State of California Department of Consumer Affairs

LAWS RELATING TO THE PRACTICE OF OPTOMETRY

WITH

RULES AND REGULATIONS

ISSUED BY

CALIFORNIA STATE BOARD OF OPTOMETRY

1998

Laws, Rules, and Regulations Includes Amendments Through March 1998

STATE OF CALIFORNIA

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TABLE OF CONTENTS

	Page
Business and Professions Code	1
California Code of Regulations	141
Corporations Code	169
Education Code	176
Federal Trade Commission	177
Government Code	179
Health and Safety Code	212

BUSINESS AND PROFESSIONS CODE

		Section
General Provisions		7.5-31
DIVISION 1	**DEPARTMENT OF CONSUMER AFFAIRS**	
Chapter 1	The Department	100-148
Chapter 2	Director of Consumer Affairs	150-166
Chapter 3	Departmental Funds	201
Chapter 4	Consumer Affairs	
Article 3	Powers and Duties	310-313.2
Article 4	Representation of Consumers	320-321
Article 5	Consumer Complaints	325-327
Article 6	Information	335-336
Chapter 6	Public Members	450-452
Chapter 7	Licensees	460-461
DIVISION 1.5	**DENIAL, SUSPENSION AND REVOCATION OF LICENSES**	
Chapter 1	General Provisions	475-478
Chapter 2	Denial of Licenses	480-489
Chapter 3	Suspension and Revocation of Licenses	490-493
Chapter 4	Public Reproval	495
Chapter 5	Examination Security	496-499
DIVISION 2	**HEALING ARTS**	
Chapter 1	General Provisions	
Article 2	Eyeglasses	525-527
Article 6	Unearned Rebates, Refunds,and Discounts	650-657
Article 8	Selection of Healing Arts Practitioner	690
Article 9	Inactive License	700-704
Article 10.5	Unprofessional Conduct	725-727
Article 11	Professional Reporting	800-807
Chapter 5		
Article 3	License Required and Exemptions	2074
Chapter 5.4	Prescription Lenses	2540-2545
Chapter 5.5	Register Dispensing Opticians	
Article 1	General Provisions	2550-2559.6

Chapter 7 Optometry
Article 1 General Provisions..... 3000-3002
Article 2 Administration..... 3010-3029
Article 3 Admission to Practice..... 3040-3060
Article 4 Registration..... 3070-3077
Article 5 Revocation and Suspension.....3090-3109
Article 6 Offenses Against the Chapter..... 3120-3135
Article 7 Revenue..... 3145-3153
Article 8 Optometric Corporation..... 3160-3167
Chapter 9 Pharmacy
Article General Provisions..... 4024-4171
DIVISION 7 GENERAL BUSINESS REGULATIONS
Chapter 1 Advertising
Article 1 False Advertising in General..... 17500-17506.6
Article 2 Particular Offenses..... 17535-17536.5
CALIFORNIA CODE OF REGULATIONS-
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 15 STATE BOARD OF OPTOMETRY
Article 1 General Provisions..... 1500-1502
Article 2 Location of Practice..... 1505-1507.1
Article 3 Professional Rules..... 1510-1519
Article 4 Sanitary and/or HygienicFacilitiesStandards.1520
Article 6 Examinations..... 1526-1535
Article 6.5 Continuing Education..... 1536
Article 7 Corporations..... 1540-1550
Article 8 Topical Pharmaceutical Agents(Diagnostic)..1560-1563
Article9 Application Processing Time lines.....1564-1564.1
Article 10 Prescriptions.....1565-1566
Article 11 Therapeutic Pharmaceutical Agents1567-1570
Article 12 Enforcement..... 1575
CORPORATIONS CODE
DIVISION 3 CORPORATIONS FOR SPECIFIC PURPOSES
Part 4 Professional Corporations..... 13400-13410

EDUCATION CODE
Chapter 4
Article 3 Solicitations..... 51520

FEDERAL TRADE COMMISSION RULINGS
Part 456 Ophthalmic Practice Rules..... 456.1-456.4

GOVERNMENT CODE
DIVISION 7 MISCELLANEOUS
Chapter 3.5
Inspection of Public Records..... 6250-6265
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..... 11120-11564.5

Part 2.8 Department of Fair Employment and Housing
Chapter 6 Discrimination Prohibited
Article 1 Unlawful Practices Generally.....12944
TITLE 3 GOVERNMENT OF COUNTIES
DIVISION 2 OFFICERS
Part 3 Other Officers..... 26509

HEALTH AND SAFETY CODE
DIVISION 2 LICENSING PROVISIONS
Chapter 2.2 Health Care Service Plans
Article 9 Requirements.....1367
Miscellaneous.....1395-1399.5
DIVISION 2.3
PATIENT ACCESS TO HEALTH RECORDS…… 123100-123148

BUSINESS AND PROFESSIONS CODE

GENERAL PROVISIONS

Section	
7.5	Conviction of a Crime
12.5	Citations-Violations of Regulations
22	A Board Defined
23.6	Appointing Power Defined
29.5	Compliance with Support Orders: License Qualifications
30	Tax Enforcement; Furnishing of Federal Employer Identification Number, Social Security Number and Other Information; Penalty; Filing Reported Information; Confidentiality; Legislative Intent
31	Licensees not in Compliance with a Judgment or Order for Support; Enforcement of Obligation

Conviction of a Crime

7.5. A conviction within the meaning of this code means a plea or verdict of guilty or a conviction following a plea of nolocontendere. 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 by Statutes 1979, Ch. 876)

Citations-Violations of Regulations

12.5. 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 by Statutes 1986, Ch. 1379)

Board Defined

22. "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."

(Amended by Statute 1991, Ch. 654)

Appointing Power Defined

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

(Amended by Statutes 1971, Ch. 716)

Compliance with Support Orders: License Qualifications

29.5. 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 11350.6 of the Welfare and Institutions Code.

(Added by Statutes 1991, Ch. 542)

Tax Enforcement; Furnishing of Federal Employer Identification Number, Social Security Number and Other Information; Penalty; Filing Reported Information; Confidentiality; Legislative Intent

30. (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 or renewal of the license require that any 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 or for renewal of a 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 11350.6 of the Welfare and Institutions 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.
(Amended by Statutes 1997, Chs. 17, 604, 605)

Licensees not in Compliance with a Judgment or Order for Support; Enforcement of Obligation
31. (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 11350.6 of the Welfare and Institutions Code.
(c) "Compliance with a judgment or order for support," has the meaning given in paragraph (4) of subdivision (a) of Section 11350.6 of the Welfare and Institutions Code.
(Amended by Statutes 1991, Ch. 542)

Division 1
DEPARTMENT OF CONSUMER AFFAIRS

Chapter		Section
1.	The Director of Consumer Affairs	150
3.	Funds of the Department	200
2.	Consumer Affairs	300
5.	Buildings of the Department	400
6.	Public Members	450

7.	Licensee	460
8.	Dispute Resolution Programs	465

BUSINESS AND PROFESSIONS CODE
Division 1, Chapter 1
THE DEPARTMENT

Section	
100	Existence of Department
101	Composition of the Department
101.1	Sunset Review
101.6	Purpose of Boards, Bureaus and Commissions
102	Director May Take Over Board Duties on Request
103	Compensation and Expenses of Board, Commission or Committee Members
105	Oath of Office
105.5	Duration of Appointment to Fill Vacancy
106	Removal of Board Members
106.5	Removal of Board Members; Disclosure of Examination Questions; Law Governing
107	Appointment of Executive Officer
107.5	Official Seal; Form and Contents
108	Functions of Boards
108.5	Witness Fees and Expenses
109	Finality of Decisions
110	Records and Other Property; Examination Questions
111	Commissioners on Examination
112	Directory of Certificate Holders or Licensees
113	Conferences; Expenses
114	Reinstatement of License After War
114.5	War Defined
115	Registration While in Military Service
116	Review of Investigations and Disciplinary by Director
118	Withdrawal of Application for License; Suspension, Expiration or Forfeiture of License; Authority of Board
119	License Offenses
121	License Offenses; Legality of Practice Between Renewal and Receipt of License
122	Copies of Licensure; Fees
123	Subversion of Licensing Examinations or Administration of Examinations; Conduct Constituting Violation; Penalty
123.5	Engagement in Practices Constituting a Violation Under Section 123; Injunction or Restraining Order
124	Manner of Giving Written Notice
125	Conspiracy with Unlicensed Person; Violations; Offense; Prohibited Practices
125.3	Investigation and Enforcement Costs; Payment by Licentiate
125.5	Injunction; Law Governing Restitution; Reimbursement of Board Expenses
125.6	Refusal to Perform Licensed Activity; Aiding or Inciting Refusal of

Performance by Another Licensee; Discrimination or Restriction in Performance; Race, Color, Sex, Religion, Ancestry, Disability, Marital Status, or National Origin
125.7 Temporary Restraining Order or Other Appropriate Order; Petition; Affidavits; Notice; Accusation; Hearing; Review
125.8 Temporary Restraining or Other Appropriate Order Restraining Licensee; Law Governing; Accusation; Dissolution of Order
125.9 System for Issuance of Citation to Licensee; Establishment; Mandatory and Permissive Provisions; Fines; Application of Section
126 Reports to Governor; Exemption
127 Reports to Director
128 Unlawful Sale of Equipment, Supplies and Services
128.5 Agency with Unencumbered Funds; Reduction of License or Other Fees
129 Complaints About Licentiates; Notification of Action Taken to Complainant; Relief Authorized; Reports
130 Term of Officers; Expiration
131 Limit on Terms
132 Actions Against Other Agencies; Request to Director
134 License Fees; Proration
135 Failure on Prior Examinations; Limitations, Restrictions, etc. on Subsequent Examinations; Reexamination; Time; Regular Fees and Requirements
136 Change of Address; Notification Required
137 License Numbers; Inclusion in Advertising, Solicitation and Presentments; Advertising, etc., by Person Other than Licensee; Liability
140 Failure to Record and Preserve Cash Transactions Involving Wages; Disciplinary Action; Costs

141 Discipline by Other Governmental Agency Grounds for Discipline in California
143 Action for Collection of Compensation on Contract; Proof of Licensure; Substantial Compliance; Application
144 Fingerprinting for Criminal History Record Checks
145 Legislative Findings and Declaration
148 Administrative Citations for License Violations; Use of Additional Enforcement Statutes

Existence of Department

100. There is in the state government, in the State and Consumer Services Agency, a Department of Consumer Affairs.
(Amended by Statute 1984, Ch. 144)

Composition of the Department; Boards, bureaus and divisions

101. The department is comprised of:

(a) The Board of Dental Examiners 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 Board of Accountancy.
(g) The California State Board of Architectural Examiners.
(h) The State Board of Barbering and Cosmetology.

(i) The State Board of Registration for Professional Engineers and Land Surveyors.
(j) The Contractors' State License Board.
(k) The State Board of Funeral Directors and Embalmers.
(l) The Structural Pest Control Board.
(m) The Bureau of Home Furnishings and Thermal Insulation.
(n) The Board of Registered Nursing.
(o) The Board of Behavioral Science Examiners.
(p) The State Athletic Commission.
(q) The Cemetery Board.
(r) The State Board of Guide Dogs for the Blind.
(s) The Bureau of Security and Investigative Services.
(t) The Court Reporters Board of California.
(u) The Board of Vocational Nursing and Psychiatric Technicians.
(v) The California State Board of Landscape Architects.
(w) The Bureau of Electronic and Appliance Repair.
(x) The Division of Investigation.
(y) The Bureau of Automotive Repair.
(z) The State Board of Registration for Geologists and Geophysicists.
(aa) The State Board of Nursing Home Administrators.
(ab) The Respiratory Care Examining Committee.
(ac) The Acupuncture Examining Committee.
(ad) The Board of Psychology.
(ae) The California Board of Podiatric Medicine.
(af) The Physical Therapy Board.
(ag) The Arbitration Review Program.
(ah) The Committee on Dental Auxiliaries.
(ai) The Hearing Aid Dispensers Examining Committee.
(aj) The Physician Assistant Examining Committee.
(ak) The Speech-Language Pathology and Audiology Board.
(al) The Tax Preparers Program.
(am) Any other boards, offices, or officers subject to its jurisdiction by law.

Sunset Review

101.1. (a) It is the intent of the Legislature that all existing and proposed consumer-related boards or categories of licensed professionals be subject to a review every four years to evaluate and determine whether each board has demonstrated a public need for the continued existence of that board in accordance with enumerated factors and standards as set forth in Division 1.2 (commencing with Section 473).

(b) (1) In the event that any board, as defined in Section 477, becomes inoperative and is repealed in accordance with the act that added this section, the Department of Consumer Affairs shall succeed to and is vested with all the duties, powers, purposes, responsibilities and jurisdiction of that board and its executive officer.

(2) Any provision of existing law that provides for the appointment of board members and specifies the qualifications and tenure of board members shall not be implemented and shall have no force or effect while that board is inoperative or repealed. Every reference to the inoperative or repealed board, as defined in Section 477, shall be deemed to be a reference to the department.

(3) Notwithstanding Section 107, any provision of law authorizing the appointment of an executive officer by a board subject to the review described in Division 1.2 (commencing with Section 473), or prescribing his or her duties, shall not be implemented and shall have no force or effect while the applicable board is inoperative or repealed. Any reference to the executive officer of an inoperative or repealed board shall be deemed to be a reference to the director or his or her designee.

(c) It is the intent of the Legislature that subsequent legislation to extend or repeal the inoperative date for any board shall be a separate bill for that purpose.
(Added by Statute 1994, Ch. 908)

Purpose of Boards, Bureaus and Commissions

101.6. 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 by Statute 1980, Ch. 375)

Boards Created by Initiative Act

102. Upon the request of any board regulating, licensing, or controlling any professional or vocational occupation created by an initiative act, the Director of Consumer Affairs may take over the duties of the board under the same conditions and in the same manner as provided in this code for other boards of like character. Such boards shall pay a proportionate cost of the administration of the department on the same basis as is charged other boards included within the department. Upon request from any such board which has adopted the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code as rules of procedure in proceedings before it, the director shall assign hearing officers for such proceedings in accordance with Section 110.5.
(Amended by Statute 1971, Ch. 716)

Compensation, Reimbursement for Expenses of Members

103. 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.
(Amended by Statute 1993, Ch. 1264)

Oath of Office
105. Members of boards in the department shall take an oath of office as provided in the Constitution and the Government Code.
(Added by Statute 1949, Ch. 829)

Term of Office
105.5. 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 by Statute 1967, Ch.524)

Removal of Board Members
106. 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.
(Amended 1945, Ch. 1276)

Board Member Disclosing Exam Questions
106.5. 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 by Statute 1977, Ch. 482)

Executive Officer; Registrar
107. 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.
(Amended by Statute 1987, Ch. 850)

Official Seals
107.5. 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.
(Amended 1971, Ch. 716)

Board Functions and Powers
108. 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 such hearings, in so far as these powers are given by statute to each respective board.
(Added by Statute 1937, Ch. 399)

Witness Fees and Expenses
108.5. 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.
(Amended by Statutes 1970, Ch. 1061)

Board Decisions; Director Powers
109. (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.
(Amended by Statutes 1991, Ch.1013)

Records and Property
110. 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 compiling 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.
(Amended by Statutes 1996, Ch. 829)

Appointment of Exam Commissioners
111. 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.
(Amended by Statutes 1978, Ch.1161)

Directories; Publication, Sale
112. Notwithstanding any other provision of this code, no agency in the department, with the exception of the State Board of Registration for Professional Engineers, shall be required to compile, publish, sell, or otherwise distribute a directory. When an agency deems it necessary to compile and publish a directory, such 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 which 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 such 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.
(Amended by Statutes 1970, Ch. 475)

Travel Expenses
113. Upon recommendation of the director, officers and employees of the department, and officers, members, and employees of the boards 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 such other persons, associations or organizations as may be of assistance to the department, board 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 such 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.
(Amended by Statutes 1941, Ch. 885)

Recertification After Wartime Military Service
114. (a) Notwithstanding any other provision of this code, any licensee or registrant of any board, commission, or bureau within the department, who permitted his license or registration to expire while serving in any branch of the armed services of the United States during a period of war as defined in Section 114.5 of this code may, upon application, reinstate his license or registration without examination or penalty; provided,

(1) His license or registration was valid at the time he entered the armed services.

(2) That application for reinstatement is made while serving in the armed services, 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) 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 is licensed or registered shall be required to maintain his license in good standing even though he 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 is prevented from practicing his profession or vocation shall be excluded from said period of one year.
(Amended by Statute 1961, Ch. 1253)

War as used in Section 114
114.5. As used in Section 114 of this code, "war" means:

(a) Whenever Congress has declared war and peace has not formally been restored.

(b) Whenever the United States is engaged in active military operations against any foreign power, whether or not war has formally been declared.

(c) Whenever the United States is assisting the United Nations, in actions involving the use of armed force, to restore international peace and security.
(Amended by Statute 1951, Ch. 1577)

Registration Obtained While in Military Service
115. 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 by Statute 1951, Ch. 1577)

Review of Investigations and Disciplinary by Director

116. (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 by Statute 1993, Ch. 1267)

Withdrawal of Application

118. (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 by Statute 1961, Ch. 1079)

Illegal Uses of License

119. 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, 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.

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.
(Amended by Statute 1994, Ch. 1206)

Proper Renewal

121. 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 by Statute 1979, Ch. 77)

Fee for Duplicate Certificate

122. 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 by Statute 1986, Ch. 951)

Subversion of Licensing Exam

123. 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.
(Amended by Statute 1991, Ch. 647)

Restraining Order; Injunction

123.5. 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.
(Amended by Statute 1989, Ch. 1022, Formerly B&P 497)

Tender of Written Notice

124. Notwithstanding subdivision (c) of Section 11505 of the Government Code, whenever written notice, including a notice, order, or document served pursuant to the Administrative Procedure Act Ch. 3.5 (commencing with Sec. 11340), Ch. 4 (commencing with Sec. 11370), and Ch. 5 (commencing with Sec. 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.
(Amended by Statute 1995, Ch. 938)

Conspiracy with and Unlicensed Person to Violate Code

125. 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.
(Amended by Statute 1994, Ch. 1206)

Investigative and Enforcement Costs; Payment by licensee

125.3. (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 may request the administrative law judge to 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 where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) Where 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 forma 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.

(Added by Statute 1992, Ch. 1289)

Injunction; Restitution; Reimbursement of Board Expenses

125.5. (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.
(Amended by Statute 1982, Ch. 517)

Refusal to Perform Licensed Activity; Discrimination

125.6. 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 such person if, because of the applicant's race, color, sex, religion, ancestry, disability, marital status, or national origin, he or she refuses to perform the licensed activity or aids or incites the refusal to perform such licensed activity by another licensee, or if, because of the applicant's race, color, sex, religion, ancestry, disability, marital status, or national origin, he or she makes any discrimination, or restriction in the performance of the licensed activity.

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

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.

"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.

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

"Disability" means any of the following with respect to an individual:

(a) A physical or mental impairment that substantially limits one or more of the major life activities of the individual.

(b) A record of such an impairment.

(c) Being regarded as having such an impairment.
(Amended by Statute 1992, Ch. 913)

Temporary Restraining Order

125.7. 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 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 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 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 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.

(Amended by Statute 1997, Ch. 220)

Agency with Unencumbered Funds; Reduction of License or Other Fees

125.8. 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.

(Amended by Statutes 1982, Ch. 517)

Establishment of System for the Issuance of Citations

125.9. (a) Except with respect to persons regulated under Chapter 8 (commencing with Section 6850), Chapter 11 (commencing with Section 7500), Chapter 11.5 (commencing with Section 7512), and Chapter 11.6 (commencing with Section 7590) of Division 3, or a person holding a license specified in paragraph (1), (6), or (7) of subdivision (b) of Section 9941, any board, bureau, or commission within the department 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) Where 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 two thousand five hundred dollars ($2,500) for each inspection or each investigation made with respect to the violation, or two thousand five hundred dollars ($2,500) 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 such factors 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. 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, where 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.

(Amended by Statutes 1995. Chs. 381,708)

Reports to Governor; Exemption

126. 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 by Statute 1967, Ch. 660)

Reports to Director

127. 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 by Statutes 1967, Ch. 660)

Unlawful Sale of Equipment, Supplies and Services

128. 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.

(Amended by Statute 1994, Ch. 1010)

Reduction of Fees

128.5. (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 which 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 which 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 Board of Architectural Examiners, the Board of Behavioral Science Examiners, 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 which 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 which will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

(Amended by Statutes 1997, Ch. 759)

Complaints Against Licensees; Acknowledgment of Receipt; Notification of Action; Relief Authorized; Reports

129. (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 by Statute 1972, Ch. 1041)

Term of Office; Expiration Date

130. (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) Medical Board of California.
(2) California Board of Podiatric Medicine.
(3) Physical Therapy Examining Committee.
(4) Board of Registered Nursing.
(5) Board of Vocational Nursing and Psychiatric Technicians.
(6) State Board of Optometry.
(7) California State Board of Pharmacy.
(8) Veterinary Medical Board.
(9) California Board of Architectural Examiners.
(10) California State Board of Landscape Architects.
(11) State Board of Barbering and Cosmetology.
(12) State Board of Registration for Professional Engineers and Land Surveyors.
(13) Contractors' State License Board.
(14) State Board of Guide Dogs for the Blind.
(15) State Board of Funeral Directors and Embalmers.
(16) Board of Behavioral Science Examiners.
(17) Structural Pest Control Board.
(18) Cemetery Board.
(19) Bureau of Electronic and Appliance Repair Advisory Board.
(20) Court Reporters Board of California.
(21) State Board of Registration for Geologists and Geophysicists.
(22) State Athletic Commission.
(23) Osteopathic Medical Board of California.
(24) The Respiratory Care Board of California.
(25) The Acupuncture Examining Committee.
(26) The Board of Psychology.

(Amended by Statute 1997, Ch. 759)

Limit on Terms
131. 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.
(Amended by Statute 1987, Ch. 850)

Actions Against Other Agencies
132. 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 he 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 by Statute 1990, Ch. 285)

License Fees; Proration
134. 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.
(Amended by Statute 1978, Ch. 1161)

Failure on Prior Exams; No Basis for Additional Limitations, Restrictions, etc.
135. 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 by Statute 1974, Ch. 743)

Notification of Change in Mailing Address Required
136. (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 by Statute 1994, Ch. 26)

Advertising; License Number Required
137. 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 by Statute 1974, Ch. 743)

Failure to Record and Preserve Cash Transactions Involving Wages; Disciplinary Action
140. 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 by Statute 1984, Ch. 1490)

Disciplinary Action by Other Governmental Agencies Grounds for Discipline in California
141. (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 by Statute 1994, Ch. 1275)

Action for Collection of Compensation on Contract

143. (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 by Statute 1990, Ch. 1207)

Fingerprinting for Criminal History Record Checks.

144. (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 boards or committees:

(1) 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 Examining Committee.
(10) Board of Vocational Nursing and Psychiatric Technicians.
(11) Respiratory Care Board.
(12) Hearing Aid Dispensers Examining Committee.
(13) Physical Therapy Board of California.
(14) Physician Assistant Examining Committee.
(15) Speech-Language Pathology and Audiology Examining Committee.
(16) Medical Board of California.
(17) Board of Nursing Home Administrators.
(18) Board of Optometry.
(19) Acupuncture Committee.
(20) Cemetery and Funeral Programs.
(21) Bureau of Security and Investigative Services.
(22) Division of Investigation.
(23) Board of Psychology.

(Added by Statute 1997, Ch. 758)

Legislative Findings and Declarations

145. 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 by Statute 1992, Ch. 1135)

Administrative Citations Issued to Unlicensed Person

148. 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 by Statute 1992, Ch. 1135)

Division 1, Chapter 2

THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AFFAIRS

Section
150 Director; Civil Executive Officer; Control
151 Appointment; Tenure; Compensation; Traveling Expenses
152 Organization of Department
152.5 Extension of License, Certificate or Permit Renewal Dates
152.6 Spreading Renewal Dates
153 Investigation
154 Personnel in General
154.5 Employee of Board Evaluating Applicants or Conduct of Licensees, Named as Defendants in Civil Action; Legal Representation Provided by Board; Utilization of Attorney General
155 Investigators, Inspectors and Deputies
156 Contracts
156.5 Rental Agreements
157 Expenses of Prosecution or Unprofessional Conduct Proceedings
158 Refunds; Claims and Warrants
159 Administration of Oaths and Affirmations; Certification
159.5 Division of Investigation; Chief of Division; Personnel
160 Chief and Investigators; Authority of Peace Officers
161 Sale of Copies of Records
162 Officer's Certificate as Evidence
163 Fee for Certification of Records and Documents
163.5 Delinquency, Penalty or Late Fee; Assessment; Reinstatement Fee; Percentage of Renewal Fee
164 Determination of Form and Content of Licenses, Certificates, Permits, or

Similar Indicia of Authority
165 Fiscal Impact Analysis Relating to Pending Legislation; Review and Comment; Transmittal of Fiscal Data
166 Mandatory Continuing Education Programs; Guidelines

Director; Civil Executive Officer; Control
150. The department is under the control of a civil executive officer who is known as the Director of Consumer Affairs.
(Amended by Statute 1971, Ch. 716)

Appointment; Tenure; Compensation; Traveling Expenses
151. office at the Governor's pleasure. The director shall The director is appointed by the Governor and holds 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.
(Addedd by Statute 1937, Ch. 399)

Organization of Department
152. 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.
(Added by Statute 1937, Ch. 399)

Extension of License, Certificate or Permit Renewal Dates
152.5. 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 by Statute 1959, Ch. 1707)

Spreading Renewal Dates
152.6. 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 by Statute 1968, Ch. 1248)

Investigation
153. 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.
(Added by Statute 1937, Ch. 399)

Personnel in General
154. 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.
(Amended by Statute 1945, Ch. 1276)

Employee of Board Evaluating Applicants or Conduct of Licensees, Named as Defendants in Civil Action; Legal Representation Provided by Board; Utilization of Attorney General
154.5. 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.
(Amended by Statute 1991, Ch. 359)

Investigators, Inspectors and Deputies
155. (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.

(Amended by Statute 1985, Ch. 1382)

Contracts

156. (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.

(Amended by Statute 1988, Ch. 1448)

Rental Agreements

156.5. 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.

(Amended by Statute 1988, Ch. 1448)

Expenses of Prosecution or Unprofessional Conduct Proceedings

157. 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 by Statute 1937, Ch. 474)

Refunds; Claims and Warrants

158. 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.

(Amended by Statute 1971, Ch. 716)

Administration of Oaths and Affirmations; Certification

159. 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 by Statute 1947, Ch. 1350)

Division of Investigation; Chief of Division; Personnel

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

Except as provided in Section 16 of Chapter 1394 of the Statutes of 1970, all positions for the personnel necessary to provide investigative services, as specified in Section 160 of this code and in subdivision (b) of Section 830.3 of the Penal Code, to the agencies in the department shall be in the division and the personnel shall be appointed by the director. However, if, pursuant to the Governor's Reorganization Plan No. 2 of the 1970 Regular Session, any agency has any investigative, inspection, or auditing positions of its own, the agency shall retain those positions until the director determines, after consultation with, and consideration of, the views of the particular agency concerned, that the positions should be transferred to the division in the interests of efficient, economical, and effective service to the public, at which time they shall be so transferred.
(Amended by Statute 1985, Ch. 1382)

Chief and Investigators; Authority of Peace Officers

160. The Chief and all investigators of the Division of Investigation of the department and all investigators of the Medical Board of California and the Board of Dental Examiners 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 in this section set forth.
(Amended by Statute 1989, Ch. 886)

Sale of Copies of Records

161. 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.
(Amended by Statute 1965, Ch. 371)

Officer's Certificate as Evidence

162. 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 by Statute 1949, Ch. 355)

Fee for Certification of Records and Documents

163. 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.
(Amended by Statute 1963, Ch. 590)

Delinquency, Penalty or Late Fee; Assessment; Reinstatement Fee; Percentage of Renewal Fee

163.5. 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.
(Amended by Statute 1985, Ch. 587)

Determination of Form and Content of Licenses, Certificates, Permits, or Similar Indicia of Authority

164. 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.
(Amended by Statute 1987, Ch. 850)

Fiscal Impact Analysis Relating to Pending Legislation; Review and Comment; Transmittal of Fiscal Data

165. 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 by Statute 1984, Ch. 268)

Mandatory Continuing Education Programs; Guidelines

166. 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.

(Amended by Statute 1994, Ch.146)

Division 1, Chapter 3
FUNDS OF THE DEPARTMENT

Section
201 Pro Rata Charge for Administrative Expenses

Pro Rata Charge for Administrative Expenses
201. 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.
(Amended by Statute 1947, Ch. 1350)

Division 1, Chapter 4
CONSUMER AFFAIRS

Article 3.Powers and Duties

Section
310 Powers and Duties
311 Interdepartmental Committee
312 Annual Report
313 Library; Consumers and Consumer Problems
313.1 Rules and Regulations; Fee Changes; Approval of Director
313.2 Americans with Disabilities Act; Regulations; Professional Licensing and Certification
313.5 Consumer’s Bibliography

Powers and Duties
310. 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.

(Amended by Statute 1975, Ch. 1262)

Interdepartmental Committee

311. The director may create an interdepartmental committee to assist and advise him in the implementation of his duties. The members of such committee shall consist of the heads of state departments, or their designees. Members of such committee shall serve without compensation but shall be reimbursed for the expenses actually and necessarily incurred by them in the performance of their duties.

(Amended by Statute 1970, Ch. 1394)

Annual Report

312. The director shall submit to the Governor and the Legislature during the month of December prior to each regular session of the Legislature a full and accurate report of the activities of the department relating to consumer affairs and an evaluation of the consumer programs of each state agency. Such report shall include recommendations, when appropriate, for legislation which will protect and promote the interests of consumers. A copy shall be filed with the Secretary of State.

The required evaluation of the consumer programs of each state agency shall include, but is not limited to, comment with respect to the scope, effectiveness, and efficiency of such programs within each agency as well as deficiencies noted in the coordination, administration, or enforcement of such programs.

The director shall include within the report information regarding his or her experience in obtaining and disseminating information with respect to information available from other departments of the state.

(Amended by Statute 1975, Ch. 1262)

Library; Consumers and Consumer Problems

313. The director shall provide for the establishment of a comprehensive library of books, documents, studies, and other materials relating to consumers and consumer problems.

(Amended by Statute, Ch. 1262)

Rules and Regulations; Fee Changes; Approval of Director

313.1. (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 p eriod 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.

(Amended by Statute 1994, Ch. 26)

Americans with Disabilities Act; Regulations; Professional Licensing and Certification

313.2. 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 by Statute 1992, Ch. 1289)

Consumer's Bibliography
313.5. The director shall periodically publish a bibliography of consumer information available in the department library and elsewhere. Such bibliography shall be sent to subscribers upon payment of a reasonable fee therefor.
(Amended by Statute 1975, Ch. 1262)

Article 4.Representation of Consumers

Section
320 Representation of Consumers
321 Commencement of Legal Proceedings

Representation of Consumers
320. 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.
(Amended by Statute 1975, Ch. 1262)

Commencement of Legal Proceedings
321. 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 by Statute 1975, Ch. 1262)

Article 5.Consumer Complaints

Section
325 Consumer Complaints
325.3 Director; Receipt of Complaints
326 Receipt of Complaints
327 Director's Report; Consumer Complaints

Consumer Complaints
325. 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 by Statute 1970, Ch. 1394)

Director; Receipt of Complaints
325.3. In addition to the duties prescribed by Section 325, it shall be the duty of the director to receive complaints from consumers concerning services provided by the entities described in paragraph (2) of subdivision (b) of Section 234 of the Public Utilities Code.
(Added by Statute 1995, Ch. 357)

Receipt of Complaints
326. (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.
(Amended by Statute 1989, Ch. 1360)

Directors Report
327. The director shall submit to the Governor and the Legislature as part of his annual report information concerning his activities pursuant to Section 326, including the number and general patterns of consumer complaints, the action taken on such complaints, the results of such action, if available, and recommendations which will further the state's capability to resolve consumer complaints.
(Added by Statute 1970, Ch. 1394)

Article 6.Information

Section
335 Public Information
336 Annual Report
337 Information Brochure; Victims of Psychotherapist

Public Information
335. The director shall disseminate to the public in such form and manner as he deems most appropriate information, statistics, and other data concerning the following:
(a) Functions, duties, powers, and activities of the department and of those agencies whose authority provides relief from commercial and trade practices which are inimical to the interests of the consumer.
(b) Commercial and trade practices which are detrimental to consumers.
(c) Goods and services which are unsafe, unhealthful or inimical to the general welfare of consumers.
(d) General economic conditions.
(e) Test results, analysis, and studies of consumer products and services in the possession of state and federal agencies.
(f) Consumer education which the director may develop on his own initiative or obtain from other sources.
(g) Legislation of interest to consumers.
(Added by Statute 1970, Ch. 1394)

Annual Report
336. The director shall include as part of his annual report information regarding his activities pursuant to this article and his success in obtaining and disseminating information with respect to information available from other departments of the state.
(Added by Statute 1970 Ch. 1394)

Information Brochure; Victims of Psychotherapist
337. (a) The department shall prepare and disseminate an informational brochure for victims of psychotherapist-patient sexual contact and advocates for those victims. This brochure shall be developed by the department in consultation with members of the Sexual Assault Program of the Office of Criminal Justice Planning and the office of the Attorney General.
(b) The brochure shall include, but is not limited to, the following:
(1) A legal and an informal definition of psychotherapist-patient sexual contact.
(2) A brief description of common personal reactions and histories of victims and victim's families.
(3) A patient's bill of rights.
(4) Options for reporting psychotherapist-patient sexual relations and instructions for each reporting option.
(5) A full description of administrative, civil, and professional associations complaint procedures.
(6) A description of services available for support of victims.
(c) The brochure shall be provided to each individual contacting the Medical Board of California and their allied health boards or the Board of Behavioral Science Examiners regarding a complaint involving psychotherapist-patient

sexual relations.
(Amended by Statute 1989, Ch. 886)

Division 1, Chapter 6
PUBLIC MEMBERS

Section
450 Public Member Qualifications--Prohibited Relationships
450.3 Conflicting Financial Interests
450.4 Expert Public Member
450.5 Conflicting Pursuits
450.6 Age Requirement
451 Delegated Authority; Restrictions
452 "Board" Defined

Public Member Qualifications--Prohibited Relationships
450. 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 by Statute 1961, Ch. 2232)

Conflicting Financial Interests
450.3. 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 by Statute 1972, Ch. 1032)

Expert Public Member
450.4. Each board shall have, as one of its public members, a person who possesses expertise in one or more significant portions of the board's regulated activities.
(Added by Statute 1976, Ch. 1188)

Conflicting Pursuits
450.5. A public member, or a lay member, shall not have been engaged at any time within five years immediately preceding his appointment in pursuits which le within the field of the industry or profession regulated by the board of which he is a member, nor shall he engage in any such pursuits during his term of office.
(Added by Statute 1961, Ch. 2232)

Age Requirement
450.6. 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 by Statute 1976, Ch. 1188)

Delegated Authority; Restrictions
451. 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 by Statute 1961, Ch. 2232)

"Board" Defined
452. "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.
(Amended by Statute 1976, Ch. 1188)

Division 1, Chapter 7
LICENSEE

Section
460 Local Restriction of Licensees Prohibited
461 Records of Arrest
462 Inactive License

Local Restriction of Licensees Prohibited
460. No city or county shall prohibit a person, 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. Nothing in this section shall prohibit any city or 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.
(Amended by Statute 1971, Ch. 716)

Records of Arrest
461. 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 by Statute 1975, Ch. 883)

Inactive License
462. (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 by Statute 1994, Ch. 26)

Division 1.5
DENIAL, SUSPENSION AND REVOCATION OF LICENSES

Chapter	Section
1.General Provisions	475-478
2.Denial of License	480-489
3.Suspension and Revocation	490-494
4.Public Reproval	495
5.Examination Security	496-499

Chapter 1
GENERAL PROVISIONS

Section

475 Denial of Licenses; Grounds

476 Exceptions

477 Board; License

478 Application; Material

Denial of Licenses; Grounds

475. (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.
(Amended by Statute 1992, Ch. 1289)

Exceptions
476. 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.
(Amended by Statute 1983, Ch. 721)

Board; License
477. 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.
(Amended by Statute 1991, Ch. 654)

Application; Material
478. (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 f 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 by Statute 1992, Ch. 1289)

Chapter 2
DENIAL OF LICENSES

Section

480 Acts Disqualifying Applicant
481 Criteria; Crime or Act Substantially Related to Qualifications, Functions or Duties
482 Evaluation of Rehabilitation; Criteria
484 Attestations of Good Moral Character Not Required
485 Procedure for Board Upon Denial
486 Re-application after Denial
487 Hearing
489 Lack of Good Character--When Denial of Application Does Not Require a Hearing

Acts Disqualifying Applicant

480. (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 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.

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

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

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 has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he 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 such license.

(Amended by Statute 1979, Ch. 876***)***

Criteria; Crime or Act Substantially Related to Qualifications, Functions or Duties

481. 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 by Statute 1974, Ch. 1321)

Evaluation of Rehabilitation; Criteria

482. 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.

(Amended by Statute 1974, Ch. 1321)

Attestations of Good Moral Character Not Required

484. 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.

(Amended by Statute 1974, Ch. 1321)

Procedure for Board Upon Denial

485. 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.

(Amended by Statute 1997, Ch, 758***)***

Re-application after Denial

486. 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 re-application.

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.

(Amended by Statute 1997, Ch. 758)

Hearing

487. 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.

(Amended by Statute 1986, Ch. 220)

Lack of Good Character--When Denial of Application Does Not Require a Hearing

489. 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.
(Amended by Statute 1997, Ch. 758)

Chapter 3
SUSPENSION AND REVOCATION OF LICENSES

Section
490 Conviction of a Crime; Relationship of Crime to Licensed Activity
490.5 Child Support Order or Judgement; License Suspension
491 Information to Ex-Licensee
493 Record of Criminal Conviction Involving Moral Turpitude; Evidentiary Use
494 Interim Suspension Order

Conviction of a Crime; Relationship of Crime to Licensed Activity
490. 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. 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 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.
(Amended by Statute 1992, Chy. 1289)

Child Support Order or Judgement; License Suspension
490.5. A board may suspend a license pursuant to Section 11350.6 of the Welfare and Institutions Code if a licensee is not in compliance with a child support order or judgment.
(Added by Statute 1994, Ch. 906)

Information to Ex-Licensee
491. 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.
(Amended by Statute 1975, Ch. 678)

Record of Criminal Conviction Involving Moral Turpitude; Evidentiary Use
493. 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."
(Amended by Statute 1989, Ch. 1104)

Interim Suspension Order

494. (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.

(Amended by Statute 1994, Ch. 1275)

Chapter 4
PUBLIC REPROVAL

Section

495 Public Reproval

Public Reproval

495. 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.

(Amended by Statute 1997, Ch. 220)

Chapter 5
EXAMINATION SECURITY

Section

496 Violation of Section 123; Denial, Suspension, or Revocation of License
498 License Secured by Fraud, Deceit or Knowing Misrepresentation
499 False Statement in Support of Another Person's Application

Violation of Section 123; Denial, Suspension, or Revocation of License

496. 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 by Statute 1989, Ch. 1022)

License Secured by Fraud, Deceit or Knowing Misrepresentation
498. 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 by Statute 1989, Ch. 1022)

False Statement in Support of Another Person's Application
499. 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 by Statute 1989, Ch. 1022)

Division 2
HEALING ARTS

Chapter		Section
1.	General Provisions	500 - 851
1.5.	Exemption From Licensure	900
1.6.	Healing Arts Licentiates Information	920
5.	Medicine	2074
5.4	Prescriptions Lenses	2540
5.5	Registered Dispensing Opticians	2550
7.	Optometry	3000
8.	Pharmacy	4000

Chapter 1
Article 1.5
Advocacy for Appropriate Health Care

Section
510 Purpose
511 Prohibited Contracts

Purpose
510. (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 by Statute 1994, Ch. 1119)

Prohibited Contracts

11. (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 by Statute 1996, Ch. 1014)

Article 2
Eyeglasses

Section

525 Dispensing, Prescribing or Selling Eyeglasses Having Shatter-resistant Lenses to Certain Persons
526 Knowledge of Dispensing Optician, Optometrist, or Physician and Surgeon
527 Violations; Disciplinary Action

Dispensing, Prescribing or Selling Eyeglasses Having Shatter-resistant Lenses to Certain Persons

525. 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.

(Amended by Statute 1969, Ch. 1337)

Knowledge of Dispensing Optician, Optometrist, or Physician and Surgeon526. 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.
(Amended by Statute 1969, Ch. 1337)

Violations; Disciplinary Action
527. 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 by Statute 1963, Ch. 1380)

Article 4
Fraudulent Use of Documents or Records

Section
580 Sale of Professional Degrees
581 Diplomas; Purchase, Alterations
582 Use of Illegal Diplomas
583 False Statements
584 Impersonation During Licensure Examination
585 Violation; Penalty

Sale of Professional Degrees
580. 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.
(Amended by Statute 1986, Ch. 220)

Diplomas; Purchase, Alterations581. 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.
(Amended by Statute 1986, Ch. 220)

Use of Illegal Diplomas
582. 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.
(Amended by Statute 1986, Ch. 220)

False Statements
583. 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.
(Amended by Statute 1986, Ch. 220)

Impersonation During Licensure Examination
584. 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.
(Amended by Statute 1989, Ch. 1022)
Violation; Penalty
585. 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.
(Amended by Statute 1986, Ch. 220)

Article 6
UNEARNED REBATES, REFUNDS AND DISCOUNTS

Section	
650	Consideration for Referral of Patients, Clients, or Customers; Violations; Penalty
650.01.1.1	Referral to Health Care Provider in which Practitioner or Immediate Family Member has Financial Interest
650.01.1.2	Exemptions; Referrals by Financially Interested Licensees
651	Public Communication Containing False, Fraudulent, Misleading, or Deceptive Statement or Claim, Prohibition, Definitions; Advertisements
651.3	Health Care Service Plans; Labor Organization, or Bona Fide Employee Group or Employee Association Informing Members
652	Violation as Misdemeanor; Suspension or Revocation of License

652.5 Violation Whether or Not Licensed
653 Person Defined
654 Prohibited Arrangements Between Opticians and Medical Licensees
654.2 Soliciting 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 an Interest
655 Prohibited Arrangements Between Optometrists and Registered Dispensing Opticians or Suppliers of Optometric Appliances or Devices
655.5 Charge, Bill or Solicitation of Payment for Clinical Laboratory Services; Violation; Penalty
656 Injunction
657 Health of Medical Care Claims; Discounts by Health Care Providers

Consideration for Referral of Patients, Clients, or Customers; Violations; Penalty

650. 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 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 co-ownership in or with any person to whom these patients, clients or customers are referred is unlawful.

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.

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, 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 co-ownership in the laboratory, pharmacy, clinic, or health care facility; provided, however, that the licensee's return on investment for that proprietary interest or co-ownership 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.

"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 Health Services under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

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 such imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison.

(Amended by Statute 1981, Ch. 610)

Referral to Health Care Provider in which Practitioner or Immediate Family Member has Financial Interest

650.01. (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.

(Amended 1996, Ch. 817)

Exemptions; Referrals by Financially Interested Licensees

650.02. 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.

(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.

(Amended 1996, Ch. 817)

Public Communication Containing False, Fraudulent, Misleading, or Deceptive Statement or Claim, Prohibition, Definitions; Advertisements

651. (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 or claim, 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 television, radio, motion picture, newspaper, book, or list or directory of healing arts practitioners.

(b) A false, fraudulent, misleading, or deceptive statement or claim includes a statement or claim which 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) Is intended or is likely to create false or unjustified expectations of favorable results.

(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.

(c) 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 which refers to services, or costs for services, and which uses words of comparison must 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 any provision of 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 any provision 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. For the purposes of this section, the statement of a practitioner licensed under Chapter 4 (commencing with Section 1600) who limits his or her practice to a specific field or fields, shall only include a statement that he or she is certified or is eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board. 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 may only 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 multi-disciplinary board or association, if 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 sub-specialty. 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.

For purposes of this subparagraph, a "multi-disciplinary 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 applicants' education, training, and experience.

For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" means 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 sub-specialty.

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.

(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 (15), inclusive, provided, that any statement shall not violate subdivision (a), (b), (c), or (e) of this section 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 business 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 which services may be advertised, the manner in which defined services may be advertised, and restricting advertising which would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, non deceptive 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.
(amended by Statute 1992, Ch. 783)

Health Care Service Plans; Labor Organization, or Bona Fide Employee Group or Employee Association Informing Members

651.3. (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.
(Amended by Statute 1981, Ch. 662)

Violation as Misdemeanor; Suspension or Revocation of License

652. 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.
(Amended by Statute 1997, Ch. 220)

Violation Whether or Not Licensed

652.5. 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.
(Amended by Statute 1994, Ch. 1206)

Person Defined

653. The word "person" as used in this article includes an individual, firm, partnership, association, corporation, limited liability company, or cooperative association.
(Amended by Statute 1994, Ch. 1010)

Prohibited Arrangements Between Opticians and Medical Licensees

654. No person licensed under Chapter 5 (commencing with Section 2000) of this division may have any membership, proprietary interest or co-ownership 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.
(Amended by Statute 1979, Ch. 688)

Soliciting 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 an Interest

654.2. (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 multi-specialty 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.

(Amended by Statute 1986, Ch. 881)

Prohibited Arrangements Between Optometrists and Registered Dispensing Opticians or Suppliers of Optometric Appliances or Devices

655. (a) No person licensed under Chapter 7 (commencing with Section 3000) of this division may have any membership, proprietary interest, co-ownership, 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, co-ownership, 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, co-ownership, 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.

(Amended by Statute 1979, Ch. 975)

Charge, Bill or Solicitation of Payment for Clinical Laboratory Services; Violation; Penalty

655.5. (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) 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.

(e) 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.

(f) (1) Notwithstanding subdivision (e), 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.

(Amended by Statute 1996, Ch. 1035)

Injunction

656. 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.
(Amended by Statute 1989, Ch. 886)

Health of Medical Care Claims; Discounts by Health Care Providers
657. (a) To encourage the prompt payment of health or medical care claims by third party payors, health care providers are hereby expressly authorized to grant discounts in health or medical care claims submitted to third party payors when payment by the third party payer is made promptly within time limits prescribed by the health care providers or institutions rendering the service or treatment.

(b) "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 by Statute 1985, Ch. 263)

Article 8
SELECTION OF HEALING ARTS PRACTITIONER

Section
690 Free Choice in Selection of Optometrist or Physician for Vision Care: Injunctive Relief: Preparing List of Licenses.

Free Choice in Selection of Optometrist or Physician for Vision Care: Injunctive Relief: Preparing List of Licenses.
690. (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 herein, 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 or Chapter 10.5 (commencing with Section 6971), Chapter 11 (commencing with Section 7001), or Chapter 11.5 (commencing with Section 7041) of Division 6 of the Education Code, from preparing list 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.
(Amended by Statute 1996, Ch. 1023)

Article 9
INACTIVE LICENSE

Section

700 Legislative Intent
701 Issuance
702 Activities of Holders
703 Renewal; Time; Fees
704 Restoration to Active Status

Legislative Intent
700. 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 non-practicing status.
(Added by Statute 1977, Ch. 410)

Issuance
701. 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 by Statute 1977, Ch. 410)

Activities of Holders
702. 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 by Statute 1977, Ch. 410)

Renewal; Time; Fees
703. 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 by Statute 1977, Ch. 410)

Restoration to Active Status
704. 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.

(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 by Statute 1977, Ch. 410)

Article 10
FEDERAL PERSONNEL

Section	
710	Knowledge and Experience; Armed Services
715	Licensure; Federal Facility
716	Disciplinary Action
717	Scope of Practice; Federal Facility
718	Training; Federal Facility

Knowledge and Experience; Armed Services
710. 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 by Statute 1969, Ch. 1592)

Licensure; Federal Facility
715. 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.

(Amended by Statute 1986, Ch. 220***)***

Disciplinary Action

716. 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 by Statute 1983, Ch. 239)

Scope of Practice; Federal Facility

717. 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 by Statute 1983, Ch. 239)

Training; Federal Facility

718. 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 offices 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.
(Amended by Statute 1989, Ch. 886)

Article 10.5
UNPROFESSIONAL CONDUCT

Section
725 Excessive Prescription or Administration of Drugs or Treatment; Diagnostic Procedures; Diagnostic or Treatment Facilities; Misdemeanor; Punishment
726 Sexual Abuse, Misconduct, or Relations with a Patient
727 Evidence

Excessive Prescription or Administration of Drugs or Treatment; Diagnostic Procedures; Diagnostic or Treatment Facilities; Misdemeanor; Punishment
725. Repeated acts of clearly excessive prescribing 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, or optometrist.

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 the fine and imprisonment.
(Amended by Statute 1984, Ch. 769)

Sexual Abuse, Misconduct, or Relations with a Patient
726. 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.
(Amended by Statute 1993, Ch. 1072)

Evidence
727. 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.

(Amended by Statute 1981, Ch. 714)

Article 11
PROFESSIONAL REPORTING

Section	
800	Central Files; Creation; Contents; Complaint Forms; Confidentiality
801	Settlement or Arbitration Award; Report by Insurer; Consent of Insured
802	Settlement or Arbitration Award; Report by Holder of Authority, Parties or Counsel; Public Offense, Fines
803	Judgment Against Holder of License, Certificate or Similar Authority; Crime or Civil Liability; Report by Court
803.5	Notification of Felony Charges Against Licensee
803.6	Transcript of Felony Hearing; Notification to Board
804	Reports to Agency; Form and Contents
806	Statistical Report; Presentation to Legislature
807	Notice of Provisions of Article

Central Files; Creation; Contents; Complaint Forms; Confidentiality

800. (a) The Medical Board of California, the Board of Dental Examiners, the Osteopathic Medical Board of California, the Board of Chiropractic Examiners, the California Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the State Board of Optometry, the Veterinary Medical Board, and the State Board of Pharmacy shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from such board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to (1) any conviction of a crime in this or any other state which 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 hereinafter made, pursuant to subdivision (b) of this section; (4) disciplinary information reported pursuant to Section 805.

(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 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 which 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 licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information which 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.

(Amended by Statute 1997, Ch. 759)

Settlement or Arbitration Award; Report by Insurer; Consent of Insured

801. (a) Every insurer providing professional liability insurance to a person who holds a license, certificate or similar authority from or under any agency mentioned in subdivision (a) of Section 800 (except as provided in subdivisions (b), (c), and (d)) shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act shall send a complete report to the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, as to any settlement over thirty thousand dollars ($30,000) or arbitration award of any amount, of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(c) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten

thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Board of Dental Examiners of California as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer.

This section shall only apply to a settlement on a policy of insurance executed or renewed on or after January 1, 1971.
(Amended by Statute 1997, Ch. 359)

Settlement or Arbitration Award; Report by Holder of Authority, Parties or Counsel; Public Offense, Fines

802. (a) Every settlement or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or the unauthorized rendering of professional services, by a person who holds a license, certificate or other similar authority from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) of Division 2) or the Osteopathic Initiative Act who does not possess professional liability insurance as to that claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the arbitration award on the parties, be reported to the agency which issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if the person is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the physician or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars ($50) or more than five hundred dollars ($500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in such compliance is a public offense punishable by a fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

(b) Every settlement over thirty thousand dollars ($30,000), or arbitration award

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

(c) Every settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by negligence, error, or omission in practice, or the unauthorized rendering of professional services, by a marriage, family, and child counselor or clinical social worker licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990), who does not possess professional liability insurance as to that claim shall within 30 days after any written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the arbitration award on the parties, be reported to the agency which issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the arbitration award on the parties, counsel for the claimant (or if he or she is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make a complete report. Failure of the marriage, family, and child counselor or clinical social worker or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars ($50) or more than five hundred dollars ($500).

Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in that compliance is a public offense punishable by a fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

(Amended by Statute 1997, Ch. 359)

Judgment Against Holder of License, Certificate or Similar Authority; Crime or Civil Liability; Report by Court

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

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

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

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

(Amended by Statute 1997, Ch. 359)

Notification of Felony Charges Against Licensee

803.5. (a) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of California, the California Board of Podiatric Medicine, 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. Where the licensee is regulated by an allied health board, the record of conviction shall be transmitted to that allied health board and the Medical Board of California.

(Amended by Statute 1995, Ch. 708)

Transcript of Felony Hearing; Notification to Board

803.6. (a) The clerk of the court shall transmit any felony preliminary hearing transcript concerning a defendant licensee to the Medical Board of California and the applicable allied health board, or the California Board of Podiatric Medicine, 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.

(Amended by Statute 1993, Ch. 1267)

Reports to Agency; Form and Content

804. (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 f 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.

(d) Every professional liability insurer that makes a report under Section 801, or self-insured governmental agency that makes a report pursuant to Section 801.1, and has received a copy of any written patient medical or hospital records prepared by the treating physician or the staff of the treating physician or hospital, describing the medical condition, history, care, or treatment of the person whose death or injury is the subject of the claim prompting the Section 801 or 801.1 report, or a copy of any depositions in the matter that discuss the care, treatment, or medical condition of the person, shall provide with the report copies of the records and depositions, subject to reasonable costs to be paid by the Medical Board of California to the insurer, except when confidentiality is required by court order. If confidentiality is required by court order and, as a result, the insurer is

unable to provide the records and depositions, documentation to that effect shall accompany the original report. The applicable board may, upon prior notification of the parties to the action, petition the appropriate court for modification of any protective order to permit disclosure to the board. A professional liability issuer or self-insured governmental agency shall maintain the records and depositions referred to in this subdivision for at least one year from the date of the Section 801 or 801.1 report.
(Amended by Statute 1995, Ch. 708)

Statistical Report; Presentation to Legislature
806. Each agency in the department receiving reports pursuant to the preceding sections shall prepare a statistical report based upon such records for presentation to the Legislature not later than 30 days after the commencement of each regular session of the Legislature, including a summary of administrative and disciplinary action taken with respect to such reports and any recommendations for corrective legislation if the agency considers such legislation to be necessary.
(Added by Statute 1975, Ch. 1 Ex.Sess.)

Notice of Provisions of Article
807. Each agency in the department shall notify every person licensed, certified or holding similar authority issued by it, and the department shall notify every insurance company doing business in this state and every institution mentioned in Section 805 of the provisions of this article.
(Added by Statute 1975, Ch. 1 Ex.Sess.)

Article 12
INSURANCE FRAUD

Section
810 Unprofessional Conduct; False Claims

Unprofessional Conduct; False Claims
810. (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 550 of the Penal Code.

(c) 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.
(Amended by Statute 1997, Ch. 758)

Article 12.5
MENTAL ILLNESS OR PHYSICAL ILLNESS

Section

820 Examination to Ascertain Effect of Illness May Be Ordered
821 Failure to Comply with Order
822 Actions by Licensing Agency
823 Reinstatement Procedures
824 Proceeding Under Applicable Statue
826 Statutory Authority for Procedure
827 Protecting Privacy of Licensee
828 Insufficient Evidence for Action; Records of Proceedings

Examination to Ascertain Effect of Illness May Be Ordered

820. 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.
(Amended by Statute 1989, Ch. 1104)

Failure to Comply with Order

821. 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 by Statute 1982, Ch. 1183)

Actions by Licensing Agency

822. 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 by Statute 1982, Ch. 1183)

Reinstatement Procedures

823. 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 by Statute 1982, Ch. 1183)

Proceeding Under Applicable Statue

824. The licensing agency may proceed against a licentiate under either Section 820, or 822, or under both sections.

(Added by Statute 1982, Ch. 1183)

Statutory Authority for Procedure

826. 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 by Statute 1982, Ch. 1183)

Protecting Privacy of Licensee

827. 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 by Statute 1982, Ch. 1183)

Insufficient Evidence for Action; Records of Proceedings

828. 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 by Statute 1982, Ch. 1183)

Article 13
STANDARDS FOR LICENSURE OR CERTIFICATION

Section
850 No Association Membership Requirement
851 Private Standards; Condition for Requirement

No Association Membership Requirement
850. 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 by Statute 1978, Ch. 1106)

Private Standards; Condition for Requirement
851. 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.

(Amended by Statute 1989, Ch. 886)

Division 2,
Chapter 1.5

EXEMPTION FROM LICENSURE

SECTION
900 Exemption from Licensure for Emergency Services

Exemption from Licensure for Emergency Services
900. (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 chapter, "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 chapter, "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 by Statute 1989, Ch. 97)

Chapter 5

Article 3

Employment by Optometrists

2074. 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 certification under that chapter.
(Added by Stats. 1980, Ch. 1313)

Chapter 5.4

PRESCRIPTION LENSES

Section	
2540	Measurement of Vision and Prescription of Lenses; Persons Authorized
2541	Definition
2541.1	Spectacle Lens Prescription; Standards, Expiration Date, Filling
2541.3	Ophthalmic Devices; Quality Standards and Regulations; Adoption; Violations Misdemeanor; Disciplinary Action; Testing
2541.6	Ophthalmic Devices; Purchase by State
2542	Contact Lenses
2543	Dispensing of Prescription Lenses
2544	Fitting of Lenses by Technician
2545	Unlawful Practices; Injunction

Prescribing Ophthalmic or Contact Lenses

2540. 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 or contact lenses, or plano contact lenses.
(Amended by Stats. 1985, Ch. 1139)

Definition

2541. A prescription lens is any device ordered by a physician and surgeon or optometrist, that alters or changes the visual powers of the human eye, including, but not limited to, ophthalmic and contact lenses. A prescription lens also includes a plano contact lens.
(Amended by Stats. 1985, Ch. 1139)

Spectacle; Prescription Contacts, filling expired prescriptions

2541.1. (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 by Stats. 1998, Ch. 8, effective January 1, 1999)

Standards for Ophthalmic Devices

2541.3. The State Department of Health Services, 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. Regulations adopted subsequent to those in effect on July 1, 1976, shall become operative July 1, 1978. In promulgating such 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 which are equivalent or more stringent than the current standards of the American National Standards Institute regarding ophthalmic materials.

No individual or group which 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 which does not meet the minimum standards set by the State Department of Health Services, the State Board of Optometry or the Division of Licensing and Division of Medical Quality of the Medical Board of California.

Any violation of the regulations adopted by the State Department of Health Services, 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.

Any optometrist, ophthalmologist, or dispensing optician who violates the regulations adopted by the State Department of Health Services, 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.

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 Health Services for testing as to whether or not such 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 such testing in its own facilities or may contract with any other facility to conduct such testing.
(Amended by Stats. 1993, Ch. 1267)

Purchase with State Funds
2541.6. Effective January 1, 1977, no prescription ophthalmic device which does not meet the standards adopted by the State Department of Health Services, 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.
(Amended by Stats. 1993, Ch. 1267)

Contact Lenses
2542. 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.
(Amended by Stats. 1985, Ch. 1139)

Dispensing of Prescription Lenses
2543. The right to dispense, sell or furnish prescription lenses 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.
(Amended by Stats. 1996, Ch. 1023)

Fitting of Lenses by a Technician
2544. A technician in the office of a physician and surgeon or optometrist acting under the direct responsibility and supervision of the physician and surgeon or optometrist may fit prescription lenses.
(Added by Stats. 1959, Ch. 2073)

Unlawful Practices; Injunction
2545. 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.
(Amended by Stats. 1993, Ch. 1267)

Chapter 5.5

REGISTERED DISPENSING OPTICIANS

Section	
2546 - 2546.9	Nonresident Contact Lens Seller Registration
2550	Nature of Business; Duty to Register; Operative Date of Section
2550.1	References to Board, Board of Medical Examiners or Division as Meaning Division of Allied Professions of Medical Board of California
2551	Application; Form; Fee
2552	Verification and Contents of Application; Additional Information or Proof; Notice of Incomplete or Improper Application or Documentation; Operative Date of Section
2553	Action on Application; Issuance, Display and Transfer of Certificate; Operative Date of Section
2553.5	Business Location
2553.6	Dispensing Opticians; Proprietary Interest
2554	Customer Inquiries and Complaints; Display of Employee's Name and Telephone Number; Operative Date of Section
2555	Suspension, Probation, or Revocation of Certificate
2555.1	Suspension or Revocation of Certificate; Conviction of Specified Crime; Operative Date of Section
2556	Unlawful Acts
2556.5	Holding Self Out as Dispensing Optician as Misdemeanor
2557	Exemptions
2558	Violation as Misdemeanor; Rules and Regulations
2559	Injunction to Restrain Unlawful Acts or Practices
2559.1	Registration; Supervising Registered Dispensers
2559.2	Application for Registration; Examination; Denial of Registration; Issuance of Certificate; Managers of

	Dispensing Operations; Display of Certificate
2559.3	Suspension or Revocation of Certificates
2559.4	Technicians in Office of Physician and Surgeon or Optometrist; Application of Article
2559.5	Operative Date of Article; Implementation
2559.6	Unprofessional Conduct; Filling Expired Prescriptions
2560	Registration Requirements; Contact Lens Dispensing
2561	Registry Examination
2562	Evaluation by Prescriber
2563	Suspension and Revocation
2564	Not Applicable to Technicians
2564.5	Handwashing Facilities

Nonresident Contact Lens Seller Registration Act

2546. This act may be cited as the "Nonresident Contact Lens Seller Registration Act".
(Added by Stats. 1995, Ch. 853)

2546.1. (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 by Stats. 1995, Ch. 853)

2546.2. All references in this chapter to the division shall mean the Division of Licensing of the Medical Board of California.
(Added by Stats. 1995, Ch. 853)

2546.3. The division may adopt, amend, or repeal any rules and regulations that are reasonably necessary to carry out this chapter.
(Added by Stats. 1995, Ch. 853)

2546.4. 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 copartnership, 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 by Stats. 1995, Ch. 853)

2546.5. 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.

(Added by Stats. 1995, Ch. 853)

2546.6. Contact lenses may be sold only upon written prescription dated one year or less from the date the lenses are supplied, or within any shorter period of time that is specified by the prescription. If the written prescription 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 any lens, and maintain a record of the communication.

(Added by Stats. 1995, Ch. 853)

2546.7. (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 by Stats. 1995, Ch. 853)

2546.8. 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 by Stats. 1995, Ch. 853)

2546.9. 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), except that if the registration will expire less than one year after the issuance, then the fee shall be fifty dollars ($50).

(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 by Stats. 1995, Ch. 853)

Registration Required
2550. 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.
(Amended by Stats. 1993, Ch. 1267)

Division of Allied Health Professions
2550.1. All references in this chapter to the board or the Board of Medical Examiners or division shall mean the Division of Licensing of the Medical Board of California.
(Amended by Stats. 1993, Ch. 1267)

Application; Fee
2551. 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.
(Amended by Stats. 1990, Ch. 1190)

Contents of Application
2552. 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.
(Amended by Stats. 1986, Ch. 773)

Registration and Certificate

2553. 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.
(Amended by Stats. 1986, Ch. 773)

Business Location

2553.5. (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.
(Amended by Stats. 1993, Ch. 240)

Proprietary Interest Prohibited
2553.6. The board shall deny any application for registration under this chapter if any person licensed under Chapter 5 (commencing with Section 2000) of this division, 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) of this division 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, co-ownership, 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) of Division 2 of this code, and shall not be construed to modify Section 2557, or to affect the fitting of prescription lenses by a technician pursuant to Section 2544.
(Added by Stats. 1968, Ch. 1118)

Customer Inquiries and Complaints; Display of Designated Employee
2554. 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 by Stats. 1986, Ch. 773)

Suspension, Revocation and Probation
2555. 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.
(Amended by Stats. 1989, Ch. 433)

Conviction of a Crime
2555.1. 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.
(Amended by Stats. 1993, Ch. 1267)

Unlawful Acts
2556. 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.
(Amended by Stats. 1979, Ch. 653)

Representation as Dispensing Optician
2556.5. 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 by Stats. 1953, Ch. 1144)

Exemptions
2557. 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, sunglasses, 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 by Stats. 1939, Ch. 955)

Misdemeanor Violation; Rules and Regulations
2558. 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.
(Amended by Stats. 1993, Ch. 1267)

Injunctions
2559. 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.
(Amended by Stats. 1993, Ch. 1267)

Registration; Requirements
2559.1. 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 by Stats. 1986, Ch. 773)

Registry Examination
2559.2. (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.

(Amended by Stats. 1994, Ch. 26)

Suspension and Revocation

2559.3. 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 by Stats. 1986, Ch. 773)

Not Applicable to Technicians

2559.4. This article shall not apply to a technician fitting spectacle lenses in the office of a physician and surgeon or optometrist pursuant to Section 2544 if the technician is acting under the direct responsibility and supervision of the physician and surgeon or optometrist who engages in the practice of fitting spectacle lenses for his or her patients.

(Added by Stats. 1986, Ch. 773)

Operative Date of Article

2559.5. 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. (Amended by Stats. 1987, Ch. 525)

Unprofessional Conduct; Filling Expired Prescriptions

2559.6. 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 by Stats. 1998, Ch. 8, effective January 1, 1999)

Registration Requirements; Contact Lens Dispensing

2560. 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.

(Amended by Stats. 1994, Ch. 26)

Registry Examination

registered contact lens dispenser on forms prescribed by the 2561. An individual shall apply for registration as a 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 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 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.
(Amended by Stats. 1994, Ch. 26)

Evaluation by Prescriber
2562. 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.
(Amended by Stats. 1994, Ch. 26)

Suspension and Revocation
2563. 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 by Stats. 1982, Ch. 418)

Not Applicable to Technicians
2564. The provisions of this article shall not apply to a technician fitting contact lenses in the office of a physician and surgeon or optometrist while acting under the direct responsibility and supervision of the physician and surgeon or optometrist who engages in the practice of fitting contact lenses for his or her patients under Section 2544.
(Added by Stats. 1982, Ch. 418)

Handwashing Facilities
2564.5. A registered dispensing optician fitting contact lenses shall maintain accessible hand washing facilities on the premises and those facilities shall be used before each fitting of contact lenses.
(Added by Stats. 1982, Ch. 418)

OPTOMETRY PRACTICE ACT
Ch. 7, Division 2 (Healing Arts)

Article		Section
1.	General Provisions …….....	3000
2.	Administration.....	3010
3.	Admission to Practice.....	3040
4.	Registration.....	3070

5. Revocation and Suspension.....…… 3090
6. Offenses Against the Chapter.....…… 3120
7. Revenue.....…… 3145
8. Optometric Corporations.....…… 3160

Article 1
GENERAL PROVISIONS

Section

3000 Advertising
3001 Ophthalmic Lens Defined
3002 Trial Frame and Test Lens Defined

Advertising
3000. 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, hand bill, 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 by Stats. 1937, Ch. 423)

Ophthalmic Lens Defined
3001. As used in this chapter, an ophthalmic lens is any lens which has a spherical, cylindrical or prismatic power or value.
(Added by Stats. 1937, Ch. 423)

Trial Frame and Test Lens Defined
3002. 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 by Stats. 1937, Ch. 423)

Article 2
ADMINISTRATION

Section

3010 State Board of Optometry
3011 Members of the Board
3012 Financial Interests of Members
3013 Tenure of Members; Vacancies
3014 Officers of Board
3014.5.1.1 Executive Officer
3015 Executive Officer's Duties
3016 Compensation of Members

3017	Meetings; Examination
3018	Records of the Board
3019	Record of Prosecutions and Examinations
3020	Inventory
3021	Register of Optometrists
3022	Syllabus of Requirements for Certificate
3023	Accreditation of Schools
3023.1	Education Requirements and Standards for Accreditation of Schools; Rules and Regulations
3024	Powers of the Board
3025	Rules and Regulations
3025.5	Regulations Prescribing Minimum Standards Governing Optometric Services, Equipment or Sanitary Conditions
3025.6	Disciplinary Proceedings for Violation of Rules and Regulations; Prior Notification (Repealed)
3026	Board Seal; Offices
3026.5	Separation of Complaints by Scope of Practice
3027	Employment of Executive Officer and Other Personnel; Attorney General as Counsel
3027.5	Standard of Care When Diagnosing or Treating Eye Disease
3029	Rules and Regulations Related to Price Fixing or Advertising of Commodities

State Board of Optometry

3010. 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 nine members, three of whom shall be public members.

Six members of the board shall constitute a quorum.

This section shall become inoperative on July 1, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended by Stats. 1994, Ch. 908)

Members of the Board

3011. 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.
(Amended by Stats. 1982, Ch. 437)

Financial Interests of Members
3012. No member of the board shall be financially interested in any purchase or contract in which the board is interested nor shall he be financially interested in the sale of any property or optical supplies to any prospective candidate for examination before the board.
(Added by Stats. 1937, Ch. 423)

Tenure of Members; Vacancies
3013. Each member of the board shall hold office for a term of four years, and shall serve 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.

Vacancies occurring shall be filled by appointment for the unexpired term.

The Governor shall appoint one of the public members and the six members qualified as provided in Section 3011. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies which occur on or after January 1, 1983.
(Amended by Stats. 1982, Ch. 676)

Officers of Board
3014. The board shall organize and 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.
(Amended by Stats 1974, Ch. 1122)

Executive Officer
3014.5. 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.

This section shall become inoperative on July 1, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.
(Amended by Stats. 1994, Ch. 908)

Executive Officer=s Duties
3015. The executive officer shall keep all the records of the board and discharge such other duties as the board shall from time to time prescribe.
(Amended by Stats. 1984, Ch. 47)

Compensation of Members
3016. The secretary shall be entitled to his traveling and other necessary expenses.

The secretary shall not receive a salary for acting in such capacity.

Each member of the board shall receive a per diem and expenses as provided in Section 103.
(Amended by Stats. 1967, Ch. 535)

Meetings; Examination
3017. The board shall hold regular meetings at least once a year at which an examination of applicants for certificates of registration shall be given.

Special meetings shall be held upon request of a majority of the members of the board or upon the call of the president.
(Added by Stats. 1937, Ch. 423)

Records of the Board
3018. The board shall keep an accurate record of all of its proceedings and of all its meetings.
(Added by Stats. 1937, Ch. 423)

Record of Prosecutions and Examinations
3019. The board shall also keep a record of all prosecutions for violations of this chapter and of all examinations held for applicants for certificates of registration together with the names and addresses of all persons taking examinations and of their success or failure to pass them.
(Added by Stats. 1937, Ch. 423)

Inventory
3020. The board shall keep an accurate inventory of all property of the board and of the state in the possession of the board and it shall obtain a receipt therefor from its successor.
(Amended by Stats 1968, Ch. 1473)

Register of Optometrists
3021. The board may keep a register of optometrists which shall contain the names and addresses of all persons to whom certificates of registration have been issued in the State of California. It shall also contain the date of the issuance of each certificate and the place or places of business in which each optometrist is engaged and in addition, all the renewals, revocations and suspensions of certificates.

In each odd-numbered year the board may print and circulate to all optometrists in this state a yearbook containing their names and addresses.
(Amended by Stats. 1978, Ch. 1161)

Syllabus of Requirements for Certificate
3022. The board shall publish and distribute a syllabus of the educational requirements and the examination requirements for the obtainment of a certificate to practice optometry within this State.
(Added by Stats. 1937, Ch. 423)

Accreditation of Schools
3023. The board may visit and examine schools, colleges and universities or their divisions or departments in this state which provide optometric education.

For the purposes of this chapter, it shall accredit schools, colleges and universities or their divisions or departments in or out of this state providing optometric education, which it finds giving a sufficient program of study for the preparation of optometrists.
(Amended by Stats. 1978, Ch. 872)

Education Requirements and Standards for Accreditation of Schools; Rules and Regulations

3023.1. After January 1, 1972, the board may adopt such rules and regulations as are, in its judgment, reasonable and necessary to insure that optometrists have the knowledge to adequately protect the public health and safety by establishing educational requirements which applicants shall have satisfied for admission to an examination for certificates of registration as optometrists and by governing its accreditation of schools, colleges and universities or their divisions or departments which provide optometric education. In promulgating such rules and regulations or in extending its 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 by Stats. 1971, Ch. 1791)

Powers of the Board

3024. 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 by Stats. 1937, Ch. 423)

Rules and Regulations

3025. 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.

(Amended by Stats. 1957, Ch. 2084)

Regulations Prescribing Minimum Standards Governing Optometric Services, Equipment or Sanitary Conditions

3025.5. 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 by Stats. 1963, Ch. 1464)

Disciplinary Proceedings for Violation of Rules and Regulations; Prior Notification

3025.6

(Repealed 1994, Ch. 1275)

Board Seal; Offices

3026. The board may adopt and use a common seal and establish a permanent office or offices.

(Added by Stats. 1937, Ch. 423)

Separation of Complaints by Scope of Practice
3026.5. In the process of hearing, investigating, and reviewing complaints, the board shall separate those complaints that concern the actions of any optometrist acting within the scope of practice as it existed prior to the effective date of the act adding this section from complaints relating to an optometrist's actions within the expanded scope of practice created by the act adding this section.
(Added by Stats. 1996, Ch. 13)

Employment of Executive Officer and Other Personnel; Attorney General as Counsel
3027. Except as provided by Section 159.5, and in lieu of Section 3016, 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 such duties as are delegated by the board and shall be responsible to it for the accomplishment of such 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.

The Attorney General shall act as the legal counsel for the board and his services shall be a charge against it.
(Amended by Stats. 1974,Ch. 1122)

Standard of Care When Diagnosing or Treating Eye Disease
3027.5. 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 by Stats. 1996, Ch. 13)

Rules and Regulations Related to Price Fixing or Advertising of Commodities
3029. Except as provided in Sections 3129 and 3130, 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 by Stats. 1961, Ch. 199)

Article 3
ADMISSION TO PRACTICE

Section

3040	Unlawful Practice; Prima Facie Evidence
3041	Optometry Defined
3041.1	Therapeutic Pharmaceutical Agent Advisory Committee
3041.2	Use of Topical Pharmaceutical Agents; Educational and

	Examination Requirements
3041.3	Therapeutic Pharmaceutical Agent Certification Requirements
3042	Exceptions; Necessity of Prescription or Order
3042.5	Exceptions; Students; Instructors Licensed in Another State
3043	Goggles and Other Non-refractive Devices; Ready-to-Wear Merchandise
3044	Examination; Application; Fee; Denial of Application
3045	Contents of Application; Verification
3047	Graduation From an Accredited Institution; Evidence
3050	High School Education or Equivalent
3051	Satisfactory Evidence of Education in Child Abuse Detection and the Detection of Alcoholism and Other Chemical Substance Dependency; Matriculate in a School of Optometry on or After September 1, 1997
3052	Examination in General
3053	Mode and Scope of Examination
3054	Grading; Re-examination
3055	Issuance and Duration of Certificate
3056	Certificate of Registration Requirements; Full-Time Faculty Member
3057.5	Examination for Certificate; Graduates of Schools of Foreign Countries; Operative Date
3059	Continuing Education Requirements
3060	Child and Elderly Abuse; Dissemination of Information

Unlawful Practice; Prima Facie Evidence

3040. It is unlawful for any person to engage in the practice of optometry or to display a sign or in any other way to advertise or hold himself 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.

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.
(Amended by Stats 1978, Ch. 872)

Optometry Defined

3041. (a) The practice of optometry 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 which may be classified as drugs by any law of the United States or of this state.

(5) The use of topical pharmaceutical agents for the sole purpose of the examination of the human eye or eyes for any disease or pathological condition. The topical pharmaceutical agents shall include mydriatics, cycloplegics,

anesthetics, and agents for the reversal of mydriasis.

(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 appendages, for all of the following conditions, exclusively:

(A) Allergies, infectious disease, and non-systemic inflammations of the conjunctiva.

(B) Eyelid margin inflammation and trichiasis, including blepharitis, meibomian gland dysfunction and chalazia, but excluding cellulitis.

(C) Peripheral infectious corneal ulcers under a protocol with a consulting ophthalmologist, with a 24-hour referral requirement.

(D) Traumatic or recurrent conjunctival or corneal abrasions and erosions.

(E) Corneal surface disease and dry eyes.

(2) For purposes of this section, "treat" means the use of therapeutic pharmaceutical agents, as described in subdivision (d), and the procedures described in subdivision (e).

(c) In accordance with Section 1 of the act amending this section during the 1995-96 Regular Session of the Legislature, subdivision (b) shall be not construed to limit the scope of practice of an optometrist as it existed prior to the effective date of the act amending this section during the 1995-96 Regular Session of the Legislature.

(d) 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, exclusively:

(1) All of the topical pharmaceutical agents listed in paragraph (5) of subdivision (a).

(2) Topical lubricants.

(3) Topical nonsteroidal antiallergy agents.

(4) Topical nonsteroidal anti-inflammatories.

(5) Topical antibiotic agents.

(6) Topical hyperosmotics.

(7) Tetracyclins for treatment of blepharitis. If the patient's condition does not improve after six weeks of treatment, the optometrist shall consult with a physician and surgeon.

(8) Topical miotics for diagnostic purposes.

(9) Nonprescription medications.

(10) Topical agents for the reversal of mydriasis.

(e) An optometrist who is certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may also perform all of the following:

(1) Mechanical epilation.

(2) Ordering of smears, cultures, and sensitivities used in the diagnosis of diseases listed in this section as within the scope of practice.

(3) The use of punctal plugs that are diagnostic and absorbable and do not require punctal dilation.

(4) The prescription of therapeutic contact lenses.

(5) Removal of superficial foreign bodies of the eyelid and conjunctiva.

(6) Removal of corneal superficial foreign bodies above the Bowman's Layer, however if the superficial foreign body is within the central 3 millimeters of the cornea, the use of sharp instruments is prohibited.

(f) Notwithstanding any other provision of law, an optometrist shall not treat children under one year of age with therapeutic pharmaceutical agents.

(g) Any dispensing of a therapeutic pharmaceutical agent by an

optometrist shall be without charge.

(h) Notwithstanding any other provision of law, 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 in a manner not specifically authorized by this act. Nothing in the act amending this section shall limit an optometrist's authority, as it existed prior to the effective date of the act amending this section, to utilize diagnostic laser and ultrasound technology.

(Amended by Stats. 1996, Ch. 13)

Therapeutic Pharmaceutical Agent Advisory Committee

3041.1. (a) There shall be the Therapeutic Pharmaceutical Agent Advisory Committee within the State Board of Optometry. The committee shall consist of six members: Three board-certified ophthalmologists currently licensed in good standing in California, to be appointed by the Medical Board of California; and three optometrists who have passed the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" examination or, in the event it is no longer offered, its equivalent, as determined by the State Board of Optometry, to be appointed by the State Board of Optometry.

(b) The committee shall recommend protocols that the State Board of Optometry may use in its decisionmaking process. These protocols shall include all of the following:

(1) A protocol relating to peripheral infectious corneal ulcers.

(2) A protocol for deciding issues relating to equivalency of education and training of optometrists licensed outside of California. This shall not relieve optometrists licensed outside of California from the requirement of completing a preceptorship pursuant to paragraph (2) of subdivision (b) of Section 3041.3.

(c) The committee shall provide the Medical Board of California with copies of its recommendations.

(Amended by Stats. 1997, Ch. 17)

Use of Topical Pharmaceutical Agents; Educational and Examination Requirements

3041.2. (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.

(Amended by Stats. 1996, Ch. 13)

Therapeutic Pharmaceutical Agent Certification Requirements

3041.3. (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 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 completes 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, and the committee established pursuant to Section 3041.1 shall recommend protocols for the board to use in this regard, as described in Section 3041.1.
(Amended by Stats. 1997, Ch. 17)

Exceptions; Necessity of Prescription or Order

3042. The provisions of this chapter do not prevent a duly 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 duly licensed physician and surgeon or optometrist from filling prescriptions or orders, nor do they prevent the replacing, duplicating or repairing of ophthalmic lenses or the frames or fittings thereof by persons qualified to write or fill prescriptions or orders under the provisions of this chapter, nor prevent the doing of the merely mechanical work upon such lenses

or upon the frames or fittings thereof by an optical mechanic, nor prevent a technician acting under the responsibility and direction of a physician and surgeon or an optometrist from using any optical device in connection with ocular exercises, visual training, vision training or orthoptics.

It is unlawful for any person to dispense, replace or duplicate an ophthalmic lens or ophthalmic lenses without a prescription or order from a duly licensed physician and surgeon or optometrist.
(Amended by Stats. 1959, Ch. 2073)

Exceptions; Students; Instructors Licensed in Another State
3042.5. (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 by Stats. 1955, Ch. 110)

Goggles and Other Non-refractive Devices; Ready-to-Wear Merchandise
3043. 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 by Stats. 1937, Ch. 423)

Examination; Application; Fee; Denial of Application
3044. Any person over the age of 18 years desiring to engage in the practice of optometry in this state may file an application for examination before the board.

The application shall be accompanied by the fee required by this chapter and shall be filed with the board at least 30 days prior to the day of any meeting at which an examination is to be held.

An application for examination may be denied on any of the grounds listed 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.
(Amended by Stats. 1978, Ch. 1161)

Contents of Application; Verification
3045. The application shall be duly verified by the oath of the applicant and shall contain the name, age and address of the applicant and a statement of the previous examinations, if any, that he has taken before the board and dates of such examinations.

In addition, it shall contain information and evidence satisfactory to the board showing the eligibility of the applicant to take the examination.

(Added by Stats. 1937, Ch. 423)

Graduation From an Accredited Institution; Evidence
3047. Except as otherwise provided in this chapter and in rules and regulations promulgated by the board after January 1, 1972, each applicant shall show the board by satisfactory evidence that he was graduated from a school, college or university or its division or department which was at that time accredited by the board as provided in Section 3023 prior to the effective date of the amendment to this section at the 1971 Regular Session.
(Amended by Stats. 1978, Ch. 872)

High School Education or Equivalent
3050. Each applicant for examination shall also furnish a verified copy satisfactory to the board of his diploma, certificate of graduation or transcript of record from a high school accredited to the University of California or any other university of equal standing or any university or college accredited by a nationally recognized regional accrediting agency or association.

In lieu of such diploma, certificate or transcript, he may present a certificate signed by a State Superintendent of Public Instruction or similar officer to the effect that he has had scholastic preparation equivalent in all respects to that demanded for graduation from a high school in the state whose certificate he presents, proof of having passed an examination for entrance to an accredited university or college or to another collegiate-level institution of learning if its credits were and are accepted by accredited institutions as if coming from an accredited institution or proof of having been academically admitted as a regular student by such accredited university or college or other collegiate-level institution of learning.
(Amended by Stats. 1971, Ch. 1791)

Satisfactory Evidence of Education in Child Abuse Detection and the Detection of Alcoholism and Other Chemical Substance Dependency; Matriculate in a School of Optometry on or After September 1, 1997
3051. 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 by Stats. 1997, Ch. 556)

Examination in General
3052. Examinations shall be held by the board at least once a year with such additional examinations as the board desires to hold. The time and place of any examination shall be fixed by the board at least 30 days prior to the date that it is to be held.
(Amended by Stats. 1945, Ch. 290)

Mode and Scope of Examination
3053. 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.
(Amended by Stats. 1978, Ch. 872)

Grading; Re-examination

3054. No applicant shall be passed by the board who fails to obtain a grade of 75 percent, as determined by the board, in every section or test of the examination in which he is required to be examined as provided in this chapter and in rules and regulations promulgated by the board. In case any applicant fails to pass any examination, he shall be examined in the next or any succeeding examination held during the next five years only in any sections or tests in which he failed to obtain a grade of 75 percent.
(Amended by Stats. 1979, Ch. 788)

Issuance and Duration of Certificate

3055. All applicants, without discrimination, who satisfactorily pass the examination, shall thereupon be registered in the board's register of optometrists and a certificate of registration shall be issued to each one. The certificate shall continue in effect through the date provided in Section 3146 which next occurs after its issuance, when it shall expire unless it is renewed in the manner provided in that section.
(Amended by Stats. 1978, Ch. 872)

Certificate of Registration Requirements; Full-Time Faculty Member

3056. Notwithstanding any other provision of this chapter, the board may issue a certificate of registration to a person who meets all of the following qualifications:

(a) Has a degree as a doctor of optometry issued by an accredited school or college of optometry.

(b) Is currently licensed in another state.

(c) 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.

(d) 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.

(e) Has successfully passed the board's jurisprudence examination.

(f) Is in good standing, with no past or pending malpractice awards or judicial or administrative actions.

(g) Has met the minimum continuing education requirements set forth in Section 3059 for the current and preceding year.

(h) Has met the requirements of Section 3041.2 regarding the use of pharmaceutical agents under subdivision (e) of Section 3041.

(i) Has never had his or her license to practice optometry revoked or suspended.

(j) Is not subject to denial based on any of the grounds listed in Section 480.

(k) Pays an application fee in an amount equal to the application fee prescribed by the board pursuant to Section 3152.

(l) Files an application on a form prescribed by the board.

Any certificate of registration 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 certificates of registration issued under

this chapter.
(Added by Stats. 1994, Ch. 403)

Examination for Certificate; Graduates of Schools of Foreign Countries; Operative Date

3057.5. (a) Notwithstanding any other provision of this chapter, the board shall permit a person who meets all of the following requirements to take the examination for a certificate of registration as an optometrist:

(1) Is over the age of 18 years.

(2) Is not subject to denial of a certificate under Section 480.

(3) Has a degree as a doctor of optometry issued by a university located outside of the United States.

(b) This section shall become operative on January 1, 1996.
(Amended by Stats. 1994, Ch. 26)

Continuing Education Requirements

3059. (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 from 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) The board may adopt regulations to require licensees to maintain current certification in cardiopulmonary resuscitation. Training required for the granting or renewal of a cardiopulmonary certificate shall not be credited towards the requirements of subdivision (a) or (f).

(f) 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, systemic disease. This subdivision shall become operative only if legislation that requires the renewal of optometrists' licenses every two years is enacted during the 1995-96 Regular Session of the Legislature.

(g) An optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 shall complete a total of 25 hours of continuing education every year in order to renew his or her certificate. Eighteen of the required 25 hours of continuing education shall be on the diagnosis, treatment, and management of ocular, systemic disease. This subdivision shall become

operative only if legislation that requires the renewal of optometrists' licenses every two years is not enacted during the 1995-96 Regular Session of the Legislature.

(h) The board shall encourage every optometrist to take a course or courses in pharmacology and pharmaceuticals as part of his or her continuing education.

(i) 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.

(j) 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.
(Amended by Stats. 1997, Ch. 556)

Child and Elderly Abuse; Dissemination of Information
3060. 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 by Stats. 1997, Ch. 556)

Article 4
REGISTRATION

Section

3070	Address of Optometrist; Notice by Mail
3075	Display of Certificate; Multiple Offices
3076	Temporary Practice Not at Registered Place of Practice
3077	Office, Branch Offices; Rules and Regulations

Address of Optometrist; Notice by Mail
3070. Before engaging in the practice of optometry, each registered optometrist shall notify the board in writing of the address or addresses where he is to engage, or intends to engage, in the practice of optometry and, also, of any changes in his place of practice. The practice of optometry is the performing or the controlling of any of the acts set forth in Section 3041. Any notice required to be given by the board to any registered optometrist may be given by United States mail to this address, postage thereon prepaid.
(Amended by Stats. 1979, Ch. 788)

Display of Certificate; Multiple Offices
3075. (a) Each holder of a certificate of registration or a certification of issuance of his certificate of registration shall keep it conspicuously posted in his office or

place of practice at all times.

(b) The board may, by rule or regulation, provide that, when the holder of a certificate of registration has more than one office or place of practice or is employed to practice optometry in more than one office or place of practice and it is infeasible to have his certificate of registration or a certification of issuance of his certificate of registration posted in more than one of such offices or places of practice, he shall have such other evidence as may be prescribed by the board that he is licensed to practice optometry in California conspicuously posted in each of such additional offices or places of practice which he has or where he is employed to practice optometry. When the board is requested by a holder of a certificate of registration or certification of issuance of his certificate of registration to issue such other evidence that he is licensed to practice optometry, the board may charge a fee not to exceed twenty-five dollars ($25) for each issuance of such other evidence.

(Amended by Stats. 1976, Ch. 602)

Temporary Practice Not at Registered Place of Practice

3076. Any registered optometrist, who temporarily practices optometry outside or away from his regular registered place of practice, shall deliver to each patient there fitted or supplied with glasses a receipt which shall contain his signature and show:

(a) His permanent registered place of practice.

(b) The number of his certificate.

(c) A specification of the lenses furnished.

(d) The amount charged for them.

(Added by Stats. 1937, Ch. 423)

Office, Branch Offices; Rules and Regulations

3077. 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. Such 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 such branch office on or after that date shall notify the board in writing of such 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 such branch office. A certificate of registration so suspended shall not be restored except upon compliance with such 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 such 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 such branch office license. Such 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 which are in operation on October 1, 1959 and which 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 such branch office and no new branch office license shall be issued in place of the license issued for such branch office, unless the branch office is the only one operated by the optometrist or 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 offices fifty percent (50%) of the time during which such 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) Is registered with the State Board of Optometry as an optometric corporation in accordance with 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.

(Amended by Stats. 1996, Ch. 312)

Article 5
REVOCATION AND SUSPENSION

Section

3090	Grounds in General; Powers and Proceedings
3090.1	Professional Competency Examination
3093	Re-examination Before Setting Aside
3094	Conviction of Crime; Evidence
3095	Fraud in Securing Certificate or Other License or Permit
3096	Solicitation
3096.5	Prohibition from Claim of Specialist in Eye Disease by an Optometrist
3096.6	Knowingly Making or Signing Any Certificate Relate to Optometry
3096.7	Altering or Modifying the Medical Record of Any Person
3097	Contagious or Infectious Disease
3098	Misuse of Title or Letters
3099	Claiming Special Knowledge
3100	Employment of Cappers or Steerers
3101	Fraud in Obtaining Fee
3102	Employment of Suspended or Unlicensed Optometrist
3103	Accepting Employment by Improper Person or Company; Incorporation; Employment by Ophthalmologist
3104	Improper Advertising
3105	Intemperance
3105.1	Excessive Use of Alcoholic Beverages
3106	Permitting Another to Use Certificate
3107	Conviction Defined; Authority to Suspend, Revoke or Refuse License
3107.1	Federal or State Statute; Violations
3108	Record Keeping by Therapeutic Pharmaceutical Agent Certified Optometrist
3109	Unprofessional Conduct; Failure to Refer Patient with Pathology to Physician

Grounds in General; Powers and Proceedings

3090. The certificate of registration of any person registered under this chapter, or any former act relating to the practice of optometry, may be revoked or suspended for a fixed period by the board for any of the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or of the rules and regulations adopted by the board pursuant to this chapter and in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The proceedings under

this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(b) Unprofessional conduct.

(c) Gross ignorance.

(d) Inefficiency in his or her profession.

(Amended by Stats. 1997, Ch. 556)

Professional Competency Examination

3090.1. (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; or (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 by Stats. 1997, Ch. 556)

Re-examination Before Setting Aside

3093. 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 by Stats. 1937, Ch. 423)

Conviction of Crime; Evidence

3094. The conviction of a crime substantially related to the qualifications, functions and duties of an optometrist constitutes a cause to revoke or suspend a certificate of registration. The record of conviction or a certified copy thereof certified by the clerk of the court or by the judge in whose court the conviction is had, is conclusive evidence of the conviction.

(Amended by Stats. 1978, Ch. 1161)

Fraud in Securing Certificate or Other License or Permit

3095. The securing of a certificate of registration as an optometrist or of any other license or permit issued by the board by willfully given false information or a willfully made false statement, in a material regard on any application to the board, or by fraud or deceit practiced upon the board constitutes a cause to revoke or suspend the certificate of registration or the other license or permit.

(Amended by Stats. 1963, Ch. 1464)

Solicitation

3096. The sending of a solicitor from house to house or the soliciting from house to house by the holder of a certificate of registration constitutes a cause to revoke or suspend his certificate of registration.

(Added by Stats. 1937, Ch. 423)

Prohibition from Claim of Specialist in Eye Disease by an Optometrist

3096.5. No optometrist shall advertise or otherwise hold himself or herself out to

be a specialist in eye disease and the treatment thereof.
(Added by Stats. 1996, Ch. 13)

Knowingly Making or Signing Any Certificate Relate to Optometry
3096.6. 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. Section 3120 shall not apply to this section.
(Added by Stats. 1997, Ch. 556)

Altering or Modifying the Medical Record of Any Person
3096.7. 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. Section 3120 shall not apply to this section.
(Added by Stats. 1997, Ch. 556)

Contagious or Infectious Disease
3097. When the holder is suffering from a contagious or infectious disease, it constitutes a cause to suspend his certificate of registration during the period of continuance of such disease.
(Amended by Stats. 1979, Ch. 788)

Misuse of Title or Letters
3098. 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 by Stats. 1937, Ch. 423)

Claiming Special Knowledge
3099. The holding out as having a special knowledge of optometry, as defined in this chapter, by the holder of a certificate of registration, constitutes a cause to revoke or suspend his certificate of registration.
(Added by Stats. 1937, Ch. 423)

Employment of Cappers or Steerers
3100. The employing of what are known as "cappers" or "steerers" to obtain business constitutes unprofessional conduct.
(Added by Stats. 1937, Ch. 423)

Fraud in Obtaining Fee
3101. The obtaining of any fee by fraud or misrepresentation constitutes unprofessional conduct.
(Added by Stats. 1937, Ch. 423)

Employment of Suspended or Unlicensed Optometrist
3102. The employing, directly or indirectly, of any suspended or unlicensed optometrist to perform any work for which a certificate of registration is required constitutes unprofessional conduct.
(Amended by Stats. 1979, Ch. 788)

Accepting Employment by Improper Person or Company; Incorporation; Employment by Ophthalmologist
3103. Directly or indirectly accepting employment to practice optometry from any person not having a valid, unrevoked certificate of registration 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.
(Amended by Stats. 1979, Ch. 788)

Improper Advertising
3104. The advertising of the practice of optometry, treatment or advice in which untruthful, improbable or impossible statements are made constitutes unprofessional conduct.
(Added by Stats. 1937, Ch. 423)

Intemperance
3105. Habitual intemperance constitutes unprofessional conduct.
(Amended by Stats. 1978, Ch. 1161)

Excessive Use of Alcoholic Beverages
3105.1. The use or consumption of alcoholic beverages or a narcotic drug by a person holding a certificate under this chapter to the extent or in a manner that is dangerous or injurious to the person or to any other person or to the public or to an extent that the use or consumption impairs the ability of the person holding the certificate to conduct with safety to the public the practice authorized by the certificate constitutes unprofessional conduct. Section 3120 shall apply to a violation of this section.
(Amended by Stats. 1997, Ch. 677)

Permitting Another to Use Certificate
3106. The permitting of another to use his certificate of registration for any purpose constitutes unprofessional conduct.
(Added by Stats. 1937, Ch. 423)

Conviction Defined; Authority to Suspend, Revoke or Refuse License
3107. 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 an optometrist is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, 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 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.
(Amended by Stats. 1978, Ch. 1611)

Federal or State Statute; Violations
3107.1. The conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of this unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.
(Added by Stats. 1997, Ch. 556)

Record Keeping by Therapeutic Pharmaceutical Agent Certified Optometrist
3108. The failure of any therapeutic pharmaceutical agent certified optometrist to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.
(Added by Stats. 1996, Ch. 13)

Unprofessional Conduct; Failure to Refer Patient with Pathology to Physician
109. It shall be unprofessional conduct for an optometrist to fail to refer a patient to an appropriate physician where an examination of the eyes indicates a substantial likelihood of any pathology which requires the attention of the appropriate physician. It shall be unprofessional conduct for an optometrist to fail to refer a patient to an appropriate physician and surgeon when response to treatment does not occur within a reasonable amount of time.
(Amended by Stats. 1996, Ch. 13)

Article 6
OFFENSES AGAINST THE CHAPTER

Section

3120	Violation as Misdemeanor
3123	Alteration of Certificate
3124	Use of Improperly Obtained, Counterfeited or Altered Certificate
3125	Practice Under False or Assumed Name, Individual, Group, or Corporate Practice
3126	False Statement in Application
3127	Practice Without Certificate
3128	Holding Self Out as an Optometrist Without Valid Certificate
3129	Advertisement of Furnishing of Services Without Cost; Prohibition

3130 Including Advertisement of Optometry Practice in Other Advertisement
3131 Injunction Against Unlawful Acts or Practices
3135 Issuance of Citations and Assessment of Administrative Fines; System

Violation as Misdemeanor
3120. 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 by Stats. 1937, Ch. 423)

Alteration of Certificate
3123. It is unlawful to alter with fraudulent intent in any material regard a certificate of registration issued by the board.
(Added by Stats. 1937, Ch. 423)

Use of Improperly Obtained, Counterfeited or Altered Certificate
3124. It is unlawful to use or attempt to use any certificate of registration issued by the board which has been purchased, fraudulently issued, counterfeited or materially altered, as a valid certificate of registration.
(Added by Stats. 1937, Ch. 423)

Practice Under False or Assumed Name, Individual, Group, or Corporate Practice
3125. 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 that:

(a) 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 such place or establishment, or portion thereof, is wholly owned and entirely controlled by the applicant or applicants; provided, however, that where the applicant or applicants are practicing optometry in a community clinic, as defined in subdivision (a) of Section 1203 of the Health and Safety Code, this subdivision shall not apply.

(b) 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"; provided, however, that where the applicant or applicants are practicing optometry in a community clinic, as defined in subdivision (a) of Section 1203 of the Health and Safety Code, and is subject to the name limitations of Title 17, California Administrative Code, Section 161, 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.

(c) 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 on such location, but also in any advertising permitted by law.

(d) No charges which could result in revocation or suspension of his certificate to practice optometry are pending against any optometrist practicing at such location.

Permits issued under this section by the Board of Optometry 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 certificates issued under this chapter. The board may charge an annual fee, not to exceed ten dollars ($10) for the issuance or renewal of each such permit.

Any 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 subdivision (d), 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.

In the event the board revokes or suspends the certificate 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, such revocation or suspension shall also constitute revocation or suspension, as the case may be, of such permit.
(Amended by Stats. 1981, Ch. 474)

False Statement in Application
3126. It is unlawful to willfully make any false statement in a material regard in an application for an examination before the board or for a certificate of registration as an optometrist or any other license or permit issued by the board.
(Amended by Stats. 1963, Ch. 1464)

Practice Without Certificate
3127. It is unlawful to practice optometry in this State without having at the time of so doing a valid, unrevoked, and unexpired certificate of registration as an optometrist.
(Amended by Stats. 1961, Ch. 366)

Holding Self Out as an Optometrist Without Valid Certificate
3128. It is unlawful to advertise by displaying a sign or otherwise or hold himself out to be an optometrist without having at the time of so doing a valid unrevoked certificate of registration from the board.
(Amended by Stats. 1978, Ch. 872)

Advertisement of Furnishing of Services Without Cost; Prohibition
3129. It is unlawful to advertise as being free or without cost the examination or treatment of the eyes or the furnishing of optometrical services.
(Amended by Stats. 1979, Ch. 653)

Including Advertisement of Optometry Practice in Other Advertisement
3130. It is unlawful to include in any advertisement relating to the sale or disposition of goggles, sun-glasses, colored glasses or occupational

eye-protective devices, any words or figures which 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 by Stats 1939, Ch. 560)

Injunction Against Unlawful Acts or Practices
3131. 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 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 such conduct on application of the board, the Attorney General, the district attorney of the county, or on application of 10 or more persons holding certificates 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.
(Amended by Stats. 1982, Ch. 517)

Issuance of Citations and Assessment of Administrative Fines; System
3135. 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.
(Amended by Stats. 1997, Ch. 677)

Article 7
REVENUE

Section

3145	Optometry Fund; Reserve Balance
3145.5	Fines; Deposit; Use
3146	Expiration
3147	Renewal of Expired Certificate; Renewal Fee; Delinquency Fee; Duration of License
3147.5	Renewal of Suspended Certificate; Reinstatement of Revoked Certificate
3147.6	Failure to Renew Within Three Years of Expiration; Restoration Conditions
3147.7	Out of State Practice; Effect on Right to Renew
3148	Disposition of Fees; Payments to University of California
3150	Disbursements
3151	Reports
3152	Fee and Penalty Schedule; Report
3152.5	Application and Renewal Fee for a Certificate to Use Therapeutic Pharmaceutical Agents
3153	Examination Fee

Optometry Fund; Reserve Balance
3145. 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.
(Amended by Stats. 1994, Ch. 1275)

Fines; Deposit; Use
3145.5. Administrative fines collected pursuant to Section 3135 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 by Stats. 1983, Ch. 870)

Expiration
3146. A certificate issued under this chapter expires at 12 p.m. on the last day of the certificate holder's birth month following its original issuance and thereafter at 12 p.m. on the last day of the certificate holder's birth month every two years if not renewed. To renew an unexpired certificate, the certificate holder shall, before the time that the certificate would otherwise expire, apply for renewal on a form prescribed by the board and pay the renewal fee prescribed by this chapter.
(Amended by Stats. 1996, Ch. 328)

Renewal of Expired Certificate; Renewal Fee; Delinquency Fee; Duration of License
3147. Except as otherwise provided by Section 114 of this code, an expired certificate may be renewed at any time within three years after its expiration on filing of application for renewal on a form prescribed by the board, and payment of 150 percent of the renewal fee, but not more than twenty-five dollars ($25) in excess of the renewal fee. If the certificate is renewed more than 30 days after its expiration, the certificate holder as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the accrued renewal fees are paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the certificate shall continue in effect through the date provided in Section 3146 which next occurs after the effective date of the renewal, when it shall expire if it is not renewed.

A certificate which, under the law in effect before October 1, 1961, became suspended because of the failure of its holder to renew it, shall, for the purposes of this article, be considered to have expired on the date that it became suspended.
(Amended by Stats. 1994, Ch. 1275)

Renewal of Suspended Certificate; Reinstatement of Revoked Certificate
3147.5. A certificate which has been suspended is subject to expiration and shall be renewed as provided in this article, but such renewal does not entitle the holder of the certificate, while it remains suspended and until it is reinstated, to engage in the practice of optometry, or in any other activity or conduct in violation of the order or judgment by which the certificate was suspended.

A certificate which has been revoked is subject to expiration, but it may not be renewed. If it is reinstated after its expiration, the holder of the certificate,

as a condition precedent to its reinstatement, shall pay a reinstatement fee in an amount equal to 150 percent of the renewal fee but not more than twenty-five dollars ($25) in excess of the renewal fee.
(Amended by Stats. 1978, Ch. 1161)

Failure to Renew Within Three Years of Expiration; Restoration Conditions
3147.6. Except as otherwise provided by Section 114 of this code, a certificate that is not renewed within three years after its expiration may be restored thereafter, if no fact, circumstance, or condition exists that, if the certificate were restored, would justify its revocation or suspension, provided all of the following conditions are met:

(a) The holder of the expired certificate is not subject to denial of a certificate under Section 480.

(b) The holder of the expired certificate applies in writing for its restoration on a form prescribed by the board.

(c) He or she pays the fee or fees as would be required of him or her if he or she were then applying for a certificate of registration for the first time and had not previously taken the examination for a certificate.

(d) He or she takes and satisfactorily passes the clinical portion of the regular examination of applicants, or other clinical examination approved by the board, and takes and satisfactorily passes the California law and regulations examination administered by the board.

(e) After having taken and satisfactorily passed the clinical portion of the regular examination of applicants, or other clinical examination approved by the board, he or she pays a restoration fee equal to the renewal fee in effect on the last regular renewal date for certificates of registration.
(Amended by Stats. 1994, Ch. 1275)

Out of State Practice; Effect on Right to Renew
3147.7. The provisions of Section 3147.6 shall not apply to a person holding a certificate which has not been renewed within three years of expiration, if the person provides satisfactory proof that he or she holds a license from another state and has practiced optometry in that state when his or her certificate expired. In this event, the person may renew his or her certificate in the manner provided for under Section 3147.
(Amended by Stats. 1994, Ch. 26)

Disposition of Fees; Payments to University of California
3148. From each fee for the renewal of a certificate of registration for the biennial renewal of a certificate of registration 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.
(Amended by Stats. 1996, Ch. 328)

Disbursements
3150. The department may make all necessary disbursements to carry out the provisions of this chapter. Necessary disbursements include payment for the bond of the executive officer of the board, payment for stationery supplies, and payment for necessary optical instruments to be used in the conduct of examinations which instruments shall be the property of the state.

(Amended by Stats. 1984, Ch. 47)

Reports

3151. The Director of Consumer Affairs shall, within 30 days prior to each general session of the Legislature, submit to the Governor a full and true report of transactions under this chapter during the current biennium, including a compete statement of receipts and expenditures during that period.

In addition, the Director of Consumer Affairs, within 10 days after the beginning of each month, shall report to the State Controller all collections and receipts for the preceding month, and at the same time shall pay them into the Optometry Fund in the State Treasury.

(Amended by Stats. 1971, Ch. 716)

Fee and Penalty Schedule; Report

3152. The amount 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 certificate of registration who present credentials of graduation from an accredited school of optometry shall not exceed two hundred seventy-five dollars ($275) that shall not be refunded, except that applicants who are found ineligible to take an examination for a certificate of registration are entitled to a refund of a maximum of one hundred seventy-five dollars ($175).

(b) The fee for biennial renewal of a certificate of registration shall not exceed three hundred dollars ($300).

(c) The delinquency fee shall not exceed twenty-five dollars ($25).

(d) The annual fee for the renewal of a branch office license shall not exceed seventy-five dollars ($75).

(e) The fee for a branch office license shall not exceed seventy-five dollars ($75).

(f) The penalty for failure to pay the annual fee for renewal of a branch office license shall not exceed twenty-five dollars ($25).

(g) The fee for restoration of a certificate of registration after suspension for failure to comply with the provisions of this chapter relating to branch offices shall not exceed seventy-five dollars ($75).

(h) The fee for issuance of a certification of registration or upon change of name authorized by law of a person holding a certificate of registration under this chapter shall not exceed twenty-five dollars ($25).

(I) The board shall submit a report to the fiscal and appropriate policy committees of the Legislature whenever the board increases any fee. The report shall specify the rationale and justification for that increase and include the percentage of the fee increase to be used for enforcement purposes.

(Amended by Stats. 1996, Ch. 328)

Application and Renewal Fee for a Certificate to Use Therapeutic Pharmaceutical Agents

3152.5. 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 certificate holder 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 certificate or renewal of a certificate, monitoring the practice by certificate holders, 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 by Stats. 1996, Ch.13)

Examination Fee
3153. Notwithstanding Section 3152, the fee for the examination required by Section 3041.1 shall not exceed thirty-five dollars ($35).
(Added by Stats. 1976, Ch.418)

Article 8
OPTOMETRIC CORPORATIONS

Section

3160	Optometric Corporation Defined
3161	Application for Registration; Requirements; Issuance of Certificate
3162	Corporation Reports
3163	Names of Corporate or Individual Practitioners
3164	Directors, Shareholders and Officers; Necessity of License
3165	Income Attributable to Professional Services Not to Accrue to Disqualified Shareholders
3166	Scope of Practice
3167	Rules and Regulations

Optometric Corporation Defined
3160. An optometric corporation is a corporation which is registered with the State Board of Optometry and has a currently effective certificate of registration from the board pursuant to 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, and this article. Subject to all applicable statutes, rules and regulations, such optometric corporation is entitled to practice optometry. 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 by Stats. 1970, Ch.1265)

Application for Registration; Requirements; Issuance of Certificate
3161. An applicant for registration as an optometric corporation shall supply to the board all necessary and pertinent documents and information requested by the board concerning the applicant's plan of operation. The board may provide forms of application. If the board finds that the corporation is duly organized and existing pursuant to the general corporation law, that, except as provided in Section 13403 of the Corporations Code, each officer, director, shareholder, and each employee who will render professional services is a licensed person as defined in the Moscone-Knox Professional Corporation Act, and that from the application it appears that the affairs of the corporation will be conducted in compliance with law and the rules and regulations of the board, the board shall upon payment of the registration fee in such amount as it may determine issue a certificate of registration. The application shall be signed and verified by an officer of the corporation.

(Added by Stats. 1970, Ch.1265)

Corporation Reports
3162. Each optometric corporation shall file with the board at such times as the board may require a report containing such information pertaining to qualification and compliance with the statutes, rules and regulations of the board as the board may determine. The fee for filing such a report shall be fixed by the board. All reports shall be signed and verified by an officer of the corporation.
(Added by Stats. 1970, Ch.1265)

Names of Corporate or Individual Practitioners
3163. 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.
(Amended by Stats. 1974, Ch. 1079)

Directors, Shareholders and Officers; Necessity of License
3164. 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.
(Amended by Stats. 1981, Ch. 621)

Income Attributable to Professional Services Not to Accrue to Disqualified Shareholders
3165. 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 by Stats. 1970, Ch.1265)

Scope of Practice
3166. An optometric corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule or regulation now or hereafter in effect. In conducting its practice it shall observe and be bound by such statutes, rules and regulations to the same extent as a person holding a license under Section 3055. The board shall have the same powers of suspension, revocation, and discipline against an optometric corporation as are now or hereafter authorized by Section 3090, or by any other similar statute against individual licensees, provided however, that proceedings against an optometric corporation 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.
(Added by Stats. 1970, Ch.1265)

Rules and Regulations
3167. 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 by Stats. 1970, Ch.1265)

CHAPTER 9
PHARMACY

Article 2

Section	
4024	Dispensing; Definitions
4025	Drugs; Definitions
4039	Prescribers
4040	Prescriptions; Definitions
4057	Applicability
4124	Contact Lenses
4170	Requirements
4171	Exemptions

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 upon an order to furnish drugs or transmit a prescription from a certified nurse midwife, nurse practitioner, physician assistant, 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, or physician assistant acting within the scope of his or her practice.
(Amended by Stats. 1997, Ch. 549)

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).
(Amended by Stats. 1997, Ch. 549)

4039. ***Persons Authorized by Valid Licenses to Practice Professions - "Physician".***
"Physicians," "dentists," "optometrists," "pharmacists," "podiatrists," "veterinarians," "veterinary surgeons," "registered nurses," 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 by Stats. 1996, Ch. 890)

4040. ***Prescriptions****.*
(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 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.
(2) Issued by a physician, dentist, optometrist, podiatrist, or veterinarian 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 or names and address of the patient or patients in a manner consistent with paragraph (3) of subdivision (b) 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.
(Amended by Stats. 1997, Ch. 549)

4057. ***Applicability***.
(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 dangerous devices, hypodermic needles and syringes, sterilized sutures, parental solutions of 50 cubic centimeters or over, sterile water U.S.P., sterile normal saline solution, medicinal gases, inhalation anesthetics, laboratory chemicals, ethyl chloride, fluoromethane, stains and dyes, diagnostic agents and contrast medium for X-ray examination, and medicated dressings, 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 the following items in compliance with applicable law and regulations:
(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) The board may, by regulation, add to or delete dangerous drugs or dangerous devices from the exemptions provided in subdivision (b) or (c), for good cause shown.
(e) 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.
(f) 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.
(g) 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.
(Amended by Stats. 1997, Ch. 549)

Contact Leneses
4124. (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 by Stats. 1996, Ch. 890)

4170. ***Requirements***.

(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 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 record keeping 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.

(b) The Medical Board of California, the State Board of Optometry, the Board of Dental Examiners of California, and the Osteopathic Medical Board of California 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 dentistry, or a certificate to practice podiatry, and who is duly registered as such by the Medical Board of California, the State Board of Optometry, the Board of Dental Examiners of California, or the Board of Osteopathic Examiners of this state.
(Amended by Stats. 1997, Ch. 549)

4171. ***Exemptions***.

(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 veterinarians furnishing drugs for the treatment of animals, to programs licensed pursuant to Sections 11876, 11877, and 11877.5 of the Health and Safety Code, or to a prescriber dispensing parental chemotherapeutic agents, biologicals, or delivery systems used in the treatment of cancer.
(Added by Stats. 1996, Ch. 890)

Division 7, Part 2,
UNFAIR TRADE PRACTICES
Chapter 4

Section
17000 Chapter Cited
17001 Purpose of Chapter
17002 Unfair Practices Act

Chapter Cited
17000. This chapter may be cited as the Unfair Practices Act.
(Added by Statute 1941, Ch. 526)

Purpose of Chapter
17001. 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 by Statute 1941, Ch. 526)

Unfair Practices Act
17002. This chapter shall be liberally construed that its beneficial purposes may be subserved.
(Added by Statute 1941, Ch. 526)

Chapter 5
Unfair Competition-Fraudulent Business

Section
17200 Unfair Competition; Prohibited Activities
17201 Person
17201.5 Board within Department of Consumer Affairs; Local Consumer Affairs Agency
17202 Authority to Grant Specific or Preventive Relief
17203 Injunction; Orders or Judgements
17206 Violations; Penalty; Actions for Recovery; Expenses of Investigation and

Prosecution; Dispositon of Proceeds from Penalties
17206.1 Additional Penalties for Violations Against Senior Citizens or Disabled Persons; Definitions; Factors to be Considered; Prior Restitution

17208 Commencement of Action; Limitations; Revival

Unfair Competition; Prohibited Activities
17200. 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.
(Amended by Statute 1992, Ch. 430)

Person
17201. 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 by Statute 1977, Ch. 299)

Board within Department of Consumer Affairs; Local Consumer Affairs Agency
17201.5. 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 by Statute 1979, Ch. 897)

Authority to Grant Specific or Preventive Relief
17202. 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 by Statute 1977, Ch. 299)

Injunction; Orders or Judgements
17203. 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.
(Amended by Statute 1992, Ch. 430)

Violations; Penalty; Actions for Recovery; Expenses of Investigation and Prosecution; Dispositon of Proceeds from Penalties
17206. (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 or by any district attorney or 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, or city and county, having a population in excess of 750,000, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county, 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 General Fund. If the action 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

(d), if the action 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.

(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 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 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. 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.

(Amended by Statute 1997, Ch. 17)

Additional Penalties for Violations Against Senior Citizens or Disabled Persons; Definitions; Factors to be Considered; Prior Restitution

17206.1. (a) 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.

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 which 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; muscoloskeletal; 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. The term "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 by Statute 1988, Ch. 823)

Commencement of Action; Limitations; Revival
17208. 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 by Statute 1977, Ch. 299)

Division 7, Part 3, Chapter 1
ILLEGAL ADVERTISING

Article 1
FALSE ADVERTISING IN GENERAL

Section

17500 False or Misleading Statements
17500.1 Rules Restricting or Prohibiting Advertising Proscribed; State Bar Exception
17506.5 Board within the Department of Consumer Affairs; Local Consumer Affairs Agency; Definitions

False or Misleading Statements
17500. 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, any statement, concerning such real or personal property or 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 such 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 such personal property or 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.
(Amended by Statute 1979, Ch. 492)

Rules Restricting or Prohibiting Advertising Proscribed; State Bar Exception
17500.1. Notwithstanding any other provision of law, no trade or professional association, or state agency, ate 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.
(Amended by Statute 1979, Ch. 653)

Board within the Department of Consumer Affairs; Local Consumer Affairs Agency; Definitions
17506.5. 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 by Statute 1979, Ch. 897)

ARTICLE 2
PARTICULAR OFFENSES

Section	
17535	Injunctive Relief; Orders; Prosecutor; Complainant
17535.5	Violation of Injunction; Civil Penalty; Actions to Assess and Recover; Expenses of Investigation and Prosecution
17536	Violations of Chapter; Civil Penalty; Actions to Assess and Recover; Expenses of Investigation and Prosecution; Mutually Exclusive Remedies
17536.5	Proceedings Involving Violations or Construction of Chapter; Notice to Attorney General and County District Attorney

Injunctive Relief; Orders; Prosecutor; Complainant
17535. 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 acting for the interests of itself, its members or the general public.

(Amended by Statute 1972, Chs. 244, 711)

Violation of Injunction; Civil Penalty; Actions to Assess and Recover; Expenses of Investigation and Prosecution

17535.5. (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.
(Amended by Statute 1979, Ch. 897)

Violations of Chapter; Civil Penalty; Actions to Assess and Recover; Expenses of Investigation and Prosecution; Mutually Exclusive Remedies

17536. (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.

(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.
(Amended by Statute 1992, Ch. 430)

Proceedings Involving Violations or Construction of Chapter; Notice to Attorney General and County District Attorney

17536.5. 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 department of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that the time 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 until proof of service of this notice is filed with the court.
(Added by Statute 1992, Ch. 385)

CALIFORNIA CODE OF REGULATIONS
Title 16. Professional And Vocational Regulations
Division 15. State Board of Optometry

Article 1. General Provisions

1500. Location of Offices.
Note: 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.
Note: 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.

Note: Additional 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.

Note: 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).

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 certificate holder 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.

Note: 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).

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.

Note: 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.

Note: 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.

Note: 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).

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.

Note: 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.

Note: 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.

Note: 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.

Note: 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.

Note: 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.

Advertising in violation of Section 651, 651.3 or 17500 of the Code constitutes cause to revoke or suspend the certificate of registration.

Note: 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).

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).

Note: 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).

Note: 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 $10.00.

(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.

Note: Authority cited: Section 3125, Business and Professions Code. Reference: Sections 3125 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).

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.

Note: 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).

1520. Hand Washing Facility.

(a) Each office shall be provided with a hand washing facility which shall be 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 or powdered 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 optometrist and staff shall maintain at all times a high standard of cleanliness and personal hygiene in order to ensure proper patient care.

Note: Authority cited: Section 3025.5, Business and Professions Code. Reference: Section 3025.5, 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).

Article 5. Application for Licensure Examination

1523. Licensure Examination Requirements.

(a) Application for licensure as an optometrist shall be made on a form prescribed by the Board (Form 39A-1. Rev. 3-96), which is hereby incorporated by reference, and shall show that the applicant is at least 18 years of age.

(b) The 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 optometry school approved by the Board.

(3) One classifiable set of fingerprints on a form provided by the Board.

(c) Completed applications for examination shall be filed with the Board not later than 30 days prior to the date set for the beginning of the examination for which application is made.

(d) 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.

(e) Permission to take the Patient Management and California Laws and Regulations examination sections shall be granted to those applicants who have paid the necessary fees and who meet the educational qualifications to take the examination.

(f) Once the applicant has passed the examination, an official notice will be sent with instructions for submission of the licensure fee. Licensure shall be contingent on the applicant's passing the clinical demonstration portion of the National Board of Examiners in Optometry examination as provided in Section 1531 in this Article.

(g) Admission into the examination shall not be construed to limit the Board's authority to seek from an applicant such other information as may be deemed necessary to evaluate the applicant's qualifications for licensure.

Note: Authority cited: Sections 3025, 3044, 3045 and 3047, Business and Professions Code. Reference: Sections 3044 and 3045, Business and Professions Code.

History

1. New article 5 (section 1523-1524) and section filed 5-12-97; operative 6-11-97 (Register 97, No. 20). For prior history, see Register 83, No. 44.

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 $300

(c) Delinquency fee for failing to renew a certificate of registration timely $25

(d) Application fee for a branch office license $60

(e) Annual renewal of a branch office license $60

(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 a person holding a certificate of registration $25

(h) Application fee for a fictitious name permit $10

(i) Annual renewal of a fictitious name permit $10

(j) Application fee for a statement of licensure $20

(k) Application fee for a certificate to use therapeutic pharmaceutical agents $25

Note: Authority cited: Sections 3025, 3044, 3075, 3152 and 3152.5, Business and Professions Code. Reference: Sections 3075, 3125, 3152 and 3152.5, Business and Professions Code.

History

1. New section filed 5-12-97; operative 6-11-97 (Register 97, No. 20).

Article 6. Examinations

1526. Proof of Cardiopulmonary Resuscitation Certification (CPR).

Note: 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.

Each applicant for licensure must obtain a passing score of at least 75% in each of the required examination sections listed in Section 1531.

Note: 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 (Section 1530-1535) filed 5-4-67 as an emergency; effective upon filing (Register 67, No. 18).
2. Article 6 (Section 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).

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.

Note: 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.

The licensure examination is composed of:

Section I - Written cognitive examination approved by the board and developed by the board or the National Board of Examiners in Optometry (NBEO).

Section II - Clinical Skills Examination approved by the board and developed by the board or the National Board of Examiners in Optometry. Applicants who passed the clinical skills part of the NBEO examination administered in 1996 will have met the clinical skills examination requirement as revised June 1997.

Section III - Patient management examination developed and administered by the board.

Section IV - California Laws and Regulations Examination developed and administered by the Board.

Note: 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).

1532. Re-Examination.

(a) Each applicant must achieve passing grades in all sections of the board's examination before being registered and granted a certificate of registration.

(b) An applicant who has failed to pass either the Patient Management or California Laws and Regulations examination sections after a period of five consecutive calendar years from the date of the first examination must retake both the Patient Management and California Laws and Regulations examination sections.

Note: Authority cited: Sections 3023.1 and 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).

1533. Inspection of Examination Papers.

Any person who has failed any section of the board examination may inspect the papers he/she wrote in taking such examination provided:

(a) A request for an appointment to inspect his/her examination papers must be made in writing by such person and mailed to the principal office of the board.

(b) The inspection shall be made at a time specified by the board at its principal office.

(c) Only one inspection of the questions missed shall be permitted. No answers will be provided.

(d) The inspection of the papers he/she has written in taking the board examination must be made by such person before the expiration of 90 days after the date the examination results are mailed.

(e) A period of not more than two hours shall be allowed such person to inspect the missed questions on the examination papers.

(f) Any questions, comments or appeals of examination results which such person may wish to submit to the board based upon his/her inspection of his/her examination papers shall be submitted in writing and mailed to the principal office of the board.

(g) The papers written by all applicants in taking a board examination shall be retained at the principal office of the board for a period of not less than one year following the examination.

(h) The inspection shall be monitored by a member of the board staff.

(i) The examination shall not be duplicated in whole or in part by any means. No cameras, tape recorders, typewriters, or stenotype machines shall be utilized during the inspection process.

Note: Authority cited: Sections 3023.1 and 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).

1533.1. Examination Appeals.

(a) Any person failing to receive a passing grade on the Board examination may appeal his or her score on a one-time basis, provided that:

(1) A written appeal is submitted to the Board at its principal office, postmarked no later than 75 days after the date the examination results are mailed.

(2) The grounds upon which the appeal is based are specified, citing the specific item or items being appealed.

(b) The Board shall respond to the appeal in writing within 45 days of its receipt.

(c) The Board may, in its discretion, request a personal appearance by the candidate.

(d) Upon written request, the candidate shall be entitled to make a personal appearance before the Board.

(e) Any appeal not accompanied by information supporting the reason(s) for such request, or otherwise failing to meet the requirements in 1533.1(a)(1) through (a)(2) above, will be denied without further review.

(f) Nothing in this section shall be construed to deprive an applicant of

his/her rights of appeal as afforded by other provisions of law.

Note: 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).

1534. National Board of Examiners in Optometry (NBEO).

Note: 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.

Note: 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.

The purpose of this Article is to implement Section 3059 of the Business and Professions Code as added to said code by Chapter 403 of the Statutes of 1974 and amended by Chapter 770 of the Statutes of 1987.

(a) In addition to all other lawful requirements for renewal of optometric licenses in an active status, each licensee shall complete 20 hours of formal continuing optometric education course work within the year immediately preceding the renewal deadline. Such course work shall be subject to board approval. No more than four hours of course work shall be in the area of patient care management. Courses dealing with business management shall not be approved.

(b) A total of one-half of the 20 hours of required annual course work (10 hours) and no more may be accomplished by using any or all of the following alternative methods:

(1) Credit for documented and accredited self study (i.e. review of written, audio or video tape material or combination) will be given at the ratio of one hour of credit for every two hours spent in such self study.

(2) Credit for teaching of continuing optometric education courses may be granted if attendance at such course would also qualify for such credit, providing none are duplicate courses within the one-year period.

(3) Credit for 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) may be granted, providing no articles are duplicates, at the ratio of one hour of credit granted for each full page of printing or the equivalent thereof.

(4) Video and/or audio courses pertaining to the practice of optometry with hours of credit specified.

(c) A credit hour is defined as one classroom hour, usually a 50-minute period, but no less than that.

(d) 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 International Association of Boards of Examiners in Optometry known as COPE (Council on Optometric Practitioner Education).

(e) Other educational programs approved by the board as meeting the criteria as set forth in (f) 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 (f) below.

(f) 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.

(g) 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, social security number 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.

(h) 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 12 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 first licensed by examination within the period immediately preceding the second annual license renewal date following the initial issuance of the license.

(i) The board may conduct an audit of any licensee's attendance at continuing education programs as a means of verifying compliance with this section.

(j) 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.

Note: 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).

Article 7. Optometric Corporations

1540. Citation of Rules.

Note: 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.

Note: 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.

Note: 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.

Note: 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.

Note: 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.

Note: 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."

Note: 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.

Note: 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.

Note: 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.

As used in this Article:

(a) "Topical Pharmaceutical Agents" means:

Types of Drugs:	Maximum Concentration That may be used:
(1) Mydriatics	
(a) Phenylephrine Hydrochloride:…….	2.5%
(b) Hydroxy amphetamine Hydro bromide:……	1%
(2) Cycloplegics (a) Tropic amide:……	1%
(b) Cyclopentolate:……	1%
(c) Homatropine Hydro bromide:……	5%
(d) Atropine Sulfate:……	0.5%
(3) Topical Anesthetics	
(a) Proparacaine Hydrochloride:……	0.5%
(b) Benoxinate Hydrochloride: (including in combination with fluorescein)……	0.4%
(c) Piperocaine Hydrochloride:……	2%
(d) Tetracaine Hydrochloride:……	0.5%

Note: Authority cited: Sections 3025 and 3041, Business and Professions Code. Reference: Section 3041, Business and Professions Code.
History
1. New Article 8 (Section 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).t

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 provide evidence of taking and passing either

(2) the NBEO "Ocular Pharmacology" examination (also known as Section 9); or

(3) both the Basic and Clinical Science sections of the NBEO examination as it was constituted beginning in April 1987; or

(4) a pharmacology examination equivalent to (2) or (3) above and administered by an accredited school or college of optometry; or

(5) a pharmacology examination equivalent to (2) or (3) above and administered by the Board.

(c) The Board will issue a certification to optometrists fulfilling the requirements of subsection (b) authorizing them to use topical pharmaceutical agents.

Note: Authority cited: Sections 3025, 3041.2 and 3053, Business and Professions Code. Reference: Section 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).

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 course work 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.

Note: Authority cited: Section 3153, Business and Professions Code. Reference: Sections 3041.1 and 3041.2, Business and Professions Code; Section 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 Time lines

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.)

Note: Authority cited: Section 3025, Business and Professions Code; and Section 15376, Government Code. Reference: Section 15376, Government Code.
History
1. New Article 9 (Section 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 Perit 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 competed 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

NOTE: Authority cited: Section 3025, Business and Professions 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 and expiration date; and patient's name.

NOTE: Authority cited: Sections 3025, 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 and office policy regarding release of eyeglass and contact lens prescriptions and such notice shall at a minimum contain the following information:

Notice to Consumers Regarding Release of Prescriptions.

Federal law requires that a written copy of the spectacle prescription be given to the patient. However, the law does not require the release of a contact lens prescription; this is left to the discretion of the optometrist. You may want to inquire about your doctor's policy regarding contact lens prescriptions prior to the examination.

Note: Authority cited: Sections 3025, 3025.5 and 3090, Business and Professions Code. Reference: Sections 3025, 3025.5 and 3090, Business and Professions Code; and 16 Code of Federal Regulations 456.1 and 456.2.

History

1. New section filed 3-15-94; operative 4-14-94 (Register 94, No. 11).

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 nonsteroidal antiallergy agents, topical nonsteroidal anti-inflammatories, topical antibiotic agents, topical hyperosmotics, tetracyclins for treatment of blepharitis, 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.

Note: 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 (section 1567-1570) and section filed 7-7-97; operative 8-6- 97 (Register 97, No. 28).

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, systemic disease.

Note: Authority cited: Sections 3025 and 3041.2, Business and Professions Code. Reference: Sections 3027.5, 3041.3 and 3059, Business and Professions Code.
History
1. New section filed 7-7-97; operative 8-6-97 (Register 97, No. 28).

1569. Scope of Practice.

(a) Nothing in this section shall be construed to limit the scope of practice of an optometrist as it existed prior to the effective date of this regulation. Optometrists certified to use Therapeutic Pharmaceutical Agents (TPA certified) may also diagnose and treat the human eye or eyes, or any of its appendages, for all of the following conditions, exclusively:

(1) Allergies, infectious disease and non-systemic inflammations of the conjunctiva.

(2) Eyelid margin inflammation and trichiasis, including blepharitis, Meibomian gland dysfunction and chalazia excluding cellulitis.

(3) Peripheral infectious corneal ulcers. This practice is limited to the initiation of treatment for ulcers which lie outside the central 5mm diameter of the cornea. The optometrist must communicate with and make a referral to a consulting ophthalmologist within 24 hours of the patient's first visit to the optometrist's office. Some sight-threatening peripheral infectious corneal ulcers may require an immediate referral to an appropriate physician in less than 24 hours. This decision shall be at the optometrist's clinical discretion.

Treatment shall consist of the use of appropriate topical antibiotics. Cultures, smears or sensitivities may be appropriate depending on the clinical severity and/or clinical characteristics of the lesion. The optometrist shall keep records that, at a minimum, include a patient history, drawing(s) which show the general size and location of the lesion (photographs are acceptable as a substitute for drawings) and a description of the lesion.

(4) Traumatic or recurrent conjunctival or corneal abrasions and erosion.

(5) Corneal surface disease and dry eyes.

(b) A TPA certified optometrist may also perform all of the following:

(1) Mechanical epilation

(2) Ordering of smears, cultures and sensitivities used in the diagnosis of diseases listed above and within the scope of practice.

(3) Use of punctal plugs that are diagnostic and absorbable and do not

require punctal dilation.

(4) Prescription of therapeutic contact lenses.

(5) Removal of superficial foreign bodies of the eyelid and conjunctiva.

(6) Removal of corneal superficial foreign bodies above the Bowman's layer. If the foreign body is within the central 3mm of the cornea, the use of sharp instruments is prohibited.

(c) TPA certified optometrists are prohibited from treating children under one year of age with therapeutic pharmaceutical agents.

Note: 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).

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

Note: 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).

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-2, 8-96) 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.

Note: 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).

CORPORATIONS CODE
Division 3. Corporations for Specific Purposes
Part 4. PROFESSIONAL CORPORATIONS

Section	
13400	Citation
13401	Definitions
13401.5	Licensed Persons Who May be Shareholders, Officers, Directors or Professional Employees; Conditions
13402	Application of Part; Conduct of Business as a Professional Corporation
13403	Application of General Corporation Law; Directors; Medical Corporation
13404	Formation; Purpose; Articles; Necessity of Registration Certificate
13406	Stock; Qualifications of Shareholders; Confidential Financial Statements; Voting Trusts; Proxies
13407	Transfer of Shares; Purchase by Corporation
13408	Suspension or Revocation of Registration Certificate; Grounds
13409	Name
13410	Rules and Regulations Applicable

Citation

13400. This part shall be known and may be cited as the "Moscone-Knox Professional Corporation Act."
(Added by Statute 1968, Ch. 1375)

Definitions

13401. 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 or the Chiropractic 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 Board of Dental Examiners, State Board of Pharmacy, the Veterinary Medical Board, the California Board of Architectural Examiners, the Court Reporters Board of California, or the Board of Registered Nursing 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 or the Chiropractic 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.

(Amended by Statute 1997, Ch. 168)

Licensed Persons Who May be Shareholders, Officers, Directors or Professional Employees; Conditions

13401.5. 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, family, and child counselors.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(b) Podiatric medical corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) **Licensed optometrists.**
(5) Licensed chiropractors.
(c) Psychological corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Registered nurses.
(4) **Licensed optometrists.**
(5) Licensed marriage, family, and child counselors.
(6) Licensed clinical social workers.
(7) Licensed chiropractors.
(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, family, and child counselors.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(g) Marriage, family, and child counseling corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.
(4) Registered nurses.
(5) Licensed chiropractors.
(h) Licensed clinical social worker corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed marriage, family, and child counselors.
(4) Registered nurses.
(5) Licensed chiropractors.
(i) Physician assistants corporation.
(1) Licensed physicians and surgeons.
(2) Registered nurses.
(j) Optometric corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed chiropractors.
(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, family, and child counselors.
(7) Licensed clinical social workers.
(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, family, and child counselors.
(7) Licensed clinical social workers.
(8) Licensed physician assistants.
(9) Licensed chiropractors.
(Amended by Statute 1997, Ch. 758)

Application of Part; Conduct of Business as a Professional Corporation
13402. (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.
(Amended by Statute 1988, Ch. 919)

Application of General Corporation Law; Directors; Medical Corporation
13403. 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.
(Amended by Statute 1980, Ch. 36)

Formation; Purpose; Articles; Necessity of Registration Certificate
13404. 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.
(Amended by Statute 1993, Ch. 955)

Stock; Qualifications of Shareholders; Confidential Financial Statements; Voting Trusts; Proxies

13406. (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.

(Amended by Statute 1993, Chs. 910, 955)

Transfer of Shares; Purchase by Corporation

13407. 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 such professional corporation, and any transfer in violation of this restriction shall be void.

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 such shareholder, as the case may be, then the certificate of registration of such corporation may be suspended or revoked by the governmental agency regulating the profession in which such corporation is engaged. In the event of such suspension or revocation such corporation shall cease forthwith to render professional services in this state.
(Amended by Statute 1993, Ch. 910)

Revocation of Registration Suspension or Certificate; Grounds
13408. 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.
(Amended by Statute 1993, Ch. 910)

Name
13409. (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.
(Amended by Statute 1993, Ch. 910)

Rules and Regulations Applicable

13410. (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.

(Amended by Statute 1993, Ch. 910)

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

School premises; prohibited solicitations

51520. (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.

(Amended by Statute 1996, Ch. 83)

CODE OF FEDERAL REGULATIONS
TITLE 16--COMMERCIAL PRACTICES
CHAPTER I--FEDERAL TRADE COMMISSION
PART 456--OPHTHALMIC PRACTICE RULES

Section
456.1 Definitions
456.2 Separation of Examination and Dispensing.
456.3 Federal or State Employees
456.4 Declaration or Commission Intent

Ophthalmic Practice Rules
Effective Date: May 1, 1992

Definitions
456.1. (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.

Separation of Examination and Dispensing
456.2. It is an unfair act or practice for an ophthalmologist or optometrist to:

(a) Fail to provide 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 the 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 person 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.

Federal or State Employees
456.3. This rule does not apply to ophthalmologists or optometrists employed by any Federal, State or local government entity.

Declaration or Commission Intent
456.4. 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.

GOVERNMENT CODE
TITLE 1. GENERAL
DIVISION 7. MISCELLANEOUS
CHAPTER 3.5. INSPECTION OF PUBLIC RECORDS

Section	
6250	Legislative findings and declarations
6251	Short title
6252	Definitions
6253	Public records open to inspection; time; guidelines and regulations governing procedure
6253.1	Adoption of requirements for greater access
6254	Exemption of particular records
6254.3	State, school district and county office of education employees; home address and phone number as public records; disclosure
6254.5	Disclosures of public records; waiver of exemptions; application of section
6254.8	Employment contracts between state or local agency and public official or employee; public record
6255	Justification for withholding of records
6256	Copies of records; determination on compliance with request; notice; reasons
6256.1	Extension of time for determination in unusual circumstances; notice
6256.2	Delay in access; prohibition; notification of denial; name of person responsible
6257	Request for copy; prompt availability; fee; reasonably segregable portion after deletion of exempt portions
6258	Proceedings to enforce right to inspect or to receive copy of record
6259.	Order of court; review; contempt; court costs and attorney fees
6260	Effect of chapter on prior rights and proceedings
6262	Exemption of records of complaints to, or investigations by, any state or local agency for licensing purposes; application to district attorney
6265	Disclosure of records to district attorney; status of records

6250. **Legislative findings and declarations**
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.
(Amended by Statute 1970, Ch. 575)

6251. **Short title**
This chapter shall be known and may be cited as the California Public Records Act.

(Added by Statute 1968, Ch.1473)

6252. **Definitions**
As used in this chapter:
(a) "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.
(b) "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 nonprofit organizations of local governmental agencies and officials which are supported solely by public funds.
(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.
(d) "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.
(e) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.
(f) "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.
(Amended by Statute 1994, Ch. 1010)

6253. **Public records open to inspection; time; guidelines and regulations governing procedure**
(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. 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
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 Services
Employment Development Department
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 Quality 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 Quality Management 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 subdivision (a).
(Amended by Statute 1991, Ch. 70)

6253.1. **Adoption of requirements for greater access**
Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself which allow greater access to records than prescribed by the minimum standards set forth in this chapter.
(Added by Statute 1981, Ch. 968)

6254. **Exemption of particular records**
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, provided that 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:

(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, which 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, 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, except that 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 (c) of Section 13960, 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 reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, 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, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 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 by Section 220, 261, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code 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, except that the address of the victim of any crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly 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.

(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 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, provided that 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 data base 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 which 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 of Title 1, 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 Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 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. In the event that 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. The Joint Legislative Audit Committee 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 maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health 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 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 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) 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.

(v)(1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), 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)(A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage 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 amendment has been fully executed.

(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 Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w)(1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (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 14 (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 Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is 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 the Department 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) 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)(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) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 6.2 (commencing with Section 12693) 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.

(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 Joint Legislative Audit 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).

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.

> [FN1] 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.

(Amended by Statute 1997, Ch. 623)

6254.3. **State, school district and county office of education employees; home address and phone number as public records; disclosure**

(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.
(Amended by Statute 1992, Ch. 463)

6254.5. **Disclosures of public records; waiver of exemptions; application of section**

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 1909, 8009, or 18396 of the Financial Code.
(Amended by Statute 1996, Ch. 1064)

6254.8. **Employment contracts between state or local agency and public official or employee; public record**
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 by Statute 1974, Ch. 1198)

6255. **Justification for withholding of records**
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 making the record public clearly outweighs the public interest served by disclosure of the record.
(Added by Statute 1968, Ch. 1473)

6256. **Copies of records; determination on compliance with request; notice; reasons**
Any person may receive a copy of any identifiable public record or copy thereof. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.
Each agency, upon any request for a copy of records shall determine within 10 days after the receipt of such request whether to comply with the request and shall immediately notify the person making the request of such determination and the reasons therefor.
(Amended by Statute 1981, Ch. 968)

6256.1. **Extension of time for determination in unusual circumstances; notice**
In unusual circumstances, as specified in this section, the time limit prescribed in Section 6256 may be extended by written notice by the head of the agency 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 such notice shall specify a date that would result in an extension for more than 10 working days.
As used in this section "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:
(a) 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.
(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.
(c) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial

subject matter interest therein.
(Added by Statute 1981, Ch. 968)

6256.2. **Delay in access; prohibition; notification of denial; name of person responsible**
Nothing in this chapter shall be construed to permit an agency to delay access for purposes of inspecting public records. Any notification of denial of any request for records shall set forth the names and titles or positions of each person responsible for the denial.
(Added by Statute 1981, Ch. 968)

6257. **Request for copy; prompt availability; fee; reasonably segregable portion after deletion of exempt portions**
Except with respect to public records exempt by express provisions of law from disclosure, each state or local agency, upon any request for a copy of records, which reasonably describes an identifiable record, or information produced therefrom, shall make the records promptly available to any person, upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable. Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt by law.
(Added by Statute 1981, Ch. 968)

6258. **Proceedings to enforce right to inspect or to receive copy of record**
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.
(Amended by Statute 1990, Ch. 908)

6259. **Order of court; review; contempt; court 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.

(Amended by Statute 1993, Ch. 926)

6260. **Effect of chapter on prior rights and proceedings**

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.

(Amended by Statute 1976, Ch. 314)

6262. **Exemption of records of complaints to, or investigations by, any state or local agency for licensing purposes; application to 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 by Statute 1979, Ch. 601)

6265. **Disclosure of records to district attorney; status of records**

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 by Statute 1979, Ch. 601)

BAGLEY-KEENE OPEN MEETING ACT - 1998

Section	
11120	Public policy; legislative finding and declaration; citation of article
11121	State body

11121.2	State body; multi member body which exercises authority by delegation from state body
11121.7	State body; representative of state body
11121.8	State body; advisory bodies
11121.9	Provision of copy of article to members of state body
11121.95	Appointees or elected officials not yet in office; conformity of conduct to article requirements
11122	Action taken
11123	Meetings; attendance; teleconference option
11124	Conditions to attendance
11124.1	Tape or film recording of proceedings; inspection of state's recording; broadcast restrictions
11125	Notice of meeting
11125.1	Agendas and other writings distributed for discussion or consideration at public meetings; public records; inspection; closed sessions
11125.2	Appointment, employment or dismissal of public employees; closed sessions; public report
11125.3	Action on items of business not appearing on agenda; notice
11125.4	Special meetings; authorized purposes; notice; required finding of hardship or need to protect public interest
11125.5	Emergency meetings
11125.7	Agenda item discussion before state body; opportunity for public address; regulation by state body; freedom of expression; application of provisions
11125.8	Hearings to consider crimes against minors or crimes of sexual assault or domestic violence; identification of applicant; disclosure of nature of hearing
11125.9	Regional water quality control boards; compliance with notification guidelines
11126	Closed sessions
11126.1	Record of topics discussed and decisions made at closed sessions; availability
11126.3	Disclosure of nature of items to be discussed in closed session; scope of session; notice of meeting; announcement of additional pending litigation; unnecessary disclosures; disclosures at open session following closed session
11126.5	Disorderly conduct of general public during meeting; clearing of room
11126.7	Fees
11127	Application of article
11128	Time of closed session 11128.5. Adjournment; declaration; notice; hour for reconvened meeting
11128.5	Adjournment; declaration; notice; hour for reconvened meeting
11129	Continuance; posting notice
11130	Actions to prevent violations or determine applicability of article; validity of rules discouraging expression; taping of closed sessions; discovery procedures for tapes
11130.3	Judicial determination action by state body in violation of sections 11123 or 11125 Null and Void; action by interested person; grounds
11130.5	Court costs and attorney fees

11130.7	Violations; misdemeanor
11131	Use of facility allowing discrimination; state agency
11131.5	Identity of victims or alleged victims of crimes, tortuous sexual conduct, or child abuse; public disclosure
11132	Closed session by state body prohibited

11120. Public policy; legislative finding and declaration; 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.

(Amended by Statute 1981, Ch. 968)

11121. State body

As used in this article "state body" means every state board, or commission, or similar multi member body of the state that is required by law to conduct official meetings and every commission created by executive order, but does not include:

(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 (Sections 9027 to 9032, inclusive).

(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) State agencies provided for in Section 11770.5 of the Insurance Code.

(g) The Credit Union Advisory Committee established pursuant to Section 14380 of the Financial Code.

(Amended by Statute 1996, Chs. 1023, 1064)

11121.2. State body; multi member body which exercises authority by delegation from state body

As used in this article, "state body" also means any board, commission, committee, or similar multi member body which exercises any authority of a state body delegated to it by that state body.

(Added by Statute 1981, Ch. 968)

11121.7. State body; representative of state body

As used in this article, "state body" also means any board, commission, committee, or similar multi member body on which a member of a body which is a state body pursuant to Section 11121, 11121.2, or 11121.5 serves in his or her official capacity as a representative of such state body and which is supported, in whole or in part, by funds provided by the state body, whether such body is organized and operated by the state body or by a private corporation.
(Amended by Statutes 1981, Ch. 968)

11121.8. State body; advisory bodies
As used in this article, "state body" also means any advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multi member 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.
(Added by Statutes 1981, Ch. 968)

11121.9. Provision of copy of article to members of state body
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.
(Amended by Statute 1981, Chs. 714, 968)

11121.95. Appointees or elected officials not yet in office; conformity of conduct to article requirements
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 by Statute 1997, Ch. 968)

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.
(Amended by Statute 1981, Ch. 968)

11123. Meetings; attendance; teleconference option
(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) Nothing in this article shall be construed to prohibit a state body from holding an open or closed meeting by teleconference if the convening at one location of a quorum of the state body is difficult or impossible, subject to all of 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) Each teleconference location shall be identified in the notice of the meeting

and shall be accessible to the public.
(D) All votes taken during a teleconferenced meeting shall be byrollcall.
(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 of the Government Code.
(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 conference of individuals in different locations, connected by electronic means, through either audio or video, or both.
(Amended by Statute 1997, Ch. 52)

11124. 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.
(Amended 1981, Ch. 968)

11124.1. Tape or film recording of proceedings; inspection of state's recording; broadcast restrictions

(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 tape 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 tape or film record 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 taping or recording. Any inspection of an audio or video tape recording shall be provided without charge on an audio or video tape player 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.
(Amended by Statute 1997, Ch. 949)

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 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.

(b) The notice of a meeting of a body that is a state body as defined in Section 11121, 11121.2, 11121.5, or 11121.7 shall include a specific agenda for the meeting, which shall include the items of business to be transacted or discussed in 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.

(c) The notice of a meeting of an advisory body that is a state body as defined in Section 11121.8 shall include a brief, general description of the business to be transacted or discussed, and no item shall be added subsequent to the provision of the notice.

(d) 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.

(e) 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.

(f) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

(Amended by 1997, Ch. 949)

11125.1. Agendas and other writings distributed for discussion or consideration at public meetings; public records; inspection; closed sessions

(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.

(c) 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 6257. 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.

(d) "Writing" for purposes of this section means "writing" as defined under Section 6252.

(Amended by Statute 1997, Ch. 949)

11125.2. Appointment, employment or dismissal of public employees; closed sessions; public report

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.

(Amended by Statute 1981, Ch. 968)

11125.3. Action on items of business not appearing on agenda; notice

(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 be provided to the general public by placing it on appropriate electronic bulletin boards or other appropriate mechanisms, whenever the state body has the electronic capability necessary to do so.

(Added by Statute 1994, Ch. 1153)

11125.4. Special meetings; authorized purposes; notice; required finding of hardship or need to protect public interest

(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 where compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or where immediate action is required to protect the public interest:

(1) To consider "pending litigation" as that term is defined in subdivision (q) 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.

(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 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 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 be provided to the general public by placing it on appropriate electronic bulletin boards or other appropriate mechanisms, whenever the state body has the electronic capability necessary to do so. The notice shall specify the time and place of the special meeting and the business to be transacted. 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. Failure to adopt the finding terminates the meeting.
(Added by Statute 1997, Ch. 949)

11125.5. Emergency meetings

(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. 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 as soon after the meeting as possible.

(Amended by Statute 1997, Ch. 949)

11125.7. Agenda item discussion before state body; opportunity for public address; regulation by state body; freedom of expression; application of provisions

(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, provided, however, that 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 State Board of Control 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.
(Amended by Statute 1997, Ch. 949)

11125.8. Hearings to consider crimes against minors or crimes of sexual assault or domestic violence; identification of applicant; disclosure of nature of hearing

(a) Notwithstanding Section 11131.5, in any hearing that the State Board of Control 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 by Statute 1997, Ch. 949)

11125.9. Regional water quality control boards; compliance with notification guidelines

Regional water quality control boards shall comply with the notification guidelines in Section 11125 and, in addition, shall do both of the following:

(a) Notify, in writing, all clerks of the city councils and county boards of supervisors within the regional board's jurisdiction of any and all board hearings at least 10 days prior to the hearing. Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as 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. Each clerk, upon receipt of the notification of a board hearing, shall distribute the notice to all members of the respective city council or board of supervisors within the regional board's jurisdiction.

(b) Notify, in writing, all newspapers with a circulation rate of at least 10,000 within the regional board's jurisdiction of any and all board hearings, at least 10 days prior to the hearing. Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as 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.
(Added by Statute 1997, Ch. 301)

11126. Closed sessions

(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" shall 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 shall include 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) of Part 1 of Division 3 of Title 2 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 the Revenue and Taxation Code.

(12) Prevent the Board of Corrections 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 any committee advising the State Board of Education, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of Part 33 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) 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.

(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 regulated utilities.

(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, 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 an administrative committee established by the State Board of Accountancy pursuant to Section 5020 or 5020.3 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 an examining committee established by the 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 Section 11121.2, 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 Section 11121.7, 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 Section 11121, 11121.2, or 11121.5.

(6) Prevent a state body, as defined in Section 11121.8, 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 Director of the Office of Emergency Services or the Governor pursuant to Section 8590 concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article shall 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.
(Amended by Statute 1997, Ch. 949)

11126.1. Record of topics discussed and decisions made at closed sessions; availability

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.
(Amended by Statute 1981, Ch. 968)

11126.3. Disclosure of nature of items to be discussed in closed session; scope of session; notice of meeting; announcement of additional pending litigation; unnecessary disclosures; disclosures at open session following closed session

(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 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 additional 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.

(Amended by Statute 1997, Ch. 949)

11126.5. Disorderly conduct of general public during meeting; clearing of room

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.

(Amended by Statute 1981, Ch. 968)

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.

(Amended by Statute 1981, Ch. 968)

11127. Application of 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.

(Amended by Statute 1981, Ch. 968)

11128. Time of closed session

Each closed session of a state body shall be held only during a regular or special meeting of the body.

(Amended by Statute 1981, Ch. 968)

11128.5. Adjournment; declaration; notice; hour for reconvened meeting

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 by Statute 1997, Ch. 949)

11129. Continuance; posting notice

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 orrecontinued 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.

(Amended by Statute 1997, Ch. 949)

11130. Actions to prevent violations or determine applicability of article; validity of rules discouraging expression; taping of closed sessions; discovery procedures for tapes

(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 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 tape 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 tape record its closed sessions and preserve the tape 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 tapes shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the tape 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 tape 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.

(Amended by Statute 1997, Ch. 949)

11130.3. Judicial determination action by state body in violation of section 11123 or 11125 null and void; action by interested person; grounds

(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 30 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 by Statute 1985, Ch. 936)

11130.5. Court 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.
(Amended by Statute 1985, Ch. 936)

11130.7. Violations; misdemeanor
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.
(Amended by Statute 1997, Ch. 949)

11131. Use of facility allowing discrimination; state agency
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 race, religious creed, color, national origin, ancestry, or sex, 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.
(Amended by Statute 1997, Ch. 949)

11131.5. Identity of victims or alleged victims of crimes, tortuous sexual conduct, or child abuse; public disclosure
No notice, agenda, announcement, or report required under this article need identify any victim or alleged victim of crime, tortuous sexual conduct, or child abuse unless the identity of the person has been publicly disclosed.
(Amended by Statute 1997, Ch. 949)

11132. Closed session by state body prohibited
Except as expressly authorized by this article, no closed session may be held by any state body.
(Added by Statute 1987, Ch. 1320)

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA
DIVISION 3. EXECUTIVE DEPARTMENT
PART 2.8. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
CHAPTER 6. DISCRIMINATION PROHIBITED

ARTICLE 1. UNLAWFUL PRACTICES, GENERALLY

12944. **Licensing boards; unlawful acts based on examinations and qualifications; determination of unlawfulness; inquiries; reasonable**

accommodations; records

(a) It shall be unlawful for a licensing board to require any examination or establish any other qualification for licensing which has an adverse impact on any class by virtue of its race, creed, color, national origin or ancestry, sex, age, medical condition, or physical disability, mental disability, unless such 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 such 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 such examination or by a license issued in reliance on such 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, or age, 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 such 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 such applications.

(f) As used in this section, "licensing board" means any state board, agency, or authority in the State and Consumer Services Agency which has the authority to grant licenses or certificates which are prerequisites to employment eligibility or professional status.

(Amended by Statute 1992, Chs. 912, 913)

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 to complaints and investigations by certain state 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 which 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 Board of Dental Examiners 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 State Board of Accountancy.
(7) The California State Board of Architectural Examiners.
(8) The State Board of Barbering and Cosmetology.
(9) The State Board of Registration for Professional Engineers.
(10) The Contractors' State License Board.
(11) The State Board of Funeral Directors and Embalmers.
(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 Fabric Care.
(16) The Board of Chiropractic Examiners.
(17) The Board of Behavioral Science Examiners.
(18) The State Athletic Commission.
(19) The Cemetery Board.
(20) The State Board of Guide Dogs for the Blind.
(21) The Bureau of Collection and Investigative Services.
(22) The Court Reporters Board of California.
(23) The Board of Vocational Nursing and PsychiatricTechnicians.
(24) The California State Board of Landscape Architects.
(25) The Osteopathic Medical Board of California.
(26) The Division of Investigation.

(27) The Bureau of Automotive Repair.
(28) The State Board of Registration for Geologists and Geophysicists.
(29) The State Board of Nursing Home Administrators.
(30) The Department of Alcoholic Beverage Control.
(31) The Department of Insurance.
(32) The Public Utilities Commission.
(33) The State Department of Health Services.
(34) The New Motor Vehicle Board.
(Amended by Statute 1995, Ch. 60)

HEALTH AND SAFETY CODE
DIVISION 2. LICENSING PROVISIONS
CHAPTER 2.2. HEALTH CARE SERVICE PLANS

ARTICLE 5 STANDARDS

Sections
1367 Requirements

1367. **Requirements**

Each health care service plan and, if applicable, each specialized health care service plan shall meet the following requirements:

(a) All 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) All 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) All 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 all enrollees. To the extent feasible, the plan shall make all services readily accessible to all enrollees.

(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 10 of the California Code of Regulations.

(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) All contracts with subscribers and enrollees, including group contracts, and all 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 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.

(i) Each 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 commissioner may, for good cause, by rule or order exempt a plan contract or any class of plan contracts from that requirement. The commissioner shall by rule define the scope of each basic health care service which health care service plans shall be 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 commissioner and set forth to the subscriber or enrollee pursuant to the disclosure provisions of Section 1363.

(j) No health care service plan shall 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 commissioner to establish the rates charged subscribers and enrollees for contractual health care services.

The commissioner'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.

(Amended by Statute 1997, Chs. 17, 120)

ARTICLE 9
MISCELLANEOUS

1395	Soliciting and Advertising; Nature of Plan
1396	Documents Filed Under This Chapter; Willful False Statements Prohibited
1397	Hearing; Law Governing; Judicial Review
1397.5	Summary of Complaints Against Plans; Disclosure of Confidential Information
1397.6	Medical Consultants; Contracts
1398	Enrollment In or Subscription to Plan
1398.5	References to Know-Mills Health Plan Act (Repealed)
1399	Surrender of Licenses; Effective Date; Summary of Suspensions or Revocations
1399.1	Transitional License Plans; Knox-Mills Health Plan Act
1399.5	Intent of Legislature; Application of Chapter

Soliciting and Advertising; Nature of Plan

1395. (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.
(Amended by Statute 1996, Ch. 1023)

Documents Filed Under This Chapter; Willful False Statements Prohibited

1396. 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 commissioner 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 by Statute 1989, Ch. 845)

Hearing; Law Governing; Judicial Review

1397. (a) Whenever reference is made in this chapter to a hearing before or by the commissioner, 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 commissioner shall have all of the powers granted under that act.

(b) Every final order, decision, license, or other official act of the commissioner under this chapter is subject to judicial review in accordance with the law.
(Amended by Statute 1991, Ch. 1091)

Summary of Complaints Against Plans; Disclosure of Confidential Information

1397.5. (a) The commissioner shall make and file annually with the Department of Corporations as a public record, an aggregate summary of complaints against plans filed with the commissioner by enrollees or subscribers. This summary shall include at least all of the following information:

(1) The total number of complaints filed.

(2) The types of complaints.

(b) The summary set forth in subdivision (a) shall include the following disclaimer:

THIS INFORMATION IS PROVIDED FOR STATISTICAL PURPOSES ONLY. THE COMMISSIONER OF CORPORATIONS HAS NEITHER INVESTIGATED NOR DETERMINED WHETHER THE COMPLAINTS COMPILED WITHIN THIS SUMMARY ARE REASONABLE OR VALID.

(c) Nothing in this section shall require or authorize the disclosure of complaints filed with or received by the commissioner 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 by Statute 1994, Ch. 614)

Medical Consultants; Contracts

1397.6. The commissioner 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 by Statute 1995, Ch. 788)

Enrollment In or Subscription to Plan

1398. Neither the commissioner nor any employee of the department shall be

precluded from subscribing to or enrolling in any plan which is subject to the provisions of this chapter, subject to such rules as may be adopted hereunder or pursuant to other proper authority.
(Added by Statute 1975, Ch. 788)

References to Know-Mills Health Plan Act (Repealed)
1398.5. 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 by Statute 1976, Ch. 490)

Surrender of Licenses; Effective Date; Summary of Suspensions or Revocations
1399. (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 commissioner 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 commissioner by order determines.

(b) If the commissioner 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 commissioner may by order summarily revoke the license of the plan.

(c) The commissioner 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 commissioner 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 commissioner 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 10 of the California Code of Regulations.
(Amended by Statute 1993, Ch. 735***)***

Transitional License Plans; Knox-Mills Health Plan Act
1399.1. (a) All orders and other actions taken by the commissioner 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 by Statute 1977, Ch. 818)

Intent of Legislature; Application of Chapter
1399.5. 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.
(Amended by Statute 1980, Ch. 628)

Division 2.3
PATIENT ACCESS TO HEALTH RECORDS

Section	
123100	Legislative Findings, Declarations, and Intent
123105	Definitions
123110	Inspection and Copying; Verification of Identity; Retention and Quality of Records; Liability; Discrimination; Violations
123120	Enforcement Action; Costs and Attorney Fees
123125	Alcohol and Drug Abuse Records; Communicable Disease Carriers
123130	Summary of Record
123135	Extent of Access; Application of Confidentiality and Information Laws
123140	Information Practices Act; State Agency Records
123145	Preservation of Records by Health Services Providers; Damages Actions for Abandonment of Records
123148	Clinical Test Results

Legislative Findings, Declarations, and Intent
123100. 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 by Statute 1995, Ch. 415, Renumbered)

Definitions
123105. 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, family, and child counselor 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.

(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 a parent or the guardian of a minor who is a patient, or the guardian or conservator of the person of an adult patient, or the beneficiary or personal representative 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 by Statute 1995, Ch. 415, Renumbered)

Inspection and Copying; Verification of Identity; Retention and Quality of Records; Liability; Discrimination; Violations

123110. (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) 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.

(e) 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.

(f) 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.

(g) 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 (f).
(Added by Statute 1995, Ch. 415, Renumbered)

Enforcement Action; Costs and Attorney Fees

123120. 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 by Statute 1995, Ch. 415, Renumbered)

Alcohol and Drug Abuse Records; Communicable Disease Carriers

123125. (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 by Statute 1995, Ch. 415, Renumbered)

Summary of Record

123130. (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. he 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 by Statute 1995, Ch. 415, Renumbered)

Extent of Access; Application of Confidentiality and Information Laws

123135. 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 by Statute 1995, Ch. 415, Renumbered)

Information Practices Act; State Agency Records

123140. 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 by Statute 1995, Ch. 415, Renumbered)

Preservation of Records by Health Services Providers; Damages Actions for Abandonment of Records

123145. (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 by Statute 1995, Ch. 415, Renumbered)

Clinical Test Results

123148. Notwithstanding any other provision of law, a health care professional at whose request a test is performed shall, upon a written or oral request of a patient who is the subject of a clinical laboratory test, provide the patient with the results of the test in plain language conveyed in the manner deemed most appropriate by the health care professional who requested the test. 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.

(Added by Statute 1995, Ch. 415, Renumbered)