filed 3-3-78; effective thirtieth day thereafter (Register 78, No. 9).
3. Amendment of subsection (a) filed 4-20-81; effective thirtieth day thereafter (Register 81, No. 17).
4. Amendment filed 12-1-83; effective thirtieth day thereafter (Register 83, No. 49).

§1547. SECURITY FOR CLAIMS AGAINST AN OPTOMETRIC CORPORATION

(a) When an optometric corporation provides security by means of insurance for claims against it by its patients, the security shall consist of a policy or policies of insurance insuring the corporation against liability imposed upon it by law for damages arising out of claims against it by its patients arising out of the rendering of, or failure to render, optometric services by the corporation in an amount of each claim of at least $50,000 multiplied by the number of employed licensed persons rendering such optometric services and an aggregate maximum limit of liability per policy year of at least $150,000 multiplied by the number of such employees, provided that the maximum coverage shall not be required to exceed $150,000 for each claim and $450,000 for all claims during the policy year, and provided further that the deductible portion of such insurance shall not exceed $5,000 multiplied by the number of such employees.

(b) All shareholders of the corporation shall be jointly and severally liable for all claims established against the corporation by its patients arising out of the rendering of, or failure to render, optometric services up to the minimum amounts specified for insurance under subdivision (a) hereof except during periods of time when the corporation shall provide and maintain insurance for claims against it by its patients arising out of the rendering of, or failure to render, optometric

services. Said insurance, when provided, shall meet the minimum standards established in subdivision (a) above.

§1548. SHARES: OWNERSHIP AND TRANSFER

(a) The shares of an optometric corporation may be issued only to a natural person licensed to practice optometry and may be transferred only to a natural person licensed to practice optometry or to the issuing corporation.

(b) Where there are two or more shareholders in an optometric corporation and one of the shareholders:

(1) Dies, or

(2) Becomes a disqualified person as defined in Section 13401(d) of the Corporations Code, for a period exceeding ninety (90) days, his/her shares shall be sold and transferred to a natural person licensed to practice optometry or to the issuing optometric corporation, on such terms as are agreed upon. Such sale or transfer shall not be later than six (6) months after any such death and not later than ninety (90) days after the date he/she became a disqualified person.

(c) A corporation and its shareholders may, but need not, agree that shares sold to it by a person who becomes a disqualified person may be resold to such person if and when he/she again ceases to become a disqualified person.

(d) The restrictions of subdivision (a) and, if appropriate, subdivision (b) of this section shall be set forth in the corporation's bylaws or articles of incorporation.

(e) The income of an optometric corporation attributable to optometric services rendered while a shareholder is a disqualified person shall not in any manner accrue to the benefit of such shareholder or his/her shares.

(f) The share certificates of an optometric corporation shall contain either:

(1) An appropriate legend setting forth the restriction of subdivision (a), and where applicable, the restriction of subdivision (b), or

(2) An appropriate legend stating that ownership and transfer of the shares are restricted and specifically referring to an identified section of the by-laws or articles of incorporation of the corporation wherein the restrictions are set forth.

Authority cited: Section 3167, Business and Professions Code. Reference: Sections 3160, 3164 and 3167, Business and Professions Code; and Sections 13401, 13401.5, 13406 and 13407, Corporations Code.
History
1. Amendment filed 10-25-83; effective thirtieth day thereafter (Register 83, No. 44).

§1549. CERTIFICATE OF REGISTRATION: CONTINUING VALIDITY: REPORTS

(a) A Certificate of Registration shall continue in effect until it is suspended or revoked. Such certificate may be suspended or revoked for any of the grounds permitted by law.

(b) By May 31 of each year, each optometric corporation shall file with the Board a report on a form provided by the Board reflecting its status as of May 1 and including such information pertaining to its qualifications and compliance with the statutes, rules and regulations of the Board as the Board may require.

(c) Each optometric corporation shall file a special report, on a form provided by the Board, within 30 days of any change of the officers, directors, shareholders, places of practice, by-laws, articles of incorporation, corporate name.

(d) Each annual report filed hereunder shall be accompanied by a filing fee not to exceed $50.00.

(e) Each special report filed hereunder shall be accompanied by a filing fee not to exceed $15.00.

Authority cited: Section 3167, Business and Professions Code. Reference: Sections 3160-3167, Business and Professions Code; and Section 13401, Corporations Code.
History
1. Amendment of subsection (c) filed 3-3-78; effective thirtieth day thereafter (Register 78, No. 9.)
2. Amendment of subsections (d) and (e) filed 2-2-79; effective thirtieth day thereafter (Register 79, No. 5).
3. Change without regulatory effect of NOTE (Register 88, No. 15).

§1550. BRANCH OFFICES

An optometric corporation is subject to the provisions of Section 3077 of the Code. When any optometric corporation duly registered hereunder desires to have a branch office within the meaning of that code section, it shall, prior to the opening of any branch office, make application there for to the Board and receive permission in writing from the Board to have such branch office.

ARTICLE 8 TOPICAL PHARMACEUTICAL AGENTS

§1560. DEFINITIONS

Authority cited: Sections 3025 and 3041, Business and Professions Code. Reference: Section 3041, Business and Professions Code.
History

1. New Article 8 (Sections 1560-1563) filed 11-22-77; effective thirtieth day thereafter (Register 77, No. 48).
2. Amendment filed 10-25-83; effective thirtieth day thereafter (Register 83, No. 44).
3. New subsection (a)(3)(d) filed 6-20-96; operative 7-20-96 (Register 96, No. 25).
4. Repealer filed 4-6-2001; operative 5-6-2001 (Register 2001, No. 14).

§1561. TOPICAL PHARMACEUTICAL AGENTS USAGE – PURPOSE AND REQUIREMENTS

(a) The purpose of this article is to implement Business and Professions Code Section 3041.2, as added to said code by chapter 418 of the 1976 statutes. Only those optometrists meeting the requirements of this article may use topical pharmaceutical agents in the examination of human eyes.

(b) In order to use topical pharmaceutical agents in the examination of human eyes, an optometrist must:

(1) complete a course in pharmacology approved by the Board or have equivalent experience satisfactory to the Board; and

(2) provide evidence of taking and passing either:

(A) both the Applied Basic Science and Clinical Skills sections of the NBEO examination as it was constituted beginning in January 2010; or

(B) a pharmacology examination equivalent to subdivision (b)(1) above and administered by an accredited school or college of optometry.

(c) The Board will issue a Diagnostic Pharmaceutical Agents certification to optometrists fulfilling the requirements of subsection (b) authorizing them to use topical pharmaceutical agents.

Authority cited: Sections 3025, 3041.2 and 3053, Business and Professions Code. Reference: Sections 3041 and 3041.2, Business and Professions Code.
History
1. Amendment filed 5-20-83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 21).
2. Amendment of subsection (b) filed 5-8-89; operative 6-7-89 (Register 89, No. 27).
3. Amendment of section and Note filed 2-8-2011; operative 3-10-2011 (Register 2011, No. 6).

§1562. PHARMACOLOGY COURSES

(a) In order to be approved by the Board, a course in pharmacology must include instruction in general pharmacology, ocular pharmacology, and in ocular pharmacology applied to relevant clinical procedures. The course must be at least 55 hours in length and be subdivided as follows:

General Pharmacology..... 15 hours
Ocular Pharmacology..... 20 hours
Clinical Laboratory (ocular pharmacology applied to relevant clinical procedures)..... 20 hours

(b) Approval by the Board shall be required of all pharmacology course instructors.

§1563. PHARMACOLOGY EXAMINATION

(a) The pharmacology course examination shall cover coursework in general pharmacology, ocular pharmacology, and ocular pharmacology with relevant clinical procedures and shall be given in conjunction with the annual optometrist licensure examination or when otherwise designated by the Board.

(b) The examination fee shall not exceed thirty-five dollars ($35).

(c) The procedure specified in Section 1533 will be used for requests to inspect examination papers or to appeal examination scores.

Authority cited: Section 3153, Business and Professions Code. Reference: Sections 3041.1 and 3041.2, Business and Professions Code; Sections 1560, 1561 and 1562, California Administrative Code.
History
1. Amendment of subsection (b) filed 2-2-79; effective thirtieth day thereafter (Register 79, No. 5).

ARTICLE 9 APPLICATION PROCESSING TIMELINES

§1564. REVIEW OF OPTOMETRIST APPLICATIONS; PROCESSING TIME

(a) The Board shall inform in writing an applicant for licensure as an optometrist within 45 days of receipt of the application whether the application is complete and accepted for filing or is deficient and what specific information is required.

(b) The Board shall inform in writing an applicant for licensure as an optometrist within 120 days after completion of the application, of its decision whether the applicant meets the requirements for licensure. "Completion of the application" means that a completed application form together with all required information, documentation and fees have been filed by the applicant (This period may be extended by that time necessary for retaking or rescheduling an examination or if the applicant is delayed in obtaining or completing any required professional experience or clinical training.)

(c) The minimum, median and maximum processing times for an application for licensure as an optometrist from the time of receipt of the initial application until the Board makes a final decision on the application are:

(1) Minimum -1 day
(2) Median -30 days

(3) Maximum -120 days

(These processing times apply to those applicants who take and pass the first available licensing examination.)

Authority cited: Section 3025, Business and Professions Code; and Section 15376, Government Code. Reference: Section 15376, Government Code.
History
1. New Article 9 (Sections 1564 and 1564.1) filed 8-9-84; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 84, No. 32).

§1564.1. REVIEW OF FICTITIOUS NAME PERMIT APPLICATIONS; PROCESSING TIME

(a) The Board shall in writing inform an applicant for a permit for a fictitious name within 45 days from receipt of the application whether the application is complete and accepted for filing or is deficient and what specific information is required.

(b) The Board shall inform in writing an applicant for a permit for a fictitious name within 120 days after completion of the application, of its decision whether the applicant meets the requirements for a fictitious name
permit. "Completion of the application" means that a completed application form together with all required information, documentation and fees have been filed by the applicant.

(c) The minimum, median and maximum processing times for a fictitious name permit from the time of receipt of the initial application until the Board makes a final decision on the application are:

(1) Minimum -7 days
(2) Median -30 days
(3) Maximum -120 days

Authority cited: Section 3025, Business and Professions Code; and Section 15376, Government Code. Reference: Section 15376, Government Code.

ARTICLE 10 PRESCRIPTIONS

§1565. PRESCRIPTION STANDARDS: INFORMATION REQUIRED

(a) Any prescription or order by an optometrist comprising written specifications for ophthalmic lenses pursuant to an eye examination must contain the following minimal information: name, address, telephone number and license number of the issuing optometrist; his/her signature; issue date and expiration date; and patient's name.

Authority cited: Sections 3025 and 3025.5, Business and Professions Code. Reference: Sections 3025.5 and 3041, Business and Professions Code.
History
1. New section filed 2-21-89; operative 3-23-89 (Register 89, No. 10).

§1566. RELEASE OF PRESCRIPTIONS: NOTICE REQUIRED

At each office there shall be posted in a conspicuous place a notice which shall clearly state the legal requirements regarding the release of all corrective lens prescriptions and such notice shall at a minimum contain the following information:

CONSUMER NOTICE
Eye doctors are required to provide patients with a copy of their ophthalmic lens prescriptions as follows:
Spectacle prescriptions: Release upon completion of exam.
Contact lens prescriptions: Release upon completion of exam or upon completion of the fitting process.

Authority cited: Sections 3025, 3025.5 and 3090, Business and Professions Code. Reference: Sections 2541.2, 3025, 3025.5 and 3090, Business and Professions Code; and Title 16 CFR 315.3, 456.1 and 456.2.
History
1. New section filed 3-15-94; operative 4-14-94 (Register 94, No. 11).
2. Amendment of section and Note filed 3-10-2006; operative 4-9-2006 (Register 2006, No. 10).

§1566.1. CONSUMER INFORMATION

The "CONSUMER NOTICE" specified in Section 1566 shall also contain the following consumer information:
The practice of optometry in California is regulated by the Board of Optometry. The Board of Optometry receives and investigates all consumer complaints involving the practice of optometry. Complaints or grievances involving a California-licensed optometrist, should be directed to:

Board of Optometry
Department of Consumer Affairs
2420 Del Paso Road, Suite 255
Sacramento, CA 95834
Phone: 1-866-585-2666 or (916) 575-7170
Email: optometry@dca.ca.gov
Internet: www.optometry.ca.gov

Authority cited: Section 3025, Business and Professions Code. Reference: Section 3025.5, Business and Professions Code.
History
1. New section filed 8-12-99; operative 9-11-99 (Register 99, No. 33).
2. Amendment filed 3-10-2006; operative 4-9-2006 (Register 2006, No. 10).

ARTICLE 11 THERAPEUTIC PHARMACEUTICAL AGENTS

§1567. DEFINITIONS

As used in this Article:

(a) "Infectious" means a type of lesion suspected to be caused by a pathogen.

(b) "NBEO" is the acronym for the National Board of Examiners in Optometry.

(c) "Peripheral Infectious Corneal Ulcers" means those infectious corneal ulcers limited to the area of the eye that lies outside the central 5mm diameter of the cornea.

(d) "Preceptorship service" means 65 hours of training in the diagnosis and treatment of ocular, systemic disease completed in no less than two months nor more than one year in one or more ophthalmologist's office(s) or optometric clinic(s). Preceptor's service shall be authorized by an accredited optometry school or college or recognized ophthalmological residency review committee in California. Preceptors shall be California-licensed ophthalmologists certified by the American Board of Medical Specialties and must be in good standing with the Medical Board of California.

(e) "Referral" means the primary responsibility for the treatment of a patient is transferred from the TPA optometrist to a consulting ophthalmologist.

(f) "Therapeutic Pharmaceutical Agents" includes mydriatics, cycloplegics, anesthetics, agents used for the reversal of mydriasis, topical lubricants, topical antiallergy agents, topical steroidal antiallergy agents, topical nonsteroidal and steroidal antiinflammatories, topical antibiotic agents, topical hyperosmotics, topical antiglaucoma agents (use pursuant to the certification process defined in Business and Professions Code section 3041, subdivision (f)), oral antihistaminines, prescription oral nonsteroidal antiinflammatory agents, oral antibiotics limited to tetracyclines, dicloxacillin, amoxicillin, amoxicillin with clavulanate, erythromycin, clarythromycin, cephalexin, cephadroxil, cefaclor, trimethoprim with sulfamethoxazole, ciprofloxacin, and azithromycin (use limited to the eyelid infection and chlamydial disease, topical antiviral medication and oral acyclovir) use specified in Business and Professions Code section 3041, subdivision (c)(12), non-controlled substance oral analgesics, codeine with compounds and hydrocodone with compounds (use limited to three days) and topical miotics for diagnostic purposes and nonprescription medications.

(g) "TMOD" is the acronym for the "Treatment and Management of Ocular Disease" examination administered by the National Board of Examiners in Optometry. Passage of this examination is mandatory for certain TPA certification applicants.

(h) "TPA" is the acronym for Therapeutic Pharmaceutical Agents.

(i) "TPA certified optometrist" means a California licensed optometrist who has met all of the requirements for certification set forth by the State Board of Optometry to use Therapeutic Pharmaceutical Agents in his or her optometric practice.

(j) "Treat" means the use of therapeutic pharmaceutical agents, as described in Business and Professions Code section 3041, subdivision (c), and the procedures described in subdivision (e).

(k) "Approval" means to certify a TPA certified optometrist to perform lacrimal irrigation and dilation of patients over the age of 12 years pursuant to Business and Professions Code section 3041, subdivision (e)(6).

Authority cited: Sections 3025, 3025.5 and 3041.2, Business and Professions Code. Reference: Sections 3027.5, 3041, 3041.1, 3041.3, 3059, 3096.5, 3108, 3109, 3152.5, 4033, 4036, 4051 and 4052, Business and Professions Code.Authority cited: Sections 3025, 3025.5 and 3041.2, Business and Professions Code. Reference: Sections 3027.5, 3041, 3041.1, 3041.3, 3059, 3096.5, 3108, 3109, 3152.5, 4033, 4036, 4051 and 4052, Business and Professions Code.

History

1. New article 11 (sections 1567-1570) and section filed 7-7-97; operative 8-6-97 (Register 97, No. 28).
2. Amendment of subsection (e) and new subsections (j)-(k) filed 12-20-2004; operative 1-19-2005 (Register 2004, No. 52).

§1568. THERAPEUTIC PHARMACEUTICAL AGENTS USAGE – PURPOSE AND REQUIREMENTS

Only those optometrists meeting the requirements of this Article may apply for TPA Certification to use Therapeutic Pharmaceutical Agents. The Application for TPA Certification (Form TPA-1 Rev. 4/96), which is hereby incorporated by reference, may be obtained from the Board's Headquarters office. Requirements for TPA certification are as follows:

(a) If the applicant is licensed to practice optometry in California and graduated from an accredited school of optometry prior to January 1, 1992:

(1) Completion of an 80-hour TPA didactic course provided either by the University of California at Berkeley School of Optometry or the Southern California College of Optometry or recognized ophthalmological residency review committee or at an accredited school or college located outside of California as provided in Section 1570 in this Article.

(2) Pass the examination given at the conclusion of the TPA course.

(3) Pass the TMOD component of the NBEO administered after July 1, 1992.

(4) Complete 20 hours of self directed study in the treatment and management of ocular, systemic disease.

(5) Complete a 65-hour preceptorship service as defined in Section 1567 in this Article.

(b) If the applicant is a licensed optometrist in California and graduated from an accredited school of optometry after January 1, 1992 but before January 1, 1996:

(1) Complete 20 hours of self directed study in the treatment and management of ocular, systemic disease.

(2) Complete a 65-hour preceptorship service as defined in Section 1567 in this Article.

(c) If the applicant is a graduate from an accredited school of optometry after January 1, 1996:

(1) Obtain a California optometrist license.

(2) Be certified by an accredited school of optometry that the applicant is competent in the diagnosis, treatment, and management of ocular, systemic disease.

(3) Be certified by an accredited school of optometry that the applicant has completed 10 hours of experience with an ophthalmologist.

(d) If the applicant is licensed outside California and graduated from an accredited school of optometry before January 1, 1992:

(1) Obtain a California optometrist license.

(2) Completion of an 80-hour TPA didactic course provided either by University of California at Berkeley School of Optometry or Southern California College of Optometry or recognized ophthalmological residency review committee or at an out-of-state school as provided in Section 1570 in this Article.

(3) Pass the examination given at the conclusion of the TPA course.

(4) Pass the TMOD component of the NBEO administered after July 1, 1992.

(5) Complete 20 hours of self directed study in the treatment and management of ocular, systemic disease.

(6) Complete a 65-hour preceptorship service as defined in Section 1567 in this Article.

(e) If the applicant is licensed outside California and graduated from an accredited school of optometry after January 1, 1992 but prior to January 1, 1996:

(1) Obtain a California optometrist license.

(2) Complete 20 hours of self directed study in the treatment and of management of ocular, systemic disease.

(3) Complete a 65-hour preceptorship service as defined in Section 1567 in this Article.

(f) If the applicant is licensed in a state outside of California, graduated from an accredited school of optometry prior to January 1, 1992 and has practiced in that state, or on a reservation or a facility supported and maintained by the United States government with a TPA license:

(1) Obtain a California optometrist license.

(2) Pass the TMOD component of the NBEO administered after July 1, 1992.

(3) Complete a 65-hour preceptorship service as defined in Section 1567 in this Article.

(g) If the applicant is licensed in a state outside of California, graduated from an accredited school of optometry after January 1, 1992 but before January 1, 1996 and has practiced in that state or on a reservation or a facility supported and maintained by the United States government with a TPA license:

(1) Complete 20 hours of self directed study in the treatment and of management of ocular, systemic disease.

(2) Complete a 65-hour preceptorship service as defined in Section 1567 in this Article.

(h) All TPA certified optometrists pursuant to this Article must complete 50 hours of continuing education in order to renew licensure. Thirty-five of the required hours shall be in the diagnosis, treatment and management of ocular, and systemic disease consistent with Business and Professions Code section 3059, subdivision (f).

(i) If the applicant is licensed in a state outside of California and requests that the 65-hour preceptorship service requirement contained in subdivisions (e), (f) and (g) be waived based on their optometric practice experience using TPA in another state, the Board, as authorized under Business and Professions Code Section 3041.3(d)(1), shall deem the experience as equivalent to the 65-hour preceptorship service required in California provided the following conditions are met:

1. Applicant is licensed in good standing in their state of licensure.

2. Applicant has graduated from an accredited school of optometry before January 1, 1996.

3. Applicant has met the requirements to treat with therapeutic pharmaceutical agents in their state of licensure.

4. Applicant has been practicing optometry in their state of licensure using therapeutic pharmaceutical agents for 5 continuous years immediately preceding the submission of their application.

Authority cited: Sections 3025 and 3041.2, Business and Professions Code. Reference: Sections 3041.3 and 3059, Business and Professions Code.

History

1. New section filed 7-7-97; operative 8-6-97 (Register 97, No. 28).

2. Amendment of subsection (h) filed 12-20-2004; operative 1-19-2005 (Register 2004, No. 52).
3. New subsection (i) and amendment of Note filed 7-3-2008; operative 7-3-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 27).

§1569. SCOPE OF PRACTICE

Authority cited: Sections 3025 and 3041.2, Business and Professions Code. Reference: Sections 2266, 3027.5, 3041, 3041.1, 3108 and 3109, Business and Professions Code. Authority cited: Sections 3025 and 3041.2, Business and Professions Code. Reference: Sections 2266, 3027.5, 3041, 3041.1, 3108 and 3109, Business and Professions Code.
History
1. New section filed 7-7-97; operative 8-6-97 (Register 97, No. 28).
2. Amendment filed 12-20-2004; operative 1-19-2005 (Register 2004, No. 52).
3. Repealer filed 7-21-2010; operative 8-20-2010 (Register 2010, No. 30).

§1570. EDUCATIONAL EQUIVALENCY

Didactic courses at the following schools and colleges of optometry shall be considered equivalent to those given in California:

(a) University of Alabama at Birmingham School of Optometry
Birmingham, Alabama

(b) University of Waterloo School of Optometry
Ontario, Canada

(c) Nova Southeastern University College of Optometry
North Miami Beach, Florida

(d) Illinois College of Optometry
Chicago, IL

(e) Indiana University School of Optometry
Bloomington, Indiana

(f) New England College of Optometry
Boston, Massachusetts

(g) Ferris State University College of Optometry
Big Rapids, Michigan

(h) University of Missouri School of Optometry
St. Louis, Missouri

(i) State University of New York State College of Optometry
New York, New York

(j) The Ohio State University College of Optometry
Columbus, Ohio

(k) Northeastern State University College of Optometry
Tahlequah, Oklahoma

(l) Pacific University College of Optometry
Forest Grove, Oregon

(m) Pennsylvania College of Optometry
Philadelphia, Pennsylvania

(n) Southern College of Optometry
Memphis, Tennessee

(o) University of Houston College of Optometry
Houston, Texas

Authority cited: Sections 3025 and 3041.2, Business and Professions Code. Reference: Sections 3041.1 and 3041.3, Business and Professions Code.
History
1. New section filed 7-7-97; operative 8-6-97 (Register 97, No. 28).

§ 1571. REQUIREMENTS FOR GLAUCOMA CERTIFICATION

(a) Only optometrists meeting the requirements of this Article may apply for certification for the treatment of glaucoma as described in subdivision (j) of Section 3041, in patients over 18 years of age. The optometrist shall:

(1) Hold an active license as an optometrist in California in good standing with the State Board of Optometry (Board);

(2) Be certified to use Therapeutic Pharmaceutical Agents (TPA) pursuant to Section 3041.3;

(3) Complete a didactic course of no less than 24 hours in the diagnosis, pharmacological and other treatment and management of glaucoma. The following topics may be covered in the course:

(A) Anatomy and physiology of glaucoma

(B) Classification of glaucoma

(C) Pharmacology in glaucoma therapy

(D) Diagnosis of glaucoma including risk factors analysis

(E) Medical and surgical treatment

(F) Participant performance assessment; and

(4) Complete a Case Management Requirement where a minimum of 25 individual patients are each prospectively treated for a minimum of 12 consecutive months. For purposes of this section, “treat” means properly evaluating the patient, performing all necessary tests, diagnosing the patient, recognizing the type of glaucoma within a licensee's scope of practice, creating a treatment plan with proposed medications and target pressures, ongoing monitoring and reevaluation of the patient's condition, and making timely referrals to an ophthalmologist when appropriate. The following options may be chosen in any combination to fulfill this requirement:

(A) Case Management Course: Completion of a 16-hour case management course developed cooperatively by the accredited California schools and colleges of optometry and approved by the Board, with at least 15 cases of moderate to advanced complexity. The course may be conducted live, over the Internet, or by use of telemedicine. One hour of the program will be used for a final competency examination. Although the Case Management Course does not involve treatment of patients, completion of the 16-hour Case Management Course is equivalent

to prospectively treating 15 individual patients for 12 consecutive months. Therefore, completion of the 16-hour Case Management Course will count as a 15-patient credit towards the Case Management Requirement. The full course must be completed to receive the 15-patient credit. The course must include the following topics/conditions:

1. Presentation of conditions/cases that licensees may treat:

a. All primary open-angle glaucoma;

b. Exfoliation and pigmentary glaucoma.

2. Presentation of conditions/cases that licensees may not treat, but must recognize and refer to the appropriate physician and/or surgeon such as:

a. Pseudoglaucoma with vascular, malignant, or compressive etiologies;

b. Secondary glaucoma;

c. Traumatic glaucoma;

d. Infective or inflammatory glaucoma;

e. Appropriate evaluation and analysis for medical or surgical consultation;

f. In an emergency, if possible, stabilization of acute attack of angle closure and immediate referral of the patient.

(B) Grand Rounds Program: Completion of a 16-hour grand rounds program developed cooperatively by the accredited California schools and colleges of optometry and approved by the Board, wherein participants will evaluate and create a management plan for live patients. Completion of the 16-hour Grand Rounds Program is equivalent to prospectively treating 15 individual patients for 12 consecutive months. Therefore, the 16-hour Grand Rounds Program will count as a 15-patient credit towards the Case Management Requirement. The full program must be completed to receive the 15-patient credit. Patients must be evaluated in person. The program must include the following:

1. Presentation of various patient types such as: glaucoma suspects; narrow angle, primary open angle glaucoma (early, moderate, late); and secondary open angle glaucoma such as pigment dispersion and pseudoexfoliation. Patient data, including but not limited to, visual acuities, intra-ocular pressures, visual fields, imaging, and pachymetry, will be available on-site and presented upon request;

2. Examination of patients, evaluation of data and test results, and commitment to a tentative diagnosis, treatment, and management plan;

3. Participation in group discussion of the cases with instructor feedback;

4. Attendance of follow-up meetings (within the 16-hour program requirement) where the same or different patients will be reviewed via serial data, including but not limited to visual fields and imaging photos.

(C) Preceptorship Program: Completion of a preceptorship program where each patient must be initially evaluated by the licensee and co-managed with a preceptor. Each patient must be prospectively treated for a minimum of 12 consecutive months. A preceptor for purposes of this section is defined as:

1. A California licensed, Board certified ophthalmologist in good standing; or

2. A California licensed optometrist in good standing, who has been glaucoma certified for two or more years.

Preceptors shall confirm the diagnosis and treatment plan, and then approve the therapeutic goals and management plan for each patient. Consultation with the preceptor must occur at appropriate clinical intervals or when the therapeutic goals are not achieved. Clinical data will be exchanged at appropriate intervals determined by the preceptor and the licensee. Telemedicine and electronic exchange of information may be used as agreed upon by the preceptor and the licensee. Each patient that is seen by the optometrist in the program will count as a 1-patient credit towards the Case Management Requirement.

(b) Licensees that are glaucoma certified pursuant to this Section shall be required to complete 10 hours of glaucoma specific optometric continuing education every license renewal period. These 10 hours shall be part of the required 35 hours on the diagnosis, treatment and management of ocular disease.

(c) Licensees who completed their education from an accredited school or college of optometry on or after May 1, 2008, are exempt from the didactic course and case management requirements of this Section, provided they submit proof of graduation from that institution to the Board.

(d) Licensees who graduated from an accredited school or college of optometry prior to May 1, 2000, and who have not completed a didactic course of no less than 24 hours will be required to take the 24-hour course indicated in subsection (a). Licensees who graduated from an accredited school or college of optometry after May 1, 2000, are exempt from the didactic course requirement of this Section.

(e) Licensees who graduated from an accredited school or college of optometry prior to May 1, 2008, and who have taken a didactic course of no less than 24 hours, but not completed the case management requirement under SB 929 [Stats. 2000, ch. 676, § 3], will be required to complete the Case Management Requirement indicated in subsection (a).

(f) Licensees who started the process for certification to treat glaucoma under SB 929 [Stats. 2000, ch. 676,

§ 3] but will not complete the requirements by December 31, 2009, may apply all patients who have been co-managed prospectively for at least 12 consecutive months towards the Case Management Requirement indicated in subsection (a).

Authority cited: Sections 3025, 3041, 3041.10 and 3059, Business and Professions Code. Reference: Sections 3041 and 3041.3, Business and Professions Code.

History
1. New section filed 12-9-2010; operative 1-8-2011 (Register 2010, No. 50).

ARTICLE 12 ENFORCEMENT

§1575. DISCIPLINARY GUIDELINES

In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Board of Optometry shall consider the disciplinary guidelines entitled "Disciplinary Guidelines and Model Disciplinary Orders" (DG-3, 5-99) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation -for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Authority cited: Sections 3025 and 3090, Business and Professions Code; and Sections 11400.20 and 11420.21, Government Code. Reference: Section 3090, Business and Professions Code; and Sections 11400.20, 11400.21 and 11425.50(e), Government Code.
History
1. New article 12 (section 1575) and section filed 7-30-97; operative 7-30-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 31).
2. Amendment of "Disciplinary Guidelines and Model Disciplinary Orders" (incorporated by reference) and amendment of section filed 4-25-2001; operative 5-25-2001 (Register 2001, No. 17).

ARTICLE 12.5 CITATIONS AND FINES

§1576. CITATIONS – CONTENT AND SERVICE

(a) The executive officer of the board, or his/her designee, may issue a citation which may contain an administrative fine and/or order of abatement against a licensee for any violation of law which would be grounds for discipline or for violation of any regulation adopted by the board pursuant hereto.

(b) Each citation shall be in writing and shall describe, with particularity, the nature and facts of each violation specified in the citation, including a reference to the statute(s) or regulation(s) alleged to have been violated.

(c) The citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable time for abatement of the violation, or both.

(d) The citation shall inform the cited individual of the right to an informal citation conference concerning the matter and the right to an administrative hearing.

(e) The citation shall be served upon the individual personally, or by certified mail in accordance with the provisions of Section 11505(c) of the Government Code.

Authority cited: Sections 125.9, 3025 and 3135, Business and Professions Code. Reference: Sections 125.9 and 3135, Business and Professions Code.
History
1. New article 12.5 (sections 1576-1581) and section filed 8-17-99; operative 9-16-99 (Register 99, No. 34).

§1577. CITATIONS FOR UNLICENSED PERSONS

The executive officer of the board is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons, as defined in Section 125.9 of the Code, who are performing or who have performed services for which a license is required under the statutes and regulations enforced by the Board of Optometry. Each citation issued for unlicensed activity shall be issued in accordance with Section 1578 of these regulations. The provisions of section 1578 shall apply to the issuance of citations for unlicensed activity under this section. The sanction authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

Authority cited: Sections 125.9, 148, 3025 and 3135, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.
History
1. New section filed 8-17-99; operative 9-16-99 (Register 99, No. 34).

§1578. CITATION FACTORS

In assessing an administrative fine or issuing an order of abatement, the executive officer of the board shall give due consideration to the following factors:

(a) The gravity of the violation. If the violation is of such a nature and/or severity that revocation of the license or restrictions on the license are necessary in order to ensure consumer protection, a citation will not be issued.

(b) The good or bad faith exhibited by the cited person.

(c) The history of previous violations of the same or similar nature.

(d) Evidence that the violation was or was not willful.

(e) The extent to which the cited person has cooperated with the board's investigation.

(f) The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by the violation.

(g) Any other factors as justice may require.

Authority cited: Sections 125.9 and 3025, Business and Professions Code. Reference: Section 125.9, Business and Professions Code.
History
1. New section filed 8-17-99; operative 9-16-99 (Register 99, No. 34).

§1579. CITABLE OFFENSES

(a) The executive officer of the board shall assess fines for citable offenses listed in this section, provided however, in no case shall the total fines exceed $2,500 for each violation. The executive officer shall not impose any duplicate fines for the same violation.

(b) Where citations include an assessment of an administrative fine, they shall be classified according to the nature of the violation and shall indicate the classification on the face.

(c) Class "A" citations involve a person who has engaged in the practice of optometry without a current and valid license, including, but not limited to, acting in the capacity of an optometrist or performing or controlling the practice of optometry as defined in Business and Professions Code section 3041.

A class "A" citation is subject to an administrative fine in an amount not less than one thousand five hundred dollars ($1,500) and not to exceed two thousand five hundred dollars ($2,500) for each violation.

(d) Class "B" citations involve an optometrist who has either:

(1) Violated any statute or regulation which would be grounds for discipline by the Board that has caused non-physical financial harm to a person, or

(2) Has committed a violation that are grounds for issuance of a Class "C" citation and has been issued one or more prior Class "C" citations within the three (3) years immediately preceding the issuance of the citation.

A class "B" citation is subject to an administrative fine in an amount not less than five hundred dollars ($500) and not to exceed two thousand five hundred dollars ($2,500) for each violation.

(e) Class "C" citations involve an optometrist who has violated any statute or regulation which would be grounds for discipline by the Board that did not cause physical or financial harm to a person.

A class "C" citation is subject to an administrative fine in an amount not less than two hundred fifty dollars ($250) and not to exceed two thousand five hundred dollars ($2,500) for each violation.

(f) Notwithstanding the administrative fine amounts specified in subsections (c), (d), and (e), a citation may include a fine between two thousand five hundred and one dollars ($2,501) and five thousand dollars ($5,000) if one or more of the following circumstances apply:

(1) The citation involves a violation that has an immediate relationship to the health and safety of another person;

(2) The cited person has a history of two or more prior citations of the same or similar violations;

(3) The citation involves multiple violations that demonstrate a willful disregard of the law;

(4) The citation involves a violation or violations perpetrated against a senior citizen or disabled person;

(5) The citation involves fraudulent billing submitted to an insurance company, or Medi-Cal or Medi-Care programs;

(g) The sanctions authorized under this section shall be separate from, and in addition to, any other civil or criminal remedies.

Authority cited: Sections 125.9, 148, 2545 and 3025, Business and Professions Code. Reference: Sections 125.9, 148 and 2545, Business and Professions Code.
History
1. New section filed 8-17-99; operative 9-16-99 (Register 99, No. 34).
2. Amendment of section and Note filed 9-26-2006; operative 10-26-2006 (Register 2006, No. 39).

§1580. COMPLIANCE WITH CITATION/ORDER OF ABATEMENT

(a) If the cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the cited person may request an extension of time in which to make the correction from the executive officer of the board. Such a request shall be in writing and shall be made within the time set forth for the abatement.

(b) If a citation or order of abatement is not contested, or if the citation is contested and the cited

person does not prevail, failure to abate the violation or to pay the assessed fine within the time allowed shall constitute a violation and a failure to comply with the citation or order of abatement.

(c) Failure to comply with an order of abatement or pay an assessed fine may result in disciplinary action being taken by the board or other appropriate judicial action being taken against the cited person.

(d) If a fine is not paid after a citation has become final, the fine shall be added to the cited person's license or registration renewal fee. A license or registration shall not be renewed without payment of the renewal fee and fine.

Authority cited: Sections 125.9 and 3025, Business and Professions Code. Reference: Section 125.9, Business and Professions Code.
History
1. New section filed 8-17-99; operative 9-16-99 (Register 99, No. 34).

§1581. CONTESTED CITATIONS

(a) If a cited person wishes to contest the citation, assessment of the administrative fine, or order of abatement, the cited person shall, within thirty (30) days after service of the citation, file in writing a request for an administrative hearing to the executive officer regarding the acts charged in the citation, as provided for in subdivision (b)(4) of Section 125.9 of the Code.

(b) In addition to, or instead of, requesting an administrative hearing, as provided for in subdivision (b)(4) of Section 125.9 of the Code, the cited person may, within thirty (30) days after service of the citation, contest the citation by submitting a written request for an informal citation conference to the executive officer or his/her designee.

(c) Upon receipt of a written request for an informal citation conference, the executive officer or his/her designee shall, within sixty (60) days, hold an informal citation conference with the cited person. The cited person may be accompanied and represented at the informal citation conference by an attorney or other authorized representative.

d) If an informal citation conference is held, the request for an administrative hearing shall be deemed to be withdrawn and the executive officer or his/her designee may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued, at the conclusion of the informal citation conference. If affirmed or modified, the citation originally issued shall be considered withdrawn and an affirmed or modified citation, including reason for the decision, shall be issued. The affirmed or modified citation shall be mailed to the cited person and his/her legal counsel, if any, within ten (10) days from the date of the informal citation conference.

(e) If a cited person wishes to contest an affirmed or modified citation, the person shall, within thirty (30) days of his or her notification, file in writing a request for an administrative hearing to the executive officer regarding the acts charged in the affirmed or modified citation, in accordance with subdivision (b)(4) of Section 125.9 of the Code.

Authority cited: Sections 125.0 and 3025, Business and Professions Code. Reference: Section 125.9, Business and Professions Code.
History
1. New section filed 8-17-99; operative 9-16-99 (Register 99, No. 34).

CORPORATIONS CODE

TITLE 1 CORPORATIONS

DIVISION 3 CORPORATIONS FOR SPECIFIC PURPOSES

PART 4 PROFESSIONAL CORPORATIONS

§13400. CITATION OF PART

This part shall be known and may be cited as the "Moscone-Knox Professional Corporation Act."

Added Stats 1968 ch 1375 § 9.

§13401. DEFINITIONS

As used in this part:

(a) "Professional services" means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.

(b) "Professional corporation" means a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 that is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5, pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and that in its practice or business designates itself as a professional or other corporation as may be required by statute. However, any professional corporation or foreign professional corporation rendering professional services by persons duly licensed by the Medical Board of California or any examining committee under the jurisdiction of the board, the Osteopathic Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the California Architects Board, the Court Reporters Board of California, the Board of Behavioral Sciences, the Speech-Language Pathology and Audiology Board, the Board of Registered Nursing, or the State Board of Optometry shall not be required to obtain a certificate of registration in order to render those professional services.

(c) "Foreign professional corporation" means a corporation organized under the laws of a state of the United States other than this state that is engaged in a profession of a type for which there is authorization in the Business and Professions Code for the performance of professional services by a foreign professional corporation.

(d) "Licensed person" means any natural person who is duly licensed under the provisions of the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act to render the same professional services as are or will be rendered by the professional corporation or foreign professional corporation of which he or she is or intends to become, an officer, director, shareholder, or employee.

(e) "Disqualified person" means a licensed person who for any reason becomes legally disqualified (temporarily or permanently) to render the professional services that the particular professional corporation or foreign professional corporation of which he or she is an officer, director, shareholder, or employee is or was rendering.

Added Stats 1968 ch 1375 § 9. Amended Stats 1970 ch 1110 § 3, operative July 1, 1971; Stats 1977 ch 1126 § 3; Stats 1979 ch 472 § 2; Stats 1980 ch 1314 § 16; Stats 1981 ch 383 § 2; Stats 1985 ch 220 § 2, ch 1578 § 2; Stats 1987 ch 571 § 7; Stats 1988 ch 1448 § 28.5; Stats 1989 ch 886 § 82; Stats 1991 ch 566 § 20 (AB 766); Stats 1992 ch 1289 § 50 (AB 2743); Stats 1993 ch 910 § 2 (SB 687), ch 955 § 5.3 (SB 312). Amended Stats 1994 ch 26 § 225 (AB 1807), effective March 30, 1994, ch 26 § 226 (AB 1802), effective March 30, 1994, ch 1010 § 66.1 (SB 2053) (ch 26 prevails); Stats 1995 ch 60 § 43 (SB 42), effective July 6, 1995; Stats 1997 ch 168 § 8 (AB 348); Stats 1999 ch 657 § 34 (AB 1677); Stats 2000 ch 197 § 4 (SB 1636), ch 836 § 51 (SB 1554). Stats 2004 ch 695 § 51 (SB 1913). Amended Stats 2006 ch 564 § 17 (AB 2256).

§13401.5. LICENSEES AS SHAREHOLDERS, OFFICERS, DIRECTORS, OR EMPLOYEES

Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation:

(a) Medical corporation.
(1) Licensed doctors of podiatric medicine.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.

(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(10) Naturopathic doctors.
(b) Podiatric medical corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(c) Psychological corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed chiropractors.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.
(d) Speech-language pathology corporation.
(1) Licensed audiologists.
(e) Audiology corporation.
(1) Licensed speech-language pathologists.
(f) Nursing corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(10) Naturopathic doctors.
(g) Marriage and family therapy corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(h) Licensed clinical social worker corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed marriage and family therapists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(i) Physician assistants corporation.
(1) Licensed physicians and surgeons.
(2) Registered nurses.
(3) Licensed acupuncturists.
(4) Naturopathic doctors.
(j) Optometric corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(k) Chiropractic corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.
(l) Acupuncture corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed physician assistants.
(9) Licensed chiropractors.
(10) Naturopathic doctors.
(m) Naturopathic doctor corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed physician assistants.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Licensed physical therapists.
(8) Licensed doctors of podiatric medicine.
(9) Licensed marriage, family, and child counselors.
(10) Licensed clinical social workers.
(11) Licensed optometrists.
(n) Dental corporation.
(1) Licensed physicians and surgeons.
(2) Dental assistants.
(3) Registered dental assistants.
(4) Registered dental assistants in extended functions.
(5) Registered dental hygienists.
(6) Registered dental hygienists in extended functions.
(7) Registered dental hygienists in alternative practice.

Added Stats 1980 ch 1314 § 17.1. Amended Stats 1981 ch 621 § 5; Stats 1982 ch 1304 § 3, ch 1315 § 1; Stats 1983 ch 1026 § 23, ch 1084 § 1; Stats 1988 ch 507 § 1; Stats 1990 ch 1691 § 1 (AB 3324). Amended Stats 1994 ch 26 § 226 (AB 1807), effective March 30, 1994; Stats 1994 ch 815 § 2 (SB 1279); Stats 1997 ch 758 § 84 (SB 1346); Stats 1998 ch 175 § 1 (AB 2120). Amended Stats 2002 ch 1013 § 75 (SB 2026). Amended Stats 2003 ch 485 § 6 (SB 907).

Amended Stats 2003 ch 549 § 4 (AB 123). Amended Stats 2004 ch 183 § 50 (AB 3082).

§13402. CORPORATION RENDERING SERVICES OTHER THAN PURSUANT TO THIS PART; CONDUCT OF BUSINESS BY CORPORATION NOT PROFESSIONAL CORPORATION

(a) This part shall not apply to any corporation now in existence or hereafter organized which may lawfully render professional services other than pursuant to this part, nor shall anything herein contained alter or affect any right or privilege, whether under any existing or future provision of the Business and Professions Code or otherwise, in terms permitting or not prohibiting performance of professional services through the use of any form of corporation permitted by the General Corporation Law.

(b) The conduct of a business in this state by a corporation pursuant to a license or registration issued under any state law, except laws relating to taxation, shall not be considered to be the conduct of a business as a professional corporation if the business is conducted by, and the license or registration is issued to, a corporation which is not a professional corporation within the meaning of this part, whether or not a professional corporation could conduct the same business, or portions of the same business, as a professional corporation.

Added Stats 1968 ch 1375 § 9. Amended Stats 1985 ch 1578 § 3; Stats 1988 ch 919 § 13.

§13403. GENERAL CORPORATION LAW; APPLICABILITY

The provisions of the General Corporation Law shall apply to professional corporations, except where such provisions are in conflict with or inconsistent with the provisions of this part. A professional corporation which has only one shareholder need have only one director who shall be such shareholder and who shall also serve as the president and treasurer of the corporation. The other officers of the corporation in such situation need not be licensed persons. A professional corporation which has only two shareholders need have only two directors who shall be such shareholders. The two shareholders between them shall fill the offices of president, vice president, secretary and treasurer.

A professional medical corporation may establish in its articles or bylaws the manner in which its directors are selected and removed, their powers, duties, and compensation. Each term of office may not exceed three years. Notwithstanding the foregoing, the articles or bylaws of a professional medical corporation with more than 200 shareholders may provide that directors who are officers of the corporation or who are responsible for the management of all medical services at one or more medical centers may have terms of office, as directors, of up to six years; however, no more than 50 percent of the members of the board, plus one additional member of the board, may have six-year terms of office.

Added Stats 1968 ch 1375 § 9. Amended Stats 1979 ch 711 § 12; Stats 1980 ch 36 § 1.

§13404. FORMATION; CERTIFICATE OF REGISTRATION

A corporation may be formed under the General Corporation Law or pursuant to subdivision (b) of Section 13406 for the purposes of qualifying as a professional corporation in the manner provided in this part and rendering professional services. The articles of incorporation of a professional corporation shall contain a specific statement that the corporation is a professional corporation within the meaning of this part. Except as provided in subdivision (b) of Section 13401, no professional corporation shall render professional services in this state without a currently effective certificate of registration issued by the governmental agency regulating the profession in which such corporation is or proposes to be engaged, pursuant to the applicable provisions of the Business and Professions Code or the Chiropractic Act expressly authorizing such professional services to be rendered by a professional corporation.

Added Stats 1968 ch 1375 § 9. Amended Stats 1970 ch 1110 § 4, operative July 1, 1971; Stats 1980 ch 1314 § 18; Stats 1993 ch 955 § 6 (SB 312).

§13406. PROFESSIONAL CORPORATIONS; STOCK; FINANCIAL STATEMENTS; VOTING; NONPROFIT LAW CORPORATIONS

(a) Subject to the provisions of subdivision (b), shares of capital stock in a professional corporation may be issued only to a licensed person or to a person who is licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices, and any shares issued in violation of this restriction shall be void. Unless there is a public offering of securities by a professional corporation or by a foreign professional corporation in this state, its financial statements shall be treated by the Commissioner of Corporations as confidential, except to the extent that such statements shall be subject to subpoena in connection with any judicial or administrative proceeding, and may be admissible in evidence therein. No shareholder of a professional corporation or of a foreign professional corporation qualified to render professional services in this state shall enter into a voting trust, proxy, or any other arrangement vesting another person (other than another person who is a shareholder of the same corporation) with the authority to exercise the voting power of any or all of his or her shares, and any such purported voting trust, proxy or other arrangement shall be void.

(b) A professional law corporation may be incorporated as a nonprofit public benefit corporation under the Nonprofit Public Benefit Corporation Law under either of the following circumstances:

(1) The corporation is a qualified legal services project or a qualified support center within the meaning of subdivisions (a) and (b) of Section 6213 of the Business and Professions Code.

(2) The professional law corporation otherwise meets all of the requirements and complies with all of the provisions of the Nonprofit Public Benefit Corporation Law, as well as all of the following requirements:

(A) All of the members of the corporation, if it is a membership organization as described in the Nonprofit Corporation Law, are persons licensed to practice law in California.

(B) All of the members of the professional law corporation's board of directors are persons licensed to practice law in California.

(C) Seventy percent of the clients to whom the corporation provides legal services are lower income persons as defined in Section 50079.5 of the Health and Safety Code, and to other persons who would not otherwise have access to legal services.

(D) The corporation shall not enter into contingency fee contracts with clients.

(c) A professional law corporation incorporated as a nonprofit public benefit corporation that is a recipient in good standing as defined in subdivision (c) of Section 6213 of the Business and Professions Code shall be deemed to have satisfied all of the filing requirements of a professional law corporation under Sections 6161.1, 6162, and 6163 of the Business and Professions Code.

Added Stats 1968 ch 1375 § 9. Amended Stats 1993 ch 910 § 5 (SB 687), ch 955 § 7.5 (SB 312).

§13407. TRANSFER OF SHARES; RESTRICTION; PURCHASE BY CORPORATION; SUSPENSION OR REVOCATION OF CERTIFICATE

Shares in a professional corporation or a foreign professional corporation qualified to render professional services in this state may be transferred only to a licensed person, to a shareholder of the same corporation, to a person licensed to practice the same profession in the jurisdiction or jurisdictions in which the person practices, or to a professional corporation, and any transfer in violation of this restriction shall be void, except as provided herein.

A professional corporation may purchase its own shares without regard to any restrictions provided by law upon the repurchase of shares, if at least one share remains issued and outstanding.

If a professional corporation or a foreign professional corporation qualified to render professional services in this state shall fail to acquire all of the shares of a shareholder who is disqualified from rendering professional services in this state or of a deceased shareholder who was, on his or her date of death, licensed to render professional services in this state, or if such a disqualified shareholder or the representative of such a deceased shareholder shall fail to transfer said shares to the corporation, to another shareholder of the corporation, to a person licensed to practice the same profession in the jurisdiction or jurisdictions in which the person practices, or to a licensed person, within 90 days following the date of disqualification, or within six months following the date of death of the shareholder, as the case may be, then the certificate of registration of the corporation may be suspended or revoked by the governmental agency regulating the profession in which the corporation is engaged. In the event of such a suspension or revocation, the corporation shall cease to render professional services in this state.

Notwithstanding any provision in this part, upon the death or incapacity of a dentist, any individual named in subdivision (a) of Section 1625.3 of the Business and Professions Code may employ licensed dentists and dental assistants and charge for their professional services for a period not to exceed 12 months from the date of death or incapacity of the dentist. The employment of licensed dentists and dental assistants shall not be deemed the practice of dentistry within the meaning of Section 1625 of the Business and Professions Code, provided that all of the requirements of Section 1625.4 of the Business and Professions Code are met. If an individual listed in Section 1625.3 of the Business and Professions Code is employing licensed persons and dental assistants, then the shares of a deceased or incapacitated dentist shall be transferred as provided in this section no later than 12 months from the date of death or incapacity of the dentist.

Added Stats 1968 ch 1375 § 9. Amended Stats 1993 ch 910 § 6 (SB 687); Stats 2007 ch 433 § 4 (SB 387).

§13408. SPECIFICATIONS OF GROUNDS FOR SUSPENSION OR REVOCATION OF CERTIFICATE

The following shall be grounds for the suspension or revocation of the certificate of registration of a professional corporation or a foreign professional corporation qualified to render professional services in this state: (a) if all shareholders who are licensed persons of such corporation shall at any one time become disqualified persons, or (b) if the sole shareholder shall become a disqualified person, or (c) if such corporation shall knowingly employ or retain in its employment a disqualified person, or (d) if such corporation shall violate any applicable rule or regulation adopted by the governmental agency regulating the profession in which such corporation is engaged, or (e) if such corporation shall violate any statute applicable to a professional corporation or to a

foreign professional corporation, or (f) any ground for such suspension or revocation specified in the Business and Professions Code relating to the profession in which such corporation is engaged. In the event of such suspension or revocation of its certificate of registration such corporation shall cease forthwith to render professional services in this state.

Added Stats 1968 ch 1375 § 9. Amended Stats 1993 ch 910 § 7 (SB 687).

§13409. NAME OF CORPORATION; PROVISION GOVERNING

(a) A professional corporation may adopt any name permitted by a law expressly applicable to the profession in which such corporation is engaged or by a rule or regulation of the governmental agency regulating such profession. The provisions of subdivision (b) of Section 201 shall not apply to the name of a professional corporation if such name shall contain and be restricted to the name or the last name of one or more of the present, prospective, or former shareholders or of persons who were associated with a predecessor person, partnership or other organization or whose name or names appeared in the name of such predecessor organization, and the Secretary of State shall have no authority by reason of subdivision (b) of Section 201 to refuse to file articles of incorporation which set forth such a name; provided, however, that such name shall not be substantially the same as the name of a domestic corporation, the name of a foreign corporation qualified to render professional services in this state which is authorized to transact business in this state, or a name which is under reservation for another corporation. The Secretary of State may require proof by affidavit or otherwise establishing that the name of the professional corporation complies with the requirements of this section and of the law governing the profession in which such professional corporation is engaged. The statements of fact in such affidavits may be accepted by the Secretary of State as sufficient proof of the facts.

(b) A foreign professional corporation qualified to render professional services in this state may transact intrastate business in this state by any name permitted by a law expressly applicable to the profession in which the corporation is engaged, or by a rule or regulation of the governmental agency regulating the rendering of professional services in this state by the corporation. The provisions of subdivision (b) of Section 201 shall not apply to the name of a foreign professional corporation if the name contains and is restricted to the name or the last name of one or more of the present, prospective, or former shareholders or of persons who were associated with a predecessor person, partnership, or other organization, or whose name or names appeared in the name of the predecessor organization, and the Secretary of State shall have no authority by reason of subdivision (b) of Section 201 to refuse to issue a certificate of qualification to a foreign professional corporation that sets forth that name in its statement and designation; provided, however, that such a name shall not be substantially the same as the name of a domestic corporation, the name of a foreign corporation qualified to render professional services in the state, or a name that is under reservation for another corporation. The Secretary of State may require proof by affidavit or otherwise establishing that the name of the foreign professional corporation qualified to render professional services in this state complies with the requirements of this section and of the law governing the profession in which the foreign professional corporation qualified to render professional services in this state proposes to engage in this state. The statements of fact in such affidavits may be accepted by the Secretary of State as sufficient proof of the facts.

Added Stats 1968 ch 1375 § 9. Amended Stats 1976 ch 641 § 42, effective January 1, 1977; Stats 1993 ch 910 § 8 (SB 687).

§13410. DISCIPLINARY RULES AND REGULATIONS

(a) A professional corporation or a foreign professional corporation qualified to render professional services in this state shall be subject to the applicable rules and regulations adopted by, and all the disciplinary provisions of the Business and Professions Code expressly governing the practice of the profession in this state, and to the powers of, the governmental agency regulating the profession in which such corporation is engaged. Nothing in this part shall affect or impair the disciplinary powers of any such governmental agency over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person furnishing professional services and the person receiving such services.

(b) With respect to any foreign professional corporation qualified to render professional services in this state, each such governmental agency shall adopt rules, regulations, and orders as appropriate to restrict or prohibit any disqualified person from doing any of the following:

(1) Being a shareholder, director, officer, or employee of the corporation.

(2) Rendering services in any profession in which he or she is a disqualified person.

(3) Participating in the management of the corporation.

(4) Sharing in the income of the corporation.

Added Stats 1968 ch 1375 § 9. Amended Stats 1993 ch 910 § 10 (SB 687).

EDUCATION CODE

TITLE 2 ELEMENTARY AND SECONDARY EDUCATION

DIVISION 4 INSTRUCTION AND SERVICES

PART 28 GENERAL INSTRUCTIONAL PROGRAMS

CHAPTER 4 PROHIBITED INSTRUCTION

ARTICLE 3 SOLICITATIONS

§51520. PROHIBITED SOLICITATIONS ON SCHOOL PREMISES

(a) During school hours, and within one hour before the time of opening and within one hour after the time of closing of school, pupils of the public school shall not be solicited on school premises by teachers or others to subscribe or contribute to the funds of, to become members of, or to work for, any organization not directly under the control of the school authorities, unless the organization is a nonpartisan, charitable organization organized for charitable purposes by an act of Congress or under the laws of the state, the purpose of the solicitation is nonpartisan and charitable, and the solicitation has been approved by the county board of education or by the governing board of the school district in which the school is located.

(b) A licensed dentist who provides voluntary dental health screening programs for pupils on school premises, shall not solicit a pupil, or the pupil's parent or guardian, or encourage, or advise treatment or consultation for the pupil by the licensed dentist, or any entity in which the licensed dentist has a financial interest, for any condition discovered in the course of the dental health screening. It is the intent of the Legislature that no licensed dentist use voluntary dental health screening programs for the generation of referrals or for financial benefit. The Legislature does not intend to deny or limit freedom of choice in the selection of an appropriate dental provider for treatment or consultation.

(c) A licensed optometrist who provides voluntary vision testing programs for pupils on school premises, shall not solicit a pupil, or the pupil's parent or guardian, or encourage, or advise treatment or consultation for the pupil by the licensed optometrist, or any entity in which the licensed optometrist has a financial interest, for any condition discovered in the course of the vision testing. It is the intent of the Legislature that no licensed optometrist use voluntary vision testing programs for the generation of referrals or for financial benefit. The Legislature does not intend to deny freedom of choice in the selection of an appropriate vision care provider for treatment or consultation.

(d) Nothing in this section shall be construed as prohibiting the solicitation of pupils of the public school on school premises by pupils of that school for any otherwise lawful purpose.

Enacted Stats 1976 ch 1010 § 2, operative April 30, 1977.
Amended Stats 1995 ch 64 § 1 (SB 334); Stats 1996 ch 83 § 1 (AB 2478).

GOVERNMENT CODE

TITLE 1 GENERAL

DIVISION 7 MISCELLANEOUS

CHAPTER 3.5 INSPECTION OF PUBLIC RECORDS

ARTICLE 1 GENERAL PROVISIONS

§6250. LEGISLATIVE FINDING AND DECLARATION

In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

Added Stats 1968 ch 1473 § 39. Amended Stats 1970 ch 575 § 1.

§6251. CITATION OF CHAPTER

This chapter shall be known and may be cited as the California Public Records Act.

Added Stats 1968 ch 1473 § 39.

§6252. DEFINITIONS

As used in this chapter:

(a) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(b) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) "Public agency" means any state or local agency.

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(g) "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

Added Stats 1968 ch 1473 § 39. Amended Stats 1970 ch 575 § 2; Stats 1975 ch 1246 § 2; Stats 1981 ch 968 § 1; Stats 1991 ch 181 § 1 (AB 788); Stats 1994 ch 1010 § 136 (SB 2053); Stats 1998 ch 620 § 2 (SB 143). Amended Stats 2002 ch 945 § 2.5 (AB 1962), ch 1073 § 1.5 (AB 2937); Stats 2004 ch 937 § 1 (AB 1933).

§6253. TIME FOR INSPECTION OF PUBLIC RECORDS; “UNUSUAL CIRCUMSTANCES”

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records,
shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended

by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

Added Stats 1998 ch 620 § 5 (SB 143). Amended Stats 1999 ch 83 § 64 (SB 966); Stats 2000 ch 982 § 1 (AB 2799); Stats 2001 ch 355 § 2 (AB 1014).

§6253.1. AGENCY TO ASSIST IN INSPECTION OF PUBLIC RECORD

(a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:

(1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

(2) Describe the information technology and physical location in which the records exist.

(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.

(c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253.

(d) This section shall not apply to a request for public records if any of the following applies:

(1) The public agency makes available the requested records pursuant to Section 6253.

(2) The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Section 6254.

(3) The public agency makes available an index of its records.

Added Stats 2001 ch 355 § 3 (AB 1014).

§6253.4. RECORDS TO BE MADE AVAILABLE

(a) Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section.

The following state and local bodies shall establish written guidelines for accessibility of records. A copy of these guidelines shall be posted in a conspicuous public place at the offices of these bodies, and a copy of the guidelines shall be available upon request free of charge to any person requesting that body's records:

Department of Motor Vehicles
Department of Consumer Affairs
Department of Transportation
Department of Real Estate
Department of Corrections
Department of the Youth Authority
Department of Justice
Department of Insurance
Department of Corporations
Department of Managed Health Care
Secretary of State
State Air Resources Board
Department of Water Resources
Department of Parks and Recreation
San Francisco Bay Conservation and Development

Commission
State Board of Equalization
State Department of Health Care Services
Employment Development Department
State Department of Public Health
State Department of Social Services
State Department of Mental Health
State Department of Developmental Services
State Department of Alcohol and Drug Abuse
Office of Statewide Health Planning and Development
Public Employees' Retirement System
Teachers' Retirement Board
Department of Industrial Relations
Department of General Services
Department of Veterans Affairs
Public Utilities Commission
California Coastal Commission
State Water Resources Control Board
San Francisco Bay Area Rapid Transit District
All regional water quality control boards
Los Angeles County Air Pollution Control District
Bay Area Air Pollution Control District
Golden Gate Bridge, Highway and Transportation District
Department of Toxic Substances Control
Office of Environmental Health Hazard Assessment

(b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make the records accessible to the public. The guidelines and regulations adopted pursuant to this section shall not operate to limit the hours public records are open for inspection as prescribed in Section 6253.

Added Stats 1968 ch 1473 § 39, as Gov C § 6253. Amended Stats 1973 ch 664 § 1; Stats 1974 ch 544 § 7; Stats 1975 ch 957 § 6; Stats 1977 ch 1252 § 96, operative July 1, 1978; Stats 1979 ch 373 § 120; Stats 1983 ch 826 § 1; Stats 1988 ch 409 § 1. Supplemented by Governor's Reorganization Plan No. 1 of 1991 § 70, effective July 17, 1991. Amended and renumbered by Stats 1998 ch 620 § 4 (SB 143). Amended Stats 1999 ch 525 § 11 (AB 78); Stats 2000 ch 857 § 9 (AB 2903); Stats 2006 ch 241 § 2 (SB 162), effective January 1, 2007, operative July 1, 2007.)

§6254. RECORDS EXEMPT FROM DISCLOSURE REQUIREMENTS

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to any of the following:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the California Emergency Management Agency, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined in any of the sections of the Penal Code set forth in this subdivision may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph may not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury. Nothing in this paragraph shall be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of Division 14 of Title 3 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary. However, public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public database maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Article 2. 6 (commencing with Section 14081), Article 2.8 (commencing with Section 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. If a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee and the Legislative Analyst's Office. The committee and that office shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Care Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u)(1) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's

medical or psychological history or that of members of his or her family.

(2) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(3) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(v)(1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.3 (commencing with Section 12695), Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), and Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, and that reveal any of the following:

(A) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board, entities with which the board is considering a contract, or entities with which the board is considering or enters into any other arrangement under which the board provides, receives, or arranges services or reimbursement.

(B) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2)(A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.3 (commencing with Section 12695), Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after their effective dates.

(B) If a contract that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the effective date of the amendment.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contracts or amendments to the contracts are open to inspection pursuant to paragraph (3).

(w)(1) Records of the Managed Risk Medical Insurance Board related to activities governed by Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contracts or amendments to the contracts are open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y)(1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, and that reveal any of the following:

(A) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board, entities with which the board is considering a contract, or entities with which the board is considering or enters into any other arrangement under which the board provides, receives, or arranges services or reimbursement.

(B) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or

strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2)(A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after their effective dates.

(B) If a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the effective date of the amendment.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

(5) The exemption from disclosure provided pursuant to this subdivision for the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff shall also apply to the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of applicants pursuant to Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code.

(z) Records obtained pursuant to paragraph (2) of subdivision (c) of Section 2891.1 of the Public Utilities Code.

(aa) A document prepared by or for a state or local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session.

(ab) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Emergency Management Agency for use by that office, including the identity of the person who or entity that voluntarily submitted the information. As used in this subdivision, “voluntarily submitted” means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information. This subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

(ac) All information provided to the Secretary of State by a person for the purpose of registration in the Advance Health Care Directive Registry, except that those records shall be released at the request of a health care provider, a public guardian, or the registrant's legal representative.

(ad) The following records of the State Compensation Insurance Fund:

(1) Records related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) Records related to the discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the fund, and any related deliberations.

(3) Records related to the impressions, opinions, recommendations, meeting minutes of meetings or sessions that are lawfully closed to the public, research, work product, theories, or strategy of the fund or its staff, on the development of rates, contracting strategy, underwriting, or competitive strategy pursuant to the powers granted to the fund in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

(4) Records obtained to provide workers' compensation insurance under Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, including, but not limited to, any medical claims information, policyholder information provided that nothing in this paragraph shall be interpreted to prevent an insurance agent or broker from obtaining proprietary information or other information authorized by law to be obtained by the agent or broker, and information on rates, pricing, and claims handling received from brokers.

(5)(A) Records that are trade secrets pursuant to Section 6276.44, or Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, including without limitation, instructions, advice, or training provided by the State Compensation Insurance Fund to its board members, officers, and employees regarding the fund's special investigation unit, internal audit unit, and informational security, marketing, rating, pricing, underwriting, claims handling, audits, and collections.

(B) Notwithstanding subparagraph (A), the portions of records containing trade secrets shall be available for review by the Joint Legislative Audit Committee, the Bureau of State Audits, Division of Workers'

Compensation, and the Department of Insurance to ensure compliance with applicable law.

(6)(A) Internal audits containing proprietary information and the following records that are related to an internal audit:

(i) Personal papers and correspondence of any person providing assistance to the fund when that person has requested in writing that his or her papers and correspondence be kept private and confidential. Those papers and correspondence shall become public records if the written request is withdrawn, or upon order of the fund.

(ii) Papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed or an internal audit that contains proprietary information.

(B) Notwithstanding subparagraph (A), the portions of records containing proprietary information, or any information specified in subparagraph (A) shall be available for review by the Joint Legislative Audit Committee, the Bureau of State Audits, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

(7)(A) Except as provided in subparagraph (C), contracts entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code shall be open to inspection one year after the contract has been fully executed.

(B) If a contract entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(C) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(D) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to this paragraph.

(E) Nothing in this paragraph is intended to apply to documents related to contracts with public entities that are not otherwise expressly confidential as to that public entity.

(F) For purposes of this paragraph, “fully executed” means the point in time when all of the necessary parties to the contract have signed the contract.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act (29 U.S.C. SEC. 158).

Added Stats 1981 ch 684 § 1.5, effective September 23, 1981, operative January 1, 1982. Amended Stats 1982 ch 83 § 1, effective March 1, 1982, ch 1492 § 2, ch 1594 § 2, effective September 30, 1982; Stats 1983 ch 200 § 1, effective July 12, 1983, ch 621 § 1, ch 955 § 1, ch 1315 § 1; Stats 1984 ch 1516 § 1, effective September 28, 1984; Stats 1985 ch 103 § 1; ch 1218 § 1; Stats 1986 ch 185 § 2; Stats 1987 ch 634 § 1, effective September 14, 1987, ch 635 § 1; Stats 1988 ch 870 § 1, ch 1371 § 2; Stats 1989 ch 191 § 1; Stats 1990 ch 1106 § 2 (SB 2106); Stats 1991 ch 278 § 1.2 (AB 99), effective July 30, 1991, ch 607 § 4 (SB 98); Stats 1992 ch 3 § 1 (AB 1681), effective February 10, 1992, ch 72 § 2 (AB 1525), effective May 28, 1992, ch 1128 § 2 (AB 1672), operative July 1, 1993; Stats 1993 ch 606 § 1 (AB 166), effective October 1, 1993 (ch 1265 prevails); Stats 1993 ch 610 § 1 (AB 6), effective October 1, 1993; Stats 1993 ch 611 § 1 (SB 60), effective October 1, 1993; Stats 1993 ch 1265 § 14 (SB 798); S tats 1994 ch 82 § 1 (AB 2547), ch 1263 § 1.5 (AB 1328); Stats 1995 ch 438 § 1 (AB 985), ch 777 § 2 (AB 958), ch 778 § 1.5 (SB 1059); Stats 1996 ch 1075 § 11 (SB 1444); Stats 1997 ch 623 § 1 (AB 1126); Stats 1998 ch 13 § 1 (AB 487), ch 110 § 1 (AB 1795) (ch 110 prevails), ch 485 § 83 (AB 2803); Stats 2000 ch 184 § 1 (AB 1349); Stats 2001 ch 159 § 105 (SB 662). Amended Stats 2002 ch 175 § 1 (SB 1643); Stats 2003 ch 230 § 1 (AB 1762), effective August 11, 2003, ch 673 § 12 (SB 2); Stats 2004 ch 8 § 1 (AB 1209), effective January 22, 2004, ch 183 § 134 (AB 3082), ch 228 § 2 (SB 1103), effective August 16, 2004, ch 882 § 1 (AB 2445), ch 937 § 2.5 (AB 1933); Stats 2005 ch 22 § 71 (SB 1108), ch 476 § 1 (AB 1495), effective October 4, 2005, ch 670 § 1.5 (SB 922), effective October 7, 2005; Stats 2006 ch 538 § 232 (SB 1852); Stats 2007 ch 577 § 1 (AB 1750), effective October 13, 2007, ch 578 § 1.5 (SB 449); Stats 2008 ch 344 § 1 (SB 1145), effective September 26, 2008, ch 358 § 2 (AB 2810), ch 372 § 1.3 (AB 38), effective January 1, 2009;; Stats 2010 ch 178 § 33 (SB 1115), operative January 1, 2012; Stats 2010 ch 32, § 1 (AB 1887), effective June 29, 2010.

§6254.3. CONFIDENTIALITY OF STATE EMPLOYEE HOME ADDRESSES AND TELEPHONE NUMBERS

(a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled

dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

Added Stats 1984 ch 1657 § 1. Amended Stats 1992 ch 463 § 1 (AB 1040), effective August 7, 1992.

§6254.5. DISCLOSURE OF OTHERWISE EXEMPT RECORDS; EXCEPTIONS

Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

(a) Made pursuant to the Information Practices Act (commencing with Section 1798 of the Civil Code) or discovery proceedings.

(b) Made through other legal proceedings or as otherwise required by law.

(c) Within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes.

(d) Not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings.

(e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law.

(f) Of records relating to a financial institution or an affiliate thereof, if the disclosures are made to the financial institution or affiliate by a state agency responsible for the regulation or supervision of the financial institution or affiliate.

(g) Of records relating to any person that is subject to the jurisdiction of the Department of Corporations, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Corporations.

(h) Made by the Commissioner of Financial Institutions under Section 280, 282, 8009, or 18396 of the Financial Code.

(i) Of records relating to any person that is subject to the jurisdiction of the Department of Managed Health Care, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Managed Health Care.

Added Stats 1981 ch 968 § 3. Amended Stats 1983 ch 101 § 57; Stats 1987 ch 1453 § 5; Stats 1993 ch 469 § 11 (AB 729); Stats 1995 ch 480 § 199 (AB 1482), effective October 2, 1995, operative October 2, 1995; Stats 1996 ch 1064 § 780 (AB 3351), operative July 1, 1997; Stats 1999 ch 525 § 12 (AB 78) operative July 1, 2000; Stats 2000 ch 857 § 10 (AB 2093); Stats 2008 ch 501 § 23 (AB 2749), effective January 1, 2009.)

§6254.8. PUBLIC EMPLOYMENT CONTRACTS AS PUBLIC RECORDS

Every employment contract between a state or local agency and any public official or public employee is a public record which is not subject to the provisions of Sections 6254 and 6255.

Added Stats 1974 ch 1198 § 1.

§6255. WITHHOLDING RECORDS FROM INSPECTION; JUSTIFICATION; PUBLIC INTEREST

(a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

(b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

Added Stats 1968 ch 1473 § 39. Amended Stats 2000 ch 982 § 3 (AB 2799).

§6258. ENFORCEMENT OF RIGHTS; PROCEEDINGS FOR INJUNCTIVE OR DECLARATORY RELIEF; WRIT OF MANDATE

Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or

class of public records under this chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

Added Stats 1968 ch 1473 § 39. Amended Stats 1970 ch 575 § 4; Stats 1990 ch 908 § 1 (SB 2272).

§6259. ORDER TO SHOW CAUSE; IN CAMERA INSPECTION; REVIEWABILITY OF DETERMINATION; COSTS AND ATTORNEY FEES

(a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

Added Stats 1968 ch 1473 § 39. Amended Stats 1975 ch 1246 § 9; Stats 1984 ch 802 § 1; Stats 1990 ch 908 § 2 (SB 2272); Stats 1993 ch 926 § 10 (AB 2205).

§6260. STATUS OF EXISTING JUDICIAL RECORDS; DISCOVERY OF RIGHTS OF LITIGANTS

The provisions of this chapter shall not be deemed in any manner to affect the status of judicial records as it existed immediately prior to the effective date of this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state, nor to limit or impair any rights of discovery in a criminal case.

Added Stats 1968 ch 1473 § 39. Amended Stats 1976 ch 314 § 2.

§6262. DISCLOSURE OF LICENSING COMPLAINT AND INVESTIGATION RECORDS ON REQUEST OF DISTRICT ATTORNEY

The exemption of records of complaints to, or investigations conducted by, any state or local agency for licensing purposes under subdivision (f) of Section 6254 shall not apply when a request for inspection of such records is made by a district attorney.

Added Stats 1979 ch 601 § 2.

§6265. STATUS OF RECORDS NOT CHANGED BY DISCLOSURE TO DISTRICT ATTORNEY

Disclosure of records to a district attorney under the provisions of this chapter shall effect no change in the status of the records under any other provision of law.

Added Stats 1979 ch 601 § 5.

TITLE 2 GOVERNMENT OF THE STATE OF CALIFORNIA

DIVISION 3 EXECUTIVE DEPARTMENT

PART 1 STATE DEPARTMENTS AND AGENCIES

CHAPTER 1 STATE AGENCIES

ARTICLE 9 MEETINGS

§11120. LEGISLATIVE FINDING AND DECLARATION; OPEN PROCEEDINGS; CITATION OF ARTICLE

It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act.

Added Stats 1967 ch 1656 § 122. Amended Stats 1980 ch 1284 § 4; Stats 1981 ch 968 § 4.

§11121. "STATE BODY"

As used in this article, "state body" means 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 section 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.

Added Stats 1967 ch 1656 § 122. Amended Stats 1980 ch 515 § 1; Stats 1981 ch 968 § 5; Stats 1984 ch 193 § 38; Stats 1996 ch 1023 § 88 (SB 1497), effective September 29, 1996, ch 1064 § 783.1 (AB 3351), operative July 1, 1997. Amended Stats 2001 ch 243 § 1 (AB 192); Stats 2003 ch 62 § 117 (SB 600).

§11121.1. "STATE BODY" DEFINITION EXCLUSIONS

As used in this article, "state body" does not include any of the following:

(a) State agencies provided for in Article VI of the California Constitution.

(b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act (Article 2.2 (commencing with Section 9027) of Chapter 1.5 of Part 1 of Division 2 of Title 2).

(d) State agencies when they are conducting proceedings pursuant to Section 3596.

(e) State agencies provided for in Section 109260 of the Health and Safety Code, except as provided in Section 109390 of the Health and Safety Code.

(f) The Credit Union Advisory Committee established pursuant to Section 14380 of the Financial Code.

Added Stats 2001 ch 243 § 2 (AB 192). Amended Stats 2008 ch 344 § 2 (SB 1145), effective September 26, 2008.

§11121.9. PROVIDING A COPY OF ARTICLE TO MEMBERS OF STATE BODIES

Each state body shall provide a copy of this article to each member of the state body upon his or her appointment to membership or assumption of office.

Added Stats 1980 ch 1284 § 6. Amended Stats 1981 ch 714 § 175, ch 968 § 7.1.

§11121.95. DUTIES OF PERSONS WHO HAVEN'T YET ASSUMED STATE OFFICE

Any person appointed or elected to serve as a member of a state body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this article and shall be treated for purposes of this article as if he or she has already assumed office.

Added Stats 1997 ch 949 § 1 (SB 95).

§11122. "ACTION TAKEN"

As used in this article "action taken" means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action.

Added Stats 1967 ch 4026 § 122. Amended Stats 1981 ch 968 § 7.3.

§11122.5. "MEETING"; DIRECT COMMUNICATION PROHIBITIONS; PROHIBITION EXCEPTIONS

(a) As used in this article, "meeting" includes any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.

(b) Except as authorized pursuant to Section 11123, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body is prohibited.

(c) The prohibitions of this article do not apply to any of the following:

(1) Individual contacts or conversations between a member of a state body and any other person.

(2) The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body. This paragraph is not intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the state body.

(4) The attendance of a majority of the members of a state body at an open and noticed meeting of another state body or of a legislative body of a local agency as defined by Section 54951, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the other state body.

(5) The attendance of a majority of the members of a state body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the state body.

(6) The attendance of a majority of the members of a state body at an open and noticed meeting of a standing committee of that body, provided that the members of the state body who are not members of the standing committee attend only as observers.

Added Stats 2001 ch 243 § 6 (AB 192); Amended Stats 2009 ch 150 § 1(AB 1494).

§11123. OPEN MEETING REQUIREMENT FOR STATE BODIES; MEETINGS BY TELECONFERENCE

(a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

(b) (1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by roll call.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, "teleconference" means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video.

Added Stats 1967 ch 1656 § 122. Amended Stats 1981 ch 968 § 7.5. Amended Stats 1994 ch 1153 § 1 (AB 3467); Stats 1997 ch 52 § 1 (AB 1097); Stats 2001 ch 243 § 7 (AB 192).

§11123.1. OPEN AND PUBLIC MEETINGS TO CONFORM TO AMERICANS WITH DISABILITIES ACT

All meetings of a state body that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

Added Stats 2002 ch 300 § 1 (AB 3035).

§11124. PROHIBITED CONDITIONS TO ATTENDANCE

No person shall be required, as a condition to attendance at a meeting of a state body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

Added Stats 1967 ch 1656 § 122. Amended Stats 1981 ch 968 § 8.

§11124.1. RECORDING OF PROCEEDINGS; INSPECTION OF RECORDING

(a) Any person attending an open and public meeting of the state body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera in the absence of a reasonable finding by the state body that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any audio or video recording of an open and public meeting made for whatever purpose by or at the direction of the state body shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but may be erased or destroyed 30 days after the recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the state body.

(c) No state body shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

Added Stats 1980 ch 1284 § 7. Amended Stats 1981 ch 968 § 9. Amended Stats 1997 ch 949 § 2 (SB 95); Stats 2009 ch 88 § 42 (AB 176).

§11125. NOTICE OF MEETING

(a) The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the Internet site where notices required by this article are made available.

(b) The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of business to be transacted or discussed in either open or closed session. A brief general description of an item

generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice, unless otherwise permitted by this article.

(c) Notice of a meeting of a state body that complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

(d) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(e) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

(f) The notice shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by any person with a disability. The notice shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

Added Stats 1967 ch 1656 § 122. Amended Stats 1973, ch 1126 § 1; Stats 1975 ch 708 § 1; Stats 1979 ch 284 § 1, effective July 24, 1979; Stats 1981 ch 968 § 10. Amended Stats 1997 ch 949 § 3 (SB 95); Stats 1999 ch 393 § 1 (AB 1234); Stats 2001 ch § 8243 (AB 192); Stats 2002 ch 300 § 2 (AB 3035).

§11125.1. AGENDAS OF PUBLIC MEETINGS AND OTHER “WRITINGS” AS PUBLIC RECORD; EXEMPTION; PUBLIC INSPECTION; ALTERNATIVE FORMAT REQUIREMENTS; FEE

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7 of this code, or Section 489.1 or 583 of the Public Utilities Code.

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by a person with a disability.

(c) In the case of the Franchise Tax Board, prior to that state body taking final action on any item, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by the Franchise Tax Board staff or individual members to members of the state body prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request notice in writing pursuant to subdivision (a) of Section 11125.

(3) Made available on the Internet.

(d) Prior to the State Board of Equalization taking final action on any item that does not involve a named tax or fee payer, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by board staff or individual members to members of the state body prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request or have requested copies of these writings.

(3) Made available on the Internet.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The writings described in subdivision (b) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to

limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

Added Stats 1975 ch 959 § 4. Amended Stats 1980 ch 1284 § 8; Stats 1981 ch 968 § 10.1; Stats 1997 ch 949 § 4 (SB 95). Amended Stats 2001 ch 670 § 1 (SB 445); Stats 2002 ch 156 § 1 (AB 1752), ch 300 § 3.5 (AB 3035). Amended Stats 2005 ch 188 § 1 (AB 780).

§11125.2. PUBLIC REPORT OF ACTION TAKEN REGARDING PUBLIC EMPLOYEE

Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body.

Added Stats 1980 ch 1284 § 9. Amended Stats 1981 ch 968 § 10.3.

§11125.3. CONDITIONS FOR TAKING ACTION ON ITEMS NOT APPEARING ON POSTED AGENDA; NOTICE REQUIREMENTS

(a) Notwithstanding Section 11125, a state body may take action on items of business not appearing on the posted agenda under any of the conditions stated below:

(1) Upon a determination by a majority vote of the state body that an emergency situation exists, as defined in Section 11125.5.

(2) Upon a determination by a two-thirds vote of the state body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there exists a need to take immediate action and that the need for action came to the attention of the state body subsequent to the agenda being posted as specified in Section 11125.

(b) Notice of the additional item to be considered shall be provided to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after a determination of the need to consider the item is made, but shall be delivered in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet as soon as is practicable after the decision to consider additional items at a meeting has been made.

Added Stats 1994 ch 1153 § 2 (AB 3467). Amended Stats 2001 ch 243 § 9 (AB 192).

§11125.4. PERMISSIBLE PURPOSES FOR SPECIAL MEETINGS; NOTICE; FINDING OF HARDSHIP

(a) A special meeting may be called at any time by the presiding officer of the state body or by a majority of the members of the state body. A special meeting may only be called for one of the following purposes when compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or when immediate action is required to protect the public interest:

(1) To consider "pending litigation" as that term is defined in subdivision (e) of Section 11126.

(2) To consider proposed legislation.

(3) To consider issuance of a legal opinion.

(4) To consider disciplinary action involving a state officer or employee.

(5) To consider the purchase, sale, exchange, or lease of real property.

(6) To consider license examinations and applications.

(7) To consider an action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000)
of the Health and Safety Code.

(8) To consider its response to a confidential final draft audit report as permitted by Section 11126.2.

(9) To provide for an interim executive officer of a state body upon the death, incapacity, or vacancy in the office of the executive officer.

(b) When a special meeting is called pursuant to one of the purposes specified in subdivision (a), the state body shall provide notice of the special meeting to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after the decision to call a special meeting has been made, but shall deliver the notice in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the special meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet within the time periods required by this section. The notice shall specify the time and place of the special meeting and the business to be transacted. The written notice shall additionally specify the address of the Internet Web site where notices required by this article are made

available. No other business shall be considered at a special meeting by the state body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the state body a written waiver of notice. The waiver may be given by telegram, facsimile transmission, or similar means. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

(c) At the commencement of any special meeting, the state body must make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 would cause a substantial hardship on the body or that immediate action is required to protect the public interest. The finding shall set forth the specific facts that constitute the hardship to the body or the impending harm to the public interest. The finding shall be adopted by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present. The finding shall be made available on the Internet. Failure to adopt the finding terminates the meeting.

Added Stats 1997 ch 949 § 5 (SB 95). Amended Stats 1999 ch 393 § 2 (AB 1234), operative July 1, 2001. Amended Stats 2004 ch 576 § 1 (AB 1827); Stats 2007 ch 92 § 1 (SB 519).

§11125.5. EMERGENCY MEETINGS; NOTIFICATION OF MEDIA

(a) In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a state body may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4.

(b) For purposes of this section, "emergency situation" means any of the following, as determined by a majority of the members of the state body during a meeting prior to the emergency meeting, or at the beginning of the emergency meeting:

(1) Work stoppage or other activity that severely impairs public health or safety, or both.

(2) Crippling disaster that severely impairs public health or safety, or both.

(c) However, newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the state body, or a designee thereof, one hour prior to the emergency meeting by telephone. Notice shall also be made available on the Internet as soon as is practicable after the decision to call the emergency meeting has been made. If telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the presiding officer of the state body, or a designee thereof, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(d) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the state body, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place, and also made available on the Internet for a minimum of 10 days, as soon after the meeting as possible.

Added Stats 1981 ch 968 § 11. Amended Stats 1982 ch 1346 § 5.5; Stats 1992 ch 1312 § 11 (AB 2912), effective September 30, 1992; Stats 1997 ch 949 § 6 (SB 95). Amended Stats 1999 ch 393 § 3 (AB 1234), operative July 1, 2001.

§11125.7. OPPORTUNITY FOR PUBLIC TO ADDRESS STATE BODY

(a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. This section is not applicable if the agenda item has already been considered by a committee composed exclusively of members of the state body at a public meeting where interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the state body. Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the state body concerning that item prior to action on the item. In addition, the notice requirement of Section 11125 shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public if no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

(b) The state body may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.

(c) The state body shall not prohibit public criticism of the policies, programs, or services of the state body, or of the acts or omissions of the state body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

(d) This section is not applicable to closed sessions held pursuant to Section 11126.

(e) This section is not applicable to decisions regarding proceedings held pursuant to Chapter 5 (commencing with Section 11500), relating to administrative adjudication, or to the conduct of those proceedings.

(f) This section is not applicable to hearings conducted by the California Victim Compensation and Government Claims Board pursuant to Sections 13963 and 13963.1.

(g) This section is not applicable to agenda items that involve decisions of the Public Utilities Commission regarding adjudicatory hearings held pursuant to Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of the Public Utilities Code. For all other agenda items, the commission shall provide members of the public, other than those who have already participated in the proceedings underlying the agenda item, an opportunity to directly address the commission before or during the commission's consideration of the item.

Added Stats 1993 ch 1289 § 2 (SB 367), operative until July 1, 1997. Amended Stats 1995 ch 938 § 13 (SB 523), operative July 1, 1997; Stats 1997 ch 949 § 7 (SB 95); Stats 2006 ch 538 § 248 (SB 1852).

§11125.8. IDENTIFICATION OF CRIME VICTIM HAVING CLOSED HEARING ON APPLICATION FOR INDEMNIFICATION; EFFECT OF DISCLOSURE THAT PUBLIC IS EXCLUDED FROM HEARING

(a) Notwithstanding Section 11131.5, in any hearing that the California Victim Compensation and Government Claims Board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, no notice, agenda, announcement, or report required under this article need identify the applicant.

(b) In any hearing that the board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, the board shall disclose that the hearing is being held pursuant to Section 13963.1. That disclosure shall be deemed to satisfy the requirements of subdivision (a) of Section 11126.3.

Added Stats 1997 ch 949 § 9 (SB 95).

§11126. CLOSED SESSION ON ISSUES RELATING TO PUBLIC EMPLOYEE; EMPLOYEE'S RIGHT TO PUBLIC HEARING; CLOSED SESSIONS NOT PROHIBITED BY ARTICLE; ABROGATION OF LAWYER-CLIENT PRIVILEGE

(a)(1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, "employee" does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a

proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7)(A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, “lease” includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(12) Prevent the Corrections Standards Authority from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the Superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 9 (commencing with Section 60850) of, Part 33 of Division 4 of Title 2 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3

(commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(18)(A) Prevent a state body from holding closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could compromise or impede the safety or security of the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body.

(B) Notwithstanding any other provision of law, a state body, at any regular or special meeting, may meet in a closed session pursuant to subparagraph (A) upon a two-thirds vote of the members present at the meeting.

(C) After meeting in closed session pursuant to subparagraph (A), the state body shall reconvene in open session prior to adjournment and report that a closed session was held pursuant to subparagraph (A), the general nature of the matters considered, and whether any action was taken in closed session.

(D) After meeting in closed session pursuant to subparagraph (A), the state body shall submit to the Legislative Analyst written notification stating that it held this closed session, the general reason or reasons for the closed session, the general nature of the matters considered, and whether any action was taken in closed session. The Legislative Analyst shall retain for no less than four years any written notification received from a state body pursuant to this subparagraph.

(d)(1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e)(1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B)(i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C)(i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(iii) For purposes of this subdivision, “litigation” includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(iv) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent the enforcement advisory committee established by the California Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent the qualifications examining committee established by the California Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in subdivision (b) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in subdivision (d) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to subdivision (a) or (b) of Section 11121.

(6) Prevent a state body, as defined in subdivision (c) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Secretary of Emergency Management or the Governor concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article does not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

(h) This article does not prevent the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters relating to the development of rates and competitive strategy for plans offered pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2.

(i) This article does not prevent the Managed Risk Medical Insurance Board from holding closed sessions when considering matters related to the development of rates and contracting strategy for entities contracting or seeking to contract with the board, entities with which the board is considering a contract, or entities with which the board is considering or enters into any other arrangement under which the board provides, receives, or arranges services or reimbursement, pursuant to Part 6.2 (commencing with Section 12693), Part 6.3 (commencing with Section 12695), Part 6.4 (commencing with Section 12699.50), Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code.

(j) Nothing in this article shall be construed to prevent the board of the State Compensation Insurance Fund from holding closed sessions in the following:

(1) When considering matters related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) To the extent that matters related to audits and

investigations that have not been completed would be disclosed.

(3) To the extent that an internal audit containing proprietary information would be disclosed.

(4) To the extent that the session would address the development of rates, contracting strategy, underwriting, or competitive strategy, pursuant to the powers granted to the board in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, when discussion in open session concerning those matters would prejudice the position of the State Compensation Insurance Fund.

(k) The State Compensation Insurance Fund shall comply with the procedures specified in Section 11125.4 of the Government Code with respect to any closed session or meeting authorized by subdivision (j), and in addition shall provide an opportunity for a member of the public to be heard on the issue of the appropriateness of closing the meeting or session.

Added Stats 1967 ch 1656 § 122. Amended Stats 1968 ch 1272 § 1; Stats 1970 ch 346 § 5; Stats 1972 ch 431 § 43, ch 1010 § 63, effective August 17, 1972, operative July 1, 1972; Stats 1974 ch 1254 § 1, ch 1539 § 1; Stats 1975 ch 197 § 1, ch 959 § 5; Stats 1977 ch 730 § 5, effective September 12, 1977; Stats 1980 ch 1197 § 1, ch 1284 § 11; Stats 1981 ch 180 § 1, ch 968 § 12; Stats 1982 ch 454 § 40; Stats 1983 ch 143 § 187; Stats 1984 ch 678 § 1, ch 1284 § 4; Stats 1985 ch 186 § 1; ch 1091 § 1; Stats 1986 ch 575 § 1; Stats 1987 ch 1320 § 2; Stats 1988 ch 1448 § 29; Stats 1989 ch 177 § 2, ch 882 § 2, ch 1360 § 52 (ch 1427 prevails), ch 1427 § 1, effective October 2, 1989, operative January 1, 1990; Stats 1991 ch 788 § 4 (AB 1440); Stats 1992 ch 1050 § 17 (AB 2987); Stats 1994 ch 26 § 230 (AB 1807), effective March 30, 1994, ch 422 § 15.5 (AB 2589), effective September 6, 1994, ch 845 § 1 (SB 1316); Stats 1995 ch 975 § 3 (AB 265); Stats 1996 ch 1041 § 2 (AB 3358); Stats 1997 ch 949 § 8 (SB 95). Amended Stats 1998 ch 210 § 1 (SB 2008), ch 972 § 1 (SB 989); Stats 1999 ch 735 § 9 (SB 366), effective October 10, 1999; Stats 2000 ch 1002 § 1, ch 1055 § 30 (AB 2889), effective September 30, 2000; Stats 2001 ch 21 § 1 (SB 54), effective June 25, 2001, ch 243 § 10 (AB 192). Amended Stats 2002 ch 664 § 93.7 (AB 3034), ch 2002 ch 1113 § 1 (AB 2072); Stats 2005 ch 288 § 1 (AB 277); Stats 2007 ch 577 § 4 (AB 1750), effective October 12, 2007; Stats 2008 ch 179 § 91 (SB 1498), ch 344 § 3 (SB 1145), effective September 26, 2008; Stats 2010 ch 32 § 2 (AB 1887), effective June 29, 2010; Stats 2010 ch 618 § 124 (AB 2791).

§11126.1. MINUTE BOOK OF CLOSED SESSION

The state body shall designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available to members of the state body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction. Such minute book may, but need not, consist of a recording of the closed session.

Added Stats 1980 ch 1284 § 12. Amended Stats 1981 ch 968 § 13.

§11126.2. CLOSED SESSION FOR RESPONSE TO FINAL DRAFT AUDIT REPORT

(a) Nothing in this article shall be construed to prohibit a state body that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a state body meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

Added Stats 2004 ch 576 § 2 (AB 1827).

§11126.3. DISCLOSURE OF ITEMS TO BE DISCUSSED IN CLOSED SESSION; DISCUSSION OF ADDITIONAL PENDING LITIGATION MATTERS ARISING AFTER DISCLOSURE

(a) Prior to holding any closed session, the state body shall disclose, in an open meeting, the general nature of the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. If the session is closed pursuant to paragraph (2) of subdivision (d) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the proceeding or disciplinary action contemplated. However, should the body determine that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties if the proceeding or disciplinary action is commenced or that to do so would fail to protect the private economic and business reputation of the person or entity if the proceeding or disciplinary action is not commenced, then the state body shall notice that there will be a closed session and describe in general terms the purpose of that session. If the session is closed pursuant to subparagraph (A) of paragraph (2) of subdivision (e) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the litigation to be discussed unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(b) In the closed session, the state body may consider only those matters covered in its disclosure.

(c) The disclosure shall be made as part of the notice provided for the meeting pursuant to Section 11125 or pursuant to subdivision (a) of Section 92032 of the Education Code and of any order or notice required by Section 11129.

(d) If, after the agenda has been published in compliance with this article, any pending litigation (under subdivision (e) of Section 11126) matters arise, the postponement of which will prevent the state body from complying with any statutory, court-ordered, or other legally imposed deadline, the state body may proceed to discuss those matters in closed session and shall publicly announce in the meeting the title of, or otherwise specifically identify, the litigation to be discussed, unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage. Such an announcement shall be deemed to comply fully with the requirements of this section.

(e) Nothing in this section shall require or authorize a disclosure of names or other information that would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session or the disclosure of which is prohibited by state or federal law.

(f) After any closed session, the state body shall reconvene into open session prior to adjournment and shall make any reports, provide any documentation, and make any other disclosures required by Section 11125.2 of action taken in the closed session.

(g) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcement.

Added Stats 1980 ch 1284 § 13. Amended Stats 1981 ch 968 § 14; Stats 1987 ch 1320 § 3; Stats 1997 ch 949 § 10 (SB 95). Amended Stats 1998 ch 210 § 2 (SB 2008); Stats 2001 ch 243 § 11 (AB 192).

§11126.5. CLEARING ROOM WHEN MEETING WILLFULLY INTERRUPTED

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting the state body conducting the meeting may order the meeting room cleared and continue in session. Nothing in this section shall prohibit the state body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting. Notwithstanding any other provision of law, only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section.

Added Stats 1970 ch 1598 § 1. Amended Stats 1981 ch 968 § 15.

§11126.7. FEES

No fees may be charged by a state body for providing a notice required by Section 11125 or for carrying out any provision of this article, except as specifically authorized pursuant to this article.

Added Stats 1980 ch 1284 § 14. Amended Stats 1981 ch 968 § 16.

§11127. STATE BODIES SUBJECT TO ARTICLE

Each provision of this article shall apply to every state body unless the body is specifically excepted from that provision by law or is covered by any other conflicting provision of law.

Added Stats 1967 ch 1656 § 122. Amended Stats 1981 ch 968 § 17.

§11128. WHEN CLOSED SESSIONS HELD

Each closed session of a state body shall be held only during a regular or special meeting of the body.

Added Stats 1967 ch 1656 § 122. Amended Stats 1980 ch 1284 § 15; Stats 1981 ch 968 § 18.

§11128.5. ADJOURNMENT OF MEETINGS; POSTING OF COPY OF ORDER OR NOTICE OF ADJOURNMENT

The state body may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time.

If all members are absent from any regular or adjourned regular meeting, the clerk or secretary of the state body may declare the meeting adjourned to a stated time and place and he or she shall cause a written notice of the adjournment to be given in the same manner as provided in Section 11125.4 for special meetings, unless that notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by law or regulation.

Added Stats 1997 ch 949 § 11 (SB 95).

§11129. CONTINUANCE OR RECONTINUANCE OF HEARING

Any hearing being held, or noticed or ordered to be held by a state body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the state body in the same manner and to the same extent set forth in Section

11128.5 for the adjournment of meetings. A copy of the order or notice of continuance shall be conspicuously posted on or near the door of the place where the hearing was held within 24 hours after the time of the continuance; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

Added Stats 1967 ch 1656 § 122. Amended Stats 1981 ch 968 § 19; Stats 1997 ch 949 § 12 (SB 95).

§11130. ACTION TO STOP OR PREVENT VIOLATIONS OF ARTICLE; ORDER FOR RECORDING OF CLOSED SESSIONS; DISCOVERY OF RECORDING

(a) The Attorney General, the district attorney, or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this article to past actions or threatened future action by members of the state body or to determine whether any rule or action by the state body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the state body to audio record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 11126, order the state body to audio record its closed sessions and preserve the audio recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c)(1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The audio recordings shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the audio recording is sought by the Attorney General, the district attorney, or the plaintiff in a civil action pursuant to this section or Section 11130.3 alleging that a violation of this article has occurred in a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has custody and control of the audio recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency that has custody and control of the recording.

(ii) An affidavit that contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this article, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) Nothing in this section shall permit discovery of communications that are protected by the attorney-client privilege.

Added Stats 1967 ch 1656 § 122. Amended Stats 1969 ch 494 § 1; Stats 1981 ch 968 § 20; Stats 1997 ch 949 § 13 (SB 95). Amended Stats 1999 ch 393 § 4 (AB 1234); Stats 2009 ch 88 §43 (AB 176).

§11130.3. CAUSE OF ACTION TO VOID ACTION TAKE BY STATE AGENCY IN VIOLATION OF OPEN MEETING REQUIREMENTS

(a) Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of obtaining a judicial determination that an action taken by a state body in violation of Section 11123 or 11125 is null and void under this section. Any action seeking such a judicial determination shall be commenced within 90 days from the date the action was taken. Nothing in this section shall be construed to prevent a state body from curing or correcting an action challenged pursuant to this section.

(b) An action shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement related thereto.

(2) The action taken gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied.

(3) The action taken was in substantial compliance with Sections 11123 and 11125.

(4) The action taken was in connection with the collection of any tax.

Added Stats 1985 ch 936 § 1. Amended Stats 1999 ch 393 § 5 (AB 1234).

§11130.5. COSTS AND ATTORNEY FEES

A court may award court costs and reasonable attorney's fees to the plaintiff in an action brought pursuant to Section 11130 or 11130.3 where it is found that a state body has violated the provisions of this article. The costs and fees shall be paid by the state body and shall not become a personal liability of any public officer or employee thereof. A court may award court costs and reasonable attorney's fees to a defendant in any action brought pursuant to Section 11130 or 11130.3 where the defendant has prevailed in a final determination of the action and the court finds that the action was clearly frivolous and totally lacking in merit.

Added Stats 1975 ch 959 § 6. Amended Stats 1981 ch 968 § 21; Stats 1985 ch 936 § 2.

§11130.7. OFFENSES

Each member of a state body who attends a meeting of that body in violation of any provision of this article, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this article, is guilty of a misdemeanor.

Added Stats 1980 ch 1284 § 16. Amended Stats 1981 ch 968 § 22; Stats 1997 ch 949 § 14 (SB 95).

§11131. PROHIBITION AGAINST USE OF CERTAIN FACILITIES

No state agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of ancestry or any characteristic listed or defined in Section 11135, or that is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. As used in this section, "state agency" means and includes every state body, office, officer, department, division, bureau, board, council, commission, or other state agency.

Added Stats 1970 ch 383 § 1. Amended Stats 1981 ch 968 § 23; Stats 1997 ch 949 § 15 (SB 95); Stats 2007 ch 568 § 32 (AB 14).

§11131.5. IDENTIFICATION OF CRIME VICTIM

No notice, agenda, announcement, or report required under this article need identify any victim or alleged victim of crime, tortious sexual conduct, or child abuse unless the identity of the person has been publicly disclosed.

Added Stats 1997 ch 949 § 16 (SB 95).

§11132. PROHIBITION AGAINST CLOSED SESSIONS EXCEPT AS EXPRESSLY AUTHORIZED

Except as expressly authorized by this article, no closed session may be held by any state body.

Added Stats 1987 ch 1320 § 4.

PART 2.8 DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

CHAPTER 6 DISCRIMINATION PROHIBITED

ARTICLE 1 UNLAWFUL PRACTICES, GENERALLY

§12944. DISCRIMINATION BY "LICENSING BOARD"

(a) It shall be unlawful for a licensing board to require any examination or establish any other qualification for licensing that has an adverse impact on any class by virtue of its race, creed, color, national origin or ancestry, sex, age, medical condition, physical disability, mental disability, or sexual orientation, unless the practice can be demonstrated to be job related. Where the commission, after hearing, determines that an examination is unlawful under this subdivision, the licensing board may continue to use and rely on the examination until such time as judicial review by the superior court of the determination is exhausted. If an examination or other qualification for licensing is determined to be unlawful under this section, that determination shall not void, limit, repeal, or otherwise affect any right, privilege, status, or responsibility previously conferred upon any person by the examination or by a license issued in reliance on the examination or qualification.

(b) It shall be unlawful for a licensing board to fail or refuse to make reasonable accommodation to an individual's mental or physical disability or medical condition.

(c) It shall be unlawful for any licensing board, unless specifically acting in accordance with federal equal employment opportunity guidelines or regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, sex, age, or sexual orientation or any intent to make any such limitation, specification, or discrimination. Nothing in this subdivision shall prohibit any licensing board from making, in connection with prospective licensure or certification, an inquiry as to, or a request for information regarding, the physical fitness of applicants if that inquiry or request for information is directly related and pertinent to the license or the licensed position the applicant is applying for. Nothing in this subdivision shall prohibit any licensing board, in connection with prospective examinations, licensure, or certification, from inviting individuals with physical or mental disabilities to request reasonable accommodations or from making inquiries related to reasonable accommodations.

(d) It is unlawful for a licensing board to discriminate against any person because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(e) It is unlawful for any licensing board to fail to keep records of applications for licensing or certification for a
period of two years following the date of receipt of the applications.

(f) As used in this section, "licensing board" means any state board, agency, or authority in the State and Consumer Services Agency that has the authority to grant licenses or certificates which are prerequisites to employment eligibility or professional status.

Added Stats 1980 ch 992 § 4. Amended Stats 1992 ch 912 § 6 (AB 1286), ch 913 § 24 (AB 1077). Amended Stats 1999 ch 592 § 8 (AB 1001).

TITLE 3 GOVERNMENT OF COUNTIES

DIVISION 2 OFFICERS - PART 3 OTHER OFFICERS

CHAPTER 1 DISTRICT ATTORNEY

ARTICLE 1 DUTIES AS PUBLIC PROSECUTOR

§26509. CONSUMER FRAUD INVESTIGATIONS; ACCESS BY DISTRICT ATTORNEY TO RECORDS OF OTHER AGENCIES

(a) Notwithstanding any other provision of law, including any provision making records confidential, and including Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code, the district attorney shall be given access to, and may make copies of, any complaint against a person subject to regulation by a consumer-oriented state agency and any investigation of the person made by the agency, where that person is being investigated by the district attorney regarding possible consumer fraud.

(b) Where the district attorney does not take action with respect to the complaint or investigation, the material shall remain confidential.

(c) Where the release of the material would jeopardize an investigation or other duties of a consumer-oriented state agency, the agency shall have discretion to delay the release of the information.

(d) As used in this section, a consumer-oriented state agency is any state agency that regulates the licensure, certification, or qualification of persons to practice a profession or business within the state, where the regulation is for the protection of consumers who deal with the professionals or businesses. It includes, but is not limited to, all of the following:

(1) The Dental Board of California.
(2) The Medical Board of California.
(3) The State Board of Optometry.
(4) The California State Board of Pharmacy.
(5) The Veterinary Medical Board.
(6) The California Board of Accountancy.
(7) The California Architects Board.
(8) The State Board of Barbering and Cosmetology.
(9) The Board for Professional Engineers and Land Surveyors.
(10) The Contractors' State License Board.
(11) The Funeral Directors and Embalmers Program.
(12) The Structural Pest Control Board.
(13) The Bureau of Home Furnishings and Thermal Insulation.
(14) The Board of Registered Nursing.
(15) The State Board of Chiropractic Examiners.
(16) The Board of Behavioral Science Examiners.
(17) The State Athletic Commission.
(18) The Cemetery Program.
(19) The State Board of Guide Dogs for the Blind.
(20) The Bureau of Security and Investigative Services.
(21) The Court Reporters Board of California.
(22) The Board of Vocational Nursing and Psychiatric Technicians of the State of California.
(23) The Osteopathic Medical Board of California.
(24) The Division of Investigation. (25) The Bureau of Automotive Repair.
(26) The State Board for Geologists and Geophysicists.
(27) The Department of Alcoholic Beverage Control.
(28) The Department of Insurance.
(29) The Public Utilities Commission.
(30) The State Department of Health Services.
(31) The New Motor Vehicle Board.

Added Stats 1979 ch 559 § 1, as Gov C § 26508. Amended and renumbered by Stats 1980 ch 676 § 113. Amended Stats 1988 ch 1448 § 30; Stats 1989 ch 886 § 84. Supplemented by Governor's Reorganization Plan No. 1 of 1991 § 87, effective July 17, 1991. Amended Stats 1991 ch 359 § 35 (AB 1332); Stats 1994 ch 26 § 233 (AB 1807), effective March 30, 1994, ch 1275 § 55 (SB 2101); Stats 1995 ch 60 § 46 (SB 42), effective July 6, 1995; Stats 1998 ch 59 § 14 (AB 969); Stats 2000 ch 1055 § 35 (AB 2889), effective September 30, 2000. Amended Stats 2003 ch 325 § 8 (SB 1079).

HEALTH AND SAFETY CODE

DIVISION 2 LICENSING PROVISIONS

CHAPTER 2.2 HEALTH CARE SERVICE PLANS

ARTICLE 5 STANDARDS

§1367. REQUIREMENTS FOR HEALTH CARE SERVICE PLANS

A health care service plan and, if applicable, a specialized health care service plan shall meet the following requirements:

(a) Facilities located in this state including, but not limited to, clinics, hospitals, and skilled nursing facilities to be utilized by the plan shall be licensed by the State Department of Health Services, where licensure is required by law. Facilities not located in this state shall conform to all licensing and other requirements of the jurisdiction in which they are located.

(b) Personnel employed by or under contract to the plan shall be licensed or certified by their respective board or agency, where licensure or certification is required by law.

(c) Equipment required to be licensed or registered by law shall be so licensed or registered, and the operating personnel for that equipment shall be licensed or certified as required by law.

(d) The plan shall furnish services in a manner providing continuity of care and ready referral of patients to other providers at times as may be appropriate consistent with good professional practice.

(e) (1) All services shall be readily available at reasonable times to each enrollee consistent with good professional practice. To the extent feasible, the plan shall make all services readily accessible to all enrollees consistent with Section 1367.03.

(2) To the extent that telemedicine services are appropriately provided through telemedicine, as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code, these services shall be considered in determining compliance with Section 1300.67.2 of Title 28 of the California Code of Regulations.

(3) The plan shall make all services accessible and appropriate consistent with Section 1367.04.

(f) The plan shall employ and utilize allied health manpower for the furnishing of services to the extent permitted by law and consistent with good medical practice.

(g) The plan shall have the organizational and administrative capacity to provide services to subscribers and enrollees. The plan shall be able to demonstrate to the department that medical decisions are rendered by qualified medical providers, unhindered by fiscal and administrative management.

(h) (1) Contracts with subscribers and enrollees, including group contracts, and contracts with providers, and other persons furnishing services, equipment, or facilities to or in connection with the plan, shall be fair, reasonable, and consistent with the objectives of this chapter. All contracts with providers shall contain provisions requiring a fast, fair, and cost-effective dispute resolution mechanism under which providers may submit disputes to the plan, and requiring the plan to inform its providers upon contracting with the plan, or upon change to these provisions, of the procedures for processing and resolving disputes, including the location and telephone number where information regarding disputes may be submitted.

(2) A health care service plan shall ensure that a dispute resolution mechanism is accessible to noncontracting providers for the purpose of resolving billing and claims disputes.

(3) On and after January 1, 2002, a health care service plan shall annually submit a report to the department regarding its dispute resolution mechanism. The report shall include information on the number of providers who utilized the dispute resolution mechanism and a summary of the disposition of those disputes.

(i) A health care service plan contract shall provide to subscribers and enrollees all of the basic health care services included in subdivision (b) of Section 1345, except that the director may, for good cause, by rule or order exempt a plan contract or any class of plan contracts from that requirement. The director shall by rule define the scope of each basic health care service that health care service plans are required to provide as a minimum for licensure under this chapter. Nothing in this chapter shall prohibit a health care service plan from charging subscribers or enrollees a copayment or a deductible for a basic health care service or from setting forth, by contract, limitations on maximum coverage of basic health care services,

provided that the copayments, deductibles, or limitations are reported to, and held unobjectionable by, the director and set forth to the subscriber or enrollee pursuant to the disclosure provisions of Section 1363.

(j) A health care service plan shall not require registration under the Controlled Substances Act of 1970 (21 U.S.C. Sec. 801 et seq.) as a condition for participation by an optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 of the Business and Professions Code.

Nothing in this section shall be construed to permit the director to establish the rates charged subscribers and enrollees for contractual health care services.

The director's enforcement of Article 3.1 (commencing with Section 1357) shall not be deemed to establish the rates charged subscribers and enrollees for contractual health care services.

The obligation of the plan to comply with this section shall not be waived when the plan delegates any services that it is required to perform to its medical groups, independent practice associations, or other contracting entities.

Added Stats 1978 ch 285 § 4, effective June 23, 1978, operative July 1, 1978. Amended Stats 1992 ch 1128 § 7 (AB 1672), operative July 1, 1993; Stats 1995 ch 774 § 1 (AB 1840), ch 788 § 1 (SB 454); Stats 1996 ch 864 § 5 (SB 1665); Stats 1997 ch 17 § 60 (SB 947), ch 120 § 1 (SB 497) (ch 120 prevails); Stats 1999 ch 525 § 94 (AB 78), operative July 1, 2000; Stats 2000 ch 825 § 2 (SB 1177), ch 827 § 2 (AB 1455). Amended Stats 2002 ch 797 § 3 (AB 2179); Stats 2003 ch 713 § 1 (SB 853).

ARTICLE 9 MISCELLANEOUS

§1395. ADVERTISING; CONTRACTS WITH LICENSED PROFESSIONALS; OFFICES; MISREPRESENTATIONS BY PLAN; COMPLIANCE BY PLAN

(a) Notwithstanding Article 6 (commencing with Section 650) of Chapter 1 of Division 2 of the Business and Professions Code, any health care service plan or specialized health care service plan may, except as limited by this subdivision, solicit or advertise with regard to the cost of subscription or enrollment, facilities and services rendered, provided, however, Article 5 (commencing with Section 600) of Chapter 1 of Division 2 of the Business and Professions Code remains in effect. Any price advertisement shall be exact, without the use of such phrases as "as low as," "and up," "lowest prices" or words or phrases of similar import. Any advertisement that refers to services, or costs for the services, and that uses words of comparison must be based on verifiable data substantiating the comparison. Any health care service plan or specialized health care service plan so advertising shall be prepared to provide information sufficient to establish the accuracy of the comparison. Price advertising shall not be fraudulent, deceitful, or misleading, nor contain any offers of discounts, premiums, gifts, or bait of similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(b) Plans licensed under this chapter shall not be deemed to be engaged in the practice of a profession, and may employ, or contract with, any professional licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code to deliver professional services. Employment by or a contract with a plan as a provider of professional services shall not constitute a ground for disciplinary action against a health professional licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code by a licensing agency regulating a particular health care profession.

(c) A health care service plan licensed under this chapter may directly own, and may directly operate through its professional employees or contracted licensed professionals, offices and subsidiary corporations, including pharmacies that satisfy the requirements of subdivision (d) of Section 4080.5 of the Business and Professions Code, as are necessary to provide health care services to the plan's subscribers and enrollees.

(d) A professional licensed pursuant to the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code who is employed by, or under contract to, a plan may not own or control offices or branch offices beyond those expressly permitted by the provisions of the Business and Professions Code.

(e) Nothing in this chapter shall be construed to repeal, abolish, or diminish the effect of Section 129450 of the Health and Safety Code.

(f) Except as specifically provided in this chapter, nothing in this chapter shall be construed to limit the effect of the laws governing professional corporations, as they appear in applicable provisions of the Business and Professions Code, upon specialized health care service plans.

(g) No representative of a participating health, dental, or vision plan or its subcontractor representative shall in any manner use false or misleading claims to

misrepresent itself, the plan, the subcontractor, or the Healthy Families or Medi-Cal program while engaging in application assistance activities that are subject to this section. Notwithstanding any other provision of this chapter, any representative of the health, dental, or vision care plan or of the health, dental, or vision care plan's subcontractor who violates any of the provisions of Section 12693.325 of the Insurance Code shall only be subject to a fine of five hundred dollars ($500) for each of those violations.

(h) A health care service plan shall comply with Section 12693.325 of the Insurance Code and Section 14409 of the Welfare and Institutions Code. In addition to any other disciplinary powers provided by this chapter, if a health care service plan violates any of the provisions of Section 12693.325 of the Insurance Code, the department may prohibit the health care service plan from providing application assistance and contacting applicants pursuant to Section 12693.325 of the Insurance Code.

Added Stats 1975 ch 941 § 2, operative July 1, 1976. Amended Stats 1980 ch 1167 § 1; Stats 1981 ch 798 § 2; Stats 1996 ch 1023 § 162 (SB 1497), effective September 29, 1996; Stats 2000 ch 93 § 9 (AB 2877), effective July 7, 2000; Stats 2001 ch 171 § 2 (AB 430), effective August 10, 2001.

§1396. MISSTATEMENTS OR OMISSIONS IN DOCUMENTS FILED

It is unlawful for any person willfully to make any untrue statement of material fact in any application, notice, amendment, report, or other submission filed with the director under this chapter or the regulations adopted thereunder, or willfully to omit to state in any application, notice, or report any material fact which is required to be stated therein.

Added Stats 1989 ch 845 § 5. Amended Stats 1999 ch 525 § 151 (AB 78), operative July 1, 2000.

§1397. HEARINGS; JUDICIAL REVIEW

(a) Whenever reference is made in this chapter to a hearing before or by the director, the hearing shall be held in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the director shall have all of the powers granted under that act.

(b) Every final order, decision, license, or other official act of the director under this chapter is subject to judicial review in accordance with the law.

Added Stats 1975 ch 941 § 2, operative July 1, 1976. Amended Stats 1985 ch 106 § 80; Stats 1991 ch 1091 § 70 (AB 1487); Stats 1999 ch 525 § 152 (AB 78), operative July 1, 2000.

§1397.5. SUMMARY OF COMPLAINTS AGAINST PLANS

(a) The director shall make and file annually with the Department of Managed Health Care as a public record, an aggregate summary of grievances against plans filed with the director by enrollees or subscribers. This summary shall include at least all of the following information: (1) The total number of grievances filed. (2) The types of grievances.

(b) The summary set forth in subdivision (a) shall include the following disclaimer: THIS INFORMATION IS PROVIDED FOR STATISTICAL PURPOSES ONLY. THE DIRECTOR OF THE DEPARTMENT OF MANAGED CARE HAS NEITHER INVESTIGATED NOR DETERMINED WHETHER THE GRIEVANCES COMPILED WITHIN THIS SUMMARY ARE REASONABLE OR VALID.

(c) Nothing in this section shall require or authorize the disclosure of grievances filed with or received by the director and made confidential pursuant to any other provision of law including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). Nothing in this section shall affect any other provision of law including, but not limited to, the California Public Records Act and the Information Practices Act of 1977.

Added Stats 1994 ch 614 § 8 (SB 1832). Amended Stats 1999 ch 525 § 153 (AB 78), operative July 1, 2000; Stats 2000 ch 857 § 46 (AB 2903).

§1397.6. CONTRACTS WITH MEDICAL CONSULTANTS

The director may contract with necessary medical consultants to assist with the health care program. These contracts shall be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

Added Stats 1995 ch 788 § 3 (SB 454). Amended Stats 1999 ch 525 § 154 (AB 78), operative July 1, 2000.

§1398.5. REFERENCES TO PRIOR LAW

All references to the Knox-Mills Health Plan Act (Article 2.5 (commencing with Section 12530) of Chapter 6 of Part 2 of Division 3 of the Government Code), which was repealed by Chapter 941 of the Statutes of 1975, shall be deemed to be references to the Knox-Keene Health Care Service Plan Act of 1975.

Added Stats 1976 ch 490 § 1.

§1399. SURRENDER OF LICENSE; SUMMARY SUSPENSION OR REVOCATION OF LICENSE

(a) Surrender of a license as a health plan becomes effective 30 days after receipt of an application to surrender the license or within a shorter period of time as the director may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the surrender is instituted within 30 days after the application is filed. If this proceeding is pending or instituted, surrender becomes effective at the time and upon the conditions as the director by order determines.

(b) If the director finds that any plan is no longer in existence, or has ceased to do business or has failed to initiate business activity as a licensee within six months after licensure, or cannot be located after reasonable search, the director may by order summarily revoke the license of the plan.

(c) The director may summarily suspend or revoke the license of a plan upon (1) failure to pay any fee required by this chapter within 15 days after notice by the director that the fee is due and unpaid, (2) failure to file any amendment or report required under this chapter within 15 days after notice by the director that the report is due, (3) failure to maintain any bond or insurance pursuant to Section 1376, (4) failure to maintain a deposit, insurance, or guaranty arrangement pursuant to Section 1377, or (5) failure to maintain a deposit pursuant to Section 1300.76.1 of Title 28 of the California Code of Regulations.

Added Stats 1975 ch 941 § 2, operative July 1, 1976. Amended Stats 1977 ch 818 § 19, effective September 16, 1977; Stats 1982 ch 99 § 2, effective March 6, 1982; Stats 1989 ch 845 § 6; Stats 1993 ch 735 § 4 (AB 2079); Stats 1999 ch 525 § 156 (AB 78), operative July 1, 2000. Stats 2009 ch 298 §9 (AB 1540).

§1399.1. ADMINISTRATIVE ACTIONS APPLICABLE TO TRANSITIONALLY LICENSED PLANS

(a) All orders and other actions taken by the Commissioner of Corporations pursuant to the authority contained in subdivision (c) of Section 1350 on or before September 30, 1977, and all administrative or judicial decisions or orders relating to the same and all conditions imposed upon the same remain in effect against a plan holding a transitional license.

(b) The Knox-Mills Health Plan Act as in effect prior to its repeal continues to govern all suits, actions, prosecutions or proceedings which are pending or which may be initiated under subdivision (c) of Section 1350 on the basis of facts or circumstances occurring on or before September 30, 1977.

Added Stats 1977 ch 818 § 19, effective September 16, 1977. Amended Stats 1999 ch 525 § 157 (AB 78), operative July 1, 2000.

§1399.5. LEGISLATIVE INTENT; APPLICATION OF CHAPTER

It is the intent of the Legislature that the provisions of this chapter shall be applicable to any private or public entity or political subdivision which, in return for a prepaid or periodic charge paid by or on behalf of a subscriber or enrollee, provides, administers or otherwise arranges for the provision of health care services, as defined in this chapter, unless such entity is exempted from the provisions of this chapter by, or pursuant to, Section 1343.

Added Stats 1975 ch 941 § 2, operative July 1, 1976. Amended Stats 1980 ch 628 § 4.

DIVISION 10 UNIFORM CONTROLLED SUBSTANCES ACT

CHAPTER 1 GENERAL PROVISIONS AND DEFINITIONS

§11024. "PHYSICIAN," "DENTIST," "PODIATRIST," "PHARMACIST," "VETERINARIAN," AND "OPTOMETRIST"

"Physician," "dentist," "podiatrist," "pharmacist," "veterinarian," and "optometrist" means persons who are licensed to practice their respective professions in this state.

Added Stats 1972 ch 1407 § 3. Amended Stats 2000 ch 676 § 6 (SB 929).

§11026. "PRACTITIONER"

"Practitioner" means any of the following:

(a) A physician, dentist, veterinarian, podiatrist, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, a registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, a certified nurse-midwife acting within the scope of Section 2746.51 of the Business and Professions Code, a nurse practitioner acting within the scope of Section 2836.1 of the Business and Professions Code, or a physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or Section 3502.1 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code.

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer, a controlled substance in the course of professional practice or research in this state.

(c) A scientific investigator, or other person licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in this state.

Added Stats 1972 ch 1407 § 3. Amended Stats 1976 ch 896 § 1; Stats 1977 ch 843 § 16; Stats 1986 ch 1042 § 1, effective September 23, 1986; Stats 1996 ch 1023 § 196 (SB 1497), effective September 29, 1996; Stats 1999 ch 749 § 7 (SB 816). Amended Stats 2000 ch 676 § 7 (SB 929); Stats 2001 ch 289 § 10 (SB 298).

CHAPTER 4 PRESCRIPTIONS

ARTICLE 1 REQUIREMENTS OF PRESCRIPTIONS

§11150. PERSONS PERMITTED TO WRITE PRESCRIPTION

No person other than a physician, dentist, podiatrist, or veterinarian, or naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or within the scope of either Section 4052.1 or 4052.2 of the Business and Professions Code, a registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, a certified nurse-midwife acting within the scope of Section 2746.51 of the Business and Professions Code, a nurse practitioner acting within the scope of Section 2836.1 of the Business and Professions Code, a physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or Section 3502.1 of the Business and Professions Code, a naturopathic doctor acting within the scope of Section 3640.5 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code, or an out-of-state prescriber acting pursuant to Section 4005 of the Business and Professions Code shall write or issue a prescription.

Added Stats 1972 ch 1407 § 3. Amended Stats 1977 ch 843 § 18; Stats 1981 ch 113 § 9; Stats 1996 ch 1023 § 198 (SB 1497), effective September 29, 1996; Stats 1997 ch 549 § 142 (SB 1349); Stats 1999 ch 749 § 8 (SB 816). Amended Stats 2000 ch 676 § 8 (SB 929); Stats 2001 ch 289 § 11 (SB 298); Stats 2004 ch 191 § 6 (AB 2660); Stats 2005 ch 506 § 26 (AB 302), effective October 4, 2005. Stats 2009 ch 308 § 93 (SB 819).

§11161.5. SECURITY PRINTERS FOR CONTROLLED SUBSTANCE PRESCRIPTION FORMS; APPLICATION AND APPROVAL; SECURITY CHECKS; GROUNDS FOR DENIAL; LIST OF APPROVED SECURITY PRINTERS; DUTIES OF SECURITY PRINTER; RECORDS; REVOCATION OF APPROVAL

(a) Prescription forms for controlled substance prescriptions shall be obtained from security printers approved by the Department of Justice.

(b) The department may approve security printer applications after the applicant has provided the following information:

(1) Name, address, and telephone number of the applicant.

(2) Policies and procedures of the applicant for verifying the identity of the prescriber ordering controlled substance prescription forms.

(3) Policies and procedures of the applicant for verifying delivery of controlled substance prescription forms to prescribers.

(4) (A) The location, names, and titles of the applicant's agent for service of process in this state; all principal corporate officers, if any; and all managing general partners, if any.

(B) A report containing this information shall be made on an annual basis and within 30 days after any change of office, principal corporate officers, or managing general partner.

(5) (A) A signed statement indicating whether the applicant, principal corporate officers, or managing general partners have ever been convicted of, or pled no contest to, a violation of any law of a foreign country, the United States, or any state, or of any local ordinance.

(B) The department shall provide the applicant with the means and direction to provide fingerprints and related information, in a manner specified by the department, for the purpose of completing state, federal, or foreign criminal background checks.

(C) Any applicant described in subdivision (b) shall submit his or her fingerprint images and related information to the department, for the purpose of the department obtaining information as to the existence and nature of a record of state, federal, or foreign level convictions and state, federal, or foreign level arrests for which the department establishes that the applicant was released on bail or on his or her own recognizance pending trial, as described in subdivision (l) of Section 11105 of the Penal Code. Requests for federal level criminal offender record information received by the department pursuant to this section shall be forwarded to the Federal Bureau of Investigation by the department.

(D) The department shall assess against each applicant a fee determined by the department to be sufficient to cover all processing, maintenance, and investigative costs generated from or associated with completing state, federal, or foreign background checks pursuant to this section with respect to that applicant; the fee shall be paid by the applicant at the time he or she submits fingerprints and related information to the department.

(E) The department shall retain fingerprint impressions and related information for subsequent arrest notification pursuant to Section 11105.2 of the Penal Code for all applicants.

(c) The department may, within 60 calendar days of receipt of the application from the applicant, deny the security printer application.

(d) The department may deny a security printer application on any of the following grounds:

(1) The applicant, any individual owner, partner, corporate officer, manager, agent, representative, employee, or subcontractor for the applicant, who has direct access, management, or control of controlled substance prescription forms, has been convicted of a crime. A conviction within the meaning of this paragraph means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) The applicant committed any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself, herself, or another, or substantially injure another.

(3) The applicant committed any act that would constitute a violation of this division.

(4) The applicant knowingly made a false statement of fact required to be revealed in the application to produce controlled substance prescription forms.

(5) The department determines that the applicant failed to demonstrate adequate security procedures relating to the production and distribution of controlled substance prescription forms.

(6) The department determines that the applicant has submitted an incomplete application.

(7) As a condition for its approval as a security printer, an applicant shall authorize the Department of Justice to make any examination of the books and records of the applicant, or to visit and inspect the applicant during business hours, to the extent deemed

necessary by the board or department to properly enforce this section.

(e) An approved applicant shall submit an exemplar of a controlled substance prescription form, with all security features, to the Department of Justice within 30 days of initial production.

(f) The department shall maintain a list of approved security printers and the department shall make this information available to prescribers and other appropriate government agencies, including the Board of Pharmacy.

(g) Before printing any controlled substance prescription forms, a security printer shall verify with the appropriate licensing board that the prescriber possesses a license and current prescribing privileges which permits the prescribing of controlled substances.

(h) Controlled substance prescription forms shall be provided directly to the prescriber either in person, by certified mail, or by a means that requires a signature signifying receipt of the package and provision of that signature to the security printer.

(i) Security printers shall retain ordering and delivery records in a readily retrievable manner for individual prescribers for three years.

(j) Security printers shall produce ordering and delivery records upon request by an authorized officer of the law as defined in Section 4017 of the Business and Professions Code.

(k) (1) The department may revoke its approval of a security printer for a violation of this division or action that would permit a denial pursuant to subdivision (d) of this section.

(2) When the department revokes its approval, it shall notify the appropriate licensing boards and remove the security printer from the list of approved security printers.

Added Stats 2003 ch 406 § 6 (SB 151). Amended Stats 2005 ch 487 § 3 (SB 734).

§11161.7. INFORMATION ON RESTRICTIONS OF PRESCRIBER'S AUTHORITY TO BE PROVIDED TO PHARMACIES, SECURITY PRINTERS, DEPARTMENT OF JUSTICE, AND BOARD OF PHARMACY

(a) When a prescriber's authority to prescribe controlled substances is restricted by civil, criminal, or administrative action, or by an order of the court issued pursuant to Section 11161, the law enforcement agency or licensing board that sought the restrictions shall provide the name, category of licensure, license number, and the nature of the restrictions imposed on the prescriber to security printers, the Department of Justice, and the Board of Pharmacy.

(b) The Board of Pharmacy shall make available the information required by subdivision (a) to pharmacies and security printers to prevent the dispensing of controlled substance prescriptions issued by the prescriber and the ordering of additional controlled substance prescription forms by the restricted prescriber.

Added Stats 2003 ch 406 § 7 (SB 151).

§11162.1. FEATURES OF PRINTED PRESCRIPTION FORMS; REQUIREMENTS FOR BATCHES AND WHEN ORDERING FORMS

(a) The prescription forms for controlled substances shall be printed with the following features:

(1) A latent, repetitive "void" pattern shall be printed across the entire front of the prescription blank; if a prescription is scanned or photocopied, the word "void" shall appear in a pattern across the entire front of the prescription.

(2) A watermark shall be printed on the backside of the prescription blank; the watermark shall consist of the words "California Security Prescription."

(3) A chemical void protection that prevents alteration by chemical washing.

(4) A feature printed in thermochromic ink.

(5) An area of opaque writing so that the writing disappears if the prescription is lightened.

(6) A description of the security features included on each prescription form.

(7) (A) Six quantity check off boxes shall be printed on the form and the following quantities shall appear:

1-24
25-49
50-74
75-100
101-150
151 and over.

(B) In conjunction with the quantity boxes, a space shall be provided to designate the units referenced in the quantity boxes when the drug is not in tablet or capsule form.

(8) Prescription blanks shall contain a statement printed on the bottom of the prescription blank that the "Prescription is void if the number of drugs prescribed is not noted."

(9) The preprinted name, category of licensure, license number, federal controlled substance registration number of the prescribing practitioner.

(10) Check boxes shall be printed on the form so that the prescriber may indicate the number of refills ordered.

(11) The date of origin of the prescription.

(12) A check box indicating the prescriber's order not to substitute.

(13) An identifying number assigned to the approved security printer by the Department of Justice.

(14) (A) A check box by the name of each prescriber when a prescription form lists multiple prescribers.

(B) Each prescriber who signs the prescription form shall identify himself or herself as the prescriber by checking the box by his or her name.

(b) Each batch of controlled substance prescription forms shall have a lot number printed on the form and each form within that batch shall be numbered sequentially beginning with the numeral one.

(c) (1) A prescriber designated by a licensed health care facility, a clinic specified in Section 1200, or a clinic specified in subdivision (a) of Section 1206 that has 25 or more physicians or surgeons may order controlled substance prescription forms for use by prescribers when treating patients in that facility without the information required in paragraph (9) of subdivision (a) or paragraph (3) of this subdivision.

(2) Forms ordered pursuant to this subdivision shall have the name, category of licensure, license number, and federal controlled substance registration number of the designated prescriber and the name, address, category of licensure, and license number of the licensed health care facility the clinic specified in Section 1200, or the clinic specified in subdivision (a) of Section 1206 that has 25 or more physicians or surgeons preprinted on the form.

(3) Forms ordered pursuant to this section shall not be valid prescriptions without the name, category of licensure, license number, and federal controlled substance registration number of the prescriber on the form.

(4) (A) Except as provided in subparagraph (B), the designated prescriber shall maintain a record of the prescribers to whom the controlled substance prescription forms are issued, that shall include the name, category of licensure, license number, federal controlled substance registration number, and quantity of controlled substance prescription forms issued to each prescriber. The record shall be maintained in the health facility for three years.

(B) Forms ordered pursuant to this subdivision that are printed by a computerized prescription generation system shall not be subject to subparagraph (A) or paragraph (7) of subdivision (a). Forms printed pursuant to this subdivision that are printed by a computerized prescription generation system may contain the prescriber's name, category of professional licensure, license number, federal controlled substance registration number, and the date of the prescription.

(d) This section shall become operative on July 1, 2004.

Added Stats 2003 ch 406 § 9 (SB 151), operative July 1, 2004. Amended Stats 2004 ch 573 § 3 (AB 30), effective September 18, 2004, operative July 1, 2004. Amended Stats 2005 ch 487 § 4 (SB 734); Stats 2006 ch 538 § 368 (SB 1852), ch 286 § 1 (AB 2986); Stats 2007 ch 130 § 161 (AB 299).

§11162.6. CONTROLLED SUBSTANCE PRESCRIPTION FORMS; PENALTY FOR COUNTERFEITING, OBTAINING UNDER FALSE PRETENSES, FRAUDULENT PRODUCTION, ETC.

(a) Every person who counterfeits a controlled substance prescription form shall be guilty of a misdemeanor punishable by imprisonment in a county jail for not more than one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(b) Every person who knowingly possesses a counterfeited controlled substance prescription form shall be guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) Every person who attempts to obtain or obtains a controlled substance prescription form under false pretenses shall be guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) Every person who fraudulently produces controlled substance prescription forms shall be guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(e) This section shall become operative on July 1, 2004.

Added Stats 2003 ch 406 § 10 (SB 151), operative July 1, 2004.

§11164. REQUIREMENTS FOR PRESCRIPTIONS; ORAL OR ELECTRONIC PRESCRIPTION; WRITTEN RECORDS

Except as provided in Section 11167, no person shall prescribe a controlled substance, nor shall any person fill, compound, or dispense a prescription for a controlled substance, unless it complies with the requirements of this section.

(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V, except as authorized by subdivision (b), shall be made on a controlled substance prescription form as specified in Section 11162.1 and shall meet the following requirements:

(1) The prescription shall be signed and dated by the prescriber in ink and shall contain the prescriber's address and telephone number; the name of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services; refill information, such as the number of refills ordered and whether the prescription is a first-time request or a refill; and the name, quantity, strength, and directions for use of the controlled substance prescribed.

(2) The prescription shall also contain the address of the person for whom the controlled substance is prescribed. If the prescriber does not specify this address on the prescription, the pharmacist filling the prescription or an employee acting under the direction of the pharmacist shall write or type the address on the prescription or maintain this information in a readily retrievable form in the pharmacy.

(b) (1) Notwithstanding paragraph (1) of subdivision (a) of Section 11162.1, any controlled substance classified in Schedule III, IV, or V may be dispensed upon an oral or electronically transmitted prescription, which shall be produced in hard copy form and signed and dated by the pharmacist filling the prescription or by any other person expressly authorized by provisions of the Business and Professions Code. Any person who transmits, maintains, or receives any electronically transmitted prescription shall ensure the security, integrity, authority, and confidentiality of the prescription.

(2) The date of issue of the prescription and all the information required for a written prescription by subdivision (a) shall be included in the written record of the prescription; the pharmacist need not include the address, telephone number, license classification, or federal registry number of the prescriber or the address of the patient on the hard copy, if that information is readily retrievable in the pharmacy.

(3) Pursuant to an authorization of the prescriber, any agent of the prescriber on behalf of the prescriber may orally or electronically transmit a prescription for a controlled substance classified in Schedule III, IV, or V, if in these cases the written record of the prescription required by this subdivision specifies the name of the agent of the prescriber transmitting the prescription.

(c) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(d) Notwithstanding any provision of subdivisions (a) and (b), prescriptions for a controlled substance classified in Schedule V may be for more than one person in the same family with the same medical need.

(e) This section shall become operative on January 1, 2005.

Added Stats 2003 ch 406 § 13 (SB 151), operative January 1, 2005. Amended Stats 2005 ch 487 § 5 (SB 734); Stats 2006 ch 286 § 2 (AB 2986).

§11164.1. WHEN PRESCRIPTION FOR CONTROLLED SUBSTANCE ISSUED BY PRESCRIBER IN ANOTHER STATE FOR DELIVERY TO PATIENT IN ANOTHER STATE MAY BE DISPENSED BY CALIFORNIA PHARMACY; REPORT TO DEPARTMENT OF JUSTICE; PRESCRIPTIONS FOR SCHEDULE III, IV OR V CONTROLLED SUBSTANCES FROM OUT-OF-STATE PRESCRIBERS

(a) (1) Notwithstanding any other provision of law, a prescription for a controlled substance issued by a prescriber in another state for delivery to a patient in another state may be dispensed by a California pharmacy, if the prescription conforms with the requirements for controlled substance prescriptions in the state in which the controlled substance was prescribed.

(2) All prescriptions for Schedule II and Schedule III controlled substances dispensed pursuant to this subdivision shall be reported by the dispensing pharmacy to the Department of Justice in the manner prescribed by subdivision (d) of Section 11165.

(b) Pharmacies may dispense prescriptions for Schedule III, Schedule IV, and Schedule V controlled substances from out-of-state prescribers pursuant to Section 4005 of the Business and Professions Code and Section 1717 of Title 16 of the California Code of Regulations.

(c) This section shall become operative on January 1, 2005.

Added Stats 2003 ch 406 § 15 (SB 151), operative January 1, 2005.

§11166. WHEN FILING PRESCRIPTION FOR CONTROLLED SUBSTANCE IS PROHIBITED

No person shall fill a prescription for a controlled substance after six months has elapsed from the date written on the prescription by the prescriber. No person shall knowingly fill a mutilated or forged or altered prescription for a controlled substance except for the addition of the address of the person for whom the controlled substance is prescribed as provided by paragraph (3) of subdivision (b) of Section 11164.

Added Stats 1976 ch 896 § 13. Amended Stats 1985 ch 630 § 1; Stats 1998 ch 878 § 58 (SB 2239). Amended Stats 2003 ch 406 § 19 (SB 151).

§11167. EMERGENCY ORDER FOR CONTROLLED SUBSTANCES; REQUIREMENTS

Notwithstanding subdivision (a) of Section 11164, in an emergency where failure to issue a prescription may result in loss of life or intense suffering, an order for a controlled substance may be dispensed on an oral order, an electronic data transmission order, or a

written order not made on a controlled substance form as specified in Section 11162.1, subject to all of the following requirements:

(a) The order contains all information required by subdivision (a) of Section 11164.

(b) Any written order is signed and dated by the prescriber in ink, and the pharmacy reduces any oral or electronic data transmission order to hard copy form prior to dispensing the controlled substance.

(c) The prescriber provides a written prescription on a controlled substance prescription form that meets the requirements of Section 11162.1, by the seventh day following the transmission of the initial order; a postmark by the seventh day following transmission of the initial order shall constitute compliance.

(d) If the prescriber fails to comply with subdivision (c), the pharmacy shall so notify the Bureau of Narcotic Enforcement in writing within 144 hours of the prescriber's failure to do so and shall make and retain a hard copy, readily retrievable record of the prescription, including the date and method of notification of the Bureau of Narcotic Enforcement.

(e) This section shall become operative on January 1, 2005.

Added Stats 2003 ch 406 § 22 (SB 151), operative January 1, 2005.

CHAPTER 5 USE OF CONTROLLED SUBSTANCES

ARTICLE 1 LAWFUL MEDICAL USE OTHER THAN TREATMENT OF ADDICTS

§11210. PERMITTED PRESCRIBING, FURNISHING, OR ADMINISTERING CONTROLLED SUBSTANCES BY PRACTITIONERS

A physician, surgeon, dentist, veterinarian, naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or podiatrist, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or naturopathic doctor acting within the scope of Section 3640.5 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code may prescribe for, furnish to, or administer controlled substances to his or her patient when the patient is suffering from a disease, ailment, injury, or infirmities attendant upon old age, other than addiction to a controlled substance.

The physician, surgeon, dentist, veterinarian, naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or podiatrist, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or naturopathic doctor acting within the scope of Section 3640.5 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code shall prescribe, furnish, or administer controlled substances only when in good faith he or she believes the disease, ailment, injury, or infirmity requires the treatment.

The physician, surgeon, dentist, veterinarian, or naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or podiatrist, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or a naturopathic doctor acting within the scope of Section 3640.5 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code shall prescribe, furnish, or administer controlled substances only in the quantity and for the length of time as are reasonably necessary.

Added Stats 1972 ch 1407 § 3. Amended Stats 1977 ch 843 § 20; Stats 1996 ch 1023 § 199 (SB 1497), effective September 29, 1996. Amended Stats 2000 ch 676 § 9 (SB 929); Stats 2005 ch 506 § 28 (AB 302), effective October 4, 2005.

DIVISION 106 PERSONAL HEALTH CARE (INCLUDING MATERNAL, CHILD, AND ADOLESCENT)

PART 1 GENERAL ADMINISTRATION

CHAPTER 1 PATIENT ACCESS TO HEALTH RECORDS

§123100. LEGISLATIVE FINDINGS AND DECLARATIONS

The Legislature finds and declares that every person having ultimate responsibility for decisions respecting his or her own health care also possesses a concomitant right of access to complete information respecting his or her condition and care provided. Similarly, persons having responsibility for decisions respecting the health care of others should, in general, have access to information on the patient's condition and care. It is, therefore, the intent of the Legislature in enacting this chapter to establish procedures for providing access to health care records or summaries of those records by patients and by those persons having responsibility for decisions respecting the health care of others.

Added Stats 1995 ch 415 § 8 (SB 1360).

§123105. DEFINITIONS

As used in this chapter:

(a) “Health care provider” means any of the following:

(1) A health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(2) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

(3) A home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2.

(4) A physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or pursuant to the Osteopathic Act.

(5) A podiatrist licensed pursuant to Article 22 (commencing with Section 2460) of Chapter 5 of Division 2 of the Business and Professions Code.

(6) A dentist licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code.

(7) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(8) An optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code.

(9) A chiropractor licensed pursuant to the Chiropractic Initiative Act.

(10) A marriage and family therapist licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(11) A clinical social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code.

(12) A physical therapist licensed pursuant to Chapter 5.7 (commencing with Section 2600) of Division 2 of the Business and Professions Code.

(13) An occupational therapist licensed pursuant to Chapter 5.6 (commencing with Section 2570).

(b) “Mental health records” means patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. “Mental health records” includes, but is not limited to, all alcohol and drug abuse records.

(c) “Patient” means a patient or former patient of a health care provider.

(d) “Patient records” means records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. “Patient records” includes only records pertaining to the patient requesting the records or whose representative requests the records. “Patient records” does not include information given in confidence to a health care provider by a person other than another health care provider or the patient, and that material may be removed from any records prior to inspection or copying under Section 123110 or 123115. “Patient records” does not include information contained in aggregate form, such as indices, registers, or logs.

(e) “Patient's representative” or “representative” means any of the following:

(1) A parent or guardian of a minor who is a patient.

(2) The guardian or conservator of the person of an adult patient.

(3) An agent as defined in Section 4607 of the Probate Code, to the extent necessary for the agent to fulfill his or her duties as set forth in Division 4.7 (commencing with Section 4600) of the Probate Code.

(4) The beneficiary as defined in Section 24 of the Probate Code or personal representative as defined in Section 58 of the Probate Code, of a deceased patient.

(f) “Alcohol and drug abuse records” means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

Added Stats 1995 ch 415 § 8 (SB 1360). Amended Stats 2002 ch 1013 § 89 (SB 2026), ch 1150 § 49 (SB 1955); Stats 2006 ch 249 § 1 (SB 1307). Stats 2009 ch 307 § 105 (SB 821).

§123110. INSPECTION OF RECORDS; COPYING OF RECORDS; VIOLATIONS; CONSTRUCTION OF SECTION

(a) Notwithstanding Section 5328 of the Welfare and Institutions Code, and except as provided in Sections 123115 and 123120, any adult patient of a health care provider, any minor patient authorized by law to consent to medical treatment, and any patient representative shall be entitled to inspect patient records upon presenting to the health care provider a written request for those records and upon payment of reasonable clerical costs incurred in locating and making the records available. However, a patient who is a minor shall be entitled to inspect patient records pertaining only to health care of a type for which the minor is lawfully authorized to consent. A health care provider shall permit this inspection during business hours within five working days after receipt of the written request. The inspection shall be conducted by the patient or patient's representative requesting the inspection, who may be accompanied by one other person of his or her choosing.

(b) Additionally, any patient or patient's representative shall be entitled to copies of all or any portion of the patient records that he or she has a right to inspect, upon presenting a written request to the health care provider specifying the records to be copied, together with a fee to defray the cost of copying, that shall not exceed twenty-five cents ($0.25) per page or fifty cents ($0.50) per page for records that are copied from microfilm and any additional reasonable clerical costs incurred in making the records available. The health care provider shall ensure that the copies are transmitted within 15 days after receiving the written request.

(c) Copies of X-rays or tracings derived from electrocardiography, electroencephalography, or electromyography need not be provided to the patient or patient's representative under this section, if the original X-rays or tracings are transmitted to another health care provider upon written request of the patient or patient's representative and within 15 days after receipt of the request. The request shall specify the name and address of the health care provider to whom the records are to be delivered. All reasonable costs, not exceeding actual costs, incurred by a health care provider in providing copies pursuant to this subdivision may be charged to the patient or representative requesting the copies.

(d) (1) Notwithstanding any provision of this section, and except as provided in Sections 123115 and 123120, any patient or former patient or the patient's representative shall be entitled to a copy, at no charge, of the relevant portion of the patient's records, upon presenting to the provider a written request, and proof that the records are needed to support an appeal regarding eligibility for a public benefit program. These programs shall be the Medi-Cal program, social security disability insurance benefits, and Supplemental Security Income/State Supplementary Program for the Aged, Blind and Disabled (SSI/SSP) benefits. For purposes of this subdivision, "relevant portion of the patient's records" means those records regarding services rendered to the patient during the time period beginning with the date of the patient's initial application for public benefits up to and including the date that a final determination is made by the public benefits program with which the patient's application is pending.

(2) Although a patient shall not be limited to a single request, the patient or patient's representative shall be entitled to no more than one copy of any relevant portion of his or her record free of charge.

(3) This subdivision shall not apply to any patient who is represented by a private attorney who is paying for the costs related to the patient's appeal, pending the outcome of that appeal. For purposes of this subdivision, "private attorney" means any attorney not employed by a nonprofit legal services entity.

(e) If the patient's appeal regarding eligibility for a public benefit program specified in subdivision (d) is successful, the hospital or other health care provider may bill the patient, at the rates specified in subdivisions (b) and (c), for the copies of the medical records previously provided free of charge.

(f) If a patient or his or her representative requests a record pursuant to subdivision (d), the health care provider shall ensure that the copies are transmitted within 30 days after receiving the written request.

(g) This section shall not be construed to preclude a health care provider from requiring reasonable verification of identity prior to permitting inspection or copying of patient records, provided this requirement is not used oppressively or discriminatorily to frustrate or delay compliance with this section. Nothing in this chapter shall be deemed to supersede any rights that

a patient or representative might otherwise have or exercise under Section 1158 of the Evidence Code or any other provision of law. Nothing in this chapter shall require a health care provider to retain records longer than required by applicable statutes or administrative regulations.

(h) This chapter shall not be construed to render a health care provider liable for the quality of his or her records or the copies provided in excess of existing law and regulations with respect to the quality of medical records. A health care provider shall not be liable to the patient or any other person for any consequences that result from disclosure of patient records as required by this chapter. A health care provider shall not discriminate against classes or categories of providers in the transmittal of X-rays or other patient records, or copies of these X-rays or records, to other providers as authorized by this section. Every health care provider shall adopt policies and establish procedures for the uniform transmittal of X-rays and other patient records that effectively prevent the discrimination described in this subdivision. A health care provider may establish reasonable conditions, including a reasonable deposit fee, to ensure the return of original X-rays transmitted to another health care provider, provided the conditions do not discriminate on the basis of, or in a manner related to, the license of the provider to which the X-rays are transmitted.

(i) Any health care provider described in paragraphs (4) to (10), inclusive, of subdivision (a) of Section 123105 who willfully violates this chapter is guilty of unprofessional conduct. Any health care provider described in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 123105 that willfully violates this chapter is guilty of an infraction punishable by a fine of not more than one hundred dollars ($100). The state agency, board, or commission that issued the health care provider's professional or institutional license shall consider a violation as grounds for disciplinary action with respect to the licensure, including suspension or revocation of the license or certificate.

(j) This section shall be construed as prohibiting a health care provider from withholding patient records or summaries of patient records because of an unpaid bill for health care services. Any health care provider who willfully withholds patient records or summaries of patient records because of an unpaid bill for health care services shall be subject to the sanctions specified in subdivision (i).

Added Stats 1995 ch 415 § 8 (SB 1360). Amended Stats 2001 ch 325 § 1 (AB 1311).

§123120. ACTION TO ENFORCE RIGHT TO INSPECT OR COPY

Any patient or representative aggrieved by a violation of Section 123110 may, in addition to any other remedy provided by law, bring an action against the health care provider to enforce the obligations prescribed by Section 123110. Any judgment rendered in the action may, in the discretion of the court, include an award of costs and reasonable attorney fees to the prevailing party.

Added Stats 1995 ch 415 § 8 (SB 1360).

§123125. EXCEPTION OF ALCOHOL, DRUG ABUSE AND COMMUNICABLE DISEASE CARRIER RECORDS

(a) This chapter shall not require a health care provider to permit inspection or provide copies of alcohol and drug abuse records where, or in a manner, prohibited by Section 408 of the federal Drug Abuse Office and Treatment Act of 1972 (Public Law 92-255) or Section 333 of the federal Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (Public Law 91-616), or by regulations adopted pursuant to these federal laws. Alcohol and drug abuse records subject to these federal laws shall also be subject to this chapter, to the extent that these federal laws do not prohibit disclosure of the records. All other alcohol and drug abuse records shall be fully subject to this chapter.

(b) This chapter shall not require a health care provider to permit inspection or provide copies of records or portions of records where or in a manner prohibited by existing law respecting the confidentiality of information regarding communicable disease carriers.

Added Stats 1995 ch 415 § 8 (SB 1360).

§123130. PREPARATION OF SUMMARY OF RECORD; CONFERENCE WITH PATIENT

(a) A health care provider may prepare a summary of the record, according to the requirements of this section, for inspection and copying by a patient. If the health care provider chooses to prepare a summary of the record rather than allowing access to the entire record, he or she shall make the summary of the record available to the patient within 10 working days from the date of the patient's request. However, if more time is needed because the record is of extraordinary length or because the patient was discharged from a licensed health facility within the last 10 days, the health care provider shall notify the patient of this fact and the date that the summary will be completed, but in no case shall more than 30 days elapse between the request by the patient and the delivery of the summary. In preparing the summary of the record the health care provider shall not be obligated to include information that is not contained in the original record.

(b) A health care provider may confer with the patient in an attempt to clarify the patient's purpose and goal in

obtaining his or her record. If as a consequence the patient requests information about only certain injuries, illnesses, or episodes, this subdivision shall not require the provider to prepare the summary required by this subdivision for other than the injuries, illnesses, or episodes so requested by the patient. The summary shall contain for each injury, illness, or episode any information included in the record relative to the following:

(1) Chief complaint or complaints including pertinent history.

(2) Findings from consultations and referrals to other health care providers.

(3) Diagnosis, where determined.

(4) Treatment plan and regimen including medications prescribed.

(5) Progress of the treatment.

(6) Prognosis including significant continuing problems or conditions.

(7) Pertinent reports of diagnostic procedures and tests and all discharge summaries.

(8) Objective findings from the most recent physical examination, such as blood pressure, weight, and actual values from routine laboratory tests.

(c) This section shall not be construed to require any medical records to be written or maintained in any manner not otherwise required by law.

(d) The summary shall contain a list of all current medications prescribed, including dosage, and any sensitivities or allergies to medications recorded by the provider.

(e) Subdivision (c) of Section 123110 shall be applicable whether or not the health care provider elects to prepare a summary of the record.

(f) The health care provider may charge no more than a reasonable fee based on actual time and cost for the preparation of the summary. The cost shall be based on a computation of the actual time spent preparing the summary for availability to the patient or the patient' s representative. It is the intent of the Legislature that summaries of the records be made available at the lowest possible cost to the patient.

Added Stats 1995 ch 415 § 8 (SB 1360).

§123135. CONSTRUCTION OF CHAPTER

Except as otherwise provided by law, nothing in this chapter shall be construed to grant greater access to individual patient records by any person, firm, association, organization, partnership, business trust, company, corporation, or municipal or other public corporation, or government officer or agency. Therefore, this chapter does not do any of the following:

(a) Relieve employers of the requirements of the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code).

(b) Relieve any person subject to the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code) from the requirements of that act.

(c) Relieve government agencies of the requirements of the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code).

Added Stats 1995 ch 415 § 8 (SB 1360).

§123140. COMPLETION OF SCREENING PROGRAM; ENVIRONMENTAL ABATEMENT

The Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) shall prevail over this chapter with respect to records maintained by a state agency.

Added Stats 1995 ch 415 § 8 (SB 1360).

§123145. PRESERVATION OF RECORDS AFTER LICENSEE CEASES OPERATION; ACTION FOR ABANDONMENT OF RECORDS

(a) Providers of health services that are licensed pursuant to Sections 1205, 1253, 1575 and 1726 have an obligation, if the licensee ceases operation, to preserve records for a minimum of seven years following discharge of the patient, except that the records of unemancipated minors shall be kept at least one year after the minor has reached the age of 18 years, and in any case, not less than seven years.

(b) The department or any person injured as a result of the licensee's abandonment of health records may bring an action in a proper court for the amount of damage suffered as a result thereof. In the event that the licensee is a corporation or partnership that is dissolved, the person injured may take action against that corporation's or partnership's principle officers of record at the time of dissolution.

(c) Abandoned means violating subdivision (a) and leaving patients treated by the licensee without access to medical information to which they are entitled pursuant to Section 123110.

Added Stats 1995 ch 415 § 8 (SB 1360).

§123148. REPORT TO PATIENT OF RESULTS OF CLINICAL LABORATORY TEST

(a) Notwithstanding any other provision of law, a health care professional at whose request a test is performed shall provide or arrange for the provision of the results of a clinical laboratory test to the patient who is the subject of the test if so requested by the

patient, in oral or written form. The results shall be conveyed in plain language and in oral or written form, except the results may be conveyed in electronic form if requested by the patient and if deemed most appropriate by the health care professional who requested the test.

(b) (1) Consent of the patient to receive his or her laboratory results by Internet posting or other electronic means shall be obtained in a manner consistent with the requirements of Section 56.10 or 56.11 of the Civil Code. In the event that a health care professional arranges for the provision of test results by Internet posting or other electronic manner, the results shall be delivered to a patient in a reasonable time period, but only after the results have been reviewed by the health care professional. Access to clinical laboratory test results shall be restricted by the use of a secure personal identification number when the results are delivered to a patient by Internet posting or other electronic manner.

(2) Nothing in paragraph (1) shall prohibit direct communication by Internet posting or the use of other electronic means to convey clinical laboratory test results by a treating health care professional who ordered the test for his or her patient or by a health care professional acting on behalf of, or with the authorization of, the treating health care professional who ordered the test.

(c) When a patient requests to receive his or her laboratory test results by Internet posting, the health care professional shall advise the patient of any charges that may be assessed directly to the patient or insurer for the service and that the patient may call the health care professional for a more detailed explanation of the laboratory test results when delivered.

(d) The electronic provision of test results under this section shall be in accordance with any applicable federal law governing privacy and security of electronic personal health records. However, any state statute, if enacted, that governs privacy and security of electronic personal health records, shall apply to test results under this section and shall prevail over federal law if federal law permits.

(e) The test results to be reported to the patient pursuant to this section shall be recorded in the patient's medical record, and shall be reported to the patient within a reasonable time period after the test results are received at the offices of the health care professional who requested the test.

(f) Notwithstanding subdivisions (a) and (b), none of the following clinical laboratory test results and any other related results shall be conveyed to a patient by Internet posting or other electronic means:

(1) HIV antibody test.

(2) Presence of antigens indicating a hepatitis infection.

(3) Abusing the use of drugs.

(4) Test results related to routinely processed tissues, including skin biopsies, Pap smear tests, products of conception, and bone marrow aspirations for morphological evaluation, if they reveal a malignancy.

(g) Patient identifiable test results and health information that have been provided under this section shall not be used for any commercial purpose without the consent of the patient, obtained in a manner consistent with the requirements of Section 56.11 of the Civil Code.

(h) Any third party to whom laboratory test results are disclosed pursuant to this section shall be deemed a provider of administrative services, as that term is used in paragraph (3) of subdivision (c) of Section 56.10 of the Civil Code, and shall be subject to all limitations and penalties applicable to that section.

(i) A patient may not be required to pay any cost, or be charged any fee, for electing to receive his or her laboratory results in any manner other than by Internet posting or other electronic form.

(j) A patient or his or her physician may revoke any consent provided under this section at any time and without penalty, except to the extent that action has been taken in reliance on that consent.

Added Stats 1995 ch 415 § 8 (SB 1360). Amended Stats 2001 ch 529 § 1 (AB 1490); Stats 2002 ch 128 § 1 (AB 2831).

PENAL CODE

PART 4 PREVENTION OF CRIMES AND APPREHENSION OF CRIMINALS

TITLE 1 INVESTIGATION AND CONTROL OF CRIMES AND CRIMINALS

CHAPTER 2 CONTROL OF CRIMES AND CRIMINALS

ARTICLE 2.5 CHILD ABUSE AND NEGLECT REPORTING ACT

§11164. CITATION OF ARTICLE; INTENT

(a) This article shall be known and may be cited as the Child Abuse and Neglect Reporting Act.

(b) The intent and purpose of this article is to protect children from abuse and neglect. In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim.

Added Stats 1987 ch 1444 § 1.5. Amended Stats 2000 ch 916 § 1 (AB 1241).

§11165.1. “SEXUAL ABUSE”; “SEXUAL ASSAULT”; “SEXUAL EXPLOITATION”

As used in this article, "sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(a) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), 288a (oral copulation), 289 (sexual penetration), or 647.6 (child molestation).

(b) Conduct described as "sexual assault" includes, but is not limited to, all of the following:

(1) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose.

(4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

(5) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(c) "Sexual exploitation" refers to any of the following:

(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(2) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(3) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law

enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

Added Stats 1987 ch 1459 § 5. Amended Stats 1997 ch 83 § 1 (AB 327); Stats 2000 ch 287 § 21 (SB 1955).

§11165.3. "WILLFUL HARMING OR INJURING OF A CHILD OR THE ENDANGERING OF THE PERSON OR HEALTH OF A CHILD"

As used in this article, "the willful harming or injuring of a child or the endangering of the person or health of a child," means a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered.

Added Stats 1987 ch 1459 § 9. Amended Stats 2004 ch 842 § 1 (SB 1313).

§11165.6. "CHILD ABUSE OR NEGLECT"

As used in this article, the term "child abuse or neglect" includes physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4. "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

Added Stats 2000 ch 916 § 4 (AB 1241). Amended Stats 2001 ch 133 § 2 (AB 102), effective July 31, 2001; Stats 2004 ch 842 § 4 (SB 1313); Stats 2007 ch 393 § 2 (AB 673).

§11165.7. "MANDATED REPORTER"; TRAINING

(a) As used in this article, "mandated reporter" is defined as any of the following:

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by any public or private school.

(4) A classified employee of any public school.

(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.

(6) An administrator of a public or private day camp.

(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.

(9) Any employee of a county office of education or the State Department of Education, whose duties bring the employee into contact with children on a regular basis.

(10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.

(11) A Head Start program teacher.

(12) A licensing worker or licensing evaluator employed by a licensing agency as defined in Section 11165.11.

(13) A public assistance worker.

(14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.

(15) A social worker, probation officer, or parole officer.

(16) An employee of a school district police or security department.

(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(18) A district attorney investigator, inspector, or local child support agency caseworker unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.

(20) A firefighter, except for volunteer firefighters.

(21) A physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage, family, and child therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner, or any other person who performs autopsies.

(29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, "child visitation monitor" means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:

(A) "Animal control officer" means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) "Humane society officer" means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (d) of Section 11166. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any custodian of records of a clergy member, as specified in this section and subdivision (d) of Section 11166.

(34) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the California Rules of Court.

(36) A custodial officer as defined in Section 831.5.

(37) Any person providing services to a minor child under Section 12300 or 12300.1 of the Welfare and Institutions Code.

(38) An alcohol and drug counselor. As used in this article, an "alcohol and drug counselor" is a person providing counseling, therapy, or other clinical services for a state licensed or certified drug, alcohol, or drug and alcohol treatment program. However, alcohol or drug abuse, or both alcohol and drug abuse, is not in and of itself a sufficient basis for reporting child abuse or neglect.

(b) Except as provided in paragraph (35) of subdivision (a), volunteers of public or private organizations whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect to an agency specified in Section 11165.9.

(c) Employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5.

(d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(e) Unless otherwise specifically provided, the absence of training shall not excuse a mandated reporter from the duties imposed by this article.

(f) Public and private organizations are encouraged to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect.

Added Stats 1987 ch 1459 § 14. Amended Stats 1991 ch 132 § 1 (AB 1133). Amended Stats 1992 ch 459 § 1 (SB 1695); Stats 2000 ch 916 § 5 (AB 1241); Stats 2001 ch 133 § 3 (AB 102), effective July 31, 2001, ch 754 § 4 (AB 1697); Stats 2002 ch 927 § 10.7 (AB 3032), ch 936 § 1 (AB 299), effective September 27, 2002; Stats 2003 ch 122 § 1 (SB 316); Stats 2004 ch 762 § 1 (AB 2531), ch 842 § 5.5 (SB 1313); Stats 2006 ch 901 § 9.5 (SB 1422); Stats 2008 ch 456 § 1 (AB 2337).

§11165.9. REPORTS TO AUTHORITIES

Reports of suspected child abuse or neglect shall be made by mandated reporters, or in the case of reports pursuant to Section 11166.05, may be made, to any police department or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive mandated reports, or the county welfare department. Any of those agencies shall accept a report of suspected

child abuse or neglect whether offered by a mandated reporter or another person, or referred by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction. Agencies that are required to receive reports of suspected child abuse or neglect may not refuse to accept a report of suspected child abuse or neglect from a mandated reporter or another person unless otherwise authorized pursuant to this section, and shall maintain a record of all reports received.

Added Stats 2000 ch 916 § 8 (AB 1241). Amended Stats 2001 ch 133 § 4 (AB 102), effective July 31, 2001. Amended Stats 2005 ch 713 § 2 (AB 776); Stats 2006 ch 701 § 2 (AB 525).

§11166. DUTY TO REPORT

(a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send, fax, or electronically transmit a written followup report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For purposes of this article, “reasonable suspicion” means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. “Reasonable suspicion” does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any “reasonable suspicion” is sufficient. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent, faxed, or electronically transmitted even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) Any report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) If after reasonable efforts a mandated reporter is unable to submit an initial report by telephone, he or she shall immediately or as soon as is practicably possible, by fax or electronic transmission, make a one-time automated written report on the form prescribed by the Department of Justice, and shall also be available to respond to a telephone followup call by the agency with which he or she filed the report. A mandated reporter who files a one-time automated written report because he or she was unable to submit an initial report by telephone is not required to submit a written followup report.

(1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written followup report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.

(2) This subdivision shall not become operative until the CWS/CMS is updated to capture the information prescribed in this subdivision.

(3) This subdivision shall become inoperative three years after this subdivision becomes operative or on January 1, 2009, whichever occurs first.

(4) On the inoperative date of these provisions, a report shall be submitted to the counties and the Legislature by the Department of Social Services that reflects the data collected from automated one-time reports indicating the reasons stated as to why the automated one-time report was filed in lieu of the initial telephone report.

(5) Nothing in this section shall supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

(c) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that

imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(d)(1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, “penitential communication” means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3)(A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(e) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practicably possible, by telephone and shall prepare and send, fax, or electronically transmit a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, “sexual conduct” means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(f) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).

(g) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9. For purposes of this section, “any other person” includes a mandated reporter who acts in his or her private capacity and not in his or her professional capacity or within the scope of his or her employment.

(h) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(i)(1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(j) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(k) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

Added Stats 1980 ch 1071 § 4. Amended Stats 1981 ch 435 § 2, effective September 12, 1981; Stats 1982 ch 905 § 2; Stats 1984 ch 1423 § 9, effective September 26, 1984; Stats 1986 ch 1289 § 2; Stats 1987 ch 1459 § 20; Stats 1988 ch 269 § 1, ch 1580 § 2; Stats 1990 ch 1603 § 3 (SB 2669), operative July 1, 1991. Amended Stats 1992 ch 459 § 3 (SB 1695); Stats 1993 ch 510 § 1.5 (SB 665); Stats 1996 ch 1080 § 10 (AB 295), ch 1081 § 3.5 (AB 3354); Stats 2000 ch 916 § 16 (AB 1241); Stats 2001 ch 133 § 5 (AB 102), effective July 31, 2001; Stats 2002 ch 936 § 2 (AB 299), effective September 27, 2002; Stats 2004 ch 823 § 17 (AB 20), ch 842 § 7.5 (SB 1313); Stats 2005 ch 42 § 1 (AB 299), ch 713 § 3 (AB 776); Stats 2006 ch 701 § 3 (AB 525); Stats 2007 ch 393 § 3 (AB 673). Stats 2010 ch 123 § 1 (AB 2380).

§11166.01. PUNISHMENT FOR VIOLATION OF §11166; FAILURE TO REPORT RESULTING IN DEATH OR GREAT BODILY INJURY

(a) Except as provided in subdivision (b), any supervisor or administrator who violates paragraph (1) of subdivision (i) of Section 11166 shall be punished by not more than six months in a county jail, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) Notwithstanding Section 11162 or subdivision (c) of Section 11166, any mandated reporter who willfully fails to report abuse or neglect, or any person who impedes or inhibits a report of abuse or neglect, in violation of this article, where that abuse or neglect results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment.

Added Stats 2002 ch 858 § 1 (AB 2672). Amended Stats 2004 ch 842 § 8 (SB 1313). Amended Stats 2005 ch 163 § 1 (AB 1188); Stats 2006 ch 901 §10 (SB 1422).

§11167. REQUIRED INFORMATION; CONFIDENTIALITY OF REPORTER'S IDENTITY; ADVISING INDIVIDUAL OF COMPLAINT OR ALLEGATIONS

(a) Reports of suspected child abuse or neglect pursuant to Section 11166 or Section 11166.05 shall include the name, business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; and the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information. If a report is made, the following information, if known, shall also be included in the report: the child's name, the child's address, present location, and, if applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; and the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to him or her.

(b) Information relevant to the incident of child abuse or neglect and information relevant to a report made pursuant to Section 11166.05 may be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect.

(c) Information relevant to the incident of child abuse or neglect, including the investigation report and other pertinent materials, and information relevant to a report made pursuant to Section 11166.05 may be given to the licensing agency when it is investigating a known or suspected case of child abuse or neglect.

(d)(1) The identity of all persons who report under this article shall be confidential and disclosed only among agencies receiving or investigating mandated reports, to the prosecutor in a criminal prosecution or in an action initiated under Section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code, or to the county counsel or prosecutor in a proceeding under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 300 of the Welfare and Institutions Code, or to a licensing agency when abuse or neglect in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order.

(2) No agency or person listed in this subdivision shall disclose the identity of any person who reports under this article to that person's employer, except with the employee's consent or by court order.

(e) Notwithstanding the confidentiality requirements of this section, a representative of a child protective services agency performing an investigation that results from a report of suspected child abuse or neglect made pursuant to Section 11166 or Section 11166.05, at the time of the initial contact with the individual who is subject to the investigation, shall advise the individual of the complaints or allegations against him or her, in a manner that is consistent with laws protecting the identity of the reporter under this article.

(f) Persons who may report pursuant to subdivision (g) of Section 11166 are not required to include their names.

Added Stats 1980 ch 1071 § 4. Amended Stats 1981 ch 435 § 3, effective September 12, 1981; Stats 1982 ch 162 § 2, effective April 26, 1982; Stats 1984 ch 144 § 164; Stats 1985 ch 1598 § 6; Stats 1986 ch 1289 § 3; Stats 1987 ch 531 § 6. Amended Stats 1992 ch 163 § 112 (AB 2641), operative January 1, 1994 (ch 316 prevails), ch 316 § 2 (AB 3491); Stats 1993 ch 219 § 221 (AB 1500); Stats 1997 ch 324 § 8 (SB 871); Stats 2000 ch 916 § 24 (AB 1241); Stats 2001 ch 133 § 13 (AB 102), effective July 31, 2001; Stats 2004 ch 292 § 1 (AB 2749), ch 842 § 15.5 (SB 1313). Amended Stats 2005 ch 279 § 17 (SB 1107); Stats 2006 ch 901 § 10.5 (SB 1422); Stats 2006 ch 701 §4 (AB 525). Stats 2010 ch 95 § 1 (AB 2339).

§11167.5. CONFIDENTIALITY AND DISCLOSURE OF REPORTS

(a) The reports required by Sections 11166 and 11166.2, or authorized by Section 11166.05, and child abuse or neglect investigative reports that result in a summary report being filed with the Department of Justice pursuant to subdivision (a) of Section 11169 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine of five hundred dollars ($500), or by both that imprisonment and fine.

(b) Reports of suspected child abuse or neglect and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 11167.

(2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of Section 11170 or subdivision (a) of Section 11170.5.

(3) Persons or agencies with whom investigations of child abuse or neglect are coordinated under the regulations promulgated under Section 11174.

(4) Multidisciplinary personnel teams as defined in subdivision (d) of Section 18951 of the Welfare and Institutions Code.

(5) Persons or agencies responsible for the licensing of facilities which care for children, as specified in Section 11165.7.

(6) The State Department of Social Services or any county licensing agency which has contracted with the state, as specified in paragraph (4) of subdivision (b) of Section 11170, when an individual has applied for a community care license or child day care license, or for employment in an out-of-home care facility, or when a complaint alleges child abuse or neglect by an operator or employee of an out-of-home care facility.

(7) Hospital scan teams. As used in this paragraph, "hospital scan team" means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of which are engaged in the identification of child abuse or neglect. The disclosure authorized by this section includes disclosure among all hospital scan teams.

(8) Coroners and medical examiners when conducting a post mortem examination of a child.

(9) The Board of Parole Hearings, which may subpoena an employee of a county welfare department who can provide relevant evidence and reports that both (A) are not unfounded, pursuant to Section 11165.12, and (B) concern only the current incidents upon which parole revocation proceedings are pending against a parolee charged with child abuse or neglect. The reports and information shall be confidential pursuant to subdivision (d) of Section 11167.

(10) Personnel from an agency responsible for making a placement of a child pursuant to Section 361.3 of, and Article 7 (commencing with Section 305)

of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code.

(11) Persons who have been identified by the Department of Justice as listed in the Child Abuse Central Index pursuant to paragraph (7) of subdivision (b) of Section 11170 or subdivision (c) of Section 11170, or persons who have verified with the Department of Justice that they are listed in the Child Abuse Central Index as provided in subdivision (f) of Section 11170. Disclosure under this paragraph is required notwithstanding the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. Nothing in this paragraph shall preclude a submitting agency prior to disclosure from redacting any information necessary to maintain confidentiality as required by law.

(12) Out-of-state law enforcement agencies conducting an investigation of child abuse or neglect only when an agency makes the request for reports of suspected child abuse or neglect in writing and on official letterhead, or as designated by the Department of Justice, identifying the suspected abuser or victim by name and date of birth or approximate age. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written request shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports is to be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the safeguards in place to prevent unlawful disclosure provided by the requesting state or the applicable interstate compact provision.

(13) Out-of-state agencies responsible for approving prospective foster or adoptive parents for placement of a child only when the agency makes the request in compliance with the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248). The request shall also cite the safeguards in place to prevent unlawful disclosure provided by the requesting state or the applicable interstate compact provision and indicate that the requesting state shall maintain continual compliance with the requirement in paragraph (20) of subdivision (a) of Section 671 of Title 42 of the United States Code that requires the state have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the state and prevent the information from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases.

(14) Each chairperson of a county child death review team, or his or her designee, to whom disclosure of information is permitted under this article, relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victim, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(c) Authorized persons within county health departments shall be permitted to receive copies of any reports made by health practitioners, as defined in paragraphs (21) to (28), inclusive, of subdivision (a) of Section 11165.7, and pursuant to Section 11165.13, and copies of assessments completed pursuant to Sections 123600 and 123605 of the Health and Safety Code, to the extent permitted by federal law. Any information received pursuant to this subdivision is protected by subdivision (e).

(d) Nothing in this section requires the Department of Justice to disclose information contained in records maintained under Section 11170 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.

(e) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse or neglect if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse or neglect.

Added Stats 1983 ch 1082 § 1. Amended Stats 1985 ch 1593 § 4, effective October 2, 1985, ch 1598 § 7.5; Stats 1987 ch 167 § 1, ch 1459 § 22; Stats 1988 ch 1580 § 5; Stats 1989 ch 153 § 1, ch 1169 § 2. Amended Stats 1995 ch 391 § 1 (AB 1440); Stats 1997 ch 24 § 1 (AB 1536), ch 842 § 4 (SB 644), ch 844 § 1.5 (AB 1065); Stats 1998 ch 485 § 135 (AB 2803); Stats 2000 ch 916 § 25 (AB 1241); Stats 2002 ch 187 § 2 (SB 1745); Stats 2004 ch 842 § 16 (SB 1313). Stats 2006 ch 701 § 5 (AB 525); Stats 2007 ch 583 § 18 (SB 703); Stats 2008 ch 699 § 17 (SB 1241); Stats 2008 ch 701 § 9 (AB 2651), effective September 30, 2008.

§11172. LIABILITY OF PERSON MAKING REPORT; REIMBURSEMENT BY STATE OF ATTORNEY FEES INCURRED IN DEFENDING ACTION

(a) No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article, and this immunity shall apply even if the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect outside of his or her professional capacity or outside the scope of his or her employment.

Any other person reporting a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for

taking photographs of a suspected victim of child abuse or neglect, or causing photographs to be taken of a suspected victim of child abuse or neglect, without parental consent, or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any person, who, pursuant to a request from a government agency investigating a report of suspected child abuse or neglect, provides the requesting agency with access to the victim of a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of providing that access.

(c) (1) The Legislature finds that even though it has provided immunity from liability to persons required or authorized to make reports pursuant to this article, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required or authorized reports. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a mandated reporter may present a claim to the California Victim Compensation and Government Claims Board for reasonable attorney's fees and costs incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The California Victim Compensation and Government Claims Board shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

(2) This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(d) A court may award attorney's fees and costs to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds this suit to be frivolous.

Added Stats 1980 ch 1071 § 4. Amended Stats 1981 ch 135 § 1, effective July 1, 1981, ch 435 § 6, effective September 12, 1981; Stats 1984 ch 1170 § 2, ch 1703 § 2, ch 1718 § 3; Stats 1985 ch 1598 § 9; Stats 1986 ch 553 § 1; Stats 1987 ch 1459 § 23. Amended Stats 1992 ch 459 § 5 (SB 1695); Stats 1993 ch 510 § 3 (SB 665); Stats 1996 ch 1081 § 6 (AB 3354); Stats 2000 ch 916 § 31 (AB 1241); Stats 2001 ch 133 § 16 (AB 102), effective July 31, 2001; Stats 2004 ch 842 § 21 (SB 1313); Stats 2006 ch 538 § 525 (SB 1852).

CODE OF FEDERAL REGULATIONS

TITLE 16. COMMERCIAL PRACTICES

CHAPTER 1 FEDERAL TRADE COMMISSION

SUBCHAPTER C.

REGULATIONS UNDER SPECIFIC ACTS OF CONGRESS

PART 315. CONTACT LENS RULE

16 CFR § 315.1. SCOPE OF REGULATIONS IN THIS PART

This part, which shall be called the “Contact Lens Rule,” implements the Fairness to Contact Lens Consumers Act, codified at 15 U.S.C. 7601-7610, which requires that rules be issued to address the release, verification, and sale of contact lens prescriptions. This part specifically governs contact lens prescriptions and related issues. Part 456 of Title 16 governs the availability of eyeglass prescriptions and related issues (the Ophthalmic Practice Rules (Eyeglass Rule)).

SOURCE: 69 FR 40508, July 2, 2004, unless otherwise noted.
AUTHORITY: Pub.L. 108-164, secs. 1-12; 117 Stat. 2024 (15 U.S.C. 7601-7610).

16 CFR § 315.2. DEFINITIONS

For purposes of this part, the following definitions shall apply:

Business hour means an hour between 9 a.m. and 5 p.m., during a weekday (Monday through Friday), excluding Federal holidays. “Business hour” also may include, at the seller's option, a prescriber's regular business hours on Saturdays, provided that the seller has actual knowledge of these hours. “Business hour” shall be determined based on the time zone of the prescriber.

“Eight (8) business hours” shall be calculated from the time the prescriber receives the prescription verification information from the seller, and shall conclude when eight (8) business hours have elapsed. For verification requests received by a prescriber during non-business hours, the calculation of “eight (8) business hours” shall begin at 9 a.m. on the next weekday that is not a Federal holiday or, if applicable, on Saturday at the beginning of the prescriber's actual business hours.

Commission means the Federal Trade Commission.

Contact lens means any contact lens for which State or Federal law requires a prescription.

Contact lens fitting means the process that begins after an initial eye examination for contact lenses and ends when a successful fit has been achieved or, in the case of a renewal prescription, ends when the prescriber determines that no change in the existing prescription is required, and such term may include:

(1) An examination to determine lens specifications;

(2) Except in the case of a renewal of a contact lens prescription, an initial evaluation of the fit of the contact lens on the eye; and

(3) Medically necessary follow-up examinations.

Contact lens prescription means a prescription, issued in accordance with State and Federal law, that contains sufficient information for the complete and accurate filling of a prescription for contact lenses, including the following:

(1) The name of the patient;
(2) The date of examination;
(3) The issue date and expiration date of prescription;
(4) The name, postal address, telephone number, and facsimile telephone number of prescriber;
(5) The power, material or manufacturer or both of the prescribed contact lens;
(6) The base curve or appropriate designation of the prescribed contact lens;
(7) The diameter, when appropriate, of the prescribed contact lens; and
(8) In the case of a private label contact lens, the name of the manufacturer, trade name of the private label brand, and, if applicable, trade name of equivalent brand name.

Direct communication means completed communication by telephone, facsimile, or electronic mail.

Issue date means the date on which the patient receives a copy of the prescription at the completion of a contact lens fitting.

Ophthalmic goods are contact lenses, eyeglasses, or any component of eyeglasses.

Ophthalmic services are the measuring, fitting, and adjusting of ophthalmic goods subsequent to an eye examination.

Prescriber means, with respect to contact lens prescriptions, an ophthalmologist, optometrist, or other person permitted under State law to issue prescriptions for contact lenses in compliance with any applicable requirements established by the Food and Drug Administration. “Other person,” for purposes of this definition, includes a dispensing optician who is permitted under State law to issue prescriptions and who is authorized or permitted under State law to perform contact lens fitting services.

Private label contact lenses mean contact lenses that are sold under the label of a seller where the contact lenses are identical to lenses made by the same manufacturer but sold under the labels of other sellers.

SOURCE: 69 FR 40508, July 2, 2004, unless otherwise noted.
AUTHORITY: Pub.L. 108-164, secs. 1-12; 117 Stat. 2024 (15 U.S.C. 7601-7610).

16 CFR § 315.3. AVAILABILITY OF CONTACT LENS PRESCRIPTIONS TO PATIENTS

(a) In general. When a prescriber completes a contact lens fitting, the prescriber:

(1) Whether or not requested by the patient, shall provide to the patient a copy of the contact lens prescription; and

(2) Shall, as directed by any person designated to act on behalf of the patient, provide or verify the contact lens prescription by electronic or other means.

(b) Limitations. A prescriber may not:

(1) Require the purchase of contact lenses from the prescriber or from another person as a condition of providing a copy of a prescription under paragraph (a)(1) or (a)(2) of this section or as a condition of verification of a prescription under paragraph (a)(2) of this section;

(2) Require payment in addition to, or as part of, the fee for an eye examination, fitting, and evaluation as a condition of providing a copy of a prescription under paragraph (a)(1) or (a)(2) of this section or as a condition of verification of a prescription under paragraph (a)(2) of this section; or

(3) Require the patient to sign a waiver or release as a condition of releasing or verifying a prescription under paragraph (a)(1) or (a)(2) of this section.

SOURCE: 69 FR 40508, July 2, 2004, unless otherwise noted.
AUTHORITY: Pub.L. 108-164, secs. 1-12; 117 Stat. 2024 (15 U.S.C. 7601-7610).

16 CFR § 315.4. LIMITS ON REQUIRING IMMEDIATE PAYMENT

A prescriber may require payment of fees for an eye examination, fitting, and evaluation before the release of a contact lens prescription, but only if the prescriber requires immediate payment in the case of an examination that reveals no requirement for ophthalmic goods. For purposes of the preceding sentence, presentation of proof of insurance coverage for that service shall be deemed to be a payment.

SOURCE: 69 FR 40508, July 2, 2004, unless otherwise noted.
AUTHORITY: Pub.L. 108-164, secs. 1-12; 117 Stat. 2024 (15 U.S.C. 7601-7610).

16 CFR § 315.5. PRESCRIBER VERIFICATION

(a) Prescription requirement. A seller may sell contact lenses only in accordance with a contact lens prescription for the patient that is:

(1) Presented to the seller by the patient or prescriber directly or by facsimile; or

(2) Verified by direct communication.

(b) Information for verification. When seeking verification of a contact lens prescription, a seller shall provide the prescriber with the following information through direct communication:

(1) The patient's full name and address;

(2) The contact lens power, manufacturer, base curve or appropriate designation, and diameter when appropriate;

(3) The quantity of lenses ordered;

(4) The date of patient request;

(5) The date and time of verification request;

(6) The name of a contact person at the seller's company, including facsimile and telephone numbers; and

(7) If the seller opts to include the prescriber's regular business hours on Saturdays as “business hours” for purposes of paragraph (c)(3) of this section, a clear statement of the prescriber's regular Saturday business hours.

(c) Verification events. A prescription is verified under paragraph (a)(2) of this section only if one of the following occurs:

(1) The prescriber confirms the prescription is accurate by direct communication with the seller;

(2) The prescriber informs the seller through direct communication that the prescription is inaccurate and provides the accurate prescription; or

(3) The prescriber fails to communicate with the seller within eight (8) business hours after receiving

from the seller the information described in paragraph (b) of this section. During these eight (8) business hours, the seller shall provide a reasonable opportunity for the prescriber to communicate with the seller concerning the verification request.

(d) Invalid prescription. If a prescriber informs a seller before the deadline under paragraph (c)(3) of this section that the contact lens prescription is inaccurate, expired, or otherwise invalid, the seller shall not fill the prescription. The prescriber shall specify the basis for the inaccuracy or invalidity of the prescription. If the prescription communicated by the seller to the prescriber is inaccurate, the prescriber shall correct it, and the prescription shall then be deemed verified under paragraph (c)(2) of this section.

(e) No alteration of prescription. A seller may not alter a contact lens prescription. Notwithstanding the preceding sentence, a seller may substitute for private label contact lenses specified on a prescription identical contact lenses that the same company manufactures and sells under different labels.

(f) Recordkeeping requirement--verification requests. A seller shall maintain a record of all direct communications referred to in paragraph (a) of this section. Such record shall consist of the following:

(1) For prescriptions presented to the seller: the prescription itself, or the facsimile version thereof (including an email containing a digital image of the prescription), that was presented to the seller by the patient or prescriber.

(2) For verification requests by the seller:

(i) If the communication occurs via facsimile or e-mail, a copy of the verification request, including the information provided to the prescriber pursuant to paragraph (b) of this section, and confirmation of the completed transmission thereof, including a record of the date and time the request was made;

(ii) If the communication occurs via telephone, a log:

(A) Describing the information provided pursuant to paragraph (b) of this section,

(B) Setting forth the date and time the request was made,

(C) Indicating how the call was completed, and

(D) Listing the names of the individuals who participated in the call.

(3) For communications from the prescriber, including prescription verifications:

(i) If the communication occurs via facsimile or e-mail, a copy of the communication and a record of the time and date it was received;

(ii) If the communication occurs via telephone, a log describing the information communicated, the date and time that the information was received, and the names of the individuals who participated in the call.

(4) The records required to be maintained under this section shall be maintained for a period of not less than three years, and these records must be available for inspection by the Federal Trade Commission, its employees, and its representatives.

(g) Record keeping requirement--Saturday business hours. A seller that exercises its option to include a prescriber's regular Saturday business hours in the time period for verification specified in § 315.5(c)(3) shall maintain a record of the prescriber's regular Saturday business hours and the basis for the seller's actual knowledge thereof. Such records shall be maintained for a period of not less than three years, and these records must be available for inspection by the Federal Trade Commission, its employees, and its representatives.

SOURCE: 69 FR 40508, July 2, 2004, unless otherwise noted.
AUTHORITY: Pub.L. 108-164, secs. 1-12; 117 Stat. 2024 (15 U.S.C. 7601-7610).

16 CFR § 315.6. EXPIRATION OF CONTACT LENS PRESCRIPTION

(a) In general. A contact lens prescription shall expire:

(1) On the date specified by the law of the State in which the prescription was written, if that date is one year or more after the issue date of the prescription;

(2) Not less than one year after the issue date of the prescription if such State law specifies no date or specifies a date that is less than one year after the issue date of the prescription; or

(3) Notwithstanding paragraphs (a)(1) and (a)(2) of this section, on the date specified by the prescriber, if that date is based on the medical judgment of the prescriber with respect to the ocular health of the patient.

(b) Special rules for prescriptions of less than one year.

(1) If a prescription expires in less than one year, the specific reasons for the medical judgment referred to in paragraph (a)(3) of this section shall be documented in the patient's medical record with sufficient detail to allow for review by a qualified professional in the field.

(2) The documentation described in the paragraph above shall be maintained for a period of not less than three years, and it must be available for inspection by the Federal Trade Commission, its employees, and its representatives.

(3) No prescriber shall include an expiration date on a prescription that is less than the period of time that he or she recommends for a reexamination of the patient that is medically necessary.

SOURCE: 69 FR 40508, July 2, 2004, unless otherwise noted.

AUTHORITY: Pub.L. 108-164, secs. 1-12; 117 Stat. 2024 (15 U.S.C. 7601-7610).

16 CFR § 315.7. CONTENT OF ADVERTISEMENTS AND OTHER REPRESENTATIONS

Any person who engages in the manufacture, processing, assembly, sale, offering for sale, or distribution of contact lenses may not represent, by advertisement, sales presentation, or otherwise, that contact lenses may be obtained without a prescription.

SOURCE: 69 FR 40508, July 2, 2004, unless otherwise noted.
AUTHORITY: Pub.L. 108-164, secs. 1-12; 117 Stat. 2024 (15 U.S.C. 7601-7610).

16 CFR § 315.8. PROHIBITION OF CERTAIN WAIVERS

A prescriber may not place on a prescription, or require the patient to sign, or deliver to the patient, a form or notice waiving or disclaiming the liability or responsibility of the prescriber for the accuracy of the eye examination. The preceding sentence does not impose liability on a prescriber for the ophthalmic goods and services dispensed by another seller pursuant to the prescriber's correctly verified prescription.

SOURCE: 69 FR 40508, July 2, 2004, unless otherwise noted.
AUTHORITY: Pub.L. 108-164, secs. 1-12; 117 Stat. 2024 (15 U.S.C. 7601-7610).

16 CFR § 315.9. ENFORCEMENT

Any violation of this Rule shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, regarding unfair or deceptive acts or practices, and the Commission will enforce this Rule in the same manner, by the same means, and with the same jurisdiction, powers, and duties as are available to it pursuant to the Federal Trade Commission Act, 15 U.S.C. 41 et seq.

SOURCE: 69 FR 40508, July 2, 2004, unless otherwise noted.
AUTHORITY: Pub.L. 108-164, secs. 1-12; 117 Stat. 2024 (15 U.S.C. 7601-7610).

16 CFR § 315.10. SEVERABILITY

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

SOURCE: 69 FR 40508, July 2, 2004, unless otherwise noted.
AUTHORITY: Pub.L. 108-164, secs. 1-12; 117 Stat. 2024 (15 U.S.C. 7601-7610).

16 CFR § 315.11. EFFECT ON STATE AND LOCAL LAWS

(a) State and local laws and regulations that establish a prescription expiration date of less than one year or that restrict prescription release or require active verification are preempted.

(b) Any other State or local laws or regulations that are inconsistent with the Act or this part are preempted to the extent of the inconsistency.

SOURCE: 69 FR 40508, July 2, 2004, unless otherwise noted.
AUTHORITY: Pub.L. 108-164, secs. 1-12; 117 Stat. 2024 (15 U.S.C. 7601-7610).

SUBCHAPTER D.

TRADE REGULATION RULES

PART 456. OPHTHALMIC PRACTICE RULES (EYEGLASS RULE)

16 CFR § 456.1. DEFINITIONS

(a) A patient is any person who has had an eye examination.

(b) An eye examination is the process of determining the refractive condition of a person's eyes or the presence of any visual anomaly by the use of objective or subjective tests.

(c) Ophthalmic goods are eyeglasses, or any component of eyeglasses, and contact lenses.

(d) Ophthalmic services are the measuring, fitting, and adjusting of ophthalmic goods subsequent to an eye examination.

(e) An ophthalmologist is any Doctor of Medicine or Osteopathy who performs eye examinations.

(f) An optometrist is any Doctor of Optometry.

(g) A prescription is the written specifications for lenses for eyeglasses which are derived from an eye examination, including all of the information specified by state law, if any, necessary to obtain lenses for eyeglasses.

SOURCE: 57 FR 18822, May 1, 1992; 69 FR 40510, July 2, 2004, unless otherwise noted.
AUTHORITY: 15 U.S.C. 57a; 5 U.S.C 552.

16 CFR § 456.2. SEPARATION OF EXAMINATION AND DISPENSING

It is an unfair act or practice for an ophthalmologist or optometrist to:

(a) Fail to provide to the patient one copy of the patient's prescription immediately after the eye examination is completed. Provided: An ophthalmologist or optometrist may refuse to give the patient a copy of the patient's prescription until the patient has paid for the eye examination, but only if that ophthalmologist or optometrist would have required immediate payment from that patient had the examination revealed that no ophthalmic goods were required;

(b) Condition the availability of an eye examination to any person on a requirement that the patient agree to purchase any ophthalmic goods from the ophthalmologist or optometrist;

(c) Charge the patient any fee in addition to the ophthalmologist's or optometrist's examination fee as a condition to releasing the prescription to the patient. Provided: An ophthalmologist or optometrist may charge an additional fee for verifying ophthalmic goods dispensed by another seller when the additional fee is imposed at the time the verification is performed; or

(d) Place on the prescription, or require the patient to sign, or deliver to the patient a form or notice waiving or disclaiming the liability or responsibility of the ophthalmologist or optometrist for the accuracy of the eye examination or the accuracy of the ophthalmic goods and services dispensed by another seller.

SOURCE: 57 FR 18822, May 1, 1992; 57 FR 18822, July 2, 2004, unless otherwise noted.
AUTHORITY: 15 U.S.C. 57a; 5 U.S.C. 552.

16 CFR § 456.3. FEDERAL OR STATE EMPLOYEES

This rule does not apply to ophthalmologists or optometrists employed by any Federal, State or local government entity.

SOURCE: 57 FR 18822, May 1, 1992; 69 FR 40510, July 2, 2004, unless otherwise noted.
AUTHORITY: 15 U.S.C. 57a; 5 U.S.C. 552.

16 CFR § 456.4. DECLARATION OF COMMISSION INTENT

In prohibiting the use of waivers and disclaimers of liability in § 456.2 (D), it is not the Commission's intent to impose liability on an ophthalmologist or optometrist for the ophthalmic goods and services dispensed by another seller pursuant to the ophthalmologist's or optometrist's prescription.

SOURCE: 57 FR 18822, May 1, 1992; 69 FR 40510, July 2, 2004, unless otherwise noted.
AUTHORITY: 15 U.S.C. 57a; 5 U.S.C. 552.

16 CFR § 456.5. RULES APPLICABLE TO PRESCRIPTIONS FOR CONTACT LENSES AND RELATED ISSUES

Rules applicable to prescriptions for contact lenses and related issues may be found at 16 CFR part 315 (Contact Lens Rule).

SOURCE: 57 FR 18822, May 1, 1992; 69 FR 40510, July 2, 2004, unless otherwise noted.
AUTHORITY: 15 U.S.C. 57a; 5 U.S.C. 552.

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