



NOTICE OF ACUPUNCTURE BOARD MEETING

November 14, 2014

**EMBASSY SUITES SAN DIEGO-LA JOLLA
EMBASSY BALLROOM
4550 LA JOLLA VILLAGE DRIVE
SAN DIEGO, CA 92122**

AGENDA

FULL BOARD MEETING - 9:00 a.m.

1. **Call to Order and Establishment of a Quorum.**
2. **Opening Remarks.**
3. **Approval of Board Meeting Minutes for:**

February 14, 2014

May 23, 2014

September 12, 2014

4. **Chair's Report.**
5. **Executive Officer's Report.**
 - **Staff Update**
 - **Budget Update**
 - **Exam: Occupational Analysis Update, August 2014 exam statistics**
 - **801 form and Canadian training programs**
 - **Enforcement: Data Report**
6. **Presentation on National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) by CEO, Kory Ward-Cook, PhD., MT (ASCP), CAE.**
7. **Legislative Update.**
 - SB 1246 (Lieu) Acupuncture Board Sunrise Legislation
 - AB 1702 (Patterson) Delay of Denial of Licensure Due to Incarceration
 - AB 2396 (Bonta) Denial of Licensure for Prior Convictions

Acupuncture Board Members

Michael Shi, L.Ac, Chair, Licensed Member

Kitman Chan, Vice Chair, Public Member

Hildegarde Aguinaldo, Public Member

Francisco Hsieh, Public Member

Jeannie Kang, L.Ac, Licensed Member

Jamie Zamora, Public Member

Vacant, Licensed Member

AB 2720 (Ting) Requires State Agencies to Record Individual Votes in Meeting Minutes
SB 1159 (Lara) Professions and Vocations: License Applicants: Federal Tax ID
SB 1243 (Lieu) Professions and Vocations: Meeting Notice for Webcasts
SB 1256 (Mitchell) Medical Services: Credit for Consumers

8. Regulatory Update.

- **Acupuncture Advertising Guidelines.**
- **Continuing Education Ethics Requirement.**
- **Consumer Protection Enforcement Initiative (CPEI).**
- **Sponsored Free Health Care Events.**
- **Uniform Standards Related to Substance Abuse and Recommended Guidelines for Disciplinary Orders and Conditions of Probation.**
- **Hygiene guidelines.**
- **Prostitution Prevention regulation.**

CLOSED SESSION.

9. Pursuant to Government Code Section 11126(a) (1) the Board will meet in closed session to conduct the annual evaluation of the Executive Officer.

OPEN SESSION – Announcement Regarding Closed Session.

10. Future Agenda Items.

11. Public Comment on Items Not on the Agenda.

Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. Times are approximate and subject to change. Action may be taken on any item listed on the Agenda.

**THE AGENDA, AS WELL AS BOARD MEETING MINUTES, CAN BE FOUND ON THE
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ACUPUNCTURE BOARD

1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
(916) 515-5200 FAX (916) 928-2204 www.acupuncture.ca.gov

Draft
**California Acupuncture Board
Meeting Minutes
February 14, 2014**

**First Floor Hearing Room
1747 North Market Blvd., Sacramento, CA 95834**

Board Members Present

Michael Shi, L.Ac, President, Licensed Member
Kitman Chan, Vice President, Public Member
Jeannie Kang, L.Ac, Licensed Member
Jamie Zamora, Public Member
Hildegarde Aguinaldo, J.D., Public Member
Francisco Hsieh, Public Member

Board Legal Counsel Present

Spencer Walker

Staff Members Present

Terri Thorfinnson, J.D., Executive Officer
Tammy Graver, Board Liaison
Terry Sinkovich, Examination Coordinator
Ben Bodea, Education Coordinator
Kristine Brothers, Enforcement Coordinator
Marc Johnson, Policy and Regulatory Coordinator

- 1. Call to Order and Quorum established.**
- 2. Election of Officers for Chair and Vice Chair.** Michael Shi was re-elected President and Kitman Chan was re-elected Vice President.
- 3. Opening Remarks.** Michael Shi wished everyone Happy Chinese New Year.
- 4. Petition for Early Termination of Probation:**
Yihan Fang, AC 4603 (Case No. PETP-1A-2010-197).
- 5. Petition for Early Termination of Probation:**

CLOSED SESSION

- 6. Pursuant to Government Code Section 11126(c) (3) the Board convened in closed session to deliberate on the Petitions and take action on disciplinary matters.**
- 7. Pursuant to Government Code Section 11126(a) (1) the Board met in closed session to conduct the annual evaluation of the Executive Officer.**

OPEN SESSION – Announcement Regarding Closed Session

- 8. Minutes for the May 23, 2013 and November 14, 2013** Board meetings were approved.
- 9. President's Report.** MS reported on meeting with the Chinese delegation. Their mission was to get to know the status of TCM overseas. He explained that the Board had two Stakeholder meetings: one in Northern California and one in Southern California. TT prepared a presentation about workforce data which is on the Board's website. The discussion focused on the challenges facing the profession. It was also the kick-off for the Occupational Analysis.

Three of the four committees met last month. The new structure of committees is for the majority of the Board work to be completed in committees.

- 10. Executive Officer's Report.** Katie Le was introduced as the newest Board staff. TT explained that the Governor's Budget had authority for three new Board staff. Those positions need to be approved by the Legislature in this legislative session. TT further explained the budget process. DCA Budget Chief, Taylor Shick was introduced to answer any specific budget questions. The question about where unspent money goes was answered. It was explained that it goes back into the Board's special fund. Other questions that were raised included: when the fiscal year ends, how budget projections are estimated, how the budget is created. All questions were answered.

There was a question about staffing temporary versus permanent staff, which TT explained the difference between the position types. Temporary staff does not need any authority to create, but it is limited to part-time at 1500 hours per year.

TT went on to explain that to date the Board has under-spent its budget approximately \$760,000 per year. This year the amount has decreased significantly due to increased staff and enforcement expenditures. Drawing attention to the enforcement line items in the budget, TT explained that every enforcement category has significantly increased across the board this year due to increased enforcement work. Even though our performance measures are still high, we are doing more enforcement work than in the past. Eventually, with more staff the budget may turn into a structural deficit in which we expend more than we take in as revenues. However, for now and years to come, the Board has a financial cushion to deal with that deficit. TS explained that while the Board has a reserve, it is unable to raise fees, but as the Board gets closer to spending down its reserves, DCA budget staff will work with the Board about shifting to fee increase proposals. We would look at what fees are at the statutory cap or what fees the Board can raise through regulations.

TT provided an update on the status of the occupational analysis. Phase 1: the stakeholder input process has drawn to a close. Now we are in Phase 2: the subject matter expert phase that involves interviews and subject matter expert workshops. After this phase, the final phase involves surveying licensees and the final report. The next California Acupuncture Licensure Exam is February 20th in Long Beach, a new location for Southern California.

TT provided an update on the Sunset Review hearing that is set for March 17, 2014 and encouraged stakeholders to attend the meeting. The Board will send out materials and hearing dates and times to the list-serve as soon as we know more.

TT provided an update on the Strategic Plan 2013-2017. The staff met with SOLID training staff to create an Action Plan for the strategic plan. The Action Plan will be presented as a separate agenda item today, but an initial explanation of the role of the action plan was provided to demonstrate that the Board was on track with its strategic planning implementation. The purpose of the Action Plan is to provide more specifics on how each of the goals and objectives are to be accomplished, by whom and by a targeted completion date.

Kristine Brothers provided the enforcement report explaining enforcement data. In response to Board requests to see more long-term data, she created some annual charts of enforcement data. She showed a graph depicting aging cases but explained that the measure only included the investigation phase, not the subsequent disciplinary phase including DOJ and hearings. It was pointed out that few cases can skew the performance targets upwards to increased disciplinary days; whereas, more cases tend to lower disciplinary days. She answered questions from Board members. The most common question is why the intake number does not match the number of cases. The answer is that each category number is a point in time for that category; and, typically, cases take more than a year to complete. Therefore, pending cases include cases from last year's intake. It was also pointed out that there are an unusually high number of criminal charges and convictions. This is something that should be looked at by the Enforcement Committee. MS confirmed that it would be reviewed by the Enforcement Committee.

11. Committees Updates.

Education Committee. MS reported on the January 17, 2014 Committee meeting. All five Committee members were in attendance. The Committee reviewed two school approval application requests. The Phoenix Institute of Herbal Medicine and Acupuncture (PIHMA) was recommended for Board approval by the Committee. The New York Chiropractic College- Finger Lakes School Acupuncture and Oriental Medicine (NYCC-FLSAOM) application for school approval was reviewed and was recommended to the Board to deny the application due to deficiencies in clinical supervision that the school refused to correct.

The number of continuing education providers and the continuing education process was an issue referred by the Board to the Committee for consideration. The discussion focused on the fact that there are 800 plus CE providers serving 12,000 licensees. There was concern that the quality of these courses may not be very high. The Committee is continuing to discuss this issue.

Enforcement Committee. HA reported that the three members of the Committee were in attendance at the January 17, 2014 meeting. The Committee discussed the need for recommending legislative authority to create a standardized 801 reporting form. This was a recommendation from the Sunset Review Committee. TT explained that the need for Legislative authority is because the Board is not receiving many reports and anecdotal evidence indicates that there are more unreported settlements and actions that the Board does not receive. Having the authority to create a standardized form would require reports to be provided to the Board. The recommendation from the Committee was for the Board to approve seeking legislative authority to create a standardized 801 reporting form. This issue is to be discussed later as a separate agenda item. The remaining committee issues that were discussed and are agendaized later included updating the hand hygiene regulation and the proposed prostitution prevention regulatory change.

Examination Committee. FH explained that the Committee discussed several issues. The first issue discussed was to place a cap on the number of times applicants can retake the California Acupuncture Licensure Exam (CALE). The Committee is continuing that discussion. The second issue discussed was the Herb List in the Exam Preparation Guide, which the Committee decided to leave to the Exam Subject Matter Experts. The third issue that the Committee discussed was the August 2012 exam results. The Committee reviewed the Investigation Report and the Independent Expert Report that concluded nothing was wrong with the exam. The Committee concluded that the Board has sufficiently addressed concerns raised about the exam results and that the matter was closed.

12. Assignment of Strategic Goals and Objectives to Board Committees:

- Goal 1 – Licensing
- Goal 2 – Enforcement (Enforcement Committee)
- Goal 3 – Education (Education Committee)
- Goal 4 – Professional Qualifications (Education Committee)
- Goal 5 – Outreach
- Goal 6 – Administration

Please see document at end of these minutes for committee assignments.

MS went through each Goal and objective and assigned them to their respective committees to work on accomplishing the goals and objectives.

There was public comment that claimed that the Objective 5.4 does not need to be accomplished because there is no mandate for acupuncturists to go to electronic medical records under the Affordable Care Act. They offered to provide the Board a written document related to electronic medical records. Other comments included the fact that there was no mention of the accreditation and national exam issues in the strategic plan.

13. Final Decision on School Applications:

Phoenix Institute of Herbal Medicine and Acupuncture (PIHMA). Motion: Kitman Chan (KC) motioned to approve, Francisco Hsieh (FH) seconded. Board voted 6-0

New York Chiropractic College- Finger Lakes School Acupuncture and Oriental Medicine

(NYCC-FLSAOM). Motion: KC motioned to deny school approval, seconded by FH. The Board voted 6-0 to deny Board approval for the school. Like the Committee, the Board felt strongly about the school's non-compliance with clinical supervision standards, and that it is a threat to public safety and violated the Board's curriculum standards. Public comment from several speakers indicated that this was an unrealistic standard and that none of the schools were in compliance with the Board's clinical standards. The Board clarified that this is an existing regulation so there has been no regulatory change.

14. Standardized Malpractice form 801 proposed legislation.

Enforcement staff KB presented the need for seeking legislation. The problem is that the Board receives few reports and the Board believes that are settlements not being reported. In Fiscal year 2012/13, the Board did not receive any reports. The Sunset Review Committee recommended that the Board seek this authority. Approving the proposal to seek legislative authority for this form would resolve this issue and satisfy the Sunset Review Committee. There was further discussion about why the current law is not sufficient to require reporting. The fact that the Board receives few to no reports indicates the current statutory authority is not sufficient. JK motioned to seek legislative authority to create a standardized 801 reporting form, seconded by HA. Approved 6-0.

15. Proposed regulatory language for prostitution prevention.

This proposal would add a regulatory change to the condition of office regulatory section. It would prohibit sex in the office space and in effect create an administrative standard that would be violated by use of an acupuncture office for prostitution. Currently, prostitution is a crime that District Attorneys are not prosecuting, so the Board has no disciplinary recourse against providers who use their license for prostitution. This would create an administrative action related to prostitution that would provide the Board the administrative authority to bring disciplinary actions against licensees who allow prostitution on the premises regardless of whether they were prosecuted for the crime or prostitution. This would prevent prostitution from spreading within the acupuncture profession. Board members all agreed with the proposed regulation. JK motioned to approve propose regulatory change, seconded by HA. Approved by Board 6-0. Motion to delegate authority to EO to commence the regulatory process and to make non-substantive changes by JK, seconded HA. Approved by Board 6-0.

16. Proposed update of hygiene regulations.

HA provided the explanation of why this regulatory change is needed and what it does exactly. The current regulations related to hand hygiene are outdated and non-compliant with health industry and public health standards. This change would bring our hand hygiene standard into compliance. The change would add the use of alcohol-based hand sanitizers. The Board member discussion reflected support and that the change is needed and uncontroversial. JK motion to approve proposed regulation and language, seconded by HA. Approved by Board 6-0. Motion to authorize EO to commence the regulatory process and make non-substantive changes by JK, seconded by HA. Board approved 6-0.

Public comment raised the concern not to put this in regulations, which are cumbersome, but to simply amend the Infectious Disease Guidelines instead, which are not in regulations and can be easily changed. In the discussion it was determined that the Infectious Disease Guidelines are not actionable and updating the regulation is the only way to make it an actionable standard and update current outdated standards in regulations.

17. Proposed regulatory change that sets limits on the number of times applicants can re-take the CALE. This is an issue of concern that MS assigned to the Exam Committee for further study.

18. Regulatory Update List.

- Acupuncture Advertising Guidelines
- Continuing Education Ethics Requirement
- Consumer Protection Enforcement Initiative (CPEI)
- Sponsored Free Health Care Events
- Uniform Standards Related to Substance Abuse and Recommended
- Guidelines for Disciplinary Orders and Conditions of Probation

TT explained that staffing shortage and meeting preparation was causing delays in completing regulatory packages. JK expressed concern that regulatory packages were not completed and particularly CPEI and SB 1441. She specifically requested that CPEI be completed by the next Board meeting. In setting priority next should be SB 1441 then Free Sponsored Health Events.

19. Requests Pursuant to B & P Code Section 4967.

Marlena Louisa Isidro (license cancelled 8/20/12) presented her request for a new license without having to retake the exam. JK moved to approve reinstatement, seconded by MS. Discussion included why should reinstatement be allowed because then everyone would simply let their licenses lapse and come to the Board to request reinstatement. The answer was the statute allows the option.

Poongwon Peter Lee (license cancelled 9/26/13) No show. Tabled by Chair.

Future Agenda Items. None.

Public Comment on Items Not on the Agenda.

A comment requesting merged file of all materials. Reverse public comment and future agenda items on the agenda.

Adjournment.

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Committee Assignments from Action Plan February 14, 2014 Acupuncture Board Meeting

Enforcement Committee Assignment

- ✓ Review existing disciplinary guidelines to identify revisions and update the regulatory standards language (p.11)

Education Committee Assignment

- ✓ Review international terminology standard including the World Health Organization (WHO) (p. 19)
- ✓ Review continuing education standards, course lists and review scope of required course work (p.20)

Exam Committee

- ✓ Review what regulatory changes would be required to shift to computerized exams (p.23)
- ✓ Propose a limit on the number of times a person can take the CALE (p.23)

Executive Committee

- ✓ Identify current training needs for Board members (p. 28)

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Draft
**California Acupuncture Board
Meeting Minutes
May 23, 2014**

**Hotel Whitcomb
Whitcomb Ballroom
1231 Market Street, San Francisco, CA 94103**

Board Members Present

Michael Shi, L.Ac, President, Licensed Member
Kitman Chan, Vice President, Public Member
Hildegarde Aguinaldo, J.D., Public Member
Francisco Hsieh, Public Member
Jeannie Kang, L.Ac, Licensed Member
Jamie Zamora, Public Member

Board Legal Counsel Present

Spencer Walker

Staff Members Present

Terri Thorfinnson, J.D., Executive Officer
Tammy Graver, Board Liaison
Kristine Brothers, Enforcement Coordinator
Marc Johnson, Policy and Regulatory Coordinator

FULL BOARD MEETING - 9:00 a.m.

- 1. Call to Order and Quorum established.**
- 2. Opening Remarks**

Michael Shi welcomed and thanked everyone for attending.

- 3. Approval of Board Meeting Minutes for February 14, 2014**

Jamie Zamora requested that for Item 12, "Assignments of strategic goals and objectives to board committees" list the specific committee assigned to the goals. It was decided that approval of the February 14, 2014 meeting minutes would be tabled for approval until the next meeting.

- 4. President's Report.**

5. Executive Officer's Report.

- **Staff Update**

Three new positions are in the process of being posted. Enforcement position is priority since Kristine Brothers will be on maternity leave.

- **Budget Update**

Very little change since February board mtg. to report. We are projected to under spend the budget by about \$321,000.

- **Exam: Occupational Analysis update**

Phase 1 is done (general input) and now the board is in Phase 2 – conducting subject matter expert workshops. In July surveys will be sent out to the licensed population, which is Phase 3. The projected release of the report is set for February 2015.

- **Enforcement: Data Report**

Kristine reviewed the enforcement graphs covering the start of the fiscal year to April 30, 2014 regarding number of complaints, number of closed or referred to investigation with average intake time of nine days. Other information covered was investigations initiated, pending and closed. Performance measures from DCA for quarter one and two were also shared. There was also a lengthy discussion regarding the backlog and target days to close cases. The Chair suggested that further detailed discussion should be done by the Enforcement Committee.

CLOSED SESSION.

The President decided there was no need for this item to be a closed session. This item was moved after item 8.

6. Pursuant to Government Code Section 11126(c) (1), the Board Will Meet in Closed Session to Discuss the California Acupuncture Licensing Examination (CALE) with the Office of Professional Exam Services (OPES) staff.

OPEN SESSION – Announcement Regarding Closed Session.

7. Exam Development Presentation by Office of Professional Examination Services (OPES), Chief, Heidi Lincer-Hill

A presentation by Heidi Lincer-Hill and Raul Villanueva regarding the Occupational Analysis (OA) survey development, exam development, determining passing scores and the roll the subject matter experts have. Exam costs were also discussed. There were many

questions/issues raised by the public regarding exam translation, security of the exam and what percentage of previous questions appear on the current exam, and that educators and people who work with applicants are not allowed to be involved in the development of exam questions. Computer based testing was also brought up, as well as exam question bank and who oversees OPES. All questions were answered.

8. Review of National Exams Presentation by OPES staff

Heidi talked about the statistics of the February 14, 2014 exam. Raul Villanueva gave an overview of the basis for what the national review consists of including three steps: 1) Psychometric Technical Evaluation; 2) Linkage study; 3) Based on Linkage study whether There is a need to do a California-specific exam. He also explained the process for identifying the relationship between California and the nation exam organization. The President told the Board that after the Occupational Analysis is done they will be reviewing the California exam versus the national exam. The President stated that approximately summer of 2015 Raul will be presenting his report to the Board. The board President wants the education committee to discuss finding a way for academics, teachers to be involved somehow in the test development.

9. Proposed regulatory change pursuant to Business and Professions Code section 138.

10. Accreditation Commission for Acupuncture & Oriental Medicine (ACAOM) Presentation By Executive Director Mark McKenzie, L.Ac, MsOM, DiplOM

Terry Courtney, Assistant Director with the ACAOM presented the role of accreditation in higher education and the work of the Commission. She reviewed the different types of accreditation and talked about their role in protecting students by ensuring a quality educational program is in place at schools and universities and is appropriately resourced. Another part of their responsibility is to ensure that teaching clinics are safe, effective and in legal compliance. They are also the gatekeeper for Title IV, federal financial aid to help students with their professional education. Site visits and school analysis reports were also discussed. The ACAOM is a United States Department of Education recognized professional agency.

11. SB 1246 (Lieu) Acupuncture Sunrise Bill.

TT gave an overview of each section of the memo titled SB 1246 CAB Sunrise Legislation version as amended on April 23, 2014, which changes the statutes and any regulations that are attached to a section that's being repealed will also be impacted and essentially repealed. Public concerns and comments regarding CAB and ACAOM working together, amendments to the bill that associations would like to see including not taking away board authority and the E.O. provision should be removed. Accreditation was also discussed. Jamie made a motion for the Board to take a watch-and-concern session conference call to discuss or conduct a performance evaluation to the EO. Jeannie seconded the motion. The vote was unanimous in favor of the motion. It was also discussed that TT is responsible for making the Board aware of any amendments to the bill.

12. Committees Updates.

- **Education Committee** – a meeting was held April 18, 2014 in Sacramento. All members of the committee were present except for Francisco. Discussion included reviewing school approval procedures and exists in our regulation. This comes directly from the strategic plan, which directed the Education Committee to review and improve our existing processes for the basic functions of the Board. MS reiterated that these are our committed functions and the need to continue to carry them through. This discussion will continue at the next committee meeting. Also a collection of input from stakeholder meeting held in S.F. and L.A. were presented.
- **Enforcement Committee** – HA served as chair and two other board members were in attendance. The discussion was about Article 5 the Standards of Practice. Other topics discussed were consistency in the statutes as far as the way acupuncture is practiced today. Statutes regarding single-use needles and reusable, non-disposable needles were also discussed. Also discussion on sterility of office area and how needles are transported to ensure sterility and patient safety during the process was also done. Not all discussions were completed so discussion will continue.
- **Examination Committee** – Kitman said that there is not much change in the pattern of the passing rate of exams. Limiting the number of times a candidate can take the exam was also discussed.
- **Executive Committee** – did not meet

13. Regulatory Update.

- **Acupuncture Advertising Guidelines** – Display of license numbers of an acupuncturist's actual license.
- **Continuing Education Ethics Requirement** – This would require 4 CEUs every two years.
- **Consumer Protection Enforcement Initiative (CPEI)** – This regulatory package has been filed with OAL. This was the highest priority as designated by Spencer and the Board.
- **Sponsored Free Health Care Events** – In final stages of drafting.
- **Uniform Standards Related to Substance Abuse and Recommended Guidelines for Disciplinary Orders and Conditions of Probation** – This regulatory package in the drafting stage.
- **Hygiene guidelines** – This is under development right now.

- **Prostitution Prevention regulation** – this was passed by the Board back in February and we will be modeling the language after the Chiropractic Board's from 1971 and use this as our guidelines. In research stage.

14. Requests Pursuant to B & P Code Section 4967.

Poongwon Peter Lee (license cancelled 9/26/13) – Mr. Lee gave the board a background by talking about the work he has been involved in.

- 15. Future Agenda Items** – MS said that the closed session regarding the E.O. provision on bill 1246 is one future agenda item. Jamie would like to have an update of our Strategic plan and how we are meeting the completion dates. He also would like to have a review process of the sunset review process and the recommendations that the committee proposed in terms of what they've asked. Thirdly, Jamie suggested that a presentation be done by NCCAOM.

16. Public Comment on Items Not on the Agenda.

Public comment was made regarding the audit of the nation Exam by Mr. London of NCCAOM. His concern is how OPES can give an unbiased, third-party independent review any more than the NCCAOM could give one since OPES is the vendor of the CALE. This seems to be a conflict of interest and how will the board address this? Another concern is that the audit should take place immediately. It should not have to wait until the occupational analysis is complete, except for the CALE, instead of waiting until September to start the occupational analysis. It was also suggested that a comparison be done of how a candidate performs on the totality of the National Exam versus how that person performs on the CALE. It's not just anecdotal evidence; there would actually be some data. "The NCCAOM is ready and willing to participate in an expeditious manner".

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Draft

**Acupuncture Board Meeting
Meeting Minutes
September 12, 2014**

**THE CONCOURSE HOTEL AT LOS ANGELES AIRPORT
6225 WEST CENTURY BOULEVARD
LOS ANGELES, CA 90045**

Board Members Present

Michael Shi, L.Ac, President, Licensed Member
Kitman Chan, Vice President, Public Member
Hildegarde Aguinaldo, J.D., Public Member
Francisco Hsieh, Public Member
Jeannie Kang, L.Ac, Licensed Member
Jamie Zamora, Public Member

Board Legal Counsel Present

Spencer Walker

Staff Members Present

Terri Thorfinnson, Executive Officer
Tammy Graver, Board Liaison
Ben Bodea, Continuing Education Coordinator
Katie Le, Education Coordinator

FULL BOARD MEETING - 9:00 a.m.

- 1. Call to Order and Quorum established.**
- 2. Opening Remarks.** MS welcomed and thanked everyone for attending.
- 3. Approval of Board Meeting Minutes**

May 23, 2014 – Motion was made but withdrawn by JK and accepted by JZ to table these minutes until November 14th Board Meeting.

June 13, 2014 – JK made the motion to approve as submitted and Jamie seconded the motion. The vote was unanimous to approve.

June 27, 2014 - JK made the motion to approve as submitted and JZ seconded the motion. The vote was unanimous to approve.

4. Chair's Report.

MS went to Taiwan this summer, hosted by the professional association in Taiwan. He was also invited to spend a few days in Korea and also visited the Korean National Research Institute. In both Taiwan and Korea the countries have a single payer system so it is not uncommon for practitioners to see up to 70 to 80 patients a day. Herbal services become a separate income for clinics and hospitals. After a licensee passes their exam, they have to join an association and show membership in order to be licensed. Schooling there is also more centralized.

5. Executive Officer's Report.

- **Staff Update** – Three staff: one education coordinator, one enforcement coordinator and one licensing technician have been hired. “Did You Know” tips for licensees were created and will be included in the letters to new licensees, renewals and exam participants pertaining to the rules, deadlines and processes. This was one of the Strategic Plan objectives—to create an informational series for licensees. Department of Investigation has offered to have one of their staff assist in inputting cases into the computer, which is very helpful. We also have help drafting citations so more citations will be done. The addition of a staff person in education will allow the board to review pending school applications, create files on schools that are behind on annual reports, approvals for CE's, CE providers, and tutorials.
- **Budget Update** – TT pointed out that two years ago we were spending about 750,000 under our budget and now that number is reduced to 195,000. With the addition of new staff, which isn't reflected in these budget numbers, we may, expenditure-wise, go over our revenues in this next year. Budget-wise we're right on the verge of going beyond our budget. Going beyond our budget into our reserve, we will be working with DCA on fees and increases.
- **Exam: Occupational Analysis update** – September 21st is the last day for people to submit their occupational analysis. We need more completed responses. Putting the questionnaire on line, increasing the time period and the fact that it was sent out to 8,800 active licensees didn't seem to improve the number of responses received compared to 2008. Once completed the analysis of the actual survey will be written up and the report would be on target for being released to the board by February. MS requested that those in the audience are encouraged to impress the membership of the associations to completed the survey; it only takes about an hour to an hour and a half to complete.

- **Enforcement: Data Report** – Department of Investigation is lending one of their staff to do intake which is helping us to not fall behind in our intake. She is also capturing in real-time in the computer as opposed to retroactively put into the computer.

CLOSED SESSION.

6. **Pursuant to Government Code Section 827, the Board will meet in closed session to consider a petition for an order compelling a psychiatric evaluation and physical examination.**

OPEN SESSION – Announcement Regarding Closed Session.

7. **Western Association of Schools and Colleges, Senior College and University Commission (WASC) accreditation presentation by Melanie Booth, Vice President.**

Melanie Booth gave a presentation on accreditation. She explained the difference between regional, national, institutional, and programmatic accreditation. She detailed the components of accreditation to understand the differences in structure and in the requirements. This also included the standards of accreditation and articulating how an institution becomes WSCUC accredited and why they might want to seek accreditation.

8. **Accrediting Council for Independent Colleges and Schools (ACICS) accreditation presentation by Joseph E. Gurubatham, Ed.D., Senior Vice President.**

Dr. Gurubatham presented information about what is ACICS, how they conduct their business, the business of accreditation and who can be considered for accreditation as well as highlights of their requirements. He explained that in contrast to WASC, ACICS took a prescriptive approach to accreditation. ACICS is the oldest accreditation organization.

9. **Proposed regulatory change pursuant to Business and Professions Code Section 138.**

This proposed regulation would require that all licensed acupuncturists post a consumer notice in their offices that states that they are licensed by the California Acupuncture Board and includes the contact information for the Board for consumers. KC made the motion that licensees post in English. KC made the motion to approve this language in English. HA seconded the motion and the vote was passed unanimously. MS made a motion to direct staff to commence the rule-making process and to delegate to the Executive Officer the authority to make any non-substantive changes. JK seconded the motion and it passed unanimously. This was one of the recommendations from the Sunset Review Committee for the Board to complete by the next Sunset Review.

10. **Strategic Plan Action Plan Update.**

TT prepared a hand out that reviewed the sunrise action plan for 2014-2017 highlighting what has been achieved. Also noted on the handout is the completion dates. Some of the board members suggested that the issues brought up in the Sunrise Review be included in the Strategic Action Plan as well. No action taken on suggestion.

11. Legislative Update - SB 1246

Amendments to the bill that were done on August 19th and also on August 22nd were included in the board packet as well as the assembly appropriations analysis. TT reviewed the changes in both of the amendments for the board. These changes won't be taking effect until 2017, so the board will go through another Sunrise/Sunset Review process before these changes go into effect. Ongoing dialogue with the legislature and administration will continue.

12. Regulatory Update.

- **Acupuncture Advertising Guidelines** - Planned for OAL submission by spring 2015, with 45 day public comment period to follow.
- **Continuing Education Ethics Requirement** - Planned for OAL submission by Summer 2015, with 45 day public comment period to follow.
- **Consumer Protection Enforcement Initiative (CPEI)** – At the Agency; 45 day comment period ended 6/30/14 with public hearing held. Final rulemaking package submitted to DCA Director for approval with OAL submission to follow.
- **Sponsored Free Health Care Events** – Planned for OAL submission October 2014, with 45 day public comment period to follow.
- **Uniform Standards Related to Substance Abuse and Recommended Guidelines for Disciplinary Orders and Conditions of Probation** – At the Administration DCA stage before filing; date to Legal Counsel was changed to Sept. 11th.
- **Hygiene guidelines** – Package under staff development. Planned for OAL submission by Fall 2015.
- **Prostitution Prevention regulation** –Planned for OAL submission by December 2014, with 45 day public comment period to follow.

13. Future Agenda Items.

The Executive Officer evaluation should be put on the November agenda.

14. Public Comment on Items Not on the Agenda.

There was a comment about CAOMA and that every Chinese organization in Southern California works with CAOMA. They all want to work with the Acupuncture Board, the Legislator, the schools--everybody working together. Additional comments were made regarding what boards are able to approve schools.

Another member of the public brought up the fact that CPR recertification is not required for license renewal and requests that the board address this issue. All other boards do require this.

There was a comment about a proposed situation that a constituent board member meets with their elected representative to discuss a bill that their legislator is authorizing which directly affects the board and during the meeting a staff meeting committee consultant who is developing the board's language calls-in and participates in the meeting. How would the board view the member's conversation with the consultant? There was an intention expressed to follow up for clarification.

15. Adjournment

Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. Times are approximate and subject to change. Action may be taken on any item listed on the Agenda.

**THE AGENDA, AS WELL AS BOARD MEETING MINUTES, CAN BE FOUND ON THE
ACUPUNCTURE BOARD'S WEBSITE AT**

www.acupuncture.ca.gov

Please Note: Board meetings are open to the public and are held in barrier free facilities that are accessible to those with physical disabilities in accordance with the Americans with Disabilities Act (ADA). If you need additional reasonable accommodations, please make your request no later than five (5) business days before this meeting. Please direct any questions regarding this meeting to the Board Liaison, Tammy Graver at (916) 515-5204; FAX (916) 928-2204

**ACUPUNCTURE BOARD - 0108
BUDGET REPORT
FY 2013-14 EXPENDITURES
Sep-2014**

FISCAL MONTH 3

OBJECT DESCRIPTION	FY 2013-14		FY 2014-15				
	ACTUAL	PRIOR YEAR	BUDGET	CURRENT YEAR	PERCENT	PROJECTIONS	UNENCUMBERED
	EXPENDITURES (MONTH 13)	EXPENDITURES 9/30/2013	ACT 2014-15	EXPENDITURES 9/30/2014	SPENT	TO YEAR END	BALANCE
PERSONNEL SERVICES							
Salary & Wages (Staff)	319,354	76,354	499,894	97,403	19%	457,866	42,028
Statutory Exempt (EO)	81,975	20,100	80,400	21,465	27%	85,440	(5,040)
Temp Help Reg (Seasonals)	61,334	13,079	19,000	7,554		37,380	(18,380)
BI 12-03 Blanket							
Temp Help (Exam Proctors)							0
Board Member Per Diem	8,800		7,463	1,100	15%	8,000	(537)
Committee Members (DEC)							0
Overtime	396		5,000	0		1,000	4,000
Staff Benefits	171,986	39,230	309,166	55,956	18%	223,824	85,342
TOTALS, PERSONNEL SVC	643,845	148,763	920,923	183,478	20%	813,510	107,413
OPERATING EXPENSE AND EQUIPMENT							
General Expense	48,614	1,538	56,861	23,462	41%	56,861	0
Fingerprint Reports	2,374	766	20,045	538	3%	2,152	17,893
Minor Equipment	19,599		6,000	0	0%	6,000	0
Printing	9,771	955	17,331	11,783	68%	17,331	0
Communication	2,347	287	16,958	368	2%	3,000	13,958
Postage	24,411	8,563	26,773	15,037	56%	26,773	0
Insurance			0				0
Travel In State	42,908	3,938	32,141	7,935	25%	45,000	(12,859)
Travel, Out-of-State			0	0	0%		0
Training	307		3,129	0	0%	500	2,629
Facilities Operations	120,750	115,387	65,195	118,722	182%	120,500	(55,305)
Utilities			0	0			0
C & P Services - Interdept.			8,771	0	0%		8,771
C & P Services - External	0		3,965	0	0%		3,965
DEPARTMENTAL SERVICES:							0
Departmental Pro Rata	111,043	32,269	143,198	35,800	25%	143,198	0
Admin/Exec	81,360	20,118	87,979	21,995	25%	87,979	0
Interagency Services			650	0	0%		650
IA w/ OER	303,906		333,119	385,383	116%	385,383	(52,264)
DOI-ProRata Internal	2,608	647	2,755	689	25%	2,755	0
Public Affairs Office	3,014	909	2,688	672	25%	2,688	0
CCED	2,973	773	101,463	25,366	25%	101,463	0
INTERAGENCY SERVICES:							0
Consolidated Data Center	370	40	2,604	143	5%	572	2,032
DP Maintenance & Supply	13,903	27,137	5,494		0%	5,000	494
Central Admin Svc-ProRata	108,549		141,674	35,419	25%	141,674	0
EXAM EXPENSES:							0
Exam Supplies			0				0
Exam Freight			25				25
Exam Site Rental			0				0
C/P Svcs-External Expert Administrative	351,075	321,149	286,772	305,491		305,491	(18,719)
C/P Svcs-External Expert Examiners	60,026	2,458	83,944	3,293		13,172	70,772
C/P Svcs-External Subject Matter	2,565	1,565					0
ENFORCEMENT:							0
Attorney General	177,391	13,311	379,123	52,368	14%	209,472	169,651
Office Admin. Hearings	41,173		106,670	4,570	4%	27,420	79,250
Court Reporters	1,765		0	308		1,232	(1,232)
Evidence/Witness Fees	30,792	10,093	10,795	17,385	161%	50,000	(39,205)
DOI - Investigations	309,938	76,026	391,305	97,826	25%	391,305	0
Major Equipment	20,866		18,000		0%	18,000	0
Special Items of Expense							0
Other (Vehicle Operations)			2,650				2,650
TOTALS, OE&E	1,894,398	637,929	2,358,077	1,164,553	49%	2,164,921	193,156
TOTAL EXPENSE	2,538,243	786,692	3,279,000	1,348,031	69%		300,569
Sched. Reimb. - External/Private	(2,605)	(480)					
Sched. Reimb. - Fingerprints	(1,715)	(539)	(22,000)		0%		(22,000)
Sched. Reimb. - Other			(1,000)				(1,000)
Unsched. Reimb. - Other	(18,395)	(4,036)					0
NET APPROPRIATION	2,515,528	781,637	3,256,000	1,348,031	41%	0	277,569
SURPLUS/(DEFICIT):							8.5%

0108 - Acupuncture Analysis of Fund Condition

Prepared 11/04/14

(Dollars in Thousands)

	ACTUAL 2013-2014	Governor's Budget CY 2014-15	BY 2015-16	BY+1 2016-17
BEGINNING BALANCE	\$ 2,088	\$ 2,128	\$ 1,981	\$ 1,886
Prior Year Adjustment	\$ 10	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 2,098	\$ 2,128	\$ 1,981	\$ 1,886
REVENUES AND TRANSFERS				
Revenues:				
125600 Other regulatory fees	\$ 45	\$ 45	\$ 47	\$ 47
125700 Other regulatory licenses and permits	\$ 792	\$ 980	\$ 1,086	\$ 1,086
125800 Renewal fees	\$ 1,697	\$ 2,067	\$ 2,073	\$ 2,073
125900 Delinquent fees	\$ 14	\$ 12	\$ 13	\$ 13
141200 Sales of documents	\$ -	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ 1	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 6	\$ 6	\$ 6	\$ 5
150500 Interest Income From Interfund Loans	\$ -	\$ -	\$ -	\$ -
160400 Sale of fixed assets	\$ -	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 1	\$ -	\$ -	\$ -
161400 Miscellaneous revenues	\$ -	\$ -	\$ -	\$ -
Totals, Revenues	\$ 2,556	\$ 3,110	\$ 3,225	\$ 3,224
Transfers from Other Funds				
Proposed GF 11-12 Loan Repayment				\$ 1,000
Transfers to Other Funds				
GF Loan per item 1110-011-0108, Budget Act of 2011				
Totals, Revenues and Transfers	\$ 2,556	\$ 3,110	\$ 3,225	\$ 4,224
Totals, Resources	\$ 4,654	\$ 5,238	\$ 5,206	\$ 6,110
EXPENDITURES				
Disbursements:				
0840 - SCO				
1110 - Program Expenditures (State Operations)	\$ 2,513	\$ 3,255	\$ 3,320	\$ 3,386
8880 - FISCAL	\$ 13	\$ 2		
Total Disbursements	\$ 2,526	\$ 3,257	\$ 3,320	\$ 3,386
FUND BALANCE				
Reserve for economic uncertainties	\$ 2,128	\$ 1,981	\$ 1,886	\$ 2,724
Months in Reserve	7.8	7.2	6.7	9.5

NOTES: A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.

B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING BY+1.

C. ASSUMES INTEREST RATE AT 0.3%

**California Acupuncture Board
August 2014 Examination Results
Statistics by Language**

FIRST TIME TAKERS ONLY				
	ENGLISH	CHINESE	KOREAN	TOTAL
PASSED	115	33	33	181
FAILED	46	12	12	70
TOTAL	161	45	45	251
PASS RATE	71%	73%	73%	72%
RE-EXAMINEES ONLY				
	ENGLISH	CHINESE	KOREAN	TOTAL
PASSED	48	12	14	74
FAILED	75	35	25	135
TOTAL	123	47	39	209
PASS RATE	39%	26%	36%	35%
OVERALL				
	ENGLISH	CHINESE	KOREAN	TOTAL
PASSED	163	45	47	255
FAILED	121	47	37	205
TOTAL	284	92	84	460
PASS RATE	57%	49%	56%	55%

AUGUST 2014 EXAMINATION RESULTS STATISTICS BY SCHOOL

SCHOOL	1st TIME TAKERS			OVERALL (includes re-examinees)		
	# Passed	# Failed	PASS %	# Passed	# Failed	PASS %
<i>Academy of Chinese Culture & Health Sciences</i>	1	3	25%	2	11	15%
<i>Academy of Oriental Medicine at Austin</i>	2	1	67%	2	1	67%
<i>Acupuncture & Integrative Medicine College, Berkeley</i>	4	6	40%	8	13	38%
<i>Alhambra Medical University</i>	2	0	100%	3	3	50%
<i>American College of Traditional Chinese Medicine</i>	25	3	89%	28	9	76%
<i>Bastyr University</i>	1	0	100%	2	0	100%
<i>California Trinity University (formerly Kyung San)</i>	0	1	0%	1	5	17%
<i>Dong-guk University, California</i>	11	5	69%	14	14	50%
<i>Emperor's College of Traditional Oriental Medicine</i>	10	5	67%	15	10	60%
<i>Five Branches University</i>	18	3	86%	28	16	64%
<i>Kingston University</i>	1	0	100%	1	0	100%
<i>Kyung San University (now CTU)</i>	0	0	N/A	0	1	0%
<i>New England School of Acupuncture</i>	1	2	33%	1	2	33%
<i>New York College of Health Professions</i>	2	0	100%	2	0	100%
<i>Nine Star University of Health Sciences</i>	0	0	N/A	0	1	0%
<i>Oregon College of Oriental Medicine</i>	1	2	33%	3	2	60%
<i>Pacific College of Oriental Medicine</i>	14	10	58%	21	17	55%
<i>Samra University</i>	0	0	N/A	0	1	0%
<i>Santa Barbara College of Oriental Medicine</i>	0	0	N/A	0	1	0%
<i>South Baylo University</i>	43	11	80%	51	40	56%
<i>Southern California University of Health Sciences</i>	12	1	92%	15	8	65%
<i>Southern CA Univ. School of OM & Acupuncture</i>	3	3	50%	5	3	63%
<i>Southwest Acupuncture College</i>	3	0	100%	3	0	100%
<i>St. Luke</i>	0	0	N/A	1	0	100%
<i>Stanton University</i>	4	1	80%	7	3	70%
<i>Traditional Acupuncture Institute</i>	0	0	N/A	0	1	0%
<i>University of East West Medicine</i>	9	2	82%	13	10	57%
<i>University of South Los Angeles (formerly Life University)</i>	0	2	0%	0	2	0%
<i>YoSan University of TCM</i>	3	0	100%	9	2	82%
<i>Tutorials</i>	1	0	100%	1	0	100%
<i>Foreign Equivalency</i>	11	9	55%	19	29	40%
GRAND TOTAL	182	70	72%	255	205	55%



NCCAOM® Exhibit: Reference Materials for California Acupuncture Board

November 14, 2014

[Dr. Kory Ward-Cook, CEO of NCCAOM](#)

The information below is a compilation of background information and resources that the NCCAOM has created for the purpose of educating licensed acupuncturists, state regulatory agency officials, academic program officials and other stakeholders regarding the NCCAOM examination administration and development, and the NCCAOM certification programs. The links will direct you to PDF documents or web pages that are all housed in the [NCCAOM website](#). Please consider these resources as background information for the NCCAOM presentation to the California Acupuncture Board (CAB) on Friday, November 14, 2014. These resources will supplement the PowerPoint presentation that will be presented during the CAB meeting. If you have any questions about the materials included, please address them to Dr. Ward-Cook at the time of the meeting or by contacting her through email (kwardcook@thenccaom.org) or by phone at (904) 674-2501

NCCAOM® Fact Sheets on the Organization and Certification Programs:

- [National Certification Commission for Acupuncture and Oriental Medicine \(NCCAOM®\) Fact Sheet: Information for California Licensed Acupuncturists about the NCCAOM Testing and Certification Program](#)
- [National Certification Commission for Acupuncture and Oriental Medicine \(NCCAOM®\) Fact Sheet: NCCAOM Certification and Testing Program](#)
- [National Certification Commission for Acupuncture and Oriental Medicine \(NCCAOM®\) Fact Sheet: Meeting National Standards through its Examinations and Certification Process](#)

Examination Development Information:

NCCAOM Job Analysis (i.e. Occupational Analysis): Content Validation

- [Job Analysis Fact Sheet](#)
- [Executive Summary Descriptive Demographic and Clinical Practice Profile from the NCCAOM 2013 Job Analysis](#)
- [2013 Job Analysis Report](#)
- [2008 Job Analysis Report](#)



- [2003 Job Analysis Report](#)

NCCAOM Exam Content Informational Page: [2014 NCCAOM® Exam Content Outlines](#)

Expanded Content Outlines

- [2014 – English – Acupuncture with Point Location](#) exam expanded content outline
- [2014 – English – Biomedicine](#) exam expanded content outline
- [2014 – English – Chinese Herbology](#) exam expanded content outline
- [2014 – English – Foundations of Oriental Medicine](#) exam expanded content outline
- [2014 – Chinese – Acupuncture with Point Location](#) exam expanded content outline
- [2014 – Chinese – Biomedicine](#) exam expanded content outline
- [2014 – Chinese – Chinese Herbology](#) exam expanded content outline
- [2014 – Chinese – Foundations of Oriental Medicine](#) exam expanded content outline
- [2014 – Korean – Acupuncture with Point Location](#) exam expanded content outline
- [2014 – Korean – Biomedicine](#) exam expanded content outline
- [2014 – Korean – Chinese Herbology](#) exam expanded content outline
- [2014 – Korean – Foundations of Oriental Medicine](#) exam expanded content outline

Abbreviated Content Outlines

- [2014 Acupuncture with Point Location](#) exam abbreviated content outline
- [2014 Biomedicine](#) exam abbreviated content outline
- [2014 Chinese Herbology](#) exam abbreviated content outline
- [2014 Foundations of Oriental Medicine](#) exam abbreviated content outline



Reinstatement Examination Content Outlines

- [NCCAOM[®] Reinstatement Exam for Acupuncture Certification](#)
- [NCCAOM[®] Reinstatement Exam for Oriental Medicine Certification](#)
- [NCCAOM[®] Reinstatement Exam for Chinese Herbology Certification](#)

Examination Statistics

- Link to the 2011 – 2013 Exam Statistics: [NCCAOM[®] Comprehensive Examination Statistics Report fly-out](#)
- Link to 2014 - Six Month Report: [NCCAOM[®] Comprehensive Examination Statistics Report](#)

Examination Administration

- Overview of NCCAOM's Examination Administration Process: [NCCAOM Examination Administration Frequently Asked Questions](#)
- Link to [Pearson VUE™](#) – [NCCAOM's Test Administration Vendor](#):



Examination Scoring

- Establishing the Cut-Score (i.e. Setting the Passing Standard): [General Considerations for Setting a Passing Standard, Prepared by Schroeder Measurement Technologies \(NCCAOM's Psychometric Vendor\)](#)
- Assuring Examination Fairness to Candidates: [Equating and Scaling: Assuring the Highest level of Fairness for Examination Programs](#)
- Link to [Schroeder Measurement Technologies \(SMT\)](#) – [NCCAOM Psychometric Vendor](#)





NCCAOM Subject Matter Experts – Criteria, Roles, and Position Description

- Overview of NCCAOM and the Volunteer Program - [NCCAOM® Volunteer Handbook](#)
 - Subject Matter Experts Job Description and Duties, See pages pp. 17-22:
 - NCCAOM Item Writing Academy Information, pp. 23-24.

NCCAOM Certification Programs

NCCAOM Certification Handbook

- [NCCAOM® Certification Handbook and Application](#)
- [NCCAOM® Certification E-Handbook \(Interactive Certification Handbook\)](#)

NCCAOM Recertification Handbook

- [NCCAOM® Recertification Handbook](#)

National Third-Party Accreditation

- [National Commission for Certifying Agencies \(NCCA\) of the Institution for Credentialing Excellence \(ICE\)](#) – NCCAOM's Certification Programs are accredited by NCCA



NCCAOM Certification Fact Sheets:

- [The NCCAOM® Certification in Acupuncture Fact Sheet](#)
- [The NCCAOM® Certification in Chinese Herbology Fact Sheet](#)
- [The NCCAOM® Certification in Oriental Medicine Fact Sheet](#)

NCCAOM Code of Ethics and Disciplinary Documents

- [NCCAOM® Code of Ethics](#)



- [Grounds for Professional Discipline](#)
- [Procedures for Upholding Professional Conduct](#)

Use of NCCAOM Examinations and Certifications as a Requirement for State Licensure

- [*State Licensure Requirement Table*](#)
- [*States Using NCCAOM Certification or Exams*](#)
- [*States with Scope of Practice for Chinese Herbology*](#)
- [*Number of Acupuncturists Provided by State Licensing Boards*](#)
- [*Number of Active Diplomates Per State*](#)

ACUPUNCTURE BOARD

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DATE	November 14, 2014
TO	Acupuncture Board
FROM	Executive Officer
SUBJECT	Legislative Update 2014

SB 1246 (Lieu) Acupuncture Board Sunrise bill. Signed.

AB 1702 (Patterson) Delay or Denial of Licensure Due to Incarceration. Signed.

This legislation provides that an applicant shall not be subject to a delay in processing his or her application or a denial of the license due to the applicant.

AB 2396 (Bonta) Denial of Licensure for Prior Convictions. Signed.

This legislation amends BPC 480 to provide that a person may not be denied licensure solely based upon a conviction that has been dismissed through specified penal code procedures. This may have a significant impact on the Board's enforcement actions involving convictions.

AB 2720 (Ting) Requires State Agencies to Record Votes in Meeting Minutes for Each Board member. Signed.

This legislation amends the Bagley Keene Open Meetings Act to require that the votes of each Board member be recorded in the minutes for all actions taken at meetings. The purpose is to create more transparency so that the public can see how each member votes on issues. This will require the roll call voting positions of each member to be captured in the minutes, not just the vote totals.

SB 1159 (Lara) Professions and Vocations: license Applicants: Federal Tax Identification Number. Signed.

This legislation would allow licensees to use federal taxpayer identification in lieu of a social security number when applying for licensure. This will impact foreign graduates who apply for licensure in California but do not have a social security number. Currently, applicants for licensure must have a social security number. Under this legislation, they can also use a taxpayer identification number in applying for licensure.

SB 1243 (Lieu) Professions and Vocations. Signed.

This legislation makes changes to DCA enforcement training. It also adds meeting notice requirements that if meetings are webcast that there is notice of the fact that the meeting is to be webcast.

SB 1256 (Mitchell) Medical Services: Credit. Signed.

This legislation prohibits medical providers from arranging for a line of credit on behalf of a patient unless the patient signs a release acknowledging they are aware of their rights concerning these loans

that are offered by third-party providers. In addition, the bill would require the health care practitioner to provide the patient with a treatment plan prior to arranging for the line of credit, prohibit charges to the credit account before the procedure has been rendered, and prohibit a licensee from arranging for credit for a patient who is under the influence of anesthesia. This bill extends these prohibitions that currently apply only to dentists beyond just dentists to all medical providers.

Assembly Bill No. 1702

CHAPTER 410

An act to add Section 480.5 to the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 18, 2014. Filed with Secretary of State September 18, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1702, Maienschein. Professions and vocations: incarceration.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, among other entities. Existing law establishes various eligibility criteria needed to qualify for a license and authorizes a board to deny a license on the grounds that the applicant has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

This bill would provide that an individual who has satisfied any of the requirements needed to obtain a license while incarcerated, who applies for that license upon release from incarceration, and who is otherwise eligible for the license shall not be subject to a delay in processing the application or a denial of the license solely on the basis that some or all of the licensure requirements were completed while the individual was incarcerated.

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

SECTION 1. Section 480.5 is added to the Business and Professions Code, to read:

480.5. (a) An individual who has satisfied any of the requirements needed to obtain a license regulated under this division while incarcerated, who applies for that license upon release from incarceration, and who is otherwise eligible for the license shall not be subject to a delay in processing his or her application or a denial of the license solely on the basis that some or all of the licensure requirements were completed while the individual was incarcerated.

(b) Nothing in this section shall be construed to apply to a petition for reinstatement of a license or to limit the ability of a board to deny a license pursuant to Section 480.

(c) This section shall not apply to the licensure of individuals under the initiative act referred to in Chapter 2 (commencing with Section 1000) of Division 2.

Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER
PROTECTION
Susan A. Bonilla, Chair
AB 1702 (Maienschein) - As Introduced: February 13, 2014

SUBJECT : Professions and vocations: incarceration.

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

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

2) Specifies that the above provision does not apply to a petition for reinstatement of a license or to the licensure of individuals under the Chiropractic Act, as specified.

EXISTING LAW

1) Allows a board to deny a license, as specified, on the grounds that the applicant has done one of the following:

- a) Been convicted of a crime, as specified;
- b) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another; or,
- c) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. (Business & Professions Code (BPC) Section 480(a))

1) Authorizes a board to deny a license, as specified, only if a crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. (BPC 480(a)(3)(B))

2) Specifies that no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation, as specified, or that he or she has been convicted of a misdemeanor, if he or she has met all applicable requirements of the criteria of rehabilitation, developed by the board, to evaluate the

rehabilitation of a person when considering the denial of a license, as specified. (BPC 480(b))

3)Requires each board, as specified, to develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates. (BPC 481)

4)Requires each board, as specified, to develop criteria to evaluate the rehabilitation of a person when:

- a) Considering the denial of a license by the board, as specified; or,
- b) Considering suspension or revocation of a license,as specified.(BPC 482)

5)Requires a board who has denied an application for a license,as specified, to include a copy of the criteria relating to rehabilitation, as specified, and to inform the applicant of the following:

- a) The earliest date on which the applicant may reapply for licensure, as specified; and
- b) That all competent evidence of rehabilitation presented will be considered upon reapplication. (BPC 486).

FISCAL EFFECT : Unknown

COMMENTS :

1)Purpose of this bill . In order to alleviate unnecessary barriers to employment after incarceration, this bill specifies that an individual who has completed certain requirements for licensure while incarcerated cannot have their application for licensure denied or delayed solely based on their prior incarceration.

2)Author's statement . According to the author, "The purpose of [this bill] is to remove any obstacles preventing individuals who have obtained specific job training [and education], while incarcerated, from receiving a license for that particular profession. This bill is necessary because many of the licensing boards have provisions in place to delay or prevent a person with a criminal record from receiving a professional license."

3)Requirements for licensure . Each board under the Department of Consumer Affairs (DCA) is responsible for enforcing their licensing standards and ensuring that an applicant has met all of the specified educational, examination, and experience requirements necessary for licensure, based on the criteria set forth in each specified practice act. The individual boards are tasked with the duty of examining the content of applications to ensure they have met the appropriate criteria,including the investigation of criminal convictions.

Current law authorizes boards to deny a license based on certain elements, including the conviction of a crime for duties substantially related to the criteria of the profession, and each board determines what those duties are. Additionally, boards are required to develop criteria for rehabilitation in order to potentially address individuals who have been denied a license based on past convictions. Rehabilitation criteria are determined directly by the boards and are not uniform.

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

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

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

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

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

Information provided by the Council of State Governments, Justice Center, found that each year nearly 700,000 individuals are released from state and federal prisons and another 12 million cycle through local jails. More than two-thirds of state prisoners are rearrested within three years of their

release; half are re-incarcerated. Further, it was reported that two out of every three men were employed before they were incarcerated, and many were the primary financial contributors in their households. Individuals who have been incarcerated can expect future annual earnings to be reduced by some 40 percent after they return to their communities.

Under current law, boards under DCA are permitted to make licensure decisions based on the specific criminal history reported by an applicant or identified through background check requirements. This bill does not alter or impede a board's ability to deny a license if the criminal conviction merits denial under current law, but may assist other individuals seeking licensure for different professions if boards are delaying or denying applications solely on the fact the applicant's education was achieved during incarceration.

6)Exemption for Chiropractic Board . This bill makes clear that BCE is exempt from the provisions of this bill because the Chiropractic Act was created through an initiative measure approved by the electors of California on November 7, 1922. As is common with many initiatives, unless the initiative measure states otherwise, it may not be amended or repealed by the Legislature without a vote of approval of the electors, thus prohibiting a legislative change.

7)Arguments in support . The California Correctional Peace Officers Association writes in support, "If California is serious about reducing recidivism; it needs to promote work among the previously incarcerated. Allowing a person who has met the qualifications for a profession, and has not served time for a crime related to that profession, to become licensed represents a sound use of the resources devoted to that person's training. More importantly, it provides that individual with a clear path to becoming a productive, tax-paying member of society, rather than to continue to be a financial dependent on state and local governments. For these reasons, we urge your support for this important measure."

8)Author's amendments . The author has requested amendments to this bill to further clarify the prohibition on delay and denial based on the fact that the applicant completed some or all of the licensure requirements while incarcerated. The author's proposed amendments will continue to provide boards with the ability to deny a license based on criminal convictions relevant to the duties and functions of a specific license.

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

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

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

9)Related legislation . AB 2396 (Bonta) of 2014 prohibits a board from denying a license based solely on a conviction that has been dismissed, as specified. This bill is pending in the Assembly Business, Professions and Consumer Protection Committee.

10)Previous legislation . AB 2423 (Bass), Chapter 675, Statutes of 2008, permits specified DCA boards to issue initial licenses on probation and makes other changes related to licensing and discipline to encourage the employment of ex-offenders.

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

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

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

REGISTERED SUPPORT / OPPOSITION :

Support

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

Opposition

None on file.

Analysis Prepared by : Elissa Silva / B.,P. & C.P. / (916)
319-330

Assembly Bill No. 2396

CHAPTER 737

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

[Approved by Governor September 28, 2014. Filed with
Secretary of State September 28, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2396, Bonta. Convictions: expungement: licenses.

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

Existing law permits a defendant to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty in any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or has been convicted of a misdemeanor and not granted probation and has fully complied with and performed the sentence of the court, or has been sentenced to a county jail for a felony, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted this or other specified relief and requires the defendant to be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

This bill would prohibit a board within the Department of Consumer Affairs from denying a license based solely on a conviction that has been dismissed pursuant to the above provisions. The bill would require an applicant who has a conviction that has been dismissed pursuant to the above provisions to provide proof of the dismissal.

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

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

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 that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

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

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

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

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

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

BILL ANALYSIS

| Hearing Date: June 16, 2014 | Bill No: AB
| |
| | | 2396

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

Bill No: AB 2396 Author: Bonta
As Amended: May 15, 2014 Fiscal: Yes

SUBJECT: Convictions: Expungement: Licenses

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

Existing law:

1) Allows a board to deny a license to an applicant if the applicant has done one of the following: (Business & Professions Code (BPC) § Section 480(a))

- a) Been convicted of a crime, as specified;
- b) Committed any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another; or,
- c) Committed any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

1) Authorizes a board to deny a license, as specified, only if a crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which an application is made. (BPC § 480(a)(3)(B))

2) Specifies that no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has

obtained a certificate of rehabilitation, as specified, or that he or she has been convicted of a misdemeanor, if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license, as specified. (BPC § 480(b))

3) Requires each board to develop criteria to aid it when considering the denial, suspension or revocation of a license, in order to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates. (BPC § 481)

4) Requires each board, as specified, to develop criteria to evaluate the rehabilitation of a person when considering the denial, or suspension or revocation of a license, by the board, as specified. (BPC § 482)

5) Requires a board that has denied an application for a license to include a copy of the criteria relating to rehabilitation, as specified, and to inform the applicant of the earliest date at which the applicant may reapply for licensure and that all competent evidence of rehabilitation presented will be considered upon reapplication. (BPC § 486).

6) Provides that in any case, except as specified, in which a defendant has fulfilled the condition of probation, or has been discharged prior to termination of probation, or in any case in which a court determines a person should be granted relief in the interest of justice, the court may withdraw or set aside a guilty plea and shall dismiss the accusations or information against the defendant and release the defendant from all penalties and disabilities resulting from the offense of which he or she has been convicted and inform them of their right to petition for a certificate of rehabilitation and pardon. (Penal Code Section (PC) §1203.4)

7) Provides that if the court dismisses the accusations of information against the defendant, it does not relieve him or her of the obligation to disclose the conviction in an application for licensure for any state or local agency. (Id.)

8) Provides that in a case in which a defendant who was convicted of a misdemeanor and not granted probation, or convicted of an

infraction, and who has fully complied with and performed the sentence of the court, is not serving a sentence for any offense and is not under charge of commission of any crime, and if one year has elapsed since the date of judgment, the court may withdraw or set aside the guilty plea and dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she was convicted, except as specified. (PC § 1203.4a(a))

9) Provides that if a defendant does not satisfy all of the above conditions but has fully complied with and performed the sentence of the court, is not serving a sentence for any offense, and is not under charge of commission of any crime, and one year has lapsed since the judgment, the court may, in its discretion and in the interests of justice, withdraw or set aside and dismiss the conviction. (PC § 1203.4a(b))

10) Provides that if a defendant is sentenced to county jail pursuant to criminal justice realignment and is not under mandatory supervision and not serving a sentence for, on probation for, or charged with the commission of any offense, and at least one year has elapsed since the judgment, the court, in its discretion and in the interests of justice, may withdraw or set aside the guilty plea and dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she was convicted, except as specified.
(PC § 1203.41)

This bill: Prohibits boards and bureaus within DCA from denying a professional license based solely on a prior conviction that was dismissed by a court.

FISCAL EFFECT: This measure is keyed "fiscal" by Legislative Counsel.

According to the Assembly Appropriations Committee, this bill would impose minor and absorbable costs to each of the affected boards.

COMMENTS:

1. Purpose. This bill is sponsored by the Alameda County Board of Supervisors. According to the Author, "[This bill] is designed to reduce employment barriers for people with criminal records who have been rehabilitated. [This bill] allows them the opportunity to pursue meaningful employment and work towards entering the middle class, instead of struggling in low-wage jobs or returning to crime. "In many cases, individuals seeking a

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

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

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

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

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

In order to obtain a dismissal, a person must successfully serve and complete all the terms of their sentence, including paying any restitution and fines, and not be charged with any other offenses. In addition, a person must file a petition with the court, which may include information about the offense, letters of recommendation, proof of compliance with the terms of probation,

and any other materials that may assist the court in making a decision. The petition must also be served to the applicable District or City Attorney, who may object to the petition and provide evidence to the court that the dismissal should not be granted. The court will decide on the petition, and if the petition is denied, an individual may file for reconsideration or refile the petition at a later date. As a result, this "set aside and dismissal" remedy is limited both in terms of scope and application.

4. License Denials: Appeal Process. Over half of the boards under DCA require criminal history information, and other boards require applicants to self-report any criminal history. While criminal background checks are supposed to show whether a conviction has been dismissed, this does not always occur. If a board denies a license, it is required to notify the applicant by letter, which provides the applicant with the specific reasons why the application was denied. An applicant has the right to appeal the denial of the application by requesting a statement of issues hearing, and must submit a request for that hearing within 60 days of the date of the letter. Once a written request for a hearing is made, it is forwarded to the Attorney General's office. At the hearing, an applicant may present evidence and witnesses to prove that his or her application for a certificate or license should not be denied.

5. Professional Boards Discretion When Denying a License. Existing law authorizes each board to deny a professional license based on an applicant's past conviction, "act involving dishonest, fraud, or deceit," or other act that could subject a licensee to license suspension or revocation, if that conviction or act is "substantially related" to the qualifications, functions, or duties of the business or profession for which application is made. This discretion does not distinguish between types of convictions or types of dishonest acts, and these terms are so broad that many convictions or acts could be determined by a board to be cause for denial of a license. In addition, there are no other qualifications, such as how long ago a person was convicted or had committed a bad act, or whether a board has to take that length of time into consideration. It is up to each board to determine what they consider as criteria for license denial or rehabilitation. There is no data that tracks how many people are denied professional licenses based on a past conviction, how many of those denials were based on convictions that were dismissed, or how many denials based on dismissed convictions were successfully appealed. However, according to the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, one non-profit organization that hosts expungement clinics and assist individuals with prior convictions to obtain a license or appeal a license denial, it has seen at least 20 to 30 cases where licenses were denied by a professional board based on a conviction that was dismissed. According to the Lawyer's Committee, once they got involved in an appeal, they experienced an extremely high level of success, which makes one question why the license was denied in the first place and whether these decisions are arbitrary or fraught with too much discretion. License denials are generally not subject to review unless there is alleged misconduct or the denial is being appealed. In addition, while some may argue that the appeals process allows the system to correct itself many applicants may lack the knowledge or have access to limited legal resources to help them pursue an appeal of a denial. It should be noted that this bill would not affect a board's ability to deny a license based on other

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

6. Related Legislation This Year. AB 1702 (Maienschein) specifies that an individual who has satisfied the requirements for licensure while incarcerated and who applies for licensure after being released from incarceration shall not have his or her application delayed or denied solely based on the prior incarceration. The bill exempts the Board of Chiropractic Examiners (BCE) from these requirements. (Status : This bill is pending in the Senate Committee on Business, Professions, and Economic Development.)

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

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

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

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

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

AB 2423 (Bass, Chapter 675, Statutes of 2008) requires the Veterinary Medical Board, Structural Pest Control Board, Board of Vocational Nursing and Psychiatric Technicians of the State of California, State Board of Barbering and Cosmetology, and the Director of DCA, when considering the issuance or granting of a probationary license or registration, to request that an applicant with a dismissed conviction provide proof of that dismissal and

would require that special consideration be given to applicants whose convictions have been dismissed, as specified.

AB 1025 (Bass) of 2007 would have provided that an applicant for a license with a board under DCA may not be denied licensure or have his or her license suspended or revoked solely on the basis that he or she has been convicted of a felony or misdemeanor if that conviction was dismissed, unless the board provides substantial evidence, as specified, justifying the denial, suspension, or revocation. (Status: This bill was vetoed by the Governor.) In his veto message, Governor Schwarzenegger wrote, "AB 1025 creates a presumption of rehabilitation based on an expungement of a conviction. This is problematic for two reasons. First expungement is not intended to be indicative of rehabilitation. Second, this provision places the burden of proof on state licensing bodies to show that an individual is not rehabilitated, which would result in increased litigation and extensive investigations."

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

The Lawyers' Committee for Civil Rights of the San Francisco Bay Area also writes in support, "By disregarding the 'set aside and dismissal' remedy, Section 480 in its current form undermines the state's efforts to encourage individuals to demonstrate rehabilitation. Indeed, the majority of our clients seeking licensure with [DCA] have been denied despite having attained dismissals of their convictions. Denying a license to an applicant on the sole basis of a dismissed conviction unnecessarily limits the applicant's ability to find gainful employment, provide for his or her family, and otherwise successfully reintegrate into the community."

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

9. Arguments in Opposition. Several boards, including the Board of Psychology, underscores, "this bill would have a fiscal impact on the Board through increased utilization of investigators, the Attorney General's Office, and staff resources. This Board also has concerns that this bill would impede the Board's ability to protect consumers of psychological services in the State of California."

According to the Board of Behavioral Sciences , "The Board has seen cases of applications having multiple DUI, theft, and assault charges which

occurred over the past 5-10 years, all of which have been expunged. To ensure the public protection, the Board must examine each case individually to determine whether these convictions remain relevant to the safe practice to psychotherapy."

The Respiratory Care Board of California writes, "dismissal of a conviction is not indicative of rehabilitation, although AB 2396 creates a presumption of such and could result in a risk to consumers by prohibiting the denial of a license based on conviction that have been dismissed."

SUPPORT AND OPPOSITION:

Support:

Alameda County (Sponsor)
California Catholic Conference, Inc.
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Legal Services for Prisoners with Children
National Employment Law Project

Opposition:

Board of Psychology
Board of Behavioral Sciences
Contractors State License Board
Respiratory Care Board of California

Consultant: Mark Mendoza

Assembly Bill No. 2720

CHAPTER 510

An act to amend Section 11123 of the Government Code, relating to public meetings.

[Approved by Governor September 20, 2014. Filed with Secretary of State September 20, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2720, Ting. State agencies: meetings: record of action taken.

The Bagley-Keene Open Meeting Act requires, with specified exceptions, that all meetings of a state body, as defined, be open and public and all persons be permitted to attend any meeting of a state body. The act defines various terms for its purposes, including "action taken," which 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.

This bill would require a state body to publicly report any action taken and the vote or abstention on that action of each member present for the action.

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

SECTION 1. Section 11123 of the Government Code is amended to read:

11123. (a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

(b) (1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and

conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, “teleconference” means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video.

(c) The state body shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

Date of Hearing: May 7, 2014

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION
Isadore Hall, Chair
AB 2720 (Ting) - As Amended: April 2, 2014

SUBJECT : Public meetings.

SUMMARY :

Requires a state body to publicly report any action taken and the vote or abstention on that action of each member present for the action.

EXISTING LAW

1) Requires under the Bagley-Keene open Meeting Act (Bagley Act) that all meetings of a state body be open and public and that all persons be permitted to attend and participate in any meeting of a state body.

2) Defines a "state body" as each of the following:

- a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.
- b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.
- c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.
- d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this sections serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

3) Defines "action taken" as a collective decision 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.

FISCAL EFFECT : The bill is keyed non-fiscal by Legislative Counsel.

COMMENTS :

Purpose of the bill : According to the author, current law requires that the meetings of state boards and commissions be open to the public, so that their deliberations and actions are conducted in service of the public's interest. However, there is no specific requirement that actions taken by state boards and commissions during regular meetings are publicly reported and reveal vote or abstention of each member present for the action. Consequently, there are multiple examples of state boards and commissions that do not make this important information readily accessible to the public. Final votes are often reported, for example, as 20 Ayes and 10 Noes, making it impossible to determine how individual members, who represent different industry interests, voted on the action taken. Some votes do not even report the final vote numerically, only reporting whether the action passed or failed. If a member of the public was not able to attend the meeting, then it is impossible for that individual to be wholly informed about the outcome of the action taken.

AB 2720 would strengthen California's commitment to open and transparent governance by requiring all state boards and commissions to count, identify, and publicly disclose all votes on actions taken during meetings. This bill will ensure that the public has complete information about the decisions made by state bodies, so they are held accountable to the public interest.

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

Ralph M. Brown Act (Brown Act) : While the Bagley Act ensures open meetings at the state level, the Brown Act governs open meetings at the local level. Last year, the Legislature unanimously approved and the Governor signed SB 751 (Yee), which guaranteed that local agencies publicly report the vote of each member of their governing bodies on actions taken. AB 2720 will make conforming changes to the Bagley Act to ensure that all state boards and commissions are similarly held accountable to the public they serve.

Arguments in support : The California Taxpayers Association (CalTax) states that all levels of government need to continue to promote a transparent government. Empowering people to engage in government allows them to become stakeholders in the political process. Giving access, in turn, allows people to see how their government is run, and how policymakers' decisions will impact their lives.

The California Newspaper Publishers Association states that the need for AB 2720 arose when several state agencies governed by the Bagley Act, failed to conduct either a roll call vote or a specific tally and report the votes of each member of the boards. Consequently, constituents found it difficult, if not impossible to determine who voted for or against a measure when the agencies took action. AB 2720 would prevent anonymous voting by large agencies and would improve the ability of the public and others who monitor legislative meetings of state agencies to be certain of how members vote on an issue. The costs associated with the implementation of AB 2720 would be minimal because the task of identifying how a member votes is a simple one requiring little, if any, effort by the agency to perform.

Related legislation : AB 2058 (Wilk), 2013-2014 Legislative session. The bill would modify the definition of "state body" to clarify that standing committees, even if composed of less than three members, are a "state body" for the purposes of the Bagley Act. (Pending in Assembly Appropriations Committee)

Prior legislation : SB 751 (Yee), Chapter 257, Statutes of 2013. The bill required local agencies to publicly report any action taken and the vote or abstention of each member of a legislative body.

REGISTERED SUPPORT / OPPOSITION :

Support

California Newspaper Publishers Association
California Taxpayers Association

Opposition

None on file

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

Senate Bill No. 1159

CHAPTER 752

An act to amend Sections 30, 2103, 2111, 2112, 2113, 2115, 3624, and 6533 of, and to add Section 135.5 to, the Business and Professions Code, to amend Section 17520 of the Family Code, and to amend Section 19528 of the Revenue and Taxation Code, relating to professions and vocations.

[Approved by Governor September 28, 2014. Filed with
Secretary of State September 28, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1159, Lara. Professions and vocations: license applicants: individual tax identification number.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, among other licensing bodies. Existing law requires those licensing bodies to require a licensee, at the time of issuance of the license, to provide its federal employer identification number if the licensee is a partnership, or his or her social security number for all other licensees. Existing law requires those licensing bodies to report to the Franchise Tax Board any licensee who fails to provide the federal employer identification number or social security number, and subjects the licensee to a penalty for failing to provide the information after notification, as specified.

This bill, no later than January 1, 2016, would require those licensing bodies to require an applicant to provide either an individual tax identification number or social security number if the applicant is an individual. The bill would require the licensing bodies to report to the Franchise Tax Board, and subject a licensee to a penalty, for failure to provide that information, as described above. The bill would prohibit, except as specified, any entity within the department from denying licensure to an applicant based on his or her citizenship status or immigration status. The bill would require every board within the department to implement regulatory and procedural changes necessary to implement these provisions no later than January 1, 2016, and would authorize implementation at any time prior to that date. The bill would make other conforming changes.

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

SECTION 1. Section 30 of the Business and Professions Code is amended to read:

30. (a) (1) Notwithstanding any other law, any board, as defined in Section 22, and the State Bar and the Bureau of Real Estate shall, at the

time of issuance of the license, require that the applicant provide its federal employer identification number, if the applicant is a partnership, or the applicant's social security number for all other applicants.

(2) No later than January 1, 2016, in accordance with Section 135.5, a board, as defined in Section 22, and the State Bar and the Bureau of Real Estate shall require either the individual taxpayer identification number or social security number if the applicant is an individual for purposes of this subdivision.

(b) A licensee failing to provide the federal employer identification number, or the individual taxpayer identification number or social security number shall be reported by the licensing board to the Franchise Tax Board. If the licensee fails to provide that information after notification pursuant to paragraph (1) of subdivision (b) of Section 19528 of the Revenue and Taxation Code, the licensee 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 an application for an initial license unless the applicant provides its federal employer identification number, or individual taxpayer 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 licensee is a partnership, or the licensee's individual taxpayer identification number or social security number for all other licensees.

(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 a person or 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 Bureau 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, a federal employer identification number, individual taxpayer identification number, or social security 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) A deputy, agent, clerk, officer, or employee of a 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 federal employer identification number, individual taxpayer identification number, or social security number for the purpose of establishing the identification of persons affected by state tax laws and for purposes of compliance with Section 17520 of the Family Code and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.

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

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

SEC. 2. Section 135.5 is added to the Business and Professions Code, to read:

135.5. (a) The Legislature finds and declares that it is in the best interests of the State of California to provide persons who are not lawfully present in the United States with the state benefits provided by all licensing acts of entities within the department, and therefore enacts this section pursuant to subsection (d) of Section 1621 of Title 8 of the United States Code.

(b) Notwithstanding subdivision (a) of Section 30, and except as required by subdivision (e) of Section 7583.23, no entity within the department shall deny licensure to an applicant based on his or her citizenship status or immigration status.

(c) Every board within the department shall implement all required regulatory or procedural changes necessary to implement this section no later than January 1, 2016. A board may implement the provisions of this section at any time prior to January 1, 2016.

SEC. 3. Section 2103 of the Business and Professions Code is amended to read:

2103. An applicant shall be eligible for a physician's and surgeon's certificate if he or she has completed the following requirements:

(a) Submitted official evidence satisfactory to the board of completion of a resident course or professional instruction equivalent to that required in Section 2089 in a medical school located outside the United States or Canada. However, nothing in this section shall be construed to require the board to evaluate for equivalency any coursework obtained at a medical school disapproved by the board pursuant to Article 4 (commencing with Section 2080).

(b) Submitted official evidence satisfactory to the board of completion of all formal requirements of the medical school for graduation, except the applicant shall not be required to have completed an internship or social service or be admitted or licensed to practice medicine in the country in which the professional instruction was completed.

(c) Attained a score satisfactory to an approved medical school on a qualifying examination acceptable to the board.

(d) Successfully completed one academic year of supervised clinical training in a program approved by the board pursuant to Section 2104. The board shall also recognize as compliance with this subdivision the successful completion of a one-year supervised clinical medical internship operated by a medical school pursuant to Chapter 85 of the Statutes of 1972 and as amended by Chapter 888 of the Statutes of 1973 as the equivalent of the year of supervised clinical training required by this section.

(1) Training received in the academic year of supervised clinical training approved pursuant to Section 2104 shall be considered as part of the total academic curriculum for purposes of meeting the requirements of Sections 2089 and 2089.5.

(2) An applicant who has passed the basic science and English language examinations required for certification by the Educational Commission for Foreign Medical Graduates may present evidence of those passing scores along with a certificate of completion of one academic year of supervised clinical training in a program approved by the board pursuant to Section 2104 in satisfaction of the formal certification requirements of subdivision (b) of Section 2102.

(e) Satisfactorily completed the postgraduate training required under Section 2096.

(f) Passed the written examination required for certification as a physician and surgeon under this chapter.

SEC. 4. Section 2111 of the Business and Professions Code is amended to read:

2111. (a) Physicians who are not citizens but who meet the requirements of subdivision (b) and who seek postgraduate study in an approved medical school may, after receipt of an appointment from the dean of the California medical school and application to and approval by the Division of Licensing, be permitted to participate in the professional activities of the department or division in the medical school to which they are appointed. The physician shall be under the direction of the head of the department to which he or she is appointed, supervised by the staff of the medical school's medical center, and known for these purposes as a "visiting fellow." The visiting fellow shall wear a visible name tag containing the title "visiting fellow" when he or she provides clinical services.

(b) (1) Application for approval shall be made on a form prescribed by the division and shall be accompanied by a fee fixed by the division in an amount necessary to recover the actual application processing costs of the program. The application shall show that the person does not immediately qualify for a physician's and surgeon's certificate under this chapter and that the person has completed at least three years of postgraduate basic residency requirements. The application shall include a written statement of the recruitment procedures followed by the medical school before offering the appointment to the applicant.

(2) Approval shall be granted only for appointment to one medical school, and no physician shall be granted more than one approval for the same period of time.

(3) Approval may be granted for a maximum of three years and shall be renewed annually. The medical school shall submit a request for renewal on a form prescribed by the division, which shall be accompanied by a renewal fee fixed by the division in an amount necessary to recover the actual application processing costs of the program.

(c) Except to the extent authorized by this section, the visiting fellow may not engage in the practice of medicine. Neither the visiting fellow nor the medical school may assess any charge for the medical services provided by the visiting fellow, and the visiting fellow may not receive any other compensation therefor.

(d) The time spent under appointment in a medical school pursuant to this section may not be used to meet the requirements for licensure under Section 2102.

(e) The division shall notify both the visiting fellow and the dean of the appointing medical school of any complaint made about the visiting fellow.

The division may terminate its approval of an appointment for any act that would be grounds for discipline if done by a licensee. The division shall provide both the visiting fellow and the dean of the medical school with a written notice of termination including the basis for that termination. The visiting fellow may, within 30 days after the date of the notice of termination,

file a written appeal to the division. The appeal shall include any documentation the visiting fellow wishes to present to the division.

(f) Nothing in this section shall preclude any United States citizen who has received his or her medical degree from a medical school located in a foreign country and recognized by the division from participating in any program established pursuant to this section.

SEC. 5. Section 2112 of the Business and Professions Code is amended to read:

2112. (a) Physicians who are not citizens and who seek postgraduate study, may, after application to and approval by the Division of Licensing, be permitted to participate in a fellowship program in a specialty or subspecialty field, providing the fellowship program is given in a hospital in this state which is approved by the Joint Committee on Accreditation of Hospitals and providing the service is satisfactory to the division. Such physicians shall at all times be under the direction and supervision of a licensed, board-certified physician and surgeon who is recognized as a clearly outstanding specialist in the field in which the foreign fellow is to be trained. The supervisor, as part of the application process, shall submit his or her curriculum vitae and a protocol of the fellowship program to be completed by the foreign fellow. Approval of the program and supervisor is for a period of one year, but may be renewed annually upon application to and approval by the division. The approval may not be renewed more than four times. The division may determine a fee, based on the cost of operating this program, which shall be paid by the applicant at the time the application is filed.

(b) Except to the extent authorized by this section, no such visiting physician may engage in the practice of medicine or receive compensation therefor. The time spent under appointment in a medical school pursuant to this section may not be used to meet the requirements for licensure under Section 2101 or 2102.

(c) Nothing in this section shall preclude any United States citizen who has received his or her medical degree from a medical school located in a foreign country from participating in any program established pursuant to this section.

SEC. 6. Section 2113 of the Business and Professions Code is amended to read:

2113. (a) Any person who does not immediately qualify for a physician's and surgeon's certificate under this chapter and who is offered by the dean of an approved medical school in this state a full-time faculty position may, after application to and approval by the Division of Licensing, be granted a certificate of registration to engage in the practice of medicine only to the extent that the practice is incident to and a necessary part of his or her duties as approved by the division in connection with the faculty position. A certificate of registration does not authorize a registrant to admit patients to a nursing or a skilled or assisted living facility unless that facility is formally affiliated with the sponsoring medical school. A clinical fellowship shall not be submitted as a faculty service appointment.

(b) Application for a certificate of registration shall be made on a form prescribed by the division and shall be accompanied by a registration fee fixed by the division in an amount necessary to recover the actual application processing costs of the program. To qualify for the certificate, an applicant shall submit all of the following:

(1) If the applicant is a graduate of a medical school other than in the United States or Canada, documentary evidence satisfactory to the division that he or she has been licensed to practice medicine and surgery for not less than four years in another state or country whose requirements for licensure are satisfactory to the division, or has been engaged in the practice of medicine in the United States for at least four years in approved facilities, or has completed a combination of that licensure and training.

(2) If the applicant is a graduate of an approved medical school in the United States or Canada, documentary evidence that he or she has completed a resident course of professional instruction as required in Section 2089.

(3) Written certification by the head of the department in which the applicant is to be appointed of all of the following:

(A) The applicant will be under his or her direction.

(B) The applicant will not be permitted to practice medicine unless incident to and a necessary part of his or her duties as approved by the division in subdivision (a).

(C) The applicant will be accountable to the medical school's department chair or division chief for the specialty in which the applicant will practice.

(D) The applicant will be proctored in the same manner as other new faculty members, including, as appropriate, review by the medical staff of the school's medical center.

(E) The applicant will not be appointed to a supervisory position at the level of a medical school department chair or division chief.

(4) Demonstration by the dean of the medical school that the applicant has the requisite qualifications to assume the position to which he or she is to be appointed and that shall include a written statement of the recruitment procedures followed by the medical school before offering the faculty position to the applicant.

(c) A certificate of registration shall be issued only for a faculty position at one approved medical school, and no person shall be issued more than one certificate of registration for the same period of time.

(d) (1) A certificate of registration is valid for one year from its date of issuance and may be renewed twice.

A request for renewal shall be submitted on a form prescribed by the division and shall be accompanied by a renewal fee fixed by the division in an amount necessary to recover the actual application processing costs of the program.

(2) The dean of the medical school may request renewal of the registration by submitting a plan at the beginning of the third year of the registrant's appointment demonstrating the registrant's continued progress toward licensure and, if the registrant is a graduate of a medical school other than in the United States or Canada, that the registrant has been issued a certificate

by the Educational Commission for Foreign Medical Graduates. The division may, in its discretion, extend the registration for a two-year period to facilitate the registrant's completion of the licensure process.

(e) If the registrant is a graduate of a medical school other than in the United States or Canada, he or she shall meet the requirements of Section 2102 or 2135, as appropriate, in order to obtain a physician's and surgeon's certificate. Notwithstanding any other provision of law, the division may accept clinical practice in an appointment pursuant to this section as qualifying time to meet the postgraduate training requirements in Section 2102, and may, in its discretion, waive the examination and the Educational Commission for Foreign Medical Graduates certification requirements specified in Section 2102 in the event the registrant applies for a physician's and surgeon's certificate. As a condition to waiving any examination or the Educational Commission for Foreign Medical Graduates certification requirement, the division in its discretion, may require an applicant to pass the clinical competency examination referred to in subdivision (d) of Section 2135. The division shall not waive any examination for an applicant who has not completed at least one year in the faculty position.

(f) Except to the extent authorized by this section, the registrant shall not engage in the practice of medicine, bill individually for medical services provided by the registrant, or receive compensation therefor, unless he or she is issued a physician's and surgeon's certificate.

(g) When providing clinical services, the registrant shall wear a visible name tag containing the title "visiting professor" or "visiting faculty member," as appropriate, and the institution at which the services are provided shall obtain a signed statement from each patient to whom the registrant provides services acknowledging that the patient understands that the services are provided by a person who does not hold a physician's and surgeon's certificate but who is qualified to participate in a special program as a visiting professor or faculty member.

(h) The division shall notify both the registrant and the dean of the medical school of a complaint made about the registrant. The division may terminate a registration for any act that would be grounds for discipline if done by a licensee. The division shall provide both the registrant and the dean of the medical school with written notice of the termination and the basis for that termination. The registrant may, within 30 days after the date of the notice of termination, file a written appeal to the division. The appeal shall include any documentation the registrant wishes to present to the division.

SEC. 7. Section 2115 of the Business and Professions Code is amended to read:

2115. (a) Physicians who are not citizens and who seek postgraduate study may, after application to and approval by the Division of Licensing, be permitted to participate in a fellowship program in a specialty or subspecialty field, providing the fellowship program is given in a clinic or hospital in a medically underserved area of this state that is licensed by the State Department of Health Services or is exempt from licensure pursuant

to subdivision (b) or (c) of Section 1206 of the Health and Safety Code, and providing service is satisfactory to the division. These physicians shall at all times be under the direction and supervision of a licensed, board certified physician and surgeon who has an appointment with a medical school in California and is a specialist in the field in which the fellow is to be trained. The supervisor, as part of the application process, shall submit his or her curriculum vitae and a protocol of the fellowship program to be completed by the foreign fellow. Approval of the program and supervisor is for a period of one year, but may be renewed annually upon application to and approval by the division. The approval may not be renewed more than four times. The division may determine a fee, based on the cost of operating this program, which shall be paid by the applicant at the time the application is filed.

(b) Except to the extent authorized by this section, no visiting physician may engage in the practice of medicine or receive compensation therefor. The time spent under appointment in a clinic pursuant to this section may not be used to meet the requirements for licensure under Section 2102.

(c) Nothing in this section shall preclude any United States citizen who has received his or her medical degree from a medical school located in a foreign country from participating in any program established pursuant to this section.

(d) For purposes of this section, a medically underserved area means a federally designated Medically Underserved Area, a federally designated Health Professional Shortage Area, and any other clinic or hospital determined by the board to be medically underserved. Clinics or hospitals determined by the board pursuant to this subdivision shall be reported to the Office of Statewide Health Planning and Development.

SEC. 8. Section 3624 of the Business and Professions Code is amended to read:

3624. (a) The committee may grant a certificate of registration to practice naturopathic medicine to a person who does not hold a naturopathic doctor's license under this chapter and is offered a faculty position by the dean of a naturopathic medical education program approved by the committee, if all of the following requirements are met to the satisfaction of the committee:

(1) The applicant submits an application on a form prescribed by the committee.

(2) The dean of the naturopathic medical education program demonstrates that the applicant has the requisite qualifications to assume the position to which he or she is to be appointed.

(3) The dean of the naturopathic medical education program certifies in writing to the committee that the applicant will be under his or her direction and will not be permitted to practice naturopathic medicine unless incident to and a necessary part of the applicant's duties as approved by the committee.

(b) The holder of a certificate of registration issued under this section shall not receive compensation for or practice naturopathic medicine unless

it is incidental to and a necessary part of the applicant's duties in connection with the holder's faculty position.

(c) A certificate of registration issued under this section is valid for two years.

SEC. 9. Section 6533 of the Business and Professions Code is amended to read:

6533. In order to meet the qualifications for licensure as a professional fiduciary a person shall meet all of the following requirements:

(a) Be at least 21 years of age.

(b) Have not committed any acts that are grounds for denial of a license under Section 480 or 6536.

(c) Submit fingerprint images as specified in Section 6533.5 in order to obtain criminal offender record information.

(d) Have completed the required prelicensing education described in Section 6538.

(e) Have passed the licensing examination administered by the bureau pursuant to Section 6539.

(f) Have at least one of the following:

(1) A baccalaureate degree of arts or sciences from a college or university accredited by a nationally recognized accrediting body of colleges and universities or a higher level of education.

(2) An associate of arts or sciences degree from a college or university accredited by a nationally recognized accrediting body of colleges and universities, and at least three years of experience working as a professional fiduciary or working with substantive fiduciary responsibilities for a professional fiduciary, public agency, or financial institution acting as a conservator, guardian, trustee, personal representative, or agent under a power of attorney.

(3) Experience of not less than five years, prior to July 1, 2012, working as a professional fiduciary or working with substantive fiduciary responsibilities for a professional fiduciary, public agency, or financial institution acting as a conservator, guardian, trustee, personal representative, or agent under a power of attorney.

(g) Agree to adhere to the Professional Fiduciaries Code of Ethics and to all statutes and regulations.

(h) Consent to the bureau conducting a credit check on the applicant.

(i) File a completed application for licensure with the bureau on a form provided by the bureau and signed by the applicant under penalty of perjury.

(j) Submit with the license application a nonrefundable application fee, as specified in this chapter.

SEC. 10. Section 17520 of the Family Code is amended to read:

17520. (a) As used in this section:

(1) "Applicant" means a person applying for issuance or renewal of a license.

(2) "Board" means an entity specified in Section 101 of the Business and Professions Code, the entities referred to in Sections 1000 and 3600 of the Business and Professions Code, the State Bar, the Bureau of Real Estate,

the Department of Motor Vehicles, the Secretary of State, the Department of Fish and Wildlife, and any other state commission, department, committee, examiner, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, or to the extent required by federal law or regulations, for recreational purposes. This term includes all boards, commissions, departments, committees, examiners, entities, and agencies that issue a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession. The failure to specifically name a particular board, commission, department, committee, examiner, entity, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession does not exclude that board, commission, department, committee, examiner, entity, or agency from this term.

(3) “Certified list” means a list provided by the local child support agency to the Department of Child Support Services in which the local child support agency verifies, under penalty of perjury, that the names contained therein are support obligors found to be out of compliance with a judgment or order for support in a case being enforced under Title IV-D of the federal Social Security Act.

(4) “Compliance with a judgment or order for support” means that, as set forth in a judgment or order for child or family support, the obligor is no more than 30 calendar days in arrears in making payments in full for current support, in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a support arrearage, or in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a judgment for reimbursement for public assistance, or has obtained a judicial finding that equitable estoppel as provided in statute or case law precludes enforcement of the order. The local child support agency is authorized to use this section to enforce orders for spousal support only when the local child support agency is also enforcing a related child support obligation owed to the obligee parent by the same obligor, pursuant to Sections 17400 and 17604.

(5) “License” includes membership in the State Bar, and a certificate, credential, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession, or to operate a commercial motor vehicle, including appointment and commission by the Secretary of State as a notary public. “License” also includes any driver’s license issued by the Department of Motor Vehicles, any commercial fishing license issued by the Department of Fish and Wildlife, and to the extent required by federal law or regulations, any license used for recreational purposes. This term includes all licenses, certificates, credentials, permits, registrations, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession. The failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board that allows a person to engage in a business, occupation, or profession, does not

exclude that license, certificate, credential, permit, registration, or other authorization from this term.

(6) “Licensee” means a person holding a license, certificate, credential, permit, registration, or other authorization issued by a board, to engage in a business, occupation, or profession, or a commercial driver’s license as defined in Section 15210 of the Vehicle Code, including an appointment and commission by the Secretary of State as a notary public. “Licensee” also means a person holding a driver’s license issued by the Department of Motor Vehicles, a person holding a commercial fishing license issued by the Department of Fish and Game, and to the extent required by federal law or regulations, a person holding a license used for recreational purposes. This term includes all persons holding a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, and the failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board does not exclude that person from this term. For licenses issued to an entity that is not an individual person, “licensee” includes an individual who is either listed on the license or who qualifies for the license.

(b) The local child support agency shall maintain a list of those persons included in a case being enforced under Title IV-D of the federal Social Security Act against whom a support order or judgment has been rendered by, or registered in, a court of this state, and who are not in compliance with that order or judgment. The local child support agency shall submit a certified list with the names, social security numbers, and last known addresses of these persons and the name, address, and telephone number of the local child support agency who certified the list to the department. The local child support agency shall verify, under penalty of perjury, that the persons listed are subject to an order or judgment for the payment of support and that these persons are not in compliance with the order or judgment. The local child support agency shall submit to the department an updated certified list on a monthly basis.

(c) The department shall consolidate the certified lists received from the local child support agencies and, within 30 calendar days of receipt, shall provide a copy of the consolidated list to each board that is responsible for the regulation of licenses, as specified in this section.

(d) On or before November 1, 1992, or as soon thereafter as economically feasible, as determined by the department, all boards subject to this section shall implement procedures to accept and process the list provided by the department, in accordance with this section. Notwithstanding any other law, all boards shall collect social security numbers or individual taxpayer identification numbers from all applicants for the purposes of matching the names of the certified list provided by the department to applicants and licensees and of responding to requests for this information made by child support agencies.

(e) (1) Promptly after receiving the certified consolidated list from the department, and prior to the issuance or renewal of a license, each board

shall determine whether the applicant is on the most recent certified consolidated list provided by the department. The board shall have the authority to withhold issuance or renewal of the license of an applicant on the list.

(2) If an applicant is on the list, the board shall immediately serve notice as specified in subdivision (f) on the applicant of the board's intent to withhold issuance or renewal of the license. The notice shall be made personally or by mail to the applicant's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(A) The board shall issue a temporary license valid for a period of 150 days to any applicant whose name is on the certified list if the applicant is otherwise eligible for a license.

(B) Except as provided in subparagraph (D), the 150-day time period for a temporary license shall not be extended. Except as provided in subparagraph (D), only one temporary license shall be issued during a regular license term and it shall coincide with the first 150 days of that license term. As this paragraph applies to commercial driver's licenses, "license term" shall be deemed to be 12 months from the date the application fee is received by the Department of Motor Vehicles. A license for the full or remainder of the license term shall be issued or renewed only upon compliance with this section.

(C) In the event that a license or application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board.

(D) This paragraph shall apply only in the case of a driver's license, other than a commercial driver's license. Upon the request of the local child support agency or by order of the court upon a showing of good cause, the board shall extend a 150-day temporary license for a period not to exceed 150 extra days.

(3) (A) The department may, when it is economically feasible for the department and the boards to do so as determined by the department, in cases where the department is aware that certain child support obligors listed on the certified lists have been out of compliance with a judgment or order for support for more than four months, provide a supplemental list of these obligors to each board with which the department has an interagency agreement to implement this paragraph. Upon request by the department, the licenses of these obligors shall be subject to suspension, provided that the licenses would not otherwise be eligible for renewal within six months from the date of the request by the department. The board shall have the authority to suspend the license of any licensee on this supplemental list.

(B) If a licensee is on a supplemental list, the board shall immediately serve notice as specified in subdivision (f) on the licensee that his or her license will be automatically suspended 150 days after notice is served, unless compliance with this section is achieved. The notice shall be made personally or by mail to the licensee's last known mailing address on file

with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(C) The 150-day notice period shall not be extended.

(D) In the event that any license is suspended pursuant to this section, any funds paid by the licensee shall not be refunded by the board.

(E) This paragraph shall not apply to licenses subject to annual renewal or annual fee.

(f) Notices shall be developed by each board in accordance with guidelines provided by the department and subject to approval by the department. The notice shall include the address and telephone number of the local child support agency that submitted the name on the certified list, and shall emphasize the necessity of obtaining a release from that local child support agency as a condition for the issuance, renewal, or continued valid status of a license or licenses.

(1) In the case of applicants not subject to paragraph (3) of subdivision (e), the notice shall inform the applicant that the board shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 150 calendar days if the applicant is otherwise eligible and that upon expiration of that time period the license will be denied unless the board has received a release from the local child support agency that submitted the name on the certified list.

(2) In the case of licensees named on a supplemental list, the notice shall inform the licensee that his or her license will continue in its existing status for no more than 150 calendar days from the date of mailing or service of the notice and thereafter will be suspended indefinitely unless, during the 150-day notice period, the board has received a release from the local child support agency that submitted the name on the certified list. Additionally, the notice shall inform the licensee that any license suspended under this section will remain so until the expiration of the remaining license term, unless the board receives a release along with applications and fees, if applicable, to reinstate the license during the license term.

(3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board. The Department of Child Support Services shall also develop a form that the applicant shall use to request a review by the local child support agency. A copy of this form shall be included with every notice sent pursuant to this subdivision.

(g) (1) Each local child support agency shall maintain review procedures consistent with this section to allow an applicant to have the underlying arrearage and any relevant defenses investigated, to provide an applicant information on the process of obtaining a modification of a support order, or to provide an applicant assistance in the establishment of a payment schedule on arrearages if the circumstances so warrant.

(2) It is the intent of the Legislature that a court or local child support agency, when determining an appropriate payment schedule for arrearages, base its decision on the facts of the particular case and the priority of

payment of child support over other debts. The payment schedule shall also recognize that certain expenses may be essential to enable an obligor to be employed. Therefore, in reaching its decision, the court or the local child support agency shall consider both of these goals in setting a payment schedule for arrearages.

(h) If the applicant wishes to challenge the submission of his or her name on the certified list, the applicant shall make a timely written request for review to the local child support agency who certified the applicant's name. A request for review pursuant to this section shall be resolved in the same manner and timeframe provided for resolution of a complaint pursuant to Section 17800. The local child support agency shall immediately send a release to the appropriate board and the applicant, if any of the following conditions are met:

(1) The applicant is found to be in compliance or negotiates an agreement with the local child support agency for a payment schedule on arrearages or reimbursement.

(2) The applicant has submitted a request for review, but the local child support agency will be unable to complete the review and send notice of its findings to the applicant within the time specified in Section 17800.

(3) The applicant has filed and served a request for judicial review pursuant to this section, but a resolution of that review will not be made within 150 days of the date of service of notice pursuant to subdivision (f). This paragraph applies only if the delay in completing the judicial review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving the local child support agency's notice of findings.

(4) The applicant has obtained a judicial finding of compliance as defined in this section.

(i) An applicant is required to act with diligence in responding to notices from the board and the local child support agency with the recognition that the temporary license will lapse or the license suspension will go into effect after 150 days and that the local child support agency and, where appropriate, the court must have time to act within that period. An applicant's delay in acting, without good cause, which directly results in the inability of the local child support agency to complete a review of the applicant's request or the court to hear the request for judicial review within the 150-day period shall not constitute the diligence required under this section which would justify the issuance of a release.

(j) Except as otherwise provided in this section, the local child support agency shall not issue a release if the applicant is not in compliance with the judgment or order for support. The local child support agency shall notify the applicant in writing that the applicant may, by filing an order to show cause or notice of motion, request any or all of the following:

(1) Judicial review of the local child support agency's decision not to issue a release.

(2) A judicial determination of compliance.

(3) A modification of the support judgment or order.

The notice shall also contain the name and address of the court in which the applicant shall file the order to show cause or notice of motion and inform the applicant that his or her name shall remain on the certified list if the applicant does not timely request judicial review. The applicant shall comply with all statutes and rules of court regarding orders to show cause and notices of motion.

This section shall not be deemed to limit an applicant from filing an order to show cause or notice of motion to modify a support judgment or order or to fix a payment schedule on arrearages accruing under a support judgment or order or to obtain a court finding of compliance with a judgment or order for support.

(k) The request for judicial review of the local child support agency's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. The court shall hold an evidentiary hearing within 20 calendar days of the filing of the request for review. Judicial review of the local child support agency's decision shall be limited to a determination of each of the following issues:

(1) Whether there is a support judgment, order, or payment schedule on arrearages or reimbursement.

(2) Whether the petitioner is the obligor covered by the support judgment or order.

(3) Whether the support obligor is or is not in compliance with the judgment or order of support.

(4) (A) The extent to which the needs of the obligor, taking into account the obligor's payment history and the current circumstances of both the obligor and the obligee, warrant a conditional release as described in this subdivision.

(B) The request for judicial review shall be served by the applicant upon the local child support agency that submitted the applicant's name on the certified list within seven calendar days of the filing of the petition. The court has the authority to uphold the action, unconditionally release the license, or conditionally release the license.

(C) If the judicial review results in a finding by the court that the obligor is in compliance with the judgment or order for support, the local child support agency shall immediately send a release in accordance with subdivision (l) to the appropriate board and the applicant. If the judicial review results in a finding by the court that the needs of the obligor warrant a conditional release, the court shall make findings of fact stating the basis for the release and the payment necessary to satisfy the unrestricted issuance or renewal of the license without prejudice to a later judicial determination of the amount of support arrearages, including interest, and shall specify payment terms, compliance with which are necessary to allow the release to remain in effect.

(l) The department shall prescribe release forms for use by local child support agencies. When the obligor is in compliance, the local child support agency shall mail to the applicant and the appropriate board a release stating that the applicant is in compliance. The receipt of a release shall serve to

notify the applicant and the board that, for the purposes of this section, the applicant is in compliance with the judgment or order for support. Any board that has received a release from the local child support agency pursuant to this subdivision shall process the release within five business days of its receipt.

If the local child support agency determines subsequent to the issuance of a release that the applicant is once again not in compliance with a judgment or order for support, or with the terms of repayment as described in this subdivision, the local child support agency may notify the board, the obligor, and the department in a format prescribed by the department that the obligor is not in compliance.

The department may, when it is economically feasible for the department and the boards to develop an automated process for complying with this subdivision, notify the boards in a manner prescribed by the department, that the obligor is once again not in compliance. Upon receipt of this notice, the board shall immediately notify the obligor on a form prescribed by the department that the obligor's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The obligor shall be further notified that the license will remain suspended until a new release is issued in accordance with subdivision (h). Nothing in this section shall be deemed to limit the obligor from seeking judicial review of suspension pursuant to the procedures described in subdivision (k).

(m) The department may enter into interagency agreements with the state agencies that have responsibility for the administration of boards necessary to implement this section, to the extent that it is cost effective to implement this section. These agreements shall provide for the receipt by the other state agencies and boards of federal funds to cover that portion of costs allowable in federal law and regulation and incurred by the state agencies and boards in implementing this section. Notwithstanding any other provision of law, revenue generated by a board or state agency shall be used to fund the nonfederal share of costs incurred pursuant to this section. These agreements shall provide that boards shall reimburse the department for the nonfederal share of costs incurred by the department in implementing this section. The boards shall reimburse the department for the nonfederal share of costs incurred pursuant to this section from moneys collected from applicants and licensees.

(n) Notwithstanding any other law, in order for the boards subject to this section to be reimbursed for the costs incurred in administering its provisions, the boards may, with the approval of the appropriate department director, levy on all licensees and applicants a surcharge on any fee or fees collected pursuant to law, or, alternatively, with the approval of the appropriate department director, levy on the applicants or licensees named on a certified list or supplemental list, a special fee.

(o) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section. The procedures specified in the administrative adjudication provisions of the Administrative

Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial, suspension, or failure to issue or renew a license or the issuance of a temporary license pursuant to this section.

(p) In furtherance of the public policy of increasing child support enforcement and collections, on or before November 1, 1995, the State Department of Social Services shall make a report to the Legislature and the Governor based on data collected by the boards and the district attorneys in a format prescribed by the State Department of Social Services. The report shall contain all of the following:

(1) The number of delinquent obligors certified by district attorneys under this section.

(2) The number of support obligors who also were applicants or licensees subject to this section.

(3) The number of new licenses and renewals that were delayed, temporary licenses issued, and licenses suspended subject to this section and the number of new licenses and renewals granted and licenses reinstated following board receipt of releases as provided by subdivision (h) by May 1, 1995.

(4) The costs incurred in the implementation and enforcement of this section.

(q) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or has been granted a temporary license under this section shall respond only that the license was denied or suspended or the temporary license was issued pursuant to this section. Information collected pursuant to this section by any state agency, board, or department shall be subject to 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).

(r) Any rules and regulations issued pursuant to this section by any state agency, board, or department may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(s) The department and boards, as appropriate, shall adopt regulations necessary to implement this section.

(t) The Judicial Council shall develop the forms necessary to implement this section, except as provided in subdivisions (f) and (l).

(u) The release or other use of information received by a board pursuant to this section, except as authorized by this section, is punishable as a misdemeanor.

(v) The State Board of Equalization shall enter into interagency agreements with the department and the Franchise Tax Board that will

require the department and the Franchise Tax Board to maximize the use of information collected by the State Board of Equalization, for child support enforcement purposes, to the extent it is cost effective and permitted by the Revenue and Taxation Code.

(w) (1) The suspension or revocation of any driver's license, including a commercial driver's license, under this section shall not subject the licensee to vehicle impoundment pursuant to Section 14602.6 of the Vehicle Code.

(2) Notwithstanding any other law, the suspension or revocation of any driver's license, including a commercial driver's license, under this section shall not subject the licensee to increased costs for vehicle liability insurance.

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

(y) All rights to administrative and judicial review afforded by this section to an applicant shall also be afforded to a licensee.

SEC. 11. Section 19528 of the Revenue and Taxation Code is amended to read:

19528. (a) Notwithstanding any other law, the Franchise Tax Board may require any board, as defined in Section 22 of the Business and Professions Code, and the State Bar, the Bureau of Real Estate, and the Insurance Commissioner (hereinafter referred to as licensing board) to provide 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 licensee is a partnership, or the licensee's individual taxpayer identification number or social security number of all other licensees.

(4) Type of license.

(5) Effective date of license or renewal.

(6) Expiration date of license.

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

(8) Whether license is new or renewal.

(b) The Franchise Tax Board may do the following:

(1) Send a notice to any licensee failing to provide the federal employer identification number, individual taxpayer identification number, or social security number as required by subdivision (a) of Section 30 of the Business and Professions Code and subdivision (a) of Section 1666.5 of the Insurance Code, describing the information that was missing, the penalty associated with not providing it, and that failure to provide the information within 30 days will result in the assessment of the penalty.

(2) After 30 days following the issuance of the notice described in paragraph (1), assess a one-hundred-dollar (\$100) penalty, due and payable upon notice and demand, for any licensee failing to provide either its federal employer identification number (if the licensee is a partnership) or his or

her individual taxpayer identification number or social security number (for all others) as required in Section 30 of the Business and Professions Code and Section 1666.5 of the Insurance Code.

(c) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the information furnished to the Franchise Tax Board pursuant to Section 30 of the Business and Professions Code or Section 1666.5 of the Insurance Code shall not be deemed to be a public record and shall not be open to the public for inspection.

BILL ANALYSIS

Hearing Date: August 29, 2014

Bill No:SB 1159

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

Bill No: SB 1159 Author:Lara
As Amended:August 22, 2014Fiscal: Yes

SUBJECT: Professions and vocations: license applicants: individual tax
identification number.

SUMMARY: Prohibits licensing boards under the Department of Consumer Affairs (DCA) from denying licensure to an applicant based on his or her citizenship or immigration status, and requires a licensing board and the State Bar to require, by January 1, 2016, that an applicant for licensure provide his or her individual taxpayer identification number (ITIN) or a social security number (SSN) for an initial or renewal license.

NOTE : The Assembly amendments are considered as a rewrite of this bill and this measure has been referred to the Committee pursuant to Senate Rule 29.10 (d) for consideration. The Committee may, by a vote of the majority, either: (1) hold the bill, or (2) return the bill to the Senate floor for consideration of the bill as amended in the Assembly.

Existing law:

1)Provides that each board under the Department of Consumer Affairs, as well as the State Bar and Bureau of Real Estate shall, at the time of issuance of the license, require that the licensee provide their federal employer identification number, if the licensee is a partnership, or social security number for all others. (Business and Professions Code (BPC) § 30 (a))

2)Specifies that any licensee who does not provide the federal identification number or social security number shall be reported by the licensing board to the Franchise Tax Board and is subject to a penalty. (BPC § 30 (b))

3)Provides that in addition to a penalty, a licensing board may elect to not process any application for an original license if the applicant or licensee fails to provide its federal employer identification number or social security number where requested on the application. (BPC § 30 (c))

4) Requires a licensing board, upon request of the Franchise Tax Board (FTB), to furnish to the FTB specified information including the federal employer identification number if the entity is a partnership, or social security number, for all others. (BPC § 30(d)) (Revenue and Taxation Code § 19528)

5) Provides that it is the intent of the Legislature to utilize the social security number or federal employer identification number for the purpose of establishing the identification of persons affected by state tax laws and for purposes of compliance with Section 17520 of the Family Code and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes. (BPC § 30 (j))

6) Provides that the Department of Child Support Services (Department) shall maintain a "certified list" that provides names of persons who are found to be out of compliance with a judgment or order for support in a case being enforced under Title IV-D of the Social Security Act. (Family Code (FC) § 17520 (a) (3))

7) Provides that the Department shall provide the certified list to each board that is responsible for the regulation of licenses, as specified, and that all boards shall collect social security numbers from all applicants for the purposes of matching the names of the certified list to applicants and licensees and of responding to requests for this information made by child support services. (FC § 17520 (d))

8) Requires that promptly after receiving the certified list from the Department, and prior to issuance or renewal of a license, each board shall determine whether the applicant is on the most recent certified list provided by the Department and provides that the board shall have the authority to withhold issuance or renewal of the license of any applicant on the list. (FC § 17520 (e))

9) Authorizes the FTB to require any board, the State Bar, the Bureau of Real Estate, and the Insurance Commissioner to provide to the FTB specified information, including the licensee's federal employer identification number or SSN; to send a notice to any licensee failing to provide those numbers that describes the information that was missing; the penalty associated with not providing it; that the failure to provide that information within 30 days will result in the assessment of a penalty of \$100; and to assess a \$100 penalty for any licensee failing to provide its federal employer identification number or his or her social security number. (Revenue and Tax Code (RTC) § 19528)

10) Prohibits, under the federal Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193), certain categories of individuals not lawfully present in the United States from receiving specified public benefits, including "any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government." (8 USC Sec. 1621(c))

11) Authorizes states to provide that "an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility." (8 USC Sec. 1621(d))

This bill:

1) Requires a board, as defined, the State Bar, and the Bureau of Real Estate to require, by January 1, 2016, that an individual applicant for licensure provide either an ITIN or SSN.

2) Prohibits any entity within DCA from denying licensure to an applicant based on his or her citizenship or immigration status.

3) Requires every board to implement all required regulatory or procedural changes by January 1, 2016, and authorizes a board to implement these provisions prior to that date.

4) Requires that any applicant failing to provide the federal employer identification number or the federal taxpayer identification number or social security number, if one has been issued to the individual, to be reported by the licensing board to the FTB and provides if the applicant fails to provide that information they shall be subject to a penalty.

5) In addition to that penalty, prohibits a board from processing an application for an initial license unless the applicant provides his or her ITIN, where requested on the application.

6) Requires a board, upon request of the FTB, to furnish to the FTB specified information, including the licensee's ITIN.

7) Provides that an ITIN furnished pursuant to this bill is not deemed a public record and shall not be open to the public for inspection.

8) Provides that if the board uses a national examination to issue a license, and if a reciprocity agreement or comity exists between California and the state requesting release of the ITIN, the board may release the ITIN to an examination or licensing entity, only for the purpose of verification of licensure or examination status.

9) For purposes of enforcing child support payment provisions, requires any board, the State Bar, and the Bureau of Real Estate to require that each licensee provide the ITIN of each individual licensed on the license and any person who qualifies for the license.

10) Authorizes boards, as specified, to collect an ITIN instead of a SSN for purposes of existing law that requires all boards, as specified, to collect SSNs from applicants for the purposes of matching the names on a certified list, provided by the Department of Child Support Services (DCSS), of persons who are found to be out of compliance with a judgment or order for support, as specified.

11) Authorizes the FTB to require any board, the State Bar, the Bureau of Real Estate, and the Insurance Commissioner to provide to the FTB the licensee's ITIN, and to send a notice to any licensee failing to provide that number that describes the information that was missing; the penalty associated with not providing it, and that failure to provide that information within 30 days will result in the assessment of a penalty of \$100.

12) Makes conforming statutory changes to remove the requirement of citizenship, or legal admission or documentary evidence requirements thereof, for the following authorizations to practice or other licensure actions:

a) Allow a foreign medical graduate to be eligible for a physician's and surgeon's certificate;

b) Allow a foreign medical graduate to participate in professional activities in a medical school as a "visiting fellow," and to participate in a fellowship program in specified hospitals or clinics;

c) Allow a foreign medical graduate who does not immediately qualify for a physician and surgeon's certificate of registration to practice medicine and who is offered a full-time faculty position at a medical school to be granted a certificate in connection with his or her position;

d) Allow the Naturopathic Medicine Committee under the Osteopathic Medical Board to grant a certificate to practice naturopathic medicine to a person who does not hold a naturopathic doctor's license, but who is offered a faculty position in a naturopathic medical education program; and,

e) Allow an individual to be licensed as a professional fiduciary.

13) Finds and declares that it is in the best interests of the state to provide persons who are not lawfully present in the United States with the state benefits provided by all licensing acts of entities within DCA.

14) Makes other conforming and technical amendments.

FISCAL EFFECT: According to the Assembly Appropriations Committee:

1) One-time costs to the DCA of up to \$130,000 (various special funds) to update forms, publications, and information technology.

2) Unknown potential costs, likely minor, to DCA's boards and bureaus to ensure that new applicants using ITINs are complying with child support judgments. DCA's boards and bureau's currently perform this function using applicants' social security numbers.

3) The bill would likely result in an increase in individuals applying for licenses at the various boards and bureaus within DCA, leading to increased licensing revenues. The amount of the increase is unknown.

COMMENTS:

1. Purpose. According to the Author, "Many immigrants come to the [US] as children and attend California's public elementary and secondary schools, as well as public and private colleges and universities. Despite the high cost of higher education and limited resources, with hard work, a strong spirit of determination, and the assistance of state laws that provide access to nonresident tuition exemptions, state financial aid, and graduate school admissions tests, these students are now able to attend, participate in, and graduate from California colleges and universities."

"Recently, the Legislature has begun to recognize the need to address arbitrary restrictions on professional licenses with the passage of

SB 1822 (Bill Berryhill) in 2012 and AB 1024 (Gonzalez) in 2013. However, ambiguity in other sections of state law, in particular [BPC] 30 pertaining to the issuance of professional licenses has created barriers to access, and created an artificial wall that deprives many Californians of their only effective means of economic mobility and self-sufficiency.

"Authorizing the use of a social security number or ITIN, if one has been issued, for the application of a professional license would ensure the

collection and reporting of information to the [FTB] while clarifying inconsistent laws and removing arbitrary barriers to professional licenses.

"The provisions of SB 1159 are consistent with current law and in compliance with federal law. Additionally, recent amendments provide for a delayed implementation of the measure, allowing boards and bureaus sufficient time to comply with the provisions of the bill."

The Author states that the "recent amendments, crafted in consultation with the Department of Consumer Affairs, simply provide guidance for the boards and ensure that the bill can be implemented effectively. Specifically, these amendments clarify that otherwise eligible individuals will not be denied a license based solely on their immigration status, and provide sufficient time for successful implementation."

2. Taxpayer Identification Numbers. A Taxpayer Identification Number(TIN) is an identification number used by the Internal Revenue Service (IRS) in the administration of tax laws. It is issued by the Social Security Administration (SSA) or by the IRS. A Social Security Number is issued by the SSA whereas all other TINs are issued by the IRS.

The Individual Taxpayer Identification Number, or ITIN, is a tax processing number only available for certain nonresident and resident aliens, their spouses, and dependents who cannot get a SSN. It is a 9-digit number, beginning with the number "9" and is formatted like a SSN. To obtain an ITIN, an individual must complete an IRS form. The form requires documentation substantiating foreign/alien status and true identity for the individual. The person may either mail the documentation, along with the required form, present it at the IRS office, or process the application through an acceptable agent authorized by the IRS.

3. Federal Personal Responsibility and Work Opportunity Reconciliation Act. Federal law, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), P.L 104-193, prohibits certain categories of individuals not lawfully present in the United States from receiving certain public benefits, including "any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government." (8 USC Section 1621) (emphasis added) However, the PRWORA also authorizes a state to make those individuals eligible for any state or local public benefit for which he or she would not otherwise be eligible by affirmatively providing for those benefits through an enactment of state law.

Professional licenses issued by licensing boards under DCA constitute a public benefit, as defined under federal law, and licensing boards under DCA are considered agencies of the state, thereby triggering the federal requirement in the PRWORA for an enactment of state law to provide those benefits. Accordingly, this bill seeks to affirmatively provide this eligibility to obtain a professional license to individuals who are not lawfully present in the United States.

4. FTB and DCSS's Ability to Identify Licensees. The purpose of requiring an SSN or federal employer identification number is to identify persons with outstanding tax liabilities or who are out of compliance with child support orders. Existing law authorizes the suspension of a delinquent taxpayer's

occupational or professional license once a delinquency is at least five months old, and specified notices have been issued by the FTB. Existing law also authorizes license denials and suspensions for failure to pay court-ordered child support debt. According to both the FTB and DCSS, this bill would not affect the ability of the FTB or DCSS to identify persons with outstanding tax liabilities or child support payments because both entities have the capability to identify those persons using their ITIN.

5. Arguments in Support. The Los Angeles Area Chamber of Commerce writes in support, and states: "[This bill] would ensure that otherwise eligible applicants are not denied a professional license based solely on their immigration status? Many immigrants come to California as children and are educated in elementary and secondary schools in the state. Despite the high cost of higher education and limited resources, many of them continue on to higher education, availing themselves of state laws that offer access to in-state tuition rates and state financial aid. These young people have worked hard and overcome many obstacles to succeed. Now, they are educated and ready to contribute as professionals. Without access to a professional license, many individuals will be limited in their ability to contribute to our state."

The California Immigrant Policy Center writes in support and states: "Without access to a professional license, many individuals will be limited in their ability to participate in the workforce or start a business and thereby limit their economic contributions to the State. It is estimated that California's labor force includes 1.85 million undocumented workers and that households headed by undocumented workers contribute an estimated \$2.7 billion in state taxes. As such, we expect SB 1159 to make an impact on the economic opportunity of otherwise eligible immigrants."

The National Association of Social Workers, California Chapter, also writes in support, "It is in the best interest of our state to support efforts to educate our workforce and enable our residents, including immigrants to improve their economic mobility and self-sufficiency, which will increase their contributions back to the state."

6. Related Legislation. AB 1024 (Gonzalez, Chapter 573, Statutes of 2013) authorized the Supreme Court to admit to the practice of law an applicant who is not lawfully present in the United States, upon certification by the State Bar that the applicant has fulfilled those requirements for admission, as specified.

SB 1822 (Berryhill, Chapter 317, Statutes of 2012) authorized submission of an individual tax identification number or another identification number, as determined by the California Architects Board, in place of a social security number where the applicant is not eligible for a social security number and is not out of compliance with a child support judgment or order, as specified.

AB 664 (Jones, Chapter 610, Statutes of 2005) authorized, in specified circumstances, submission of a federal tax identification number or another identification number, as determined by the State Bar of California, in place of the applicant's social security number.

SUPPORT AND OPPOSITION:

Support:

American Civil Liberties Union of California
California Immigrant Policy Center
California Pan-Ethnic Health Network
Central American Resource Center - Los Angeles
Coalition for Humane Immigrant Rights of Los Angeles
Councilwoman Cristina N. Carrizosa, City of Pomona
Friends Committee on Legislation
The Latino and Latina Roundtable of the San Gabriel and Pomona Valley
Los Angeles Area Chamber of Commerce
Mexican American Legal Defense and Educational Fund
National Association of Social Workers - California Chapter
Our Family Coalition
Pre-Health Dreamers
United Farm Workers (UFW)

Opposition: None on file as of August 29, 2014.

Consultant: Bill Gage and Mark Mendoza

Senate Bill No. 1243

CHAPTER 395

An act to amend Sections 101.7, 149, 201, 312, 4800, 4804.5, 4836.2, 4841.5, 4844, 11506, and 22259 of, and to add Sections 154.1, 211, and 312.1 to, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 17, 2014. Filed with
Secretary of State September 17, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1243, Lieu. Professions and vocations.

(1) Under existing law, the Department of Consumer Affairs is comprised of various boards, bureaus, commissions, committees, and similarly constituted agencies that license and regulate the practice of various professions and vocations. Existing law requires those agencies to hold public meetings and provide public notice of a meeting.

This bill would require each of those agencies to offer a person requesting to receive notice of a meeting the option to receive that notice by regular mail, email, or both regular mail and email, and would require the agency to comply with that request. The bill would require an agency that intends to Web cast a meeting, to provide notice of intent to Web cast the meeting.

(2) Existing law authorizes certain agencies within the department, upon investigation and with probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with the agency, to issue a citation including an order of correction. Existing law authorizes those agencies to notify the Public Utilities Commission if a person does not comply with a final order of correction, and requires the commission to require the telephone corporation providing the telephone services to disconnect the service.

This bill would apply those provisions to all agencies that comprise the department, and would delete the requirement that the advertising appear in a telephone directory.

(3) Existing law imposes specified duties on the department and allows the department to levy a charge for the estimated administrative expenses in advance on a pro rata share basis against funds of an agency comprising the department.

This bill would require the department to submit an annual report of the accounting of the pro rata calculation of administrative expenses to the appropriate policy committees of the Legislature, on or before July 1, 2015, and on or before July 1 of each subsequent year. The bill would require the department to conduct a one-time study of its system for prorating

administrative excesses, and to include the findings of the study in the report it is required to submit on or before July 1, 2015. The bill would also require the department, if it engages a third-party consultant to assess the department's operations, to promptly, upon receipt of the consultant's final report on that assessment, submit that report to the appropriate policy committees of the Legislature including the entire study upon its completion.

The bill would require the department to develop and make available training courses for employees who perform enforcement functions to develop knowledge of enforcement practices for all employees who perform enforcement functions.

(4) Existing law requires an agency comprising the department to investigate a consumer accusation or complaint against a licensee and, where appropriate, the agency is authorized to impose disciplinary action against a licensee. Under existing law, an agency comprising the department may refer a complaint to the Attorney General or Office of Administrative Hearings for further action. Existing law requires the Director of Consumer Affairs to submit an annual report to the Governor and the Legislature, on or before January 1, that includes information regarding consumer complaints and the action taken on those complaints.

This bill would require the director's report to include specific, detailed information regarding those complaints and actions. The bill would require the Office of Administrative Hearings to submit a report to the department, the Governor, and the appropriate policy committees of the Legislature, on or before January 1, 2016, and on or before January 1 of each subsequent year, that includes specified information regarding the actions taken by the Office of Administrative Hearings pertaining to accusations and cases relating to consumer complaints against a person whose profession or vocation is licensed by an agency comprising the department.

(5) Existing law regulates the practice of veterinary medicine. Existing law, until January 1, 2016, provides for a Veterinary Medical Board within the Department of Consumer Affairs. Existing law, until January 1, 2016, authorizes the board to appoint a person exempt from civil service to be designated as an executive officer of the board, as specified.

This bill would extend those provisions until January 1, 2017.

(6) Existing law, beginning January 1, 2015, requires a veterinary assistant to obtain a controlled substance permit from the board in order to administer a controlled substance, and requires the board to revoke a veterinary controlled substance permit upon notification that the veterinary assistant has been convicted of a state or federal felony controlled substance violation.

This bill would, instead, beginning July 1, 2015, authorize the board to deny, suspend, or revoke the controlled substance permit of a veterinary assistant after notice and hearing if the veterinary assistant has been convicted of a state or federal felony controlled substance violation.

(7) Existing law regulates the practice of common interest development managers, and makes those provisions effective only until January 1, 2015.

This bill would extend the effectiveness of those provisions until January 1, 2019, and subject those provisions to review by the appropriate policy

committees of the Legislature. The bill would also delete an obsolete reference.

(8) Existing law establishes the California Tax Education Council, a nonprofit organization, and requires the council to register and regulate tax preparers. Existing law makes those provisions effective only until January 1, 2015.

This bill would extend the effectiveness of those provisions until January 1, 2019.

(9) This bill would make technical, nonsubstantive, and conforming changes.

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

SECTION 1. Section 101.7 of the Business and Professions Code is amended to read:

101.7. (a) Notwithstanding any other provision of law, boards shall meet at least three times each calendar year. Boards shall meet at least once each calendar year in northern California and once each calendar year in southern California in order to facilitate participation by the public and its licensees.

(b) The director at his or her discretion may exempt any board from the requirement in subdivision (a) upon a showing of good cause that the board is not able to meet at least three times in a calendar year.

(c) The director may call for a special meeting of the board when a board is not fulfilling its duties.

(d) An agency within the department that is required to provide a written notice pursuant to subdivision (a) of Section 11125 of the Government Code, may provide that notice by regular mail, email, or by both regular mail and email. An agency shall give a person who requests a notice the option of receiving the notice by regular mail, email, or by both regular mail and email. The agency shall comply with the requester's chosen form or forms of notice.

(e) An agency that plans to Web cast a meeting shall include in the meeting notice required pursuant to subdivision (a) of Section 11125 of the Government Code a statement of the board's intent to Web cast the meeting. An agency may Web cast a meeting even if the agency fails to include that statement of intent in the notice.

SEC. 2. Section 149 of the Business and Professions Code is amended to read:

149. (a) If, upon investigation, an agency designated in Section 101 has probable cause to believe that a person is advertising with respect to the offering or performance of services, without being properly licensed by or registered with the agency to offer or perform those services, the agency may issue a citation under Section 148 containing an order of correction that requires the violator to do both of the following:

(1) Cease the unlawful advertising.

(2) Notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(b) This action is stayed if the person to whom a citation is issued under subdivision (a) notifies the agency in writing that he or she intends to contest the citation. The agency shall afford an opportunity for a hearing, as specified in Section 125.9.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after that order is final, the agency shall inform the Public Utilities Commission of the violation and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

SEC. 3. Section 154.1 is added to the Business and Professions Code, to read:

154.1. (a) The Legislature hereby finds and declares all of the following:

(1) The department is currently providing opportunities for employees of agencies comprising the department who perform enforcement functions to attend an entry level enforcement academy.

(2) It is in the best interest of consumers in the state for the department to continue to provide ongoing training opportunities for employees performing enforcement functions for each agency comprising the department.

(b) The department shall continue to develop and make available training courses for employees who perform enforcement functions. The purpose of the training courses is to develop knowledge of enforcement practices for all employees who perform enforcement functions. The department shall encourage an agency executive officer, registrar, executive director, bureau chief, enforcement manager, supervisor, or staff member to attend enforcement training courses.

(c) The department shall develop the enforcement training curricula in consultation and cooperation with the office of the Attorney General and the Office of Administrative Hearings.

SEC. 4. Section 201 of the Business and Professions Code is amended to read:

201. (a) (1) 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 boards, bureaus, commissions, divisions, and agencies, at the discretion of the director and with the approval of the Department of Finance.

(2) The department shall submit a report of the accounting of the pro rata calculation of administrative expenses to the appropriate policy committees of the Legislature on or before July 1, 2015, and on or before July 1 of each subsequent year.

(b) The department shall conduct a one-time study of its current system for prorating administrative expenses to determine if that system is the most productive, efficient, and cost-effective manner for the department and the agencies comprising the department. The study shall include consideration of whether some of the administrative services offered by the department should be outsourced or charged on an as-needed basis and whether the agencies should be permitted to elect not to receive and be charged for certain administrative services. The department shall include the findings in its report pursuant to paragraph (2) of subdivision (a) that it is required to submit on or before July 1, 2015.

SEC. 5. Section 211 is added to the Business and Professions Code, to read:

211. If the department hires a third-party consultant to assess the department's operations, the department shall, promptly upon receipt of the consultant's final report on that assessment, submit that report to the appropriate policy committees of the Legislature after omitting any information that is not subject to disclosure under the California Public Records Act (Chapter 3.5 commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

SEC. 6. Section 312 of the Business and Professions Code is amended to read:

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

(b) The report shall include information relative to the performance of each constituent entity, including, but not limited to, length of time for a constituent entity to reach each of the following milestones in the enforcement process:

(1) Average number of days from when a constituent entity receives a complaint until the constituent entity assigns an investigator to the complaint.

(2) Average number of days from a constituent entity opening an investigation conducted by the constituent entity staff or the Division of Investigation to closing the investigation regardless of outcome.

(3) Average number of days from a constituent entity closing an investigation to imposing formal discipline.

(c) A report submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 7. Section 312.1 is added to the Business and Professions Code, to read:

312.1. The Office of Administrative Hearings shall submit a report to the department, the Governor, and the Legislature on or before January 1, 2016, and on or before January 1 of each subsequent year that includes, at a minimum, all of the following for the previous fiscal year:

(a) Number of cases referred by each constituent entity to each office of the Office of Administrative Hearings for a hearing.

(b) Average number of days from receiving a request to setting a hearing date at each office of the Office of Administrative Hearings.

(c) Average number of days from setting a hearing to conducting the hearing.

(d) Average number of days after conducting a hearing to transmitting the proposed decision by each office of the Office of Administrative Hearings.

SEC. 8. Section 4800 of the Business and Professions Code is amended to read:

4800. (a) There is in the Department of Consumer Affairs a Veterinary Medical Board in which the administration of this chapter is vested. The board consists of the following members:

(1) Four licensed veterinarians.

(2) One registered veterinary technician.

(3) Three public members.

(b) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

(c) Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature. However, the review of the board shall be limited to those issues identified by the appropriate policy committees of the Legislature and shall not involve the preparation or submission of a sunset review document or evaluative questionnaire.

SEC. 9. Section 4804.5 of the Business and Professions Code is amended to read:

4804.5. 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 remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 10. Section 4836.2 of the Business and Professions Code is amended to read:

4836.2. (a) Applications for a veterinary assistant controlled substance permit shall be upon a form furnished by the board.

(b) The fee for filing an application for a veterinary assistant controlled substance permit shall be set by the board in an amount the board determines is reasonably necessary to provide sufficient funds to carry out the purposes of this section, not to exceed one hundred dollars (\$100).

(c) The board may deny, suspend, or revoke the controlled substance permit of a veterinary assistant after notice and hearing for any cause provided in this subdivision. The proceedings under this section shall be conducted in accordance with the provisions for administrative adjudication in 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. The board may revoke or suspend a veterinary assistant controlled substance permit for any of the following reasons:

(1) The employment of fraud, misrepresentation, or deception in obtaining a veterinary assistant controlled substance permit.

(2) Chronic inebriety or habitual use of controlled substances.

(3) The veterinary assistant to whom the permit is issued has been convicted of a state or federal felony controlled substance violation.

(4) Violating or attempts 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 regulations adopted under this chapter.

(d) The board shall not issue a veterinary assistant controlled substance permit to any applicant with a state or federal felony controlled substance conviction.

(e) (1) As part of the application for a veterinary assistant controlled substance permit, the applicant shall submit to the Department of Justice fingerprint images and related information, as required by the Department of Justice for all veterinary assistant applicants, for the purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(2) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information that it receives pursuant to this section. The Department of Justice shall review any information returned to it from the Federal Bureau of Investigation and compile and disseminate a response to the board summarizing that information.

(3) The Department of Justice shall provide a state or federal level response to the board pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(4) The Department of Justice shall charge a reasonable fee sufficient to cover the cost of processing the request described in this subdivision.

(f) The board shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in paragraph (1) of subdivision (e).

(g) This section shall become operative on July 1, 2015.

SEC. 11. Section 4841.5 of the Business and Professions Code is amended to read:

4841.5. To be eligible to take the written and practical examination for registration as a registered veterinary technician, the applicant shall:

(a) Be at least 18 years of age.

(b) (1) Furnish satisfactory evidence of graduation from, at minimum, a two-year curriculum in veterinary technology, in a college or other postsecondary institution approved by the board, or the equivalent thereof as determined by the board. In the case of a private postsecondary institution, the institution shall also be approved by the Bureau for Private Postsecondary Education.

(2) For purposes of this subdivision, education or a combination of education and clinical practice experience may constitute the equivalent of the graduation requirement imposed under this subdivision, as determined by the board.

SEC. 12. Section 4844 of the Business and Professions Code is amended to read:

4844. A person who fails to renew his certificate of registration within five years after its expiration may not renew it, and it shall not be restored, reissued, or reinstated thereafter, but that person may apply for and obtain a new certificate of registration if:

(a) He or she is not subject to denial of registration under Section 480.

(b) No fact, circumstance, or condition exists which, if the certificate of registration were issued, would justify its revocation or suspension.

(c) He or she takes and passes the examination, if any, that would be required of him or her if he or she were then applying for a certificate of registration for the first time, or otherwise establishes to the satisfaction of the board that, with due regard for the public interest, he or she is qualified to be a registered veterinary technician.

(d) He or she pays all of the fees that would be required of him or her if he or she were applying for the certificate of registration for the first time.

The board may, by regulation, provide for the waiver or refund of all or any part of the examination fee when a certificate of registration is issued without an examination pursuant to this section.

SEC. 13. Section 11506 of the Business and Professions Code is amended to read:

11506. This part shall be subject to review by the appropriate policy committees of the Legislature. This part shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 14. Section 22259 of the Business and Professions Code is amended to read:

22259. (a) This chapter shall be subject to review by the appropriate policy committees of the Legislature.

(b) This chapter shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

Senate Bill No. 1256

CHAPTER 256

An act to repeal and add Section 654.3 of the Business and Professions Code, relating to health care services.

[Approved by Governor August 22, 2014. Filed with
Secretary of State August 22, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1256, Mitchell. Medical services: credit.

Existing law prohibits a healing arts licensee, including physicians and surgeons, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners, from referring a person for certain health care services if the licensee has a financial interest, as defined, with the person or entity that receives the referral. Existing law provides specified exemptions from this prohibition. Under existing law, a violation of the provisions governing referrals is a crime.

Existing law prohibits a dentist, or an employee or agent of that dentist, from arranging for or establishing credit extended by a 3rd party for a patient without first providing a written notice and a written treatment plan, as specified. Existing law prohibits a dentist, or employee or agent of a dentist, from charging treatment not yet rendered or costs not yet incurred to an open-end credit extended by a 3rd party that is arranged for or established in the dental office without first providing the patient with specified information regarding the treatment and services to be rendered and ensuring the patient's receipt of the treatment plan. A person who willfully violates these provisions is subject to specified civil liability.

This bill would delete those provisions pertaining to a dentist or an employee or agent of a dentist, and instead would prohibit a healing arts licensee, including a dentist, or an employee or agent of that licensee, from arranging for or establishing credit or a loan extended by a 3rd party for a patient without first providing a written notice or electronic notice, as specified, and a written treatment plan, and would prohibit that arrangement or establishment of credit or a loan with regard to a patient who has been administered or is under the influence of general anesthesia, conscious sedation, or nitrous oxide. The bill would prohibit a healing arts licensee, or employee or agent of a licensee, from charging treatment not yet rendered or costs not yet incurred to an open-end credit extended or a loan by a 3rd party that is arranged for or established in the licensee's office without first providing the patient with specified information regarding the treatment and services to be rendered and ensuring the patient's receipt of the treatment plan. The bill would require a healing arts licensee to refund to the lender any payment received for treatment that has not been rendered or costs that

have not been incurred, as specified, within 15 business days upon the patient's request. The bill would provide that a person who willfully violates these provisions is subject to specified civil liability.

Because a violation of these provisions would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 654.3 of the Business and Professions Code is repealed.

SEC. 2. Section 654.3 is added to the Business and Professions Code, to read:

654.3. (a) For purposes of this section, the following definitions shall apply:

(1) "Licensee" means an individual, firm, partnership, association, corporation, limited liability company, or cooperative association licensed under this division or under any initiative act or division referred to in this division.

(2) "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 law. Employees and independent contractors shall be licensed or certified when licensure or certification is required by law.

(3) "Open-end credit" means credit extended by a creditor under a plan in which the creditor reasonably contemplates repeated transactions, the creditor may impose a finance charge from time to time on an outstanding unpaid balance, and the amount of credit that may be extended to the debtor during the term of the plan, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid.

(4) "Patient" includes, but is not limited to, the patient's parent or other legal representative.

(b) It is unlawful for a licensee, or employee or agent of that licensee, to charge treatment or costs to an open-end credit or loan, that is extended by a third party and that is arranged for, or established in, that licensee's office, before the date upon which the treatment is rendered or costs are incurred, without first providing the patient with a treatment plan, as required by subdivision (e) and a list of which treatment and services are being charged in advance of rendering or incurring of costs.

(c) A licensee shall, within 15 business days of a patient’s request, refund to the lender any payment received through credit or a loan extended by a third party that is arranged for, or established in, that licensee’s office for treatment that has not been rendered or costs that have not been incurred.

(d) A licensee, or an employee or agent of that licensee, shall not arrange for or establish credit or a loan extended by a third party for a patient without first providing the following written or electronic notice, on one page or screen, respectively, in at least 14-point type, and obtaining a signature from the patient:

“Credit or Loan for Health Care Services

The attached application and information is for a credit card/line of credit or loan to help you finance your health care treatment. You should know that:

You are applying for a ____ credit card/line of credit or a ____ loan for \$ ____.

You do not have to apply for the credit card/line of credit or loan. You may pay your health care provider for treatment in another manner.

This credit card/line of credit or loan is not a payment plan with the provider’s office; it is credit with, or a loan made by, [name of company issuing the credit card/line of credit or loan]. Your health care provider does not work for this company.

Before applying for this credit card/line of credit or loan, you have the right to a written treatment plan from your health care provider that includes the anticipated treatment to be provided and the estimated costs of each service.

If you are approved for a credit card/line of credit or loan, your health care provider can only charge treatment and laboratory costs to that credit card/line of credit or loan when you get the treatment or the health care provider incurs costs unless your health care provider has first given you a list of treatments that you are paying for in advance and the cost for each treatment or service.

You have the right to receive a credit to your credit card/line of credit or loan account refunded for any costs charged to the credit card/line of credit or loan for treatment that has not been rendered or costs that your health care provider has not incurred. Your health care provider must refund the amount of the charges to the lender within 15 business days of your request, after which the lender will credit your account.

Please read carefully the terms and conditions of this credit card/line of credit or loan, including any promotional offers.

You may be required to pay interest rates on the amount charged to the credit card/line of credit or the amount of the loan. If you miss a payment or do not pay on time, you may have to pay a penalty on the entire cost of your procedure and a higher interest rate.

You may use this credit card/line of credit or loan for payments toward subsequent health care services.

If you do not pay the money that you owe the company that provides you with a credit card/line of credit or loan, your missed payments can appear on your credit report and could hurt your credit rating. You could also be sued.

[Patient's Signature]"

(e) Prior to arranging for or establishing credit or a loan extended by a third party, a licensee shall give a patient a written treatment plan. The treatment plan shall include each anticipated service to be provided and the estimated cost of each service. If a patient is covered by a private or government medical benefit plan or medical insurance, from which the licensee takes assignment of benefits, the treatment plan shall indicate the patient's private or government-estimated share of cost for each service. If the licensee does not take assignment of benefits from a patient's medical benefit plan or insurance, the treatment plan shall indicate that the treatment may or may not be covered by a patient's medical benefit or insurance plan, and that the patient has the right to confirm medical benefit or insurance information from the patient's plan, insurer, or employer before beginning treatment.

(f) A licensee, or an employee or agent of that licensee, shall not arrange for or establish credit or a loan extended by a third party for a patient with whom the licensee, or an employee or agent of that licensee, communicates primarily in a language other than English that is one of the Medi-Cal threshold languages, unless the written notice information required by subdivision (d) is also provided in that language.

(g) A licensee, or an employee or agent of that licensee, shall not arrange for or establish credit or a loan that is extended by a third party for a patient who has been administered or is under the influence of general anesthesia, conscious sedation, or nitrous oxide.

(h) A patient who suffers any damage as a result of the use or employment by any person of a method, act, or practice that willfully violates this section may seek the relief provided by Chapter 4 (commencing with Section 1780) of Title 1.5 of Part 4 of Division 3 of the Civil Code.

(i) The rights, remedies, and penalties established by this article are cumulative, and shall not supersede the rights, remedies, or penalties established under other laws.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime

within the meaning of Section 6 of Article XIII B of the California Constitution.

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Hearing Date: April 7, 2014

Bill No: SB

1256

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

Bill No: SB 1256 Author: Mitchell
As Introduced: February 21, 2014 Fiscal: Yes

SUBJECT: Medical services: credit

SUMMARY: Prohibits all healing arts licensees or an employee or agent of that licensee from arranging for or establishing credit extended by a third party without first providing a written notice and treatment plan to a patient and would prohibit that arrangement or establishment of credit with regard to a patient who has been administered or is under the influence of general anesthesia, conscious sedation, or nitrous oxide. It also prohibits all healing arts licensees or an employee or agent of that licensee from charging treatment not yet rendered or costs not yet incurred to an open-end credit extended by a third party without providing the patient with information regarding the treatment and services, and requires all licensees to refund any payment received for treatment that has not been incurred within 15 business days upon the patient's request.

Existing law:

- 1) Defines "open-end credit" as the credit extended by a creditor under a plan in which the creditor reasonably contemplates repeated transactions. (Business and Professions Code (BPC) § 654.3(i)(2))
- 2) Specifies that the creditor may impose a finance charge from time to time on an outstanding unpaid balance and the amount of credit that may be extended to the debtor during the term of the plan is generally made available to the extent that any outstanding balance is repaid. (Civil Code (CC) § 1812.405)
- 3) Specifies that the term patient includes, but is not limited to, the patient's parent or other legal representative. (BPC § 654.3)
- 4) Prohibits a dentist or employee or agent of a dentist from charging treatment not yet rendered, or costs not yet incurred, to an open-end credit extended by a third party without first providing the patient with specified information regarding the treatments and services to be rendered and ensuring the patient's receipt of the treatment plan. (BPC § 654.3 (a))
- 5) Requires a dentist, within 15 business days of a patient's request, to refund to the lender any payment received through credit extended by a third party that is arranged for or established in a dental office, for treatment that has not been rendered or costs that have not been incurred. (BPC § 654.3 (b))
- 6) Requires a dentist or an employee or agent of a dentist to provide the patient with a written notice on one page in at least 14 type font and to get a signature from the patient in order to arrange for or establish credit extended by a third party. (BPC § 654.3(c))

(i)(3))

- 7) Prohibits a dentist or employee or agent of a dentist from arranging for or establishing credit extended by a third party for a patient with whom the dentist or employee or agent of the dentist communicates with in a language other than English unless the written notice information is also provided in that language. (BPC § 654.3 (e))
- 8) Prohibits a dentist, employee or agent of that dentist from establishing credit that is extended by a third party for a patient who has been administered or is under the influence of general anesthesia, conscious sedation or nitrous oxide. (BPC 654.3 (f))
- 9) Establishes that a person who willfully violates these provisions is subject to civil liability. (BPC § 654.3(g))

This bill:

- 1) Defines a "licensee" as an individual, firm partnership, association, corporation, limited liability company or cooperative association.
- 2) Defines "licensee's" office as an office of a licensee in solo practice or an office in which services or goods are provided by the licensee or by employees in that office, or by independent contractors in that office.
- 3) Defines "open-end credit" as credit extended by a creditor under a plan in which the creditor reasonably contemplates repeated transactions.
- 4) Allows the creditor to impose a finance charge from time to time on an outstanding unpaid balance, up to any limit set by the creditor.
- 5) Specifies that a "patient" includes, but is not limited to, the patient's parent or legal representative.
- 6) Prohibits a healing arts licensee, or an employee or agent of that licensee, from arranging for or establishing credit extended by a third party for a patient without first providing a written notice and a written treatment plan.
- 7) Prohibits the arrangement or establishment of credit with regard to a patient who has been administered or is under the influence of general anesthesia, conscious sedation or nitrous oxide.
- 8) Prohibits a healing arts licensee, or employee or agent of a licensee, from charging treatment not yet rendered or costs not yet incurred to an open-end credit extended by a third party that is arranged for or established in the licensee's office without first providing the patient with specified information regarding the treatment and services to be rendered and ensuring the patient's receipt of the treatment plan.
- 9) Requires a healing arts licensee to refund to the lender any payment received for treatment that has not been rendered, or costs that have not been incurred within 15 business days upon the patient's request.
- 10) Provides that a person who willfully violates these provisions is subject to civil liability.

FISCAL EFFECT: Unknown. This bill has been keyed "fiscal" by Legislative Counsel.

COMMENTS:

1. Purpose. This bill is sponsored by the Consumer Federation of California . According to the Author, SB 1256 extends the current protections that patients receive in a dental office to other areas of the medical field. The Author believes that medical credit cards, extended through third party lenders, but solicited by medical providers, pose a significant risk to consumers who may not fully understand the arrangements that are being made for them by their provider or provider's office. The interest rates for these credit cards can range between 24 and 28 percent and may include significant penalty fees charged retroactively on the entire cost of the procedure. The significant risks created by deferred interest credit cards in connection to medical services make it essential that consumers fully understand the arrangements they make with their medical providers.
2. Background.
 - a) Medical Credit Card Popularity. Medical credit cards have increased in popularity over the past decade. U.S. financial institutions have partnered with health care providers to offer medical credit cards to people without health insurance or those who require services not covered by their insurance including dental care, vision, hearing aids, cosmetic procedures and veterinary care. According to Craig Conway, a research professor with the University of Houston Law Center in Texas, U.S. citizens spend about \$294 billion annually on out-of-pocket medical expenses, a quarter of which they charge to standard credit cards. However, an estimated 79 million people have trouble paying those expenses and, as a result, health care providers struggle to collect money owed to them (University of Houston Law Center, Health Law Perspective, November 2009). The American Medical Association and the American Dental Association have no formal policy on medical credit cards, but some practitioners refuse to use them, saying they threaten to exploit the traditional relationship between provider and patient.
 - b) Medical Credit Card Companies. Consumer Reports indicates that health care credit card providers such as Capital One Healthcare Finance, Chase Health Advance and Citi Health Card charge interest rates ranging from 24 to 28 percent with credit limits as high as 40 thousand dollars (Overdose of Debt, Consumer Reports, July 2008). Financial institutions such as General Electric, U.S. Bancorp and Citigroup are also medical creditors. According to a November 2007 Business Week article entitled, Fresh Pain for the Uninsured, General Electric owns Care Credit, and according to Care Credit's website, it has 6 million customers and is marketed to dentists, plastic surgeons and some hospitals. U.S. Bank, a U.S. Bancorp unit, finances about \$2 million in patient debt per month through a medical-benefit firm, charging most customers annual interest of 13.5 percent and as much as 24 percent on late bills.
 - c) Other States. The inception of medical credit cards began in a few states, including Texas and North Carolina, and spread quickly across the country. However, in recent years, several states have issued warnings to consumers about using medical credit cards. Some states have sued medical credit card companies for deceptive business practices.
 - i) In August of 2009, Minnesota's Attorney General, Lori Swanson, issued a consumer alert to warn patients that a trip to a clinic looking to "boost its bottom line" could result in a barrage of high-pressure sales pitches. Attorney General Swanson also issued a consumer alert warning for residents to be aware of abusive practices involving medical credit cards and has investigated several providers. She remarked, "[T]his is the health care version of sub-prime predatory mortgage lending. Enrolling people in exploding interest credit cards, not explaining the terms of those credit cards, [and] jeopardizing people's credit histories." In 2010, Attorney General Swanson sued two chiropractic

clinics, charging that, among other things, they signed patients up for credit cards without their knowledge and charged them thousands of dollars for services not yet provided (The Washington Post, Be Skeptical of Health-Care Credit Cards, August 2010; Canadian Medical Association Journal, 2010; The Office of the Attorney General, Minnesota, Lori Swanson, Health Care Credit Cards, available at <http://www.ag.state.mn.us/Brochures/pubHealthCareCreditCards.pdf>).

- ii) In August of 2010, New York's Attorney General, Andrew Cuomo, announced an expansion of an investigation into the "predatory lending practices" of medical centers pushing the cards. The investigation, launched after hundreds of complaints from consumers, had already found that some health care practices were using "fast-talking sales pitches to pressure and deceive" consumers, including seniors and vulnerable patients. Specifically, the state accused medical card provider CareCredit of having deceptive terms and pushing the cards on unwary patients. As a result, as part of the Consumer Financial Protection Bureau lawsuit, CareCredit was ordered to issue nearly 2 million dollars in refunds to consumers in the state of New York (The Wall Street Journal, Market Watch, Medical Credit Cards Come with a Catch, September 2013; Canadian Medical Association Journal, 2010).
- iii) Similarly, in 2013, the Consumer Financial Protection Bureau ordered GE Capital Retail Bank and its subsidiary, CareCredit, to refund up to 34.1 million dollars to potentially more than 1 million consumers, including the aforementioned consumers in the state of New York, who were victims of deceptive credit card enrollment tactics. At doctors' and dentists' offices around the country, consumers were signed up for CareCredit credit cards they thought were interest free, but were actually accruing interest that kicked in if the full balance was not paid at the end of a promotional period (Consumer Financial Protection Bureau, CFPB Orders GE CareCredit to Refund \$34.1 Million for Deceptive Health-Care Credit Card Enrollment, December 2013).
- iv) In 2010, Aspen Dental, reached a settlement with Pennsylvania authorities over claims that it had failed to tell patients that missing a payment would mean the rate would rise from zero to nearly 30 percent (The New York Times, Patients Mired in Costly Credit From Doctors, October 2013).
- v) In 2013, the Ohio Attorney General sued the operators of several hearing aid clinics, claiming that they misled customers about using medical credit cards to pay for batteries and warranties (The New York Times, Patients Mired in Costly Credit From Doctors, October 2013).

3. Arguments in Support. The Consumer Federation of California (Sponsor) supports the bill and writes, "Medical credit cards provide a financing option that helps patients pay for treatments or procedures that are not otherwise covered by their medical insurance?However, in some instances, patients who thought they were signing up for a payment plan directly with their provider later discover that they have signed credit applications and may have eventually paid up-front for treatments they have not yet received?patients, primarily elderly, low-income or limited English-speaking, who are offered a credit card when they are most vulnerable? may not understand that the financing option they have been recommended is actually a credit card or loan extended through a third party. SB 1256 is not intended to prohibit medical providers from helping to arrange credit cards or loans for their patients, but aims to set forth basic standards governing these credit card arrangements and provide basic consumer protections."

4. Prior Legislation. AB 171 (Jones, Chapter 418, 2009) established procedures for dentists to follow when arranging a medical credit card, extended through a third party lender, to a patient.

SB 1633 (Kuehl, 2008) would have prohibited a person providing dental services, or an employee or agent of that person, from charging to a line of credit or other extension of credit, or accept payment from loan funds for services that the patient, client, or customer has not yet received. (Status : Governor Schwarzenegger summarily vetoed SB 1633 because of the budget crisis.)

NOTE : Double-referral to Judiciary Committee (second).

SUPPORT AND OPPOSITION:

Support:

Consumer Federation of California (Sponsor)

Opposition:

None received as of April 1, 2014

Consultant:Le Ondra Clark, Ph.D.



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CAB list of past and future regulations

Set out below are a list of past and future pending regulations. Please note this list may be incomplete and subject to change depending upon Legislative or Executive action.

Authority for regulatory changes is provided under California Business and Professions (B&P) code Chapter 12, Article 1, Code section 4933.

Pending regulations				
	Subject	B&P code sections referred	Date authorizing vote taken (vote)	Status
1	Department of Consumer Affairs – Consumer Protection Enforcement Initiative (CPEI). Amends regulations to strengthen board enforcement program pursuant to DCA’s CPEI initiative (SB 1111)	Amends section 1399.405, 1399.419, 1399.469.1, 1399.468.2	8/19/2010 (5-0)	45 day comment period ended 6/30/14 with public hearing held. Final rulemaking package submitted to DCA and OAL.
2	Uniform Standards Related to Substance Abuse and Recommended Guidelines for Disciplinary Orders and Conditions of Probation (SB 1441)	adopt sections 1399.469	10/25/2013 (5-0)	Legal counsel reviewed and returned to staff with substantive changes to be made 10/15/14.
3	Sponsored Free Health-Care Events (AB 2699)	Add Article 7 and Sections 1399.480, 1400.1, 1400.2 and 1400.3	11/17/2011 (5-0)	Package complete and undergoing final staff review. To be submitted to Legal by December. Planned for OAL submission by January 2015, with 45 day public comment period to follow.
4	Prostitution enforcement and condition of office	Amends section 1399.450(b)	2/14/2014 (6-0)	Planned for OAL submission March 2015, with 45 day public comment period to follow.
5	Advertising guidelines – display of license numbers in advertising	Adopt section 1399.455	2/19/2013 (5-0)	Planned for OAL submission Spring 2015, with 45 day public comment period to follow
6	Continuing education ethics requirement – change of “medical ethics” to “professional ethics”	Adopt section 1399.482.2	11/15/2012 (5-0)	Planned for OAL submission by Spring 2015, with 45 day public comment period to follow

7	Hand Hygiene requirements	Amends 1399.451 (a)	2/14/2014 (5-0)	Package under staff development. Planned for OAL submission by Spring 2015.
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Adopted Regulations

	Subject	B&P code sections referred	Date approved by Office of Administrative Law (effective one month later) with link to text of regulation
1	Educational Curriculum Requirements	amends Section 1399.415	<i>Approved by OAL 10/5/04</i> http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art2.shtml#1399415
2	Cite and Fine enforcement	amends Section 1399.465	<i>Approved by OAL 4/17/06</i> http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art6.shtml#1399465
3	Continuing education	amends Sections 1399.480 – 1399.489.1	<i>Approved by OAL on 8/25/08</i> http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art8.shtml#1399480
4	Retroactive fingerprinting requirements	adopts Sections 1399.419.1 and 1399.419.2	<i>Approved by OAL 9/23/10</i> http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art25.shtml#13994191