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

PAB Physician Assistant Board

PHYSICIAN ASSISTANT BOARD
2005 Evergreen Street, Suite 1100, Sacramento, CA 95815
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MEETING NOTICE
November 5, 2018
PHYSICIAN ASSISTANT BOARD
2005 Evergreen Street – Hearing Room #1150
Sacramento, CA 95815
8:30 A.M. – 5:00 P.M.

AMENDED AGENDA

(Please see below for Webcast information)

EXCEPT "TIME CERTAIN"* ITEMS, ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE

1. Call to Order by President (Sachs)

2. Roll Call (Caldwell)

3. Approval of August 10, 2018 Meeting Minutes (Sachs)

4. Public Comment on items not on the Agenda (Sachs)
   (Note: The Board may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda for a future meeting. [Government Code Sections 11125, 11125.7(a).])

5. Nomination and Election of Physician Assistant Board Officers (Forsyth)

6. Reports
   a. President's Report (Sachs)
      i. Presentation at the Medical Board Meeting on October 19th regarding Optimal Team Practice
   b. Executive Officer's Report (Forsyth)
      i. Staffing and Workload Update
   c. Licensing Program Activity Report (Winslow)
   d. Diversion Program Activity Report (Forsyth)
   e. Enforcement Program Activity Report (Firdaus)

7. Department of Consumer Affairs – Director's Update (DCA Staff) – May Include Updates Pertaining to the Department's Administrative Services, Human Resources, Enforcement, Information Technology, Communications and Outreach, as well as Legislative, Regulatory and Policy Matters

8. Approval of Passing Score for 2019 Physician Assistant (PA) Initial Licensing Examination and 2019 Dates and Locations for PA Initial Licensing Examination (Sachs)

9. Schedule of 2019 Board Meeting Dates and Locations (Sachs)

10. Report on Medical Board of California Activities (Kim Kirchmeyer, Executive Officer Medical Board of California)

***TIME CERTAIN 10:00 AM – Petition Hearing**

Petition for Reinstatement of PA License– Christopher Pilaczynski, PA 18727 (Revoked)

CLOSED SESSION:

A. Pursuant to Section 11126(c)(3) of the Government Code, the Board will move into closed session to deliberate and take action on disciplinary matters, including the above petition for reinstatement of licensure.

B. Pursuant to Section 11126(a)(1) of the Government Code, the Board will move into closed session to conduct the annual evaluation of performance of the Executive Officer

RETURN TO OPEN SESSION

11. Update Regarding Optimal Team Practice of Physician Assistants (Grant)

12. Developments Since the February 2015 United States Supreme Court decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission (FTC)*: Update (Schieldge)

13. Discussion and Possible Action to Initiate a Rulemaking to Adopt Title 16, California Code of Regulations Sections 1399.513 and 1399.513.5 -- Waivers of Renewal Requirements for Members of the U.S. Armed Forces or California National Guard Who Are Called to Active Duty (Winslow/Schieldge)

14. Regulations – Update, Discussion, and Possible Action (Sachs/Schieldge/Winslow)

a. Proposed Amendments to Title 16, California Code of Regulations, Section 1399.514 -Renewal of License (Update)
b. Proposed Amendments to Title 16, California Code of Regulations, Section 1399.515 -Retired Status for Physician Assistant Licenses (Update)
c. Proposed Amendments to Title 16, California Code of Regulations, Section 1399.545 – Supervision Required (Update)
d. Proposed Amendments to Title 16 California Code of Regulations, Section 1399.617 – Audit and Sanctions for Noncompliance (Update)
e. Proposed Amendments to Repeal Title 16 California Code of Regulations Sections 1399.531 and 1399.532 – Requirements for an Approved Program for the Specialty Training of a PA (Update)
f. Proposed Amendments to Title 16, California Code of Regulations, Section 1399.573 – Citations for Unlicensed Practice (Update)

Lunch break taken at some point during the day's meeting.

15. Education/Workforce Development Advisory Committee: Update on Physician Assistant Education Programs and Applicants in California (Grant/Alexander)

16. Budget Update (DCA Budget Analyst)

17. Report by the Legislative Committee and Discussion Regarding Current or Proposed Legislation (Valencia/Earley)

a. AB 710 – Wood: Cannabidiol (Chaptered)
b. AB 1751 – Low: Controlled Substances: Cures Database (Chaptered)
c. AB 1752 – Low: Controlled Substances: Cures Database (Held)
d. AB 1753 – Low: Controlled Substances: Cures Database (Chaptered)
e. AB 1998 – Rodriguez: Opioids: Prescription Limitations (Held)
f. AB 2078 – Daly: Sex Offenses: Professional Services (Held)
g. AB 2088 – Santiago: Patient Records: Addenda (Chaptered)
h. AB 2105 – Maienschein: Punitive Damages: Minors (Chaptered)
i. AB 2143 – Caballero, Mental Health: Licensed Service Provider Education Program (Vetoed)
j. AB 2483 – Voepel: Department of Consumer Affairs: Office of Supervision of Occupational Boards (Held)
k. AB 2193 – Maienschein: Maternal Mental Health (Chaptered)
l. AB 2487 – McCarty: Physicians and Surgeons: Education: Opiate-dependent Patient Treatment and Management, (Chaptered)
m. AB 2741 – Burke: Prescription drugs: Opiod Medications: Minors (Held)
n. SB 790 – McGuire: Health Care Providers: Gifts and Benefits (Chaptered)

o. SB 1298 – Skinner: The Increasing Access to Employment Act (Held)
p. SB 1338 – Hueso: Electrical and gas corporations: Rates (Chaptered)
q. AB 2138 (Chiu and Low) (2018) Licensing Boards: Denial of Application: Criminal Conviction (Chaptered)

18. Agenda Items for Next Meeting (Sachs)

19. Adjournment (Sachs)

Note: Agenda discussion and report items are subject to action being taken on them during the meeting by the Board at its discretion. Action may be taken on any item on the agenda. All times when stated are approximate and subject to change without prior notice at the discretion of the Board unless listed as "time certain". The meeting may be canceled without notice. For meeting verification, call (916) 561-8780 or access the Board's website at http://www.pac.ca.gov. Public comments will be taken on agenda items at the time the item is heard and prior to the Board taking any action on said items. Agenda items may be taken out of order and total time allocated for public comment on particular issues may be limited at the discretion of the President.

While the Board intends to webcast this meeting, it may not be possible to webcast the meeting due to technical difficulties or limitations on resources. The meeting will continue even if the webcast is unavailable. The webcast can be located at www.dca.ca.gov. If you would like to ensure participation, please plan to attend at the physical location.

Notice: The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Julie Caldwell at (916) 561-8781 or email Julie.Caldwell@mbc.ca.gov send a written request to the Physician Assistant Board, 2005 Evergreen Street, Suite 1100, Sacramento, California 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the Request.

AGENDA

ITEM

3

MEETING MINUTES

August 10, 2018
PHYSICIAN ASSISTANT BOARD
Sheraton San Diego Hotel & Mariana
1380 Harbor Island Drive
San Diego, CA 92101
8:30 A.M. – 5:00 P.M.

1. Call to Order by President

President Sachs called the meeting to order at 8:30 a.m.

2. Roll Call

Staff called the roll. A quorum was present.

Board Members Present:
Charles Alexander, PhD.
Juan Armenta
Jennifer Carlquist, PA-C
Sonya Earley, PA-C
Javier Esquivel-Acosta, PA-C
Jed Grant, PA-C
Xavier Martinez
Robert Sachs, PA
Mary Valencia

Staff Present:
Maureen L. Forsyth, Executive Officer
Kristy Schieldge, Attorney III
Anita Winslow, Lead Licensing Analyst
Rozana Firdaus, Enforcement Analyst

3. Approval of April 23, 2018, Meeting Minutes

M/ Jed Grant S/ Sonya Earley to:

Approve the April 23, 2018, Meeting Minutes.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Juan Armenta			X		
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

Motion approved.

4. Update Regarding Optimal Team Practice (OTP) of Physician Assistants (PA)

Mr. Sachs commented that OTP continues to move forward and the California Academy of PAs (CAPA) conference, currently underway, is providing PAs multiple opportunities to attend meetings pertaining to this subject. Mr. Grant stated that OTP is a means to maximize the effectiveness the PA and physician team, represents an update to the practice laws and provides real legal representation between the PA, physician and patient.

5. Public Comment on items not on the Agenda

Mr. Sachs indicated that the Board may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda for a future meeting. [Government Code Sections 11125, 11125.7(a).])

Mr. Jeremy Adler, Chair of the Taskforce on Optimal Team Practice (OTP) with the (CAPA), expressed appreciation for the opportunity to speak with the Board. Mr. Adler stated that CAPA represents over 11,500 PAs and that OTP is a national initiative seeking to continue the important relationship of team practice. That physicians and PAs are optimally suited to practice together but there is a need to see the relationship transition. Presently California PAs have a Delegation of Services Agreement (DSA) with a specific physician and the taskforce would like to transition the regulation of the PA profession from the physician supervisory relationship to focus on the patient. Mr. Adler states that the taskforce feels the patient is the product that the team produces and the taskforce wants to empower the team by integrating the PA as healthcare transitions into a large system based healthcare system.

Mr. Adler stated that the taskforce is also looking into how PAs are reimbursed as it is the only healthcare profession that is not directly reimbursed, empowering the Board in terms of regulating the profession and removing the concept of supervision and moving to a collaborative relationship.

The idea is not to have PAs practice independently, but to ease the ability of the teams to be innovative, effective and increase access to care. What that means mechanically, as a regulatory board, is removing the DSA, protocols, and formularies in this model and moving that to the practice level where teams can decide the best way to utilize their healthcare professionals.

Mr. Adler stated that CAPA is hoping to introduce the legislation next year.

6. Reports

a. <u>President's Report</u>

i. Meeting with Department of Consumer Affairs' (DCA) Budget Office Regarding the Board's Finances:

Mr. Sach's reported he was accompanied by Ms. Forsyth and Mr. Martinez when meeting with staff from the DCA Budget Office. The meeting was very informative.

ii. New Board Member Announcement:

Mr. Sach's reported that the Speaker of the Assembly has appointment a new public member to the PA Board and introduced Mr. Juan Armenta. Mr. Armenta stated that he has been practicing law for 28 years and has experience in both insurance defense work and worker's compensation. He is looking forward to working with the Board and serving our state.

b. Executive Officer's Report

Building Lease Negotiations for the Board's Office Space:

Ms. Forsyth reported that the Board is moving forward with signing a new four-year lease. Improvements to the current building continue to be completed by the lessor. Ms. Forsyth reported that Department of General Services has announced that in 2024 all DCA boards and bureaus will be moving to a new campus. The Board is looking to relocate the office within the building being currently leased as the Board has outgrown their current office space.

c. Licensing Program Activity Report

Mr. Sachs noted that the report was within the meeting packet; no oral report was given.

d. Diversion Program Activity Report

Mr. Sachs noted that the report was within the meeting packet; no oral report was given.

e. Enforcement Program Activity Report

Mr. Sachs noted that the report was within the meeting packet; no oral report was given.

7. Department of Consumer Affairs – Director's Update

Ms. Forsyth reported that a representative from Department of Consumer Affairs was unable to attend and asked if the Board had any questions regarding the written update provided by executive staff.

Mr. Martinez asked for an update on Fi$Cal. Ms. Forsyth stated that there is not a report at this time as it is still a work in progress. Mr. Sachs advised that Fi$Cal is a new program that the Department of Finance and Budget Office implemented a year ago and that while the Board has been assured that they are financially sound, financial reports have been difficult to produce.

8. Reports on Medical Board of California Activities

Mr. Sachs reported that Kimberly Kirchmeyer, Executive Officer Medical Board of California (MBC), was unable to attend the PA Board meeting. He reported that MBC has created an iPhone application which allows one to look up and track a physician's license history with the MBC.

9. Regulation Hearing, Discussion and Possible Action to Amend Section 1399.514

a. Regulatory Hearing on Amendment of Renewal of License, Section 1399.514 of Division 13.8 of Title 16 of the California Code of Regulations

Physician Assistant Board President Robert Sachs introduced himself and stated the following:

Today's date is August 10, 2018 and this hearing is beginning at approximately 9:00 a.m. This is the time and place set for the Physician Assistant Board to conduct a public hearing on the proposed regulatory changes to sections 1399.514 of Title 16 of the California Code of Regulations as described in the notice published in the California Regulatory Notice on June 15, 2018.

The roll was called and a quorum was established.

At this time, the hearing will be opened to take oral testimony and or documentary evidence by any person interested in these regulations for the record which is now being made by tape recorder. All oral testimony and documentary evidence will be considered by the Physician Assistant Board, pursuant to the requirements of the Administrative Procedures Act, before the Board formally adopts the proposed amendment to this regulation or recommends changes which may evolve as a result of this hearing.

If any interested person desires to provide oral testimony, it will be appreciated if he or she will stand or come forward and give his or her name and address and if he or she represents an organization, the name of such organization, so that we will have a record of all those who appear. It is the desire of the Board that the record of the hearing may be clear and intelligible, and that the hearing itself may be orderly, thus providing all parties with fair and ample opportunity to be heard.

Mr. Sachs asked if there were any questions concerning the nature of the proceedings or the procedure to be followed.

No questions were asked.

The hearing proceeded in chronological order to consider the Board's proposed regulation.

Mr. Sachs asked if there was anyone who wished to testify. No testimony was given. The hearing was closed.

b. Discussion and Possible Action to Amend Title 16, California Code of Regulations Section 1399.514 – Renewal of License

Ms. Winslow reported that this regulatory proposal will allow licensees to not have to disclose minor infractions unrelated to the practice of medicine, such as moving traffic violations that do not include drugs or alcohol.

At the Board's April 18, 2016 meeting, Board members discussed raising the threshold of reporting infractions with fines from $300 to $500 or more to avoid receiving disclosures, such as minor traffic violations like running a red light, which would not be considered substantially related to the qualifications, functions, or duties of a physician assistant.

As of this date no written comments have been received. This proposed regulatory amendment will not have a significant adverse economic impact on businesses.

M/ Jed Grant S/ Sonya Earley to:

Direct staff to take all steps necessary to complete the rulemaking process, including the filing of the final rulemaking package with the Office of Administrative Law (OAL), authorize the Executive Officer to make any non-substantive changes to the proposed regulation, and adopt the proposed regulations as originally noticed.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Juan Armenta	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

Motion approved.

10. Regulation Hearing, Discussion and Possible Action to Adopt Section 1399.515

a. <u>Regulatory Hearing on the Adoption of Retired Status, Section 1399.515 of Division 13.8 of Title 16 of the California Code of Regulations</u>

Physician Assistant Board President Robert Sachs introduced himself and stated the following:

Today's date is August 10, 2018 and this hearing is beginning at approximately 9:00 a.m. This is the time and place set for the Physician Assistant Board to conduct a public hearing on the proposed regulatory changes to section 1399.515 of Title 16 of the California Code of Regulations as described in the notice published in the California Regulatory Notice.

The roll was called and a quorum was established.

At this time, the hearing will be opened to take oral testimony and or documentary evidence by any person interested in this regulation for the record which is now being made by tape recorder. All oral testimony and documentary evidence will be considered by the Physician Assistant Board pursuant to the requirements of the Administrative Procedures Act before the Board formally adopts the proposed amendment to this regulation or recommends changes which may evolve as a result of this hearing.

If any interested person desires to provide oral testimony, it will be appreciated if he or she will stand or come forward and give his or her name and address and if he or she represents an organization, the name of such organization, so that we will have a record of all those who appear. It is the desire of the Board that the record of the hearing may be clear and intelligible, and that the hearing itself may be orderly, thus providing all parties with fair and ample opportunity to be heard.

Mr. Sachs asked if there were any questions concerning the nature of the proceedings or the procedure to be followed.

No questions were asked.

The hearing proceeded in chronological order to consider the Board's proposed regulations.

Mr. Sachs asked if there was anyone who wished to testify. No testimony was given. The hearing was closed.

b. <u>Discussion and Possible Action to Adopt Title 16, California Code of Regulations Section 1399.515 – Retired Status</u>

Ms. Winslow indicated that the problem the Board is addressing with the adoption of this regulation is the current lack of a means for a physician assistant, who is retired and no longer practicing, to place their license in a retired status thereby alleviating the expense of a license renewal fee for a license they are no longer using.

This proposal would adopt a new Section 1399.515 to implement minimum eligibility requirements for a retired license, including, a practice prohibition, an application form, ineligibility criteria if the license is currently canceled, revoked or otherwise punitively restricted or if the licensee is actively practicing, exemptions from renewal requirements, and fee waivers for renewal. In addition, this regulation would create criteria for the restoration of a retired license to active status and authorize the Board to investigate violations of these new proposed standards.

As of this date no written public comments have been received. This proposed regulatory amendment will not have a significant adverse economic impact on businesses.

Business, Consumer Services, and Housing Agency (Agency) and the DCA Legal Affairs Division have recommended the text be modified, as follows:

*Add the words "receipt of" to the originally proposed language.

*Remove the following text from the proposed text because of duplicative language covered in other parts of the Physician Assistant Practice Act:
"(1) Shall not engage in any activity for which a license is required."

*Remove the following text from the form as it is covered in the proposed text:
"You may restore your license to active status by: (1) complying with the renewal requirements set forth in Section 1399.514 of the board's regulations, (2) submitting proof of completion of continuing medical education (CME) as set forth in Section 1399.615 of the board's regulations or proof of certification by the National Commission on Certification of Physician Assistants, (3) submitting a license renewal fee as set forth in Section 1399.550 of the board's regulations; and,
(4) submitting the mandatory fee for the Controlled Substance Utilization Review and Evaluation System (CURES) as set forth in Section 208 of the Business and Professions Code."

Ms. Winslow requested a motion to approve these changes and send the modified text out for public comment.

M/ Jed Grant S/ Sonya Earley to:

Direct staff to take all steps necessary to complete the rulemaking process, including sending out the modified text and modified form for an additional 15-day comment period. If after the 15-day public comment period, no adverse comments are received, direct staff to take all steps necessary to complete rule making process, including the filing of the final rulemaking package with the Office of Administrative Law (OAL), authorize the Executive Officer to make any non-substantive changes to the proposed regulation, and adopt the proposed regulation as described in the modified text notice and form.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Juan Armenta	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

Motion approved.

11. Discussion and Possible Action Regarding Development of Proposed Regulations to Implement Waivers of Renewal Requirements for Members of the U.S. Armed Forces of California National Guard Who are Called to active Duty

Ms. Winslow stated that the statute does not define what "called to active duty" means for active duty military. She asked whether the Board would like to define "called to active duty" in the regulatory proposal.

Ms. Schieldge stated that Business and Profession Code Section 114.3 enables Boards in DCA to waive renewal requirements for those persons "called to active duty" who are in the US Armed Forces or National Guard. The problem is that the original intent was to waive, temporarily, the renewal requirements which includes the fee, the application and meeting continuing education requirements so that people who are unexpectedly "called to active duty", wouldn't be burdened with having to renew their license. Ms. Schieldge indicated that it may be pretty straightforward what "called to active duty" means for reservists or National Guard members, who are civilians, and then "called to active duty." However, Ms. Schieldge questioned how you define "called to active duty" for someone who is an active duty, career military person. Is it limited to circumstances such as combat deployment, which would prevent them from renewing their license? Ms. Schieldge stated that while the statute can be more general one of the requirements when adopting a regulation is to provide clarity and she is having a difficulty defining the scope of who this waiver could be applied to. Ms. Schieldge asked for the Board's input as well as public input.

Mr. Grant stated that part of the problem is that the statute says "active duty" and there are different ways you can be on active duty. He stated that the idea behind this is for people who are part-time military members and then who are "called to active duty" and deployed. He noted that you can volunteer for active duty or be placed on active duty but not be deployed. The intent is great but the application is problematic because you have to define who you are going to allow to apply for this waiver and for how long. Mr. Grant suggested handling this case by case as an internal process within the Board without having a regulation in place. Ms. Schieldge suggested to develop criteria in regulation to avoid the perception of an underground regulation. Ms. Schieldge stated that she will continue to work with staff and bring this back to the Board at a future meeting. Mr. Grant stated he would be happy to work with staff and legal counsel.

Additional discussion included defining the waiver period and portion of the renewal fee to be waived.

12. Regulations

Ms. Winslow stated that the summary included in the Board's packet is accurate. She reported that the Office of Administrative Law has approved the proposed repeal of Title 16, California Code of Regulations, Sections 1399.531 - Curriculum Requirements for an Approved Program for Primary Care Physician Assistants and 1399-532 – Board Requirements for Approving Specialty Training for Physician Assistants and that they were filed with the Secretary of State on August 8, 2018 and will be effective on October 1, 2018.

13. Discussion and Possible Action Regarding Proposed Amendments to the Initial Physician Assistant License Application, Application Instructions and General Information, and Associated Initial Application Forms

Ms. Winslow stated that most of the suggested changes are for grammatical purposes with the expectation of adding additional questions to the disciplinary history section of the initial application to separate disciplinary actions from administrative actions.

Mr. Grant noted the removal of reporting academic difficulties from the program certification. Ms. Winslow stated that the program should be resolving academic issues, not the Board.

Mr. Sachs suggested leaving the suite number off of our address listed on the application due to the imminent relocation of the office. Ms. Schieldge advised to authorize staff to update the address once the relocation is complete.

M/ Jed Grant S/ Mary Valencia to:

Update the Board's address of record and phone number(s) on all forms as needed.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Juan Armenta	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

Motion approved.

Mr. Sachs questioned the reason for changing the term PA to physician assistant on page 6 of 8 when there is a national movement to change physician assistant to PA. Mr. Grant commented that he believes the use of physician assistant is for consistency and doesn't have a problem with accepting the suggested change.

M/ Jed Grant S/ Sonya Earley to:

Approve the proposed changes presented by staff as discussed at this meeting and authorize staff to provide the amended forms as authorized by Title 16, California Code of Regulations, Section 1399.506.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Juan Armenta	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

Motion approved.

14. CLOSED SESSION

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

RETURN TO OPEN SESSION

15. Education/Workforce Development Advisory Committee Update

Mr. Grant provided the following update regarding PA programs:

- United States programs - 234
- California programs - 15
- California programs under development - 4
- Current annual capacity of PA programs in California - 671

A geographic study conducted in 2017, revealed that California has the highest number of applicant to PA programs in the US but has the lowest number of program seats to applicants. This study indicates continued growth of PA programs and individuals applying for California licenses.

In response to Ms. Earley's question on whether or not California has the highest number of PA programs within the US, Mr. Grant responded, no, but California does have the highest number of applicants.

In response to Mr. Martinez's question on programs available in the San Diego area, Mr. Grant stated that there is one current program and three developing programs.

16. Budget Sub-Committee Update on Evaluation of the Board's Budget and Current Processes

Mr. Martinez stated that he recently attended a meeting between Board staff and DCA Budget Office staff which was very informative. A specific note of interest is that if the execute officer and Board members have knowledge that the Board's budget is in the red they could be held financially liable. He reported that currently the Board's 15/16, 16/17 and 17/18 fiscal budgets are still open to accommodate vendors who have not submitted invoices for payment.

Ms. Schieldge stated Section 32 of the Budget Act includes a provision that says no officer of the board, department or agency can expend money in excess of the appropriation that they have been given. An office is created by statue and the positions in the Physician Assistant Practice Act are the executive officer and board members who are responsible for making sure the budget stays within the appropriation. The way indebtedness is created is when the Board fails to direct the executive officer to stop spending money after reviewing the budget report provided by the executive officer at each Board meeting. In response to a question by Mr. Martinez about accountability when Fi$Cal is not providing accurate budget detail, Ms. Schieldge provided that it is a rule of reasonableness. If the Board doesn't have all of the information it would be difficult, in her opinion, to hold the Board and executive officer responsible for spending beyond the appropriation.

Mr. Armenta asked what enforcement mechanism is in place. Ms. Schieldge stated that she only recalls seeing one situation where the Budget Office informed the

executive officer and Board that their budget was approaching the red resulting in the executive officer resigning and the Board not spending the money so enforcement wasn't needed. She stated one of the reasons the Board pays pro rata is so that the Budget Office can keep the Board informed. She stated there a variety of mechanisms for correcting imbalances, including to stop spending money, redirecting funds and seeking budget change proposals.

In response to Ms. Earley's question of if the Board received a budget increase for fiscal year 2017/2018, Ms. Forsyth responded yes, and a Budget Change Proposal has been submitted for fiscal year 2018/2019.

17. Budget Update

DCA Budget Office staff were unable to attend the Board meeting.

Ms. Forsyth reviewed, with the Board, the budget report provided by the Budget Office. She stated that the majority of expenditures involve the Office of Administrative Hearings, Attorney General's fees and investigation costs. The Board did receive a budget augmentation this year for the Attorney General and will move forward with requesting a subsequent request for 2018/2019 fiscal year.

Ms. Earley stated while she appreciates the cost efficiency of the Board's staff, she questioned our plan to support the projected growth of the California PA licensing population based on the information provided by the Education/Workforce Development Advisory Committee. Ms. Forsyth stated that she is looking into hiring more staff at the beginning of the next fiscal year and converting the part-time licensing technician position to full-time.

18. Report by the Legislative Committee

Ms. Valencia stated that she will only be providing an update on the bills the Board placed on the watch list.

- AB 1998 (Rodriguez); Opioids: Prescription Limitations
  This bill has been placed in the suspense file.

- AB 2078 (Daly); Sex offenses: Professional Services
  This bill has been placed in the suspense file.

- AB 2143 (Caballero) Mental Health: Licensed Service Provider Education Program
  This bill has moved out of the Appropriation Committee and is being held for a third reading.

- AB 2483 (Voepel) Department of Consumer Affairs: Office of Supervision of Occupational Boards
  This bill is dead.

- AB 2741 (Burke) Prescription Drugs: Opioid Medications: Minors
  This bill is dead.

- SB 1298 (Skinner) The Increasing Access to Employment Act
  This bill has been placed in the suspense file.

- AB 2138 (Chiu and Low) (2018) Licensing Boards: Denial of Application: Criminal Conviction

  The author is contemplating taking some additional amendments. Legal counsel has advised to consider appointing either the Board's Chair, Vice-Chair or Legislative Committee to stay engaged and discuss, with the executive officer, possible amendments.

  Ms. Schieldge stated AB 2138 proposes to create a standard whereby if you aren't convicted of a serious crime, as set forth in the Penal Code (which is not specified), there will be a presumption that you are rehabilitated seven years after being convicted. The issue is that current law doesn't have such a presumption. The Board is allowed to look at the conviction and the possible risk to public protection, no matter when it occurred and irrespective of the conviction being set aside. Under the proposed bill the Board would not be able to look at a conviction that has been set aside and the bill would significantly narrow the Board's ability to look at actions that may affect public safety when determining who should receive a license.

  Ms. Schieldge stated that this has been a policy that certain groups have pursued and it may go through. She asked whether the Board may want to authorize a specific Board member to continue to negotiate possible amendments and potentially change the Board's current position of opposed. She stated the value of delegating the negotiating responsibility to one person is that the Board may be able to make some significant inroads to addressing some significant public safety concerns. One of the concerns is that the bill's amendments prevent the Board from examining a conviction seven years from the date of the conviction.

  Ms. Schieldge stated current case law, looks at rehabilitation as the time frame that one is released from the command of the criminal justice system and not subject to any further criminal court order such as parole or probation. She suggested the following amendments:

  1) Amending the proposed bill to seven years from the release from prison, probation or parole not seven years from the date of conviction.

  2) Suggesting to the Legislature that they amend the bill so that the boards can define what other crimes should not be subject to the seven-year wash-out period because the proposed amendment only includes crimes concerning physical harm and not dishonest acts.

  3) Authorizing the Board to do emergency regulations so the Board can get the standards up and running. If the goal of the bill is to license more people and remove barriers to licensure then this will take longer if the Board doesn't have the ability to set the standards.

  4) To authorize the Board to allow applicants to voluntarily submit information relative to their criminal history so the Board can evaluate whether to deny

the license. The proposed bill would strike the Board's ability to ask whether someone has a criminal conviction on the application. This means that the Board would be dependent on information disclosed through a background check which may not contain complete information due to the reporting requirements of other states. How do you analyze someone's rehabilitation when information is provided on a rap sheet but you are prohibited from discussing it due to the bill?

5) The proposed bill strikes current law criteria that allows the Board to deny a license: 1) conviction of substantially related criminal conviction, 2) committed any act of dishonesty, 3) committed an act, as if you were a licensee, you would be disciplined for it. The only basis left for denial is a criminal conviction. She suggested seeking an amendment to restoring those criteria and limit it to other cases besides criminal convictions.

Ms. Earley asked if there is a difference between felony and misdemeanors and if the bill's passing would impact the application. Ms. Schieldge replied that there would not be a wash out period for a serious felony conviction and the conviction could be used unrestricted. However, all other convictions could not be examined after seven years. She also confirmed that all criminal convictions questions would have to be removed from the application if the bill passes.

Ms. Schieldge stated that this legislation comes out of the Little Hoover Commission Report to remove barriers from licensure.

Ms. Valencia stated that the bill has passed through Assembly to the Senate where it was held. The bill then continued to the Senate floor and back to the Assembly for concurrence.

Mr. Armenta asked what the California Medical Board's position is and Ms. Schieldge replied that they are opposed.

M/ Xavier Martinez S/ Mary Valencia to:

To authorize the Board's Vice-President to work with staff to negotiate amendments to this bill and authorize the Vice-President to consider changing the Board's position on the bill if the amendments are accepted.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Juan Armenta	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

Motion approved.

Ms. Valencia stated that one additional bill will be added to the next agenda which is SB 1338 that authorizes a physician assistant to certify additional energy allowances that are necessary under electric and natural gas medical base line programs for those with life threatening medical conditions who are on life support.

19. Agenda Items for the Next Meeting

1) Optimal Team Practice
2) Board Elections
3) AB 2138
4) SB 1338
5) AB 2143
6) Military Waiver
7) Budget Update
8) North Carolina State Board of Dental Examiner v. FTC

20. Discussion and Possible Approval of Physician Assistant Board's Revised 2019-2023 Strategic Plan

Mr. Martinez asked if the proposed Strategic Plan will suffice for the Audit Office. Mr. Grant replied that the Board was more specific with this Strategic Plan in setting benchmarks.

M/ Jed Grant S/ Charles Alexander to:

Accept the proposed 2019-2023 Strategic Plan.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Juan Armenta	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

Motion approved.

Adjournment

With no further business the meeting was adjourned at 11:30 a.m.

Minutes do not reflect the order in which agenda items were presented at the Board meeting.

AGENDA

ITEM

6

AGENDA ITEM 6C

Licensing Population by Type

Board Code: 950

Data as of: Oct 15, 2018 9:07:39 AM

Licensing Population by Status

			License Status													
			20	21	22	24	31	45	48	50	63	65	85	98	99	Total
			C	CI	CTFM	CP	FSS	D	S	CD	SD	R	DC	E	DL	
Licens	**License Type Long Name**	**Rank Short**														
9501	Physician Assistant	PA	12,492	39	1	1		1,775	2	3,295	86	77	75			**17,834**
Total			**12,492**	**39**	**1**	**1**		**1,775**	**2**	**3,295**	**86**	**77**	**75**	**0**	**0**	**17,834**

Oct 15, 2018 9:07:39 AM

Current	12,492
Inactive	39
Temp Fam Supp	1
Probation	1
Total Current Licenses	12,533

C - Current
CI - Current Inactive
CTFM - Current Temporary Family Support
CP - Current Probation
FSS - Family Support Suspension
D - Delinquent
S - Suspension
CD - Cancelled
SD - Surrendered
R - Revoked
DC - Deceased
E - Error
DL - Deleted

AGENDA ITEM 6C

Summary of Licensing Activity

Date Range: Between Jul 20, 2018 12:00 AM and Oct 15, 2018 11:59 PM

Run Date: Oct 16, 2018

License Type	License Type Long Name	Transaction Code	Transaction Description	Apps Received	Apps Approved	Renewed
9501	Physician Assistant	1020	Initial Application	409	386	
9501	Physician Assistant	2020	Renewal Application			1,422

License Type	License Type Long Name	Rank Short	Licenses Issued
9501	Physician Assistant	PA	386

AGENDA ITEM 6c

STATE OF CALIFORNIA

DEPARTMENT OF CONSUMER AFFAIRS

Pending Application Workload

Physician Assistant Board

Application Deficiency: Show All
Paid Applications Only: No
Include External Staff: Yes

Click here for complete raw data extract

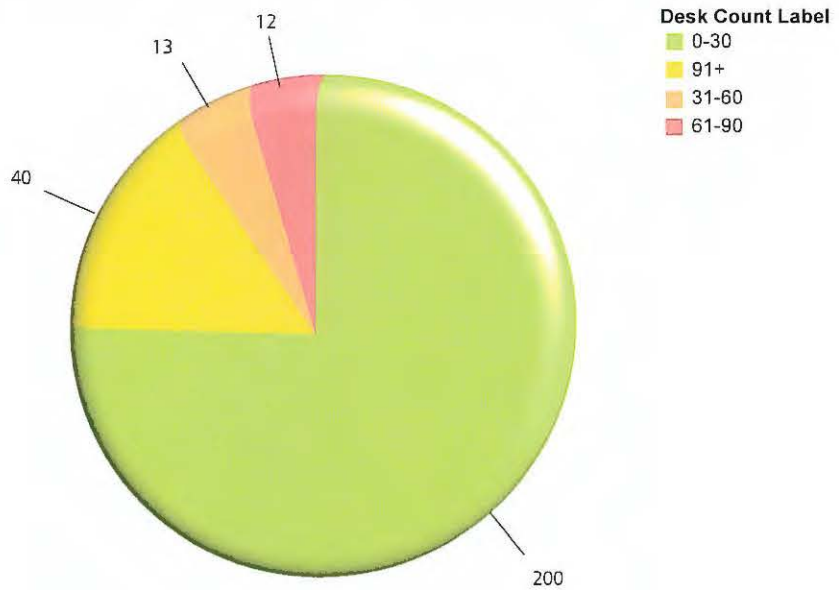
9501 - 1020
(PHYASSIST - Initial Application)

Staff Assigned	Application Count	Average Desk Age	Average Application Age
CALDWELL, JULIE	3	1	35
FLETCHER, SARAH	222	34	45
WINSLOW, ANITA	23	50	66
WEBUSER, WEBUSER	17	150	150
9501 - 1020 - Average		59	74
9501 - 1020 - Total	265		
Overall - Total	265		

Desk Age (Days)

License Type	Transaction Code	0-30	31-60	61-90	91+	Total
9501	1020	200	13	12	40	265
Overall - Total		200	13	12	40	265

Note: Desk Age volume includes only applications with assignment history



AGENDA ITEM 6C

STATE OF CALIFORNIA

DEPARTMENT OF CONSUMER AFFAIRS

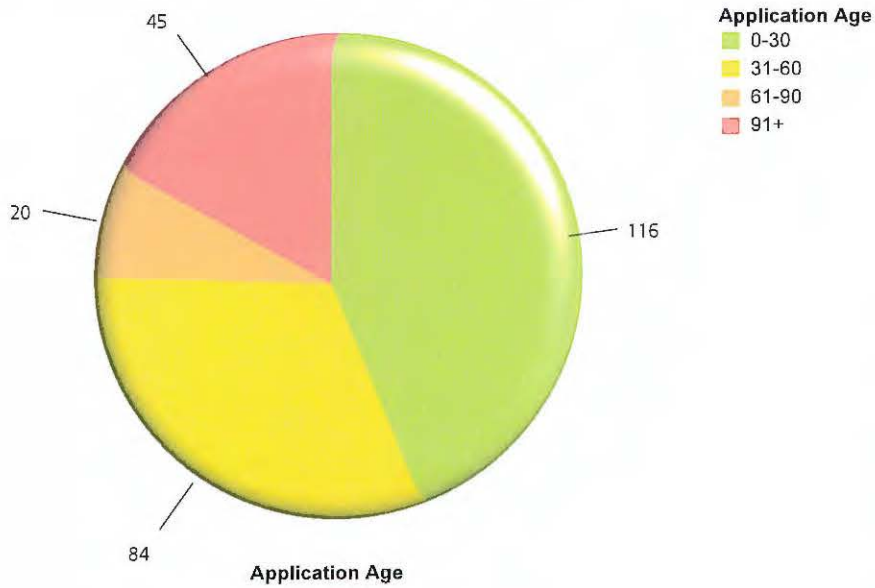
Pending Application Workload

Physician Assistant Board

Application Deficiency: Show All
Paid Applications Only: No
Include External Staff: Yes

Click here for complete raw data extract

Application Age (Days)						
License Type	Transaction Code	0-30	31-60	61-90	91+	Total
9501	1020	116	84	20	45	265
Overall - Total		116	84	20	45	265



AGENDA ITEM 6c

Licensing Performance Measures

Applications Approved Between Jul 20, 2018 12:00 AM and Oct 15, 2018 11:59 PM

Board Code: 950

Board Long Name: Physician Assistant Board

					COMPLETE APPLICATIONS		INCOMPLETE APPLICATIONS	
License Type	License Type Long Name	Transaction Code	Transaction Description	Target	Count	Processing Time	Count	Processing Time
9501	Physician Assistant	1020	Initial Application	20	69	38	317	64

Exceeds target **Exceeds target by 50-99%**

REPORT DETAIL - ALL

Report Comments:

none

AGENDA ITEM 6d

PHYSICIAN ASSISTANT BOARD
DIVERION PROGRAM

ACTIVITY REPORT

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

	As of October 1, 2018	As of October 1, 2017	As of October 1, 2016
Voluntary referrals	0	4	5
Board referrals	11	13	09
Total number of Participants	11	17	14

HISTORICAL STATISTICS

(Since program inception: 1990)

Total intakes into program as of October 1, 2018:	148
Closed Case as of October 1, 2018	
• Applicant Not Accepted	2
• Applicant Public Risk	5
• Applicant Withdrawn	11
• Clinically Inappropriate	23
• Completed	54
• Not eligible	2
• Terminated	26
• Withdrawn	14
Total closed cases	137

AGENDA ITEM 6e

Physician Assistant Board
Complaints Received by Type and Source

Fiscal Year 2018-2019*									
	Fraud	Health & Safety[1]	Non-Jurisdictional[2]	Gross Negligence/ Incompetence[3]	Other Category	Personal Conduct[4]	Unprofessional Conduct[5]	Unlicensed/ Unregistered	Total
Public	0	0	9	38	0	0	13	1	61
B&P Code[6]	0	0	0	3	0	0	0	0	3
Licensee/Prof. Group[7]	0	2	4	0	1	0	1	0	8
Government Agency[8]	0	4	0	0	0	10	10	0	24
Misc./Anonymous	0	4	3	5	0	2	2	1	17
Totals	0	10	16	46	1	12	26	2	113

Fiscal Year 2017-2018									
	Fraud	Health & Safety[1]	Non-Jurisdictional[2]	Gross Negligence/ Incompetence[3]	Other Category	Personal Conduct[4]	Unprofessional Conduct[5]	Unlicensed/ Unregistered	Total
Public	2	16	13	189	1	0	40	8	269
B&P Code[6]	0	0	0	19	0	5	1	0	25
Licensee/Prof. Group[7]	0	4	8	3	0	3	5	0	23
Government Agency[8]	0	9	0	13	2	27	73	2	126
Misc./Anonymous	1	7	5	20	7	0	6	3	49
Totals	3	36	26	244	10	35	125	13	492

1. Health and Safety complaints, e.g., excessive prescribing, sale of dangerous drugs, etc.
2. Non-jurisdictional complaints are not under the authority of the Board and are referred to other agencies such as the Department of Health Care Services, Department of Managed Health Care, etc.
3. Gross Negligence/Incompetence complaints are related to the quality of care provided by licensees.
4. Personal Conduct complaints, e.g., licensee self-abuse of drugs/alcohol, conviction of a crime, etc.
5. Unprofessional Conduct complaints include sexual misconduct with patients, discipline by another state, failure to release medical records, etc.
6. Reference is to B&P Code §800 and §2240(a) and includes complaints initiated based upon reports submitted to the Board by hospitals, insurance companies and others, as required by law, regarding instances of health facility discipline, malpractice judgments/settlements, or other reportable activities. Verify sections do we need to include B&P Code § 2510 and B&P Code § 2216.3. Look at 'M' source code.
7. Licensee/Professional Group includes the following complaint sources: other Licensee, Society/Trade Organization, and Industry.
8. Governmental Agency includes the following complaint sources: Internal, Law Enforcement Agency, other California State Agency, other State, other Unit of Consumer Affairs, and Federal or other Governmental Agency.

*July 1, 2018 through September 30, 2018

PHYSICIAN ASSISTANT BOARD
ENFORCEMENT ACTIVITY REPORT
JULY 1, 2018 TO SEPTEMBER 30, 2018

COMPLAINTS - INTAKE	
113	RECEIVED
110	ASSIGNED TO DESK ANALYST* *
10	PENDING AT INTAKE

COMPLAINTS AND INVESTIGATIONS	
19	COMPLAINTS REFERRED FOR INVESTIGATION
106	COMPLAINTS AND INVESTIGATIONS CLOSED* *
102	COMPLAINTS PENDING AT DESK ANALYST* *
82	INVESTIGATIONS PENDING AT FIELD* *
356	AVERAGE AGE OF PENDING INVESTIGATIONS* *
37	INVESTIGATION OVER 8 MONTHS OLD

SUSPENSIONS	
1	AUTOMATIC SUSPENSION ORDER
0	CEASE PRACTICE ORDER
2	INTERIM SUSPENSION ORDER/PC23

OFFICE OF ATTORNEY GENERAL CASES	
7	CASES INITIATED
34	CASES PENDING* *
499	AVERAGE AGE OF PENDING CASES* *

FORMAL ACTIONS FILED/WITHDRAWN/DISMISSED	
5	ACCUSATION FILED
0	ACCUSATIONS WITHDRAWN/DISMISSED
0	STATEMENT OF ISSUES FILED
0	STATEMENT OF ISSUES WITHDRAWN/DISMISSED
0	ACCUSATION AND/OR PETITION TO REVOKE PROB. FILED
0	PETITION TO COMPEL PHYSICAL/PSYCHIATRIC EXAM

** *MAY INCLUDE CASES RECEIVED IN PREVIOUS QUARTERS*

ADMINISTRATIVE OUTCOMES/FINAL ORDER	
0	LICENSE APPLICATION DENIED
2	PROBATION
1	PUBLIC REPROVAL
1	REVOCATION
1	SURRENDER
1	PROBATIONARY LICENSE ISSUED
0	PETITION FOR REINSTATEMENT DENIED
0	PETITION FOR REINSTATEMENT GRANTED
0	PETITION FOR TERMINATION OF PROB. DENIED
1	PETITION FOR TERMINATION OF PROB. GRANTED
0	OTHER

CURRENT PROBATIONERS	
58	ACTIVE
5	TOLLING

CITATIONS AND FINES	
PREVIOUS QTR. (APRIL 1, 2018 TO JUNE 30, 2018)	
13	PENDING
$4,500	FINES DUE
CURRENT QTR. (JULY 1, 2018 TO SEPTEMBER 30, 2018)	
4	ISSUED
0	WITHDRAWN
1	RESOLVED/CLOSED
0	SENT TO AG/NONCOMPLIANCE
3	PENDING
$1,750	FINES ISSUED
$0	FINES WITHDRAWN
$250	FINES RECEIVED
$6,000	FINES DUE FROM PREVIOUS & CURRENT QTR.

AGENDA

ITEM

8

NCCPA Exam Development and Scoring

NCCPA's exam questions are developed by committees comprising PAs and physicians selected based on both their item writing skills, experience and demographic characteristics (i.e., practice specialty, geographic region, practice setting, etc.). The test committee members each independently write a certain number of test questions or items, and then, each item then goes through an intense review by content experts and medical editors from which only some items emerge for pre-testing. Every NCCPA exam includes both scored and pre-test items, and examinees have no way of distinguishing between the two. This allows NCCPA to collect important statistics about how the pre-test items perform on the exam, which informs the final decision about whether a particular question meets the standards for inclusion as a scored item on future PANCE or PANRE exams.

When NCCPA exams are scored, candidates are initially awardee 1 point for every correct answer and 0 points for incorrect answers to produce a raw score. After examinees' raw scores have been computed by two independent computer systems to ensure accuracy, the scored response records for PANCE and PANRE examinees are entered into a maximum likelihood estimation procedure, a sophisticated, mathematically-based procedure that uses the difficulties of all the scored items in the form taken by an individual examinee as well as the number of correct responses to calculate that examinee's proficiency measure. This calculation is based on the *Rasch model* and equates the scores, compensating for minor differences in difficulty across different versions of the exam. Thus, in the end, all proficiency measures are calculated as if everyone took the same exam.

Finally, the proficiency measure is converted to a scaled score so that results can be compared over time and among different groups of examinees. The scale is based on the performance of a reference group (some particular group of examinees who took the exam in the past) whose scores were scaled so that the average proficiency measure was assigned a scaled score of 500 and the standard deviation was established at 100. The minimum reported score is 200, and the maximum reported score is 80.

We do not publish the percent correct level necessary to pass our examinations any more. Given that we have multiple test forms this information would not be accurate since some test forms, while built to be exactly the same, are slightly different in their difficulty. Therefore, we convert the percent correct to a scaled score and report scores and the passing standard on that scale.

LICENSING
INITIAL LICENSING EXAMINATION

PASSING SCORE

Business and Professions Code section 3517 provides in pertinent part:

> "The board shall, however, establish a passing score for each examination."

Motion to approve the passing score for the physician assistant initial licensing examination for year 2019 as established by the National Commission on Certification of Physician Assistants.

DATES AND LOCATIONS

Business and Professions Code section 3517 provides in pertinent part:

> "The time and place of examination shall be fixed by the board."

Motion to approve the dates and locations for the physician assistant initial licensing examination for year 2019.

Dates: The examination is given on a year-round basis. There will be no testing December 17-31, 2019.

Locations: Pearson VUE Professional Centers.

AGENDA ITEM 9

AGENDA ITEM 9

MEETING DATES FOR 2019

January 21st or 28th (Mondays)

April 22nd or 29th (Mondays)

August 9th (Friday at CAPA Conference san Diego)

October 28th or Nov 4th (Mondays – Nov 11th is Veterans Day)

MEDICAL BOARD MEETING DATES

January 31 – Feb 1st – Northern California Area

May 9th – 10th – Southern California Area

August 8th – 9th – San Francisco Area

Nov 7th – 8th – Southern California Area

AGENDA ITEM 9

2019

January

Su	M	Tu	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

February

Su	M	Tu	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

March

Su	M	Tu	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

April

Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

May

Su	M	Tu	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

June

Su	M	Tu	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

July

Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

August

Su	M	Tu	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

September

Su	M	Tu	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

October

Su	M	Tu	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

November

Su	M	Tu	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

December

Su	M	Tu	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Holidays & Observances

Jan 01	New Year's Day
Jan 21	Martin Luther King Day
Feb 05	Chinese New Year
Feb 12	Lincoln's Birthday
Feb 14	Valentine's Day
Feb 18	President's Day
Mar 06	Ash Wednesday
Mar 10	Daylight Saving (begin)
Mar 17	St. Patrick's Day
Mar 20	Vernal equinox
Apr 01	April Fool's Day
Apr 20	Passover
Apr 21	Easter
Apr 24	Admin Assistants Day
May 06	Ramadan begins
May 12	Mother's Day
May 27	Memorial Day
Jun 09	Pentecost
Jun 14	Flag Day
Jun 16	Father's Day
Jun 21	June Solstice
Jul 04	Independence Day
Sep 02	Labor Day
Sep 23	Autumnal equinox
Sep 30	Rosh Hashanah
Oct 14	Columbus Day
Oct 31	Halloween
Nov 03	Daylight Saving (end)
Nov 11	Veterans Day
Nov 28	Thanksgiving
Dec 22	Hanukkah begins
Dec 22	December Solstice
Dec 25	Christmas Day
Dec 26	Kwanzaa begins
Dec 31	New Year's Eve

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AGENDA

ITEM

12

CONGRESS.GOV

AGENDA ITEM 12

H.R.6515 - Occupational Licensing Board Antitrust Damages Relief and Reform Act of 2018

115th Congress (2017-2018) | Get alerts

Sponsor: Rep. Conaway, K. Michael [R-TX-11] (Introduced 07/25/2018)
Committees: House - Judiciary; Education and the Workforce
Latest Action: House - 10/01/2018 Referred to the Subcommittee on Regulatory Reform, Commercial And Antitrust Law. (All Actions)
Tracker: **Introduced** Passed House Passed Senate To President Became Law

Summary(0) **Text(1)** Actions(4) Titles(2) Amendments(0) Cosponsors(1) Committees(2) Related Bills(1)

There is one version of the bill.

Text available as: XML/HTML | XML/HTML (new window) | TXT | PDF (PDF provides a complete and accurate display of this text.) ?

Shown Here:
Introduced in House (07/25/2018)

115TH CONGRESS
2D SESSION

H. R. 6515

To limit private antitrust damages against occupational licensing boards, to promote beneficial reforms of State occupational licensing, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2018

Mr. CONAWAY introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To limit private antitrust damages against occupational licensing boards, to promote beneficial reforms of State occupational licensing, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America Congress assembled, AGENDA ITEM 12

SECTION 1. SHORT TITLE.

This Act may be cited as the "Occupational Licensing Board Antitrust Damages Relief and Reform Act of 2018".

SEC. 2. DEFINITIONS.

In this Act:

(1) CERTIFICATION.—The term "certification" means a voluntary program under which—

(A) a private organization (in the case of private certification) or the government of a State (in the case of government certification) authorizes an individual who meets certain personal qualifications to use "certified" as a designated title with respect to the performance of a lawful occupation; and

(B) a noncertified individual may perform the lawful occupation for compensation but may not use the title "certified".

(2) MEMBER, OFFICER, EMPLOYEE, OR AGENT.—The term "member, officer, employee, or agent", with respect to an occupational licensing board, means an individual appointed by, to, or employed by the occupational licensing board.

(3) OCCUPATIONAL LICENSE.—The term "occupational license" means a nontransferable authorization under law for an individual to perform a lawful occupation for compensation based on meeting personal qualifications established by the State government.

(4) OCCUPATIONAL LICENSING BOARD.—The term "occupational licensing board" or "board" means an entity established under State law—

(A) the express purpose of which is to regulate the personal qualifications required to engage in or practice a particular lawful occupation; and

(B) that has authority conferred by State law to interpret or enforce the occupational regulations of the State.

(5) OCCUPATIONAL REGULATION.—The term "occupational regulation"—

(A) means a statute, rule, regulation, practice, policy, or law that sets educational, examination, training and/or experience requirements to authorize an individual to work in a lawful occupation;

(B) includes any statute, rule, regulation, practice, policy, or law requiring certification or an occupational license; and

(C) does not include a business license, facility license, building permit, or zoning and land use regulation except to the extent that such a requirement or restriction substantially burdens an individual's ability to work in a lawful occupation.

(6) WIDELY REGULATED OCCUPATION.—The term "widely regulated occupation" means an occupation in which forty (40) or more States require an occupational license to engage in such occupation.

(7) STATE.—The term "State" means each of the several States, the District of Columbia, and any territory or possession of the United States.

AGENDA ITEM 1

SEC. 3. PRIVATE ANTITRUST DAMAGES.

(a) IN GENERAL.—No damages, or interest on damages, may be recovered under section 4, 4A or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) by any person, except for any State, instrumentality of a State, or employee of a State or instrumentality of a State acting in his or her official capacity, from an occupational licensing board, or any member, officer, employee, or agent of a board, acting in their official capacity, if—

(1) the State—

(A) has enacted a law requiring an occupational license to practice the lawful occupation regulated by the occupational licensing board;

(B) has set forth criteria outlining any personal qualifications necessary to obtain an occupational license and has required that licensees adhere to standards of practice and ethical standards in the performance of regulated lawful occupations; and

(C) has found that—

(i) the public needs, and can be reasonably expected to benefit from, occupational licensing of the lawful occupation; and

(ii) the unlicensed conduct of the lawful occupation would harm or endanger the health, safety, or welfare of the public;

(2) an occupation licensed by an occupational licensing board—

(A) is a widely regulated occupation; or

(B) (i) is not a widely regulated occupation and the State has implemented a periodic sunset review process of the occupational licensing board with regard to that occupation; and (ii) if previously unregulated by the State, the State has implemented a sunrise review process of the occupational licensing board with regard to its regulation of that newly-licensed occupation;

(3) the chief executive, legislature, or other elected officer of the State—

(A) has appointed all members of the occupational licensing board; and

(B) has required public representation on the occupational licensing board; and

(4) the State or the occupational licensing board has established a mechanism under which any person aggrieved by an action of the occupational licensing board has the right to—

(A) contest such action at a hearing before the occupational licensing board at which the individual may provide evidence, argument, and analysis;

(B) review, at a reasonable time before the hearing, all evidence that the occupational licensing board has gathered relating to the contested action;

(C) receive a final reasoned decision in writing from the occupational licensing board within a reasonable period after the hearing; and

AGENDA ITEM 12

(D) appeal an adverse decision of the occupational licensing board to an independent adjudicator, including judicial review.

(b) APPLICABILITY.—This section shall not apply to any case commenced before the date of enactment of this Act, unless it would be inequitable not to apply this section to a pending action.

(c) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to modify or impair the applicability or availability of—

(1) relief pursuant to section 4A or 4C of the Clayton Act (15 U.S.C. 15a, 15c);

(2) injunctive relief pursuant to section 16 of the Clayton Act (15 U.S.C. 26);

(3) equitable monetary or injunctive relief pursuant to section 13(b) of the Federal Trade Commission Act (15 U.S.C. 53(b)); or

(4) the ability of any person to recover the cost of the suit, including a reasonable attorney's fee, under section 4 of the Clayton Act (15 U.S.C. 15).

(d) SAVINGS CLAUSE.—The immunity from damages, or interest on damages, that is provided to members, officers, employees, or agents of an occupational licensing board of a State under subsection (a) shall not apply to any action unrelated to their official capacity, such as implementing rules governing minimum prices or fees.

SEC. 4. STATE LICENSING STUDIES TO BE CONDUCTED.

Not later than 120 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on—

(1) how States can best address occupational licensing reform, particularly for those occupations that are not directly related to protecting the health, safety, or welfare of the public, including recommendations on how States can weigh the costs and benefits of occupational licensing against those of less restrictive alternatives, such as certification and other approaches;

(2) how States can conduct comprehensive cost-benefit assessments of occupational regulations and occupational licensing boards through sunrise reviews and periodic sunset reviews;

(3) how States can implement policies to support occupational licensing uniformity and occupational license portability, including streamlined licensing portability programs for veterans and military service members and spouses; and

(4) how occupational licensing requirements affect low-income workers, the unemployed, immigrants with work authorizations, and individuals with criminal records.

SEC. 5. RULE OF CONSTRUCTION.

Except as provided in section 3, nothing in this Act shall be construed to modify or impair the applicability or the enforcement of the antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12).

AGENDA

ITEM

14

Regulation Summary

Regulation Number	Title	Action	Description	45-Day to DCA for Agency Approval	45-Day from Agency	OAH 45-day Notice	Hearing Date	Final Agency Review	OAL Final Filing	Effective Date	Notes
1399.513	Military Personnel Renewal Fee Exemption	Adopt	BPC 114.3 allows for all renewal requirements to be waived for all active duty military personnel.								
1399.513.5	Conversion of License from Military Active Status to Active Status	Adopt	Requirements for licensee to implement a current status of license from military active status.								
1399.514	Renewal of License	Amend	Increases violation reporting threshold to $500.	5/15/2017 to Agency 4/20/2018	5/22/2018	To OAL 6/5/2018 publication date 6/15/2018	8/10/2018	To DCA 8/20/2018 to Agency 10/1/2018			Agency approved will submit to OAL before 11/30/2018 for an effective date of 1/1/2019
1399.515	Retired Status	Adopt	Allows for retirement status of PAs, including the required form.	4/18/2017 to Agency 3/29/18	5/10/2018	To OAL 6/5/2018 publication date 6/15/2018	8/10/2018	To DCA 9/6/2018 to Agency 10/15/2018			Waiting for Agency approval
1399.531	Curriculum Requirements for an Approved Program	Repeal	This is no longer needed if 1399.532 is repealed as this regulation is a list of courses for primary care PAs.	2/17/2017 to Agency 11/22/2017	1/18/2018	To OAL 1/30/2018 publication date 2/9/2018	4/23/2018	Sent 5/14/2018	7/19/2018	10/1/2018	Approved by OAL and filed with the Secretary of State

Regulation Number	Title	Action	Description	45-Day to DCA for Agency Approval	45-Day from Agency	OAH 45-day Notice	Hearing Date	Final Agency Review	OAL Final Filing	Effective Date	Notes
1399.532	Requirements for an Approved Program for the Specialty Training of PAs	Repeal	The board does not need to approve post-graduate programs already monitored by a national accreditation agency.	2/17/2017 to Agency 11/22/2017	1/18/2018	To OAL 1/30/2018 publication date 2/9/2018	4/23/2018	Sent 5/14/2018	7/19/2018	10/1/2018	Approved by OAL and filed with the Secretary of State
1399.545	Supervision Required	Amend	Conform regulation to the implementation of SB 337 as it relates to chart review.								Notice, ISR and STD399 - fiscal impact completed and sent to MBC 7/17/2018. MBC will file Notice, hold reg hearing, and submit to OAL for filing
1399.573	Citations for Unlicensed Practice	Amend	Allows for the EO to issue citations and fines to those who have never been licensed, and are not exempt from licensure, and are holding or have held themselves out as a physician assistant.	1/4/2017 to Agency 5/12/2017	12/18/2017	To OAL 1/30/2018 Publication date 2/9/2018	4/23/2018	Sent 5/14/2018	7/19/2018	10/1/2018	Approved by OAL and filed with the Secretary of State
1399.617	Audit & Sanctions for Noncompliance	Amend	Includes a fine for failure to respond to the CME audit letter and defines unprofessional conduct as it relates to CME noncompliance	3/6/2018 to Agency 10/15/2018							Awaiting budget management approval.

AGENDA

ITEM

16

AGENDA ITEM 16

0280 - Physician Assistant Fund
Analysis of Fund Condition

Prepared 10/16/18

(Dollars in Thousands)

NOTE: $1.5 Million GF Loan Repayment Outstanding

Budget Act of 2018

	PY 2017-18	CY 2018-19	BY 2019-20	BY + 1 2020-21
BEGINNING BALANCE	$ 1,870	$ 2,248	$ 2,376	$ 2,622
Prior Year Adjustment	$ -	$ -	$ -	$ -
Adjusted Beginning Balance	$ 1,870	$ 2,248	$ 2,376	$ 2,622
REVENUES AND TRANSFERS				
Revenues:				
4121200 Delinquent fees	$ 4	$ 4	$ 4	$ 4
4127400 Renewal fees	$ 1,656	$ 1,668	$ 1,802	$ 1,802
4129200 Other regulatory fees	$ 16	$ 12	$ 13	$ 13
4129400 Other regulatory licenses and permits	$ 286	$ 272	$ 286	$ 286
4163000 Income from surplus money investments	$ 20	$ 35	$ 39	$ 42
Total Revenues	$ 1,982	$ 1,991	$ 2,144	$ 2,147
Total Revenues, Transfers, and Other Adjustments	$ 1,982	$ 1,991	$ 2,144	$ 2,147
Total Resources	$ 3,852	$ 4,239	$ 4,520	$ 4,769
EXPENDITURES				
Disbursements:				
1111 Department of Consumer Affairs Program Expenditures (State Operations)	$ 1,511	$ 1,744	$ 1,779	$ 1,815
8880 Financial Information System for California (State Operations)	$ 2	$ -	$ -	$ -
9892 Supplemental Pension Payments (State Operations)	$ -	$ 9	$ 9	$ 9
9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations)	$ 91	$ 110	$ 110	$ 110
Total Expenditures and Expenditure Adjustments	$ 1,604	$ 1,863	$ 1,898	$ 1,934
FUND BALANCE				
Reserve for economic uncertainties	$ 2,248	$ 2,376	$ 2,622	$ 2,835
Months in Reserve	14.5	15.0	16.3	17.3

NOTES:

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

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

C. ASSUMES INTEREST RATE AT 1.5%.

D. PY 2017-18 BASED ON PRELIMINARY FM 12 REPORTS

AGENDA

ITEM

17

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

PHYSICIAN ASSISTANT BOARD
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AGENDA ITEM 11

August 14, 2018

The Honorable David S. Chiu
California State Assembly
State Capitol, Room 4112
Sacramento, CA 95814

The Honorable Evan Low
California State Assembly
State Capitol, Room 4126
Sacramento, CA 95814

RE: AB 2138, requested amendments and possible change of OPPOSE position (June 20, 2018 version)

Dear Honorable Members of the Legislature:

The Physician Assistant Board (Board) has taken an oppose position on Assembly Bill (AB) 2138. The Board recognizes that physician assistants have access to consumers' most private and sensitive information and are entrusted with the very serious responsibility of a consumer's health, affecting consumers very lives. The Board has concerns that the bill, as currently drafted, may place the public at considerable risk of harm and prevent the Board from achieving its primary mission, which is protection of the public.

However, at the Board's August 10, 2018 meeting, the Board voted to authorize me to negotiate with representatives from the Legislature regarding possible amendments to the bill to address the Board's primary concerns as well as consider changing the Board's position if certain amendments are made.

Upon review of the Senate's June 20, 2018 amendments, the Board has the following primary concerns with this bill, which could be addressed by the following amendments:

(1) ***Amend Subsection(a)(1), consistent with current laws regarding rehabilitation and authorize the Board to determine what the Board considers serious crimes.***

To ensure public protection, rehabilitation time should not be credited when an applicant is not free from the command of the criminal justice system. Also, the list of crimes exempt from the seven-year limitations period does not cover all crimes the Board has traditionally viewed as a

risk to public safety (see attached analysis). Proposed amendments to address these concerns, include:

SEC. 2.
Section 480 of the Business and Professions Code is amended to read:
480.
(a) ~~(1)~~Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if ~~either~~ any of the following conditions are met:
(1) The applicant has been convicted of a crime ~~for which the applicant is presently incarcerated or for which the conviction occurred within the preceding seven years~~. No applicant shall be denied a license pursuant to this subdivision if more than seven years have passed from the date of the applicant's release from incarceration or completion of criminal probation or parole, whichever time period is later. However, the preceding seven-year limitation shall not apply under the following circumstances: (i) if additional criminal activity occurs subsequent to the conviction, (ii) to a conviction for a serious felony as defined in Sections 1192.6 or 1192.7 of the Penal Code, or (iii) to a serious crime as defined by board regulation.

(2) ***Restore Business and Professions Code sections 480(a)(2), (a)(3)***.

Honesty and safety are core functions and responsibilities of the profession. Some acts that are dishonest or grounds for discipline for a licensee do not involve criminal convictions, but nonetheless place the public at risk (see attached examples). Proposed amendments would include adding the following back to Section 480(a):

SEC.2:

(3) The applicant has done any act, other than an act covered by subsection (a)(1), involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another, or done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of a license.

(3) ***Restore the ability to inquire into an applicant's criminal history and rehabilitation evidence***.

A complete criminal background check cannot be conducted to determine whether grounds for denial or a probationary license is warranted without some contact with the applicant on this issue. Without this information, time for the processing of the application will increase as well as the likelihood of not achieving a carefully decided or fair outcome due to the inability to obtain possible mitigating or rehabilitative evidence from the applicant. Proposed amendments would include:

SEC 2.:

(f) A board shall follow the following procedures in requesting or acting on an applicant's criminal history information:

(1) A board ~~shall not~~ may ~~require~~ request that an applicant for licensure ~~to~~ disclose ~~any~~ information or documentation regarding the applicant's criminal history in order to determine whether the crime is substantially-related to the qualifications, functions or duties of the license, fix the term of a probationary license, or to fully consider the applicant's evidence of mitigation or rehabilitation.

(4) ***Restore the ability to inquire into a licensee's criminal conviction to determine whether it is substantially-related to the profession and properly consider discipline***.

The same provisions authorizing consideration of the facts and circumstances applicable to convictions for applicants should be restored for licensees in Section 6 of the bill. Section 493 currently allows the Board to consider all evidence and facts in order to fix the degree of discipline and determine whether the crime is substantially-related to the practice.[1] However, this bill is proposing to remove such discretion, which can have adverse consequences, as explained above, on both licensees and applicants. Removal of this authority appears to restrict the Board's ability to ask for this information for both licensees and applicants, which would impede the Board's ability to fairly weigh the conviction against the individual's case for rehabilitation. This could result in delayed processing of both applications and licensee discipline as well as increase the likelihood that more adverse action may be taken without the complete information from the best source: the applicant or licensee. Proposed amendments should include, as follows:

SEC. 6:

Business and Professions Code section 493.

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

(5) ***Add Delayed Implementation and Emergency Regulation Authority***.

Many of the changes proposed by this bill would necessitate extensive programmatic and regulatory changes. As a result, the Board is requesting delayed implementation of three (3) years, as well as emergency regulation authority be added to the bill to allow the Board to amend the scope of any regulations going forward. This would permit the Board to address any urgent public health and safety issues created by new crimes that may come to the Board's attention and fairly and timely develop and implement proposed regulations for the protection of the public.

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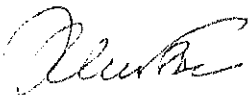
[1] "It merely assures the licensee and the public that the hearing officer in the first instance and the court thereafter will have sufficiently reliable information to properly exercise discretion in the weighing process necessary to reach a fair decision." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 457.)

Should you have any questions regarding this letter or our position, please contact Executive Officer Lynn Forsyth at (916) 561-8785.

Sincerely,



Jed Grant
Physician Assistant Board Vice President

PAB

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

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PHYSICIAN ASSISTANT BOARD DATA ON DENIED APPLICATIONS

Since Fiscal Year 2013/2014, the Physician Assistant Board (PAB) has approved 4,501 applications for PA licensure. During that time period, 99.9 percent of PA applicants with a criminal history were granted a license.

Fiscal Year	Approved PA Applications	Criminal History Identified	Applications with Criminal History Denied	Applications Denied Licensure
2013-14	527	70	1	0.2%
2014-15	870	143	1	0.1%
2015-16	942	54	1	0.1%
2016-17	1065	158	0	0.0%
2017-18	1097	174	1	0.1%
TOTAL	**4501**	**599**	**4**	**0.1%**

Below are highlights of some applicants denied licensure that the PA Board would be unable to deny or restrict under AB 2138:

- Applicant was a 2013 graduate of a PA Program and passed the national examination early in 2014 thus making him eligible to obtain a California PA license. Prior to obtaining his PA license he was observed exiting n exam room wearing a white coat and stethoscope around his neck. It was later verified that he had been seeing patients while unlicensed. He was not arrested by the local police but a complaint was filed with the board. The initial application was denied based upon the applicant's dishonest acts and misrepresenting his license status to patients, a violation of the Medical Practice Act and Section 480 of the Business and Professions Code. Four years later, the applicant re-applied and the Board agreed to issue the applicant a probationary license subject to terms and conditions.

- A license applicant (Applicant) applied for a California PA License on November 4th, 2013. On November 22, 2013 The Texas Board of PAs accepted the Applicants surrender of licensure, thus permanently cancelling the license and prohibiting practice in Texas based on the determination that the Applicant has violated Texas law governing the practice of physician assistants, and federal law prohibiting the introduction into interstate commerce of misbranded or adulterated food, drugs, or devices. In particular, from April 2011 to 2012, the Applicant had performed cosmetic procedures on approximately 40 to 50 patients, using products not approved by the federal Food and Drug Administration. The injectables came from an online Canadian supplier and did not have FDA

approval. Following an Administrative Law hearing, a Decision and Order was adopted on July 24, 2015 for denial of licensure.

- An Applicant had a temporary license in another state. That board gave the applicant the opportunity to withdraw the application or have it denied. The Applicant was fired from his position for drinking at 7:00 am just prior to starting his work shift. The Applicant was charged with unprofessional conduct during clinical rotation. The application was denied based on Out of State discipline, dishonesty (B&P 480 (a)(2), misuse of alcohol/mental condition that may impair the ability to practice medicine safely (B&P 480 (a)(3) (B&P 822)).

- The Board received an application for licensure in July 2017. The Applicant was licensed in Georgia, Maryland and the District of Columbia with unrestricted PA licenses. During the licensing process the Board discovered that the Applicant had been arrested and convicted of possession of cocaine with intent to sell, threaten bodily harm, possession of an unregistered gun, criminal trespass. On the application the only convictions disclosed were for possession of a handgun and threatening bodily harm. These convictions dated back to 2004 and the applicant assumed they would not be held against the application for licensure. Each application is evaluated on a case-by-case basis. The Board considers whether the conviction is substantially related to the qualifications, functions, or duties of a physician assistant, the nature and severity of the acts, evidence of rehabilitation, and the time elapsed since the commission of the acts.

- In March 2017, the Board received an application with seven (7) convictions. Reckless endangerment, negligent driving, malicious mischief 3rd degree, reckless driving – amended to negligent driving, criminal trespass 2nd degree, reckless driving, driving with suspended license 3rd degree and making false statement to public official. The Applicants Texas license was revoked and the Washington State license was suspended. The Applicant was arrested and convicted on all charges. Applicant was denied licensure.

AB 710

STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Assembly Bill No. 710

CHAPTER 62

An act to add Section 26002 to the Business and Professions Code, and to add Section 11150.2 to the Health and Safety Code, relating to controlled substances, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 9, 2018. Filed with Secretary of State July 9, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 710, Wood. Cannabidiol.

Existing law, the California Uniform Controlled Substances Act, classifies controlled substances into 5 designated schedules, with the most restrictive limitations generally placed on controlled substances classified in Schedule I, and the least restrictive limitations generally placed on controlled substances classified in Schedule V. Existing law designates cannabis in Schedule I. Cannabidiol is a compound contained in cannabis.

Existing law restricts the prescription, furnishing, possession, sale, and use of controlled substances, including cannabis and synthetic cannabinoid compounds, and makes a violation of those laws a crime, except as specified.

This bill, if one of specified changes in federal law regarding the controlled substance cannabidiol occurs, would deem a physician, pharmacist, or other authorized healing arts licensee who prescribes, furnishes, or dispenses a product composed of cannabidiol, in accordance with federal law, to be in compliance with state law governing those acts. The bill would also provide that upon the effective date of one of those changes in federal law regarding cannabidiol, the prescription, furnishing, dispensing, transfer, transportation, possession, or use of that product in accordance with federal law is for a legitimate medical purpose and is authorized pursuant to state law.

Existing law, the Medicinal and Adult-Use Cannabis Regulation and Safety Act, regulates the cultivation, processing, and sale of medicinal and adult-use cannabis within the state.

This bill would expressly exclude from regulation under that act, any medicinal product composed of cannabidiol approved by the federal Food and Drug Administration and either placed on a schedule of the federal Controlled Substances Act other than Schedule I, or exempted from one or more provisions of that act.

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

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

SECTION 1. The Legislature finds and declares that both children and adults with epilepsy are in desperate need of new treatment options and that cannabidiol has shown potential as an effective treatment option. If federal laws prohibiting the prescription of medications composed of cannabidiol are repealed or if an exception from the general prohibition is enacted permitting the prescription of drugs composed of cannabidiol, patients should have rapid access to this treatment option. The availability of this new prescription medication is intended to augment, not to restrict or otherwise amend, other cannabinoid treatment modalities including, but not limited to, industrial hemp products and derivatives containing cannabidiol, currently available under state law.

SEC. 2. Section 26002 is added to the Business and Professions Code, to read:

26002. This division shall not apply to any product containing cannabidiol that has been approved by the federal Food and Drug Administration that has either been placed on a schedule of the federal Controlled Substances Act other than Schedule I or has been exempted from one or more provisions of that act, and that is intended for prescribed use for the treatment of a medical condition.

SEC. 3. Section 11150.2 is added to the Health and Safety Code, to read:

11150.2. (a) Notwithstanding any other law, if cannabidiol is excluded from Schedule I of the federal Controlled Substances Act and placed on a schedule of the act other than Schedule I, or if a product composed of cannabidiol is approved by the federal Food and Drug Administration and either placed on a schedule of the act other than Schedule I, or exempted from one or more provisions of the act, so as to permit a physician, pharmacist, or other authorized healing arts licensee acting within his or her scope of practice, to prescribe, furnish, or dispense that product, the physician, pharmacist, or other authorized healing arts licensee who prescribes, furnishes, or dispenses that product in accordance with federal law shall be deemed to be in compliance with state law governing those acts.

(b) For purposes of this chapter, upon the effective date of one of the changes in federal law described in subdivision (a), notwithstanding any other state law, a product composed of cannabidiol may be prescribed, furnished, dispensed, transferred, transported, possessed, or used in accordance with federal law and is authorized pursuant to state law.

(c) This section does not apply to any product containing cannabidiol that is made or derived from industrial hemp, as defined in Section 11018.5 and regulated pursuant to that section.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that patients are able to obtain access to a new treatment modality as soon as federal law makes it available, it is necessary that this act take effect immediately.

O

CONCURRENCE IN SENATE AMENDMENTS
AB 710 (Wood)
As Amended April 2, 2018
2/3 vote. Urgency

ASSEMBLY:	(May 11, 2017)	SENATE: 37-0	(June 14, 2018)
	(vote not relevant)		

Original Committee Reference: **B. & P.**

SUMMARY: Provides that if cannabidiol (CBD) is federally rescheduled or otherwise made a legally prescribable controlled substance, it shall also be legal to prescribe under state law. Specifically, **this bill**:

1) Finds and declares that cannabidiol (a cannabinoid derived from cannabis that does not produce a psychoactive "high") has been found effective to treat epilepsy, and that changes to federal laws generally prohibiting prescriptions of cannabis products are being contemplated to allow for cannabidiol medical treatments.

2) Exempts any cannabidiol product that has been approved by the federal Food and Drug Administration and federally rescheduled or otherwise made legally prescribable from the state's Medicinal and Adult-Use Cannabis Regulation and Safety Act, which provides for California's regulation of legalized cannabis.

3) Authorizes health practitioners and pharmacists to prescribe and dispense cannabidiol products that have been approved by the federal Food and Drug Administration and federally rescheduled or otherwise made legally prescribable, with the exception of products derived from industrial hemp, which is otherwise regulated.

4) Includes an urgency clause justified through the need to ensure that patients are able to obtain access to a new treatment modality as soon as federal law makes it available.

The Senate amendments deleted the contents of the bill that was previously voted on in the Assembly and inserted the provisions regarding cannabidiol.

EXISTING LAW:

1) Allows only a physician, dentist, podiatrist, veterinarian, naturopathic doctor, registered nurse, certified nurse-midwife, optometrist, or out-of-state prescriber to write or issue a prescription. (Health and Safety Code (HSC) Section 11150)

2) States that a prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice, and that the responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. (HSC Section 11153)

3) Enacts the Medicinal and Adult-Use Cannabis Regulation and Safety Act to provide for a comprehensive regulatory framework for the cultivation, distribution, transport, storage,

manufacturing, processing, and sale of medicinal and adult-use cannabis. (Business and Professions Code (BPC) Section 26000 et al.)

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

Purpose. This bill is sponsored by the Epilepsy Foundation of Greater Los Angeles. According to the author:

> Epilepsy is a medical condition that produces seizures affecting a variety of mental and physical functions. Approximately one in 26 Americans will develop epilepsy at some point in their lifetime. There is no "one size fits all" treatment option and about one million people live with uncontrolled or intractable seizures. Uncontrolled seizures can lead to disability, injury, and even death, and many individuals living with uncontrolled seizures suffer from rare epilepsies characterized by seizures that are difficult to treat with existing treatment options. Access to new treatments is particularly important for these individuals, who live with the continual risk of serious injuries and loss of life.
>
> The Food and Drug Administration (FDA) is currently reviewing at least one CBD derived therapy that shows promise for the treatment of rare epilepsy conditions. This potential treatment option has both "Orphan Drug Designation" and Fast Track Designation from the FDA. Given the Fast Track Designation, this potential treatment option could be available as soon as Summer 2018.
>
> Currently, any product that contains any material, compound, mixture, or preparation, which contains any quantity of marijuana is considered a Schedule I Controlled Substance unless specifically exempted. Under current law, should a product derived from CBD, like Epidiolex, be approved and rescheduled, it would still be considered a Schedule I substance under California statute and therefore could not be prescribed by a physician unless specifically exempted. Individuals suffering from these rare forms of epilepsy and those living with uncontrolled seizures would not be able to access the medication. AB 710 will ensure Californians with uncontrolled seizures have continued access to FDA approved epilepsy treatments derived from CBD.

Background.

Regulation of Cannabis in California. In the spring of 2017, SB 94 (Budget and Fiscal Review Committee), Chapter 27, reconciled the distinct systems for the regulation, licensing, and enforcement of cannabis established under the Legislature's Medical Cannabis Regulation and Safety Act (MCRSA) and Proposition 64, the Adult Use of Marijuana Act. The single consolidated system established by the bill—known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)—created a unified series of cannabis laws and deleted redundant code sections no longer necessary due to the combination of the two systems. MAUCRSA also clarified a number of components, including but not limited to licensing, local control, taxation, testing, and edibles.

As of January 1, 2018, the state has begun issuing temporary licenses (adult-use and medicinal) to cannabis businesses as the state's regulatory agencies worked toward the finalization of their

regulations. While an electronic Track-and-Trace system was implemented pursuant to MAUCRSA, it is not currently being used for temporary licensees. Other licensing requirements will not be enforced until the completion of a grace period later in the year. Collectives and cooperatives previously authorized to engage in unlicensed cannabis cultivation are allowed to continue operating until January 9, 2019.

Federal Ban on Cannabis. The federal Controlled Substances Act classifies a number of drugs and chemicals into one of five schedules. Drugs falling within Schedules II through V may be prescribed only by health practitioners in possession of a Drug Enforcement Administration (DEA) registration and are ranked according to the drug's potential for abuse, with lower numbered schedules representing drugs with a higher risk of abuse or dependence. Schedule I drugs have been determined to have no currently accepted medical use and a high potential for abuse. Schedule I drugs may not be prescribed by any health practitioner in the United States. Examples of Schedule I drugs are heroin, ecstasy, and cannabis.

Cannabis's continued Schedule I status under the federal Controlled Substances Act has created a constant threat of action by the federal government, leading to apprehension among California's cannabis community. A document issued by the United States Attorney General in 2013 known as the "Cole memorandum" indicated that the existence of a strong and effective state regulatory system, and a cannabis operation's compliance with such a system, could allay the threat of federal enforcement interests. Federal prosecutors were urged under the memo to review cannabis cases on a case-by-case basis and consider whether a cannabis operation was in compliance with a strong and effective state regulatory system prior to prosecution. However, on January 4, 2018, U.S. Attorney General Jeff Sessions formally rescinded the Cole memo.

Pharmacological Applications of Cannabis. Another implication of cannabis's Schedule I status is a relative lack of scientific research regarding the risks and benefits of cannabis and products derived from cannabis. The federal government has historically restricted what institutions in receipt of federal funding may study in regards to Schedule I controlled substances. However, SB 847 ((Vasconcellos et al.) Chapter 750) of 2000 established the University of California San Diego Center for Medicinal Cannabis Research, which has produced multiple of studies regarding the medical benefits of cannabis. Proposition 64 appropriates $2 million in funding from cannabis excise tax revenue to the center to further its objectives, including studies into the efficacy and adverse effects of cannabis as a pharmacological agent.

The federal FDA, meanwhile, has stated that it "supports researchers [in states that have removed restrictions on medical cannabis] who conduct adequate and well-controlled clinical trials which may lead to the development of safe and effective marijuana products to treat medical conditions." The FDA has not yet approved any product containing or derived from botanical marijuana for any indication," meaning that the FDA "has not found any such product to be safe or effective for the treatment of any disease or condition." However, the FDA has approved drugs containing a synthetic tetrahydrocannabinol (THC) for therapeutic uses, including for the treatment of anorexia associated with weight loss in AIDS patients.

In April of 2018, an FDA advisory panel recommended approval of a drug called Epidiolex, an epilepsy medication containing ingredients derived from cannabis. The drug is currently in Phase 3 trials with the FDA. The advisory panel acknowledged the drug's potential to treat two rare forms of epilepsy: Lennox-Gastaut syndrome and Dravet syndrome. These syndromes are considered to be among the most difficult types of epilepsy to treat and cause frequent seizures in

patients. Advocates for the epileptic community have actively championed the FDA's approval of Epidiolex, leading to a reasonable probability that it could become the first federally approved drug containing cannabinoids. This bill would ensure the drug would also be legal in California.

Analysis Prepared by: Robert Sumner / B. & P. / (916) 319-3301 FN: 0002995

AB 1751

STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Assembly Bill No. 1751

CHAPTER 478

An act to amend Section 1798.24 of the Civil Code, and to amend Section 11165 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 18, 2018. Filed with Secretary of State September 18, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1751, Low. Controlled substances: CURES database.

Existing law classifies certain controlled substances into designated schedules. Existing law requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by a health care practitioner authorized to prescribe, order, administer, furnish, or dispense a Schedule II, Schedule III, or Schedule IV controlled substance.

This bill would require the department, no later than July 1, 2020, to adopt regulations regarding the access and use of the information within CURES by consulting with stakeholders, and addressing certain processes, purposes, and conditions in the regulations. The bill would authorize the department, once final regulations have been issued, to enter into an agreement with any entity operating an interstate data sharing hub, or any agency operating a prescription drug monitoring program in another state, for purposes of interstate data sharing of prescription drug monitoring program information, as specified. The bill would require any agreement entered into by the department for those purposes to ensure that all access to data obtained from CURES and the handling of data contained within CURES comply with California law and meet the same patient privacy, audit, and data security standards employed and required for direct access to CURES.

The bill would make conforming changes to related provisions concerning exceptions to the prohibition on a state agency from disclosing personal information.

This bill would incorporate additional changes to Section 11165 of the Health and Safety Code proposed by AB 1753 to be operative only if this bill and AB 1753 are enacted and this bill is enacted last.

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

SECTION 1. Section 1798.24 of the Civil Code is amended to read:

1798.24. An agency shall not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the information is disclosed, as follows:

(a) To the individual to whom the information pertains.

(b) With the prior written voluntary consent of the individual to whom the information pertains, but only if that consent has been obtained not more than 30 days before the disclosure, or in the time limit agreed to by the individual in the written consent.

(c) To the duly appointed guardian or conservator of the individual or a person representing the individual if it can be proven with reasonable certainty through the possession of agency forms, documents, or correspondence that this person is the authorized representative of the individual to whom the information pertains.

(d) To those officers, employees, attorneys, agents, or volunteers of the agency that has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired.

(e) To a person, or to another agency if the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is in accordance with Section 1798.25. With respect to information transferred from a law enforcement or regulatory agency, or information transferred to another law enforcement or regulatory agency, a use is compatible if the use of the information requested is needed in an investigation of unlawful activity under the jurisdiction of the requesting agency or for licensing, certification, or regulatory purposes by that agency.

(f) To a governmental entity if required by state or federal law.

(g) Pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(h) To a person who has provided the agency with advance, adequate written assurance that the information will be used solely for statistical research or reporting purposes, but only if the information to be disclosed is in a form that will not identify any individual.

(i) Pursuant to a determination by the agency that maintains information that compelling circumstances exist that affect the health or safety of an individual, if upon the disclosure notification is transmitted to the individual to whom the information pertains at his or her last known address. Disclosure shall not be made if it is in conflict with other state or federal laws.

(j) To the State Archives as a record that has sufficient historical or other value to warrant its continued preservation by the California state government, or for evaluation by the Director of General Services or his or her designee to determine whether the record has further administrative, legal, or fiscal value.

(k) To any person pursuant to a subpoena, court order, or other compulsory legal process if, before the disclosure, the agency reasonably

attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law.

(*l*) To any person pursuant to a search warrant.

(m) Pursuant to Article 3 (commencing with Section 1800) of Chapter 1 of Division 2 of the Vehicle Code.

(n) For the sole purpose of verifying and paying government health care service claims made pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.

(o) To a law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.

(p) To another person or governmental organization to the extent necessary to obtain information from the person or governmental organization for an investigation by the agency of a failure to comply with a specific state law that the agency is responsible for enforcing.

(q) To an adopted person and is limited to general background information pertaining to the adopted person's biological parents, if the information does not include or reveal the identity of the biological parents.

(r) To a child or a grandchild of an adopted person and disclosure is limited to medically necessary information pertaining to the adopted person's biological parents. However, the information, or the process for obtaining the information, shall not include or reveal the identity of the biological parents. The State Department of Social Services shall adopt regulations governing the release of information pursuant to this subdivision. The regulations shall require licensed adoption agencies to provide the same services provided by the department as established by this subdivision.

(s) To a committee of the Legislature or to a Member of the Legislature, or his or her staff if authorized in writing by the member, if the member has permission to obtain the information from the individual to whom it pertains or if the member provides reasonable assurance that he or she is acting on behalf of the individual.

(t) (1) To the University of California, a nonprofit educational institution, or, in the case of education-related data, another nonprofit entity, conducting scientific research, if the request for information is approved by the Committee for the Protection of Human Subjects (CPHS) for the California Health and Human Services Agency (CHHSA) or an institutional review board, as authorized in paragraphs (4) and (5). The approval shall include a review and determination that all the following criteria have been satisfied:

(A) The researcher has provided a plan sufficient to protect personal information from improper use and disclosures, including sufficient administrative, physical, and technical safeguards to protect personal information from reasonable anticipated threats to the security or confidentiality of the information.

(B) The researcher has provided a sufficient plan to destroy or return all personal information as soon as it is no longer needed for the research project, unless the researcher has demonstrated an ongoing need for the

personal information for the research project and has provided a long-term plan sufficient to protect the confidentiality of that information.

(C) The researcher has provided sufficient written assurances that the personal information will not be reused or disclosed to any other person or entity, or used in any manner, not approved in the research protocol, except as required by law or for authorized oversight of the research project.

(2) The CPHS or institutional review board shall, at a minimum, accomplish all of the following as part of its review and approval of the research project for the purpose of protecting personal information held in agency databases:

(A) Determine whether the requested personal information is needed to conduct the research.

(B) Permit access to personal information only if it is needed for the research project.

(C) Permit access only to the minimum necessary personal information needed for the research project.

(D) Require the assignment of unique subject codes that are not derived from personal information in lieu of social security numbers if the research can still be conducted without social security numbers.

(E) If feasible, and if cost, time, and technical expertise permit, require the agency to conduct a portion of the data processing for the researcher to minimize the release of personal information.

(3) Reasonable costs to the agency associated with the agency's process of protecting personal information under the conditions of CPHS approval may be billed to the researcher, including, but not limited to, the agency's costs for conducting a portion of the data processing for the researcher, removing personal information, encrypting or otherwise securing personal information, or assigning subject codes.

(4) The CPHS may enter into written agreements to enable other institutional review boards to provide the data security approvals required by this subdivision, if the data security requirements set forth in this subdivision are satisfied.

(5) Pursuant to paragraph (4), the CPHS shall enter into a written agreement with the institutional review board established pursuant to former Section 49079.6 of the Education Code. The agreement shall authorize, commencing July 1, 2010, or the date upon which the written agreement is executed, whichever is later, that board to provide the data security approvals required by this subdivision, if the data security requirements set forth in this subdivision and the act specified in subdivision (a) of Section 49079.5 of the Education Code are satisfied.

(u) To an insurer if authorized by Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code.

(v) Pursuant to Section 450, 452, 8009, or 18396 of the Financial Code.

(w) For the sole purpose of participation in interstate data sharing of prescription drug monitoring program information pursuant to the California Uniform Controlled Substances Act (Division 10 (commencing with Section

11000) of the Health and Safety Code), if disclosure is limited to prescription drug monitoring program information.

This article does not require the disclosure of personal information to the individual to whom the information pertains if that information may otherwise be withheld as set forth in Section 1798.40.

SEC. 2. Section 11165 of the Health and Safety Code is amended to read:

11165. (a) To assist health care practitioners in their efforts to ensure appropriate prescribing, ordering, administering, furnishing, and dispensing of controlled substances, law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II, Schedule III, and Schedule IV controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds in the CURES Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of, and Internet access to information regarding, the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe, order, administer, furnish, or dispense these controlled substances.

(b) The Department of Justice may seek and use grant funds to pay the costs incurred by the operation and maintenance of CURES. The department shall annually report to the Legislature and make available to the public the amount and source of funds it receives for support of CURES.

(c) (1) The operation of CURES shall comply with all applicable federal and state privacy and security laws and regulations.

(2) (A) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, if patient information, including any information that may identify the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party, unless authorized by, or pursuant to, state and federal privacy and security laws and regulations. The Department of Justice shall establish policies, procedures, and regulations regarding the use, access, evaluation, management, implementation, operation, storage, disclosure, and security of the information within CURES, consistent with this subdivision.

(B) Notwithstanding subparagraph (A), a regulatory board whose licensees do not prescribe, order, administer, furnish, or dispense controlled substances shall not be provided data obtained from CURES.

(3) The Department of Justice shall, no later than July 1, 2020, adopt regulations regarding the access and use of the information within CURES.

The Department of Justice shall consult with all stakeholders identified by the department during the rulemaking process. The regulations shall, at a minimum, address all of the following in a manner consistent with this chapter:

(A) The process for approving, denying, and disapproving individuals or entities seeking access to information in CURES.

(B) The purposes for which a health care practitioner may access information in CURES.

(C) The conditions under which a warrant, subpoena, or court order is required for a law enforcement agency to obtain information from CURES as part of a criminal investigation.

(D) The process by which information in CURES may be provided for educational, peer review, statistical, or research purposes.

(4) In accordance with federal and state privacy laws and regulations, a health care practitioner may provide a patient with a copy of the patient's CURES patient activity report as long as no additional CURES data are provided and keep a copy of the report in the patient's medical record in compliance with subdivision (d) of Section 11165.1.

(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as defined in the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the following information to the Department of Justice as soon as reasonably possible, but not more than seven days after the date a controlled substance is dispensed, in a format specified by the Department of Justice:

(1) Full name, address, and, if available, telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.

(2) The prescriber's category of licensure, license number, national provider identifier (NPI) number, the federal controlled substance registration number, and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility, if provided.

(3) Pharmacy prescription number, license number, NPI number, and federal controlled substance registration number.

(4) National Drug Code (NDC) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) International Statistical Classification of Diseases, 9th revision (ICD-9) or 10th revision (ICD-10) Code, if available.

(7) Number of refills ordered.

(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(9) Date of origin of the prescription.

(10) Date of dispensing of the prescription.

(e) The Department of Justice may invite stakeholders to assist, advise, and make recommendations on the establishment of rules and regulations necessary to ensure the proper administration and enforcement of the CURES database. All prescriber and dispenser invitees shall be licensed by one of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, in active practice in California, and a regular user of CURES.

(f) The Department of Justice shall, prior to upgrading CURES, consult with prescribers licensed by one of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, one or more of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, and any other stakeholder identified by the department, for the purpose of identifying desirable capabilities and upgrades to the CURES Prescription Drug Monitoring Program (PDMP).

(g) The Department of Justice may establish a process to educate authorized subscribers of the CURES PDMP on how to access and use the CURES PDMP.

(h) (1) The Department of Justice may enter into an agreement with any entity operating an interstate data sharing hub, or any agency operating a prescription drug monitoring program in another state, for purposes of interstate data sharing of prescription drug monitoring program information.

(2) Data obtained from CURES may be provided to authorized users of another state's prescription drug monitoring program, as determined by the Department of Justice pursuant to subdivision (c), if the entity operating the interstate data sharing hub, and the prescription drug monitoring program of that state, as applicable, have entered into an agreement with the Department of Justice for interstate data sharing of prescription drug monitoring program information.

(3) Any agreement entered into by the Department of Justice for purposes of interstate data sharing of prescription drug monitoring program information shall ensure that all access to data obtained from CURES and the handling of data contained within CURES comply with California law, including regulations, and meet the same patient privacy, audit, and data security standards employed and required for direct access to CURES.

(4) For purposes of interstate data sharing of CURES information pursuant to this subdivision, an authorized user of another state's prescription drug monitoring program shall not be required to register with CURES, if he or she is registered and in good standing with that state's prescription drug monitoring program.

(5) The Department of Justice shall not enter into an agreement pursuant to this subdivision until the department has issued final regulations regarding the access and use of the information within CURES as required by paragraph (3) of subdivision (c).

SEC. 2.5. Section 11165 of the Health and Safety Code is amended to read:

11165. (a) To assist health care practitioners in their efforts to ensure appropriate prescribing, ordering, administering, furnishing, and dispensing of controlled substances, law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II, Schedule III, and Schedule IV controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds in the CURES Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of, and Internet access to information regarding, the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe, order, administer, furnish, or dispense these controlled substances.

(b) The Department of Justice may seek and use grant funds to pay the costs incurred by the operation and maintenance of CURES. The department shall annually report to the Legislature and make available to the public the amount and source of funds it receives for support of CURES.

(c) (1) The operation of CURES shall comply with all applicable federal and state privacy and security laws and regulations.

(2) (A) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, if patient information, including any information that may identify the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party, unless authorized by, or pursuant to, state and federal privacy and security laws and regulations. The Department of Justice shall establish policies, procedures, and regulations regarding the use, access, evaluation, management, implementation, operation, storage, disclosure, and security of the information within CURES, consistent with this subdivision.

(B) Notwithstanding subparagraph (A), a regulatory board whose licensees do not prescribe, order, administer, furnish, or dispense controlled substances shall not be provided data obtained from CURES.

(3) The Department of Justice shall, no later than July 1, 2020, adopt regulations regarding the access and use of the information within CURES. The Department of Justice shall consult with all stakeholders identified by the department during the rulemaking process. The regulations shall, at a minimum, address all of the following in a manner consistent with this chapter:

(A) The process for approving, denying, and disapproving individuals or entities seeking access to information in CURES.

(B) The purposes for which a health care practitioner may access information in CURES.

(C) The conditions under which a warrant, subpoena, or court order is required for a law enforcement agency to obtain information from CURES as part of a criminal investigation.

(D) The process by which information in CURES may be provided for educational, peer review, statistical, or research purposes.

(4) In accordance with federal and state privacy laws and regulations, a health care practitioner may provide a patient with a copy of the patient's CURES patient activity report as long as no additional CURES data are provided and keep a copy of the report in the patient's medical record in compliance with subdivision (d) of Section 11165.1.

(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as defined in the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the following information to the Department of Justice as soon as reasonably possible, but not more than seven days after the date a controlled substance is dispensed, in a format specified by the Department of Justice:

(1) Full name, address, and, if available, telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.

(2) The prescriber's category of licensure, license number, national provider identifier (NPI) number, the federal controlled substance registration number, and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility, if provided.

(3) Pharmacy prescription number, license number, NPI number, and federal controlled substance registration number.

(4) National Drug Code (NDC) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) International Statistical Classification of Diseases, 9th revision (ICD-9) or 10th revision (ICD-10) Code, if available.

(7) Number of refills ordered.

(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(9) Date of origin of the prescription.

(10) Date of dispensing of the prescription.

(11) The serial number for the corresponding prescription form, if applicable.

(e) The Department of Justice may invite stakeholders to assist, advise, and make recommendations on the establishment of rules and regulations necessary to ensure the proper administration and enforcement of the CURES database. All prescriber and dispenser invitees shall be licensed by one of

the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, in active practice in California, and a regular user of CURES.

(f) The Department of Justice shall, prior to upgrading CURES, consult with prescribers licensed by one of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, one or more of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, and any other stakeholder identified by the department, for the purpose of identifying desirable capabilities and upgrades to the CURES Prescription Drug Monitoring Program (PDMP).

(g) The Department of Justice may establish a process to educate authorized subscribers of the CURES PDMP on how to access and use the CURES PDMP.

(h) (1) The Department of Justice may enter into an agreement with any entity operating an interstate data sharing hub, or any agency operating a prescription drug monitoring program in another state, for purposes of interstate data sharing of prescription drug monitoring program information.

(2) Data obtained from CURES may be provided to authorized users of another state's prescription drug monitoring program, as determined by the Department of Justice pursuant to subdivision (c), if the entity operating the interstate data sharing hub, and the prescription drug monitoring program of that state, as applicable, have entered into an agreement with the Department of Justice for interstate data sharing of prescription drug monitoring program information.

(3) Any agreement entered into by the Department of Justice for purposes of interstate data sharing of prescription drug monitoring program information shall ensure that all access to data obtained from CURES and the handling of data contained within CURES comply with California law, including regulations, and meet the same patient privacy, audit, and data security standards employed and required for direct access to CURES.

(4) For purposes of interstate data sharing of CURES information pursuant to this subdivision, an authorized user of another state's prescription drug monitoring program shall not be required to register with CURES, if he or she is registered and in good standing with that state's prescription drug monitoring program.

(5) The Department of Justice shall not enter into an agreement pursuant to this subdivision until the department has issued final regulations regarding the access and use of the information within CURES as required by paragraph (3) of subdivision (c).

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 11165 of the Health and Safety Code proposed by both this bill and Assembly Bill 1753. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 11165 of the Health and Safety Code,

and (3) this bill is enacted after Assembly Bill 1753, in which case Section 2 of this bill shall not become operative.

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CONCURRENCE IN SENATE AMENDMENTS
AB 1751 (Low)
As Amended August 24, 2018
Majority vote

ASSEMBLY: 75-0 (May 29, 2018) SENATE: 38-0 (August 29, 2018)

Original Committee Reference: **B. & P.**

SUMMARY: Authorizes the California Department of Justice (DOJ) to share prescription records between the state's prescription drug monitoring program (PDMP), Controlled Substance Utilization Review and Evaluation System (CURES), and other databases across state lines, with a requirement that other states meet California's patient privacy and data security standards.

The Senate amendments:

1) Require the DOJ to, no later than July 1, 2020, memorialize its policies regarding the access and use of the information within CURES through the public rulemaking process, which must among other things include regulations dictating when a warrant is required for searches of the system as part of a criminal investigation.

2) Allows the DOJ to enter into a datasharing agreement directly with another state's PDMP without going through a data share hub.

3) Delays implementation of the bill until the required regulations are final.

4) Make necessary changes to the Information Practices Act to authorize datasharing.

5) Add chaptering language to avoid conflicts with changes made in AB 1753 (Low) of the current legislative session.

EXISTING LAW:

1) Establishes the Controlled Substance Utilization Review and Evaluation System (CURES), a PDMP maintained by the DOJ for the purposes of collecting records of dispensed controlled substances for review by licensed prescribers and dispensers, regulatory investigators, law enforcement, and statistical researchers. (Health and Safety Code Section (HSC) 11165(a))

2) Requires pharmacists and other dispensers to report information to CURES within seven days relating to prescriptions of Schedule II, III, and IV controlled substances. (HSC 11165(d))

3) Requires health care practitioners in receipt of a federal Drug Enforcement Administration (DEA) certificate providing authorization to prescribe controlled substances, as well as pharmacists, to register for access to the CURES database. (HSC 11165.1(a))

4) Beginning October 2, 2018, requires certain health care practitioners to consult the CURES database to review a patient's controlled substance history before prescribing a Schedule II, Schedule III, or Schedule IV controlled substance to the patient for the first time and at least

once every four months thereafter if the substance remains part of the treatment of the patient, with certain exceptions. (HSC 11165.4)

5) Requires the DOJ to upgrade CURES to allow health information technology systems that meet certain patient privacy and data security requirements to interoperate with the database, allowing prescribers and dispensers to make queries through their electronic health record applications. (HSC 11165.1)

6) Provides dedicated funding for the CURES program through an annual license fee of $6 assessed for licensees authorized to prescribe or dispense controlled substances in California. (Business and Professions Code (BPC) 208)

7) Authorizes the DOJ to seek voluntarily contributed private funds from insurers, health care service plans, qualified manufacturers, and other donors for the purpose of supporting CURES. (HSC 11165.5)

8) Allows the DOJ to conduct audits of CURES and its users and issue citations and fines for system misuse. (HSC 11165.2)

9) Requires the CURES database to comply with all applicable federal and state privacy and security laws and regulations and requires the DOJ to establish policies, procedures, and regulations regarding the use, access, evaluation, management, implementation, operation, storage, disclosure, and security of the information within CURES. (HSC 11165(c))

FISCAL EFFECT: According to the Senate Committee on Appropriations, one-time costs of $516,000 and $2.5 million ongoing for increased administrative workload to promulgate regulations, develop and maintain an interstate data sharing agreement, increase legal workload for out-of-state cases, to responding to public inquiries and provide technical assistance to users, and for costs for IT analysis, design, and infrastructure. However, Appropriations staff noted that costs for the bill could decrease, depending on how the DOJ implements the bill and engages with other states and their relevant data sharing hubs.

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author:

> As the opioid crisis receives growing national attention as one of the most devastating public health epidemics in modern history, California is fortunate to have CURES, a powerful tool to promote safe prescribing and curb illicit doctor-shopping. With the Attorney General's successful launch of a state-of-the-art 'CURES 2.0' prescription drug monitoring program, it is now the Legislature's imperative to identify ways to further empower data-driven solutions to preventing prescription drug abuse and diversion. Upgrading CURES to allow the DOJ to enter into interstate data sharing agreements will provide invaluable cross-jurisdictional information to health professionals seeking to make informed decisions on behalf of their patients, particularly those practicing in communities neighboring other states.

Background. *CURES Database*. CURES was first established in 1996 as a "technologically sophisticated" database currently containing records of all Schedule II-IV drug prescriptions dispensed within the state. In 2013, the Attorney General sponsored legislation to overhaul the

database with revenue newly derived from a license fee for healing arts professionals. The resulting system, commonly referred to as "CURES 2.0," is considered to be a significantly improved, state-of-the-art tool for addressing the abuse and diversion of opioids and other prescription drugs.

Every dispenser of controlled substances and every health practitioner authorized by the DEA to prescribe controlled substances is required to obtain a login for access to CURES. For each dispensed Schedule II, III, or IV drug, pharmacists are required to report basic information about the patient and their prescription within seven days. This information is then made available to other system users in a variety of possible contexts. For example, physicians may query a patient's prescription history prior to writing a new prescription; pharmacists can check the system before agreeing to fill a prescription for a controlled substance; regulators may review a licensee's prescribing practices as part of a disciplinary investigation; and law enforcement can incorporate a search of the system into a potential criminal case of drug diversion.

Over 50 million prescription records have been uploaded into the system by dispensing pharmacists since the beginning of the CURES program. As of January 1, 2018, 170,422 users had been approved for access to the system. Last year, close to 10 million activity reports had been processed by practitioners, pharmacists, law enforcement, and regulatory users. The vast majority of these searches (over 99%) were queries made by prescribers and dispensers seeking to review a patient's prescription history as a component of exercising informed clinical judgment before providing access to opioids or other controlled substances.

Beginning October 2, 2018, health practitioners will be required to consult the CURES database prior to writing a prescription for a Schedule II, III, or IV drug for the first time, and then at least once every four months as long as the prescription continues to be renewed. Other recently enacted statutes require the DOJ to facilitate interoperability between health information technology systems and the CURES database, subject to a memorandum of understanding setting minimum security and privacy requirements. As attention to the opioid crisis continues to grow, PDMPs are regularly mentioned as powerful tools for curbing the abuse of prescription drugs.

Interstate PDMP Datasharing. Currently, the CURES database only contains information related to prescriptions dispensed within California. This means that when a health practitioner consults a patient's prescription history prior to writing a new prescription, information relating to prescriptions written in other states are not reflected in the activity report. For true "doctor shoppers," traveling across state lines to secure prescriptions of opioids is not uncommon. This is especially true in communities located near California's borders.

49 states including California and the District of Columbia currently have a PDMP. (Missouri has begun creating a PDMP pursuant to executive order in July of 2017.) Many of these states already participate in one of several interstate data share hubs that allow for the exchange of prescription information. For example, the National Association of Boards of Pharmacy administers PMP InterConnect, a technology solution developed in partnership with Appriss Health that currently connects 46 state PDMPs, including Nevada, Oregon, and Arizona. Another interstate data share hub, RxCheck, is operated by the federal Bureau of Justice Assistant using Prescription Monitoring Information Exchange National Architecture specifications developed by a PDMP Training and Technical Assistance Center housed within Brandeis University. These examples are in addition to other interstate data share hubs available,

and additional health technology vendors will likely develop interconnection solutions as the importance of PDMPs continues to be recognized.

The provisions of this bill do not dictate that any current or prospective interstate data share hub be utilized for purposes of enabling CURES to exchange information with other PDMPs. The DOJ would retain the discretion to determine what entity to contract with for purposes of providing interjurisdictional prescription information sharing. This bill does, however, contain a requirement that any agreement entered into by the DOJ include language ensuring that all access to CURES data through the data share hub meet the same patient privacy and data security standards that apply for direct access to CURES under California law.

Access to CURES is limited by a number of state and federal privacy laws. This includes the Health Insurance Portability and Accountability Act (HIPAA), the California Medical Information Act, and the Information Practices Act. Whether law enforcement use of the system implicates the Fourth Amendment's protections against unreasonable searches remains a topic of debate. In 2017, the Supreme Court of California ruled in *Lewis v. Superior Court* that privacy interests are justified by the state's interest in preventing drug diversion and protecting patients.

Amendments to this bill would require the Attorney General to engage in rulemaking to formally establish policies regarding access to CURES by various user types. The required regulations would include policies as to when a warrant is required to access the system as part of a criminal investigation. The requirement that the Attorney General promulgate regulations was added to this bill in response to stakeholder concerns that California's patient privacy and data security policies for CURES have not been sufficiently subjected to public input or adequately memorialized to hold up as a standard for other states accessing data in CURES. This bill's datasharing provisions would be delayed until these regulations are complete.

Analysis Prepared by: Robert Sumner / B. & P. / (916) 319-3301 FN: 0005154

AB 1752

AMENDED IN SENATE JUNE 20, 2018

AMENDED IN ASSEMBLY APRIL 5, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL No. 1752

Introduced by Assembly Member Low

January 3, 2018

An act to amend Sections 11165 and 11165.1 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 1752, as amended, Low. Controlled substances: CURES database.

Existing law classifies certain controlled substances into designated schedules. Existing law requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by a health care practitioner authorized to prescribe, order, administer, furnish, or dispense a Schedule II, Schedule III, or Schedule IV controlled substance. Existing law requires a dispensing pharmacy, clinic, or other dispenser to report specified information to the Department of Justice as soon as reasonably possible, but not more than 7 days after the date a controlled substance is dispensed.

This bill would add Schedule V controlled substances to the CURES database. The bill would require a dispensing pharmacy, clinic, or other dispenser to report the information required by the CURES database no more than one working day after a controlled substance is dispensed. The bill would ~~change what information is required to be reported by deleting references to classification codes and adding the date of sale~~

~~of the prescription.~~ *additionally require the date of sale of the prescription, if applicable, to be reported.*

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

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

1 SECTION 1. Section 11165 of the Health and Safety Code is
2 amended to read:
3 11165. (a) To assist health care practitioners in their efforts
4 to ensure appropriate prescribing, ordering, administering,
5 furnishing, and dispensing of controlled substances, law
6 enforcement and regulatory agencies in their efforts to control the
7 diversion and resultant abuse of Schedule II, Schedule III, Schedule
8 IV, and Schedule V controlled substances, and for statistical
9 analysis, education, and research, the Department of Justice shall,
10 contingent upon the availability of adequate funds in the CURES
11 Fund, maintain the Controlled Substance Utilization Review and
12 Evaluation System (CURES) for the electronic monitoring of, and
13 Internet access to information regarding, the prescribing and
14 dispensing of Schedule II, Schedule III, Schedule IV, and Schedule
15 V controlled substances by all practitioners authorized to prescribe,
16 order, administer, furnish, or dispense these controlled substances.
17 (b) The Department of Justice may seek and use grant funds to
18 pay the costs incurred by the operation and maintenance of
19 CURES. The department shall annually report to the Legislature
20 and make available to the public the amount and source of funds
21 it receives for support of CURES.
22 (c) (1) The operation of CURES shall comply with all
23 applicable federal and state privacy and security laws and
24 regulations.
25 (2) (A) CURES shall operate under existing provisions of law
26 to safeguard the privacy and confidentiality of patients. Data
27 obtained from CURES shall only be provided to appropriate state,
28 local, and federal public agencies for disciplinary, civil, or criminal
29 purposes and to other agencies or entities, as determined by the
30 Department of Justice, for the purpose of educating practitioners
31 and others in lieu of disciplinary, civil, or criminal actions. Data
32 may be provided to public or private entities, as approved by the
33 Department of Justice, for educational, peer review, statistical, or

research purposes, provided that patient information, including any information that may identify the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party, unless authorized by, or pursuant to, state and federal privacy and security laws and regulations. The Department of Justice shall establish policies, procedures, and regulations regarding the use, access, evaluation, management, implementation, operation, storage, disclosure, and security of the information within CURES, consistent with this subdivision.

(B) Notwithstanding subparagraph (A), a regulatory board whose licensees do not prescribe, order, administer, furnish, or dispense controlled substances shall not be provided data obtained from CURES.

(3) In accordance with federal and state privacy laws and regulations, a health care practitioner may provide a patient with a copy of the patient's CURES patient activity report as long as no additional CURES data is provided and keep a copy of the report in the patient's medical record in compliance with subdivision (d) of Section 11165.1.

(d) For each prescription for a Schedule II, Schedule III, Schedule IV, or Schedule V controlled substance, as defined in the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, 1308.14, and 1308.15, respectively, of Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the following information to the Department of Justice as soon as reasonably possible, but not more than one working day after the date a controlled substance is dispensed, in a format specified by the Department of Justice:

(1) Full name, address, and, if available, telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.

(2) The prescriber's category of licensure, license number, national provider identifier (NPI) number, if applicable, the federal controlled substance registration number, and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, NPI number, and federal controlled substance registration number.

(4) National Drug Code (NDC) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) International Statistical Classification of Diseases, 9th revision (ICD-9) or 10th revision (ICD-10) Code, if available.

~~(6)~~

(7) Number of refills ordered.

~~(7)~~

(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

~~(8)~~

(9) Date of origin of the prescription.

~~(9)~~

(10) Date of dispensing of the prescription.

~~(10)~~

(11) Date of sale of the ~~prescription.~~ *prescription, if applicable.*

(e) The Department of Justice may invite stakeholders to assist, advise, and make recommendations on the establishment of rules and regulations necessary to ensure the proper administration and enforcement of the CURES database. All prescriber and dispenser invitees shall be licensed by one of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, in active practice in California, and a regular user of CURES.

(f) The Department of Justice shall, prior to upgrading CURES, consult with prescribers licensed by one of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, one or more of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, and any other stakeholder identified by the department, for the purpose of identifying desirable capabilities and upgrades to the CURES Prescription Drug Monitoring Program (PDMP).

(g) The Department of Justice may establish a process to educate authorized subscribers of the CURES PDMP on how to access and use the CURES PDMP.

SEC. 2. Section 11165.1 of the Health and Safety Code is amended to read:

11165.1. (a) (1) (A) (i) A health care practitioner authorized to prescribe, order, administer, furnish, or dispense Schedule II, Schedule III, Schedule IV, or Schedule V controlled substances pursuant to Section 11150 shall, before July 1, 2016, or upon receipt of a federal Drug Enforcement Administration (DEA) registration, whichever occurs later, submit an application developed by the department to obtain approval to electronically access information regarding the controlled substance history of a patient that is maintained by the department. Upon approval, the department shall release to that practitioner the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in the CURES Prescription Drug Monitoring Program (PDMP).

(ii) A pharmacist shall, before July 1, 2016, or upon licensure, whichever occurs later, submit an application developed by the department to obtain approval to electronically access information regarding the controlled substance history of a patient that is maintained by the department. Upon approval, the department shall release to that pharmacist the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in the CURES PDMP.

(B) An application may be denied, or a subscriber may be suspended, for reasons which include, but are not limited to, the following:

(i) Materially falsifying an application to access information contained in the CURES database.

(ii) Failing to maintain effective controls for access to the patient activity report.

(iii) Having his or her federal DEA registration suspended or revoked.

(iv) Violating a law governing controlled substances or any other law for which the possession or use of a controlled substance is an element of the crime.

(v) Accessing information for a reason other than to diagnose or treat his or her patients, or to document compliance with the law.

(C) An authorized subscriber shall notify the department within 30 days of any changes to the subscriber account.

(D) Commencing no later than October 1, 2018, an approved health care practitioner, pharmacist, and any person acting on

behalf of a health care practitioner or pharmacist pursuant to subdivision (b) of Section 209 of the Business and Professions Code may use the department's online portal or a health information technology system that meets the criteria required in subparagraph (E) to access information in the CURES database pursuant to this section. A subscriber who uses a health information technology system that meets the criteria required in subparagraph (E) to access the CURES database may submit automated queries to the CURES database that are triggered by predetermined criteria.

(E) Commencing no later than October 1, 2018, an approved health care practitioner or pharmacist may submit queries to the CURES database through a health information technology system if the entity that operates the health information technology system can certify all of the following:

(i) The entity will not use or disclose data received from the CURES database for any purpose other than delivering the data to an approved health care practitioner or pharmacist or performing data processing activities that may be necessary to enable the delivery unless authorized by, and pursuant to, state and federal privacy and security laws and regulations.

(ii) The health information technology system will authenticate the identity of an authorized health care practitioner or pharmacist initiating queries to the CURES database and, at the time of the query to the CURES database, the health information technology system submits the following data regarding the query to CURES:

(I) The date of the query.

(II) The time of the query.

(III) The first and last name of the patient queried.

(IV) The date of birth of the patient queried.

(V) The identification of the CURES user for whom the system is making the query.

(iii) The health information technology system meets applicable patient privacy and information security requirements of state and federal law.

(iv) The entity has entered into a memorandum of understanding with the department that solely addresses the technical specifications of the health information technology system to ensure the security of the data in the CURES database and the secure transfer of data from the CURES database. The technical specifications shall be universal for all health information

technology systems that establish a method of system integration to retrieve information from the CURES database. The memorandum of understanding shall not govern, or in any way impact or restrict, the use of data received from the CURES database or impose any additional burdens on covered entities in compliance with the regulations promulgated pursuant to the federal Health Insurance Portability and Accountability Act of 1996 found in Parts 160 and 164 of Title 45 of the Code of Federal Regulations.

(F) No later than October 1, 2018, the department shall develop a programming interface or other method of system integration to allow health information technology systems that meet the requirements in subparagraph (E) to retrieve information in the CURES database on behalf of an authorized health care practitioner or pharmacist.

(G) The department shall not access patient-identifiable information in an entity's health information technology system.

(H) An entity that operates a health information technology system that is requesting to establish an integration with the CURES database shall pay a reasonable fee to cover the cost of establishing and maintaining integration with the CURES database.

(I) The department may prohibit integration or terminate a health information technology system's ability to retrieve information in the CURES database if the health information technology system fails to meet the requirements of subparagraph (E), or the entity operating the health information technology system does not fulfill its obligation under subparagraph (H).

(2) A health care practitioner authorized to prescribe, order, administer, furnish, or dispense Schedule II, Schedule III, Schedule IV, or Schedule V controlled substances pursuant to Section 11150 or a pharmacist shall be deemed to have complied with paragraph (1) if the licensed health care practitioner or pharmacist has been approved to access the CURES database through the process developed pursuant to subdivision (a) of Section 209 of the Business and Professions Code.

(b) A request for, or release of, a controlled substance history pursuant to this section shall be made in accordance with guidelines developed by the department.

(c) In order to prevent the inappropriate, improper, or illegal use of Schedule II, Schedule III, Schedule IV, or Schedule V

controlled substances, the department may initiate the referral of the history of controlled substances dispensed to an individual based on data contained in CURES to licensed health care practitioners, pharmacists, or both, providing care or services to the individual.

(d) The history of controlled substances dispensed to an individual based on data contained in CURES that is received by a practitioner or pharmacist from the department pursuant to this section is medical information subject to the provisions of the Confidentiality of Medical Information Act contained in Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.

(e) Information concerning a patient's controlled substance history provided to a practitioner or pharmacist pursuant to this section shall include prescriptions for controlled substances listed in Sections 1308.12, 1308.13, 1308.14, and 1308.15 of Title 21 of the Code of Federal Regulations.

(f) A health care practitioner, pharmacist, and any person acting on behalf of a health care practitioner or pharmacist, when acting with reasonable care and in good faith, is not subject to civil or administrative liability arising from any false, incomplete, inaccurate, or misattributed information submitted to, reported by, or relied upon in the CURES database or for any resulting failure of the CURES database to accurately or timely report that information.

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

(1) "Automated basis" means using predefined criteria to trigger an automated query to the CURES database, which can be attributed to a specific health care practitioner or pharmacist.

(2) "Department" means the Department of Justice.

(3) "Entity" means an organization that operates, or provides or makes available, a health information technology system to a health care practitioner or pharmacist.

(4) "Health information technology system" means an information processing application using hardware and software for the storage, retrieval, sharing of or use of patient data for communication, decisionmaking, coordination of care, or the quality, safety, or efficiency of the practice of medicine or delivery of health care services, including, but not limited to, electronic

1 medical record applications, health information exchange systems,
2 or other interoperable clinical or health care information system.
3 (5) "User-initiated basis" means an authorized health care
4 practitioner or pharmacist has taken an action to initiate the query
5 to the CURES database, such as clicking a button, issuing a voice
6 command, or taking some other action that can be attributed to a
7 specific health care practitioner or pharmacist.

O

SENATE COMMITTEE ON APPROPRIATIONS
Senator Anthony Portantino, Chair
2017 - 2018 Regular Session

AB 1752 (Low) - Controlled substances: CURES database

Version: June 20, 2018

Policy Vote: B., P. & E.D. 9 - 0, PUB. S. 6 - 1

Urgency: No

Mandate: No

Hearing Date: August 6, 2018

Consultant: Samantha Lui

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

Bill Summary: Adds Schedule V drugs to the Controlled Substances Utilization Review and Evaluation System (CURES). Changes the required timeframe in which pharmacists are required to report dispensed prescriptions from seven days to the following business day.

Fiscal Impact:

- $635,000 total funds ($230,000 reimbursements, $405,000 Legal Service Revolving Fund) in FY 2018-19, $698,000 (LSRF) ongoing for the Department of Justice, of which:
  - One-time $230,000 (General Fund) is attributable to the necessary IT updates.
  - One-time external consultant to assist with the design, development and implementation of adding Schedule V drugs into CURES, and
  - 2.0 deputy attorneys general and 1.0 legal secretary to address increased investigations and disciplinary workload for the prescribing of Schedule V substances, particularly of California doctors prescribing out-of-state and non-California doctors prescribing to Californians.

- Minor and absorbable workload for the Medical Board. Staff notes Medical Board believes adding Schedule V drugs and increasing communications with other states PDMP systems will facilitate current investigative efforts into doctors inappropriately prescribing to out-of-state patients and out-of-state doctors prescribing inappropriately to patients within California. While the Medical Board does anticipate an increase in investigations due to this bill, there is no data to accurately project the actual increase.

Background: Through the Controlled Substances Act of 1970, the federal government regulates the manufacture, distribution and dispensing of controlled substances. The Act ranks into five schedules those drugs known to have potential for physical or psychological harm, based on three considerations: (a) their potential for abuse; (b) their accepted medical use; and, (c) their accepted safety under medical supervision.

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

- Schedule II controlled substances have a currently accepted medical use in treatment, or a currently accepted medical use with severe restrictions, and have a high potential for abuse and psychological or physical dependence.

Schedule II drugs can be narcotics or non-narcotic. Examples of Schedule II controlled substances include combination products with less than 15 milligrams of hydrocodone per dosage unit (Vicodin), morphine, methadone, Ritalin, Demerol, Percocet, Percodan, fentanyl and Oxycontin.

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

- Schedule V drugs have a low potential for abuse relative to substances listed in Schedule IV and consist primarily of preparations containing limited quantities of certain narcotics. Schedule V drugs are generally used for antidiarrheal, antitussive, and analgesic purposes.

Current law establishes the Controlled Substances Utilization Review and Evaluation System (CURES) for the electronic monitoring of Schedule II, III and IV controlled substance prescriptions, with the intent of its establishment to assist law enforcement and regulatory agencies in controlling diversion and abuse of specified controlled substances. CURES provides for the electronic transmission of Schedule II, III and IV controlled substance prescription information to the Department of Justice (DOJ) no more than seven days from the time prescriptions are dispensed.

Proposed Law: The bill expands the drugs required to be reported and monitored in CURES to include Schedule V controlled substances. In addition, the bill:

- Changes the required timeframe in which pharmacists are required to report dispensed prescriptions from seven days to the following business day.

- Removes the requirement that reports CURES include the International Statistical Classification of Diseases, 9th revision (ICD-9) or 10th revision (ICD-10) Code, if available.

- Adds "date of sale of the prescription" to the information required for reports to CURES.

Related Legislation: The Legislature has considered several bills this legislative session related to the opioid epidemic, including those pertaining to CURES (AB 1751, Low; AB 1753, Low), opioid prescribing policies (AB 1998, Rodriguez), and improved access to naloxone.

Staff Comments: Staff notes the DOJ assumes the Department of Consumer Affairs (DCA) will reimburse DOJ for costs through an interagency agreement and would need a commensurate spending increase in the budget. There may be cost pressures on the Boards, to the extent that current fee levels cannot absorb the additional costs, and impact on DCA pro rata.

-- END --

AB 1753

STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Assembly Bill No. 1753

CHAPTER 479

An act to amend Sections 11161.5, 11162.1, and 11165 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 18, 2018. Filed with Secretary of State September 18, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1753, Low. Controlled substances: CURES database.

Existing law classifies certain controlled substances into designated schedules. Existing law requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by a health care practitioner authorized to prescribe, order, administer, furnish, or dispense a Schedule II, Schedule III, or Schedule IV controlled substance. Existing law requires prescription forms for controlled substance prescriptions to be obtained from security printers approved by the department, as specified. Existing law requires a dispensing pharmacy, clinic, or other dispenser to report specified information to the department.

This bill would authorize the department to reduce or limit the number of approved printers to 3, as specified. The bill would require prescription forms for controlled substance prescriptions to have a uniquely serialized number, in a manner prescribed by the department, and would require a printer to submit specified information to the department for all prescription forms delivered. The bill would require the information submitted by a dispensing pharmacy, clinic, or other dispenser to the department to include the serial number for the corresponding prescription form, if applicable.

This bill would incorporate additional changes to Section 11165 of the Health and Safety Code proposed by AB 1751 to be operative only if this bill and AB 1751 are enacted and this bill is enacted last.

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

SECTION 1. The Legislature finds and declares the following:

(a) The prevailing use of paper prescription pads to prescribe controlled substances leads to significant instances of theft and fraud each year, contributing to the prescription drug abuse crisis and fueling criminal enterprises engaged in drug diversion.

(b) Prescribing controlled substances by means of electronic transmission prescription, or e-prescribing, has long been considered the most effective way to combat prescription pad theft and fraud.

(c) Many states have begun to require that all controlled substances be prescribed electronically as a means of addressing the public health and public safety crises associated with prescription drug abuse and diversion.

(d) Until mandatory e-prescribing is established in California, it is critical that tighter restrictions be placed on the manufacturing and tracking of prescription pads used within the state.

SEC. 2. Section 11161.5 of the Health and Safety Code is amended to read:

11161.5. (a) Prescription forms for controlled substance prescriptions shall be obtained from security printers approved by the Department of Justice.

(b) The department may approve security printer applications after the applicant has provided the following information:

(1) Name, address, and telephone number of the applicant.

(2) Policies and procedures of the applicant for verifying the identity of the prescriber ordering controlled substance prescription forms.

(3) Policies and procedures of the applicant for verifying delivery of controlled substance prescription forms to prescribers.

(4) (A) The location, names, and titles of the applicant's agent for service of process in this state; all principal corporate officers, if any; all managing general partners, if any; and any individual owner, partner, corporate officer, manager, agent, representative, employee, or subcontractor of the applicant who has direct access to, or management or control of, controlled substance prescription forms.

(B) A report containing this information shall be made on an annual basis and within 30 days after any change of office, principal corporate officers, managing general partner, or of any person described in subparagraph (A).

(5) (A) A signed statement indicating whether the applicant, any principal corporate officer, any managing general partner, or any individual owner, partner, corporate officer, manager, agent, representative, employee, or subcontractor of the applicant who has direct access to, or management or control of, controlled substance prescription forms, has ever been convicted of, or pled no contest to, a violation of any law of a foreign country, the United States, or any state, or of any local ordinance.

(B) The department shall provide the applicant and any individual owner, partner, corporate officer, manager, agent, representative, employee, or subcontractor of the applicant who has direct access to, or management or control of, controlled substance prescription forms, with the means and direction to provide fingerprints and related information, in a manner specified by the department, for the purpose of completing state, federal, or foreign criminal background checks.

(C) Any applicant described in subdivision (b) shall submit his or her fingerprint images and related information to the department, for the purpose of the department obtaining information as to the existence and nature of a

record of state, federal, or foreign level convictions and state, federal, or foreign level arrests for which the department establishes that the applicant was released on bail or on his or her own recognizance pending trial, as described in subdivision (*l*) of Section 11105 of the Penal Code. Requests for federal level criminal offender record information received by the department pursuant to this section shall be forwarded to the Federal Bureau of Investigation by the department.

(D) The department shall assess against each security printer applicant a fee determined by the department to be sufficient to cover all processing, maintenance, and investigative costs generated from or associated with completing state, federal, or foreign background checks and inspections of security printers pursuant to this section with respect to that applicant; the fee shall be paid by the applicant at the time he or she submits the security printer application, fingerprints, and related information to the department.

(E) The department shall retain fingerprint impressions and related information for subsequent arrest notification pursuant to Section 11105.2 of the Penal Code for all applicants.

(c) The department may, within 60 calendar days of receipt of the application from the applicant, deny the security printer application.

(d) The department may deny a security printer application on any of the following grounds:

(1) The applicant, any individual owner, partner, corporate officer, manager, agent, representative, employee, or subcontractor for the applicant, who has direct access, management, or control of controlled substance prescription forms, has been convicted of a crime. A conviction within the meaning of this paragraph means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

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

(3) The applicant committed any act that would constitute a violation of this division.

(4) The applicant knowingly made a false statement of fact required to be revealed in the application to produce controlled substance prescription forms.

(5) The department determines that the applicant failed to demonstrate adequate security procedures relating to the production and distribution of controlled substance prescription forms.

(6) The department determines that the applicant has submitted an incomplete application.

(7) As a condition for its approval as a security printer, an applicant shall authorize the Department of Justice to make any examination of the books

and records of the applicant, or to visit and inspect the applicant during business hours, to the extent deemed necessary by the board or department to properly enforce this section.

(e) An approved applicant shall submit an exemplar of a controlled substance prescription form, with all security features, to the Department of Justice within 30 days of initial production.

(f) The department shall maintain a list of approved security printers and the department shall make this information available to prescribers and other appropriate government agencies, including the Board of Pharmacy.

(g) Before printing any controlled substance prescription forms, a security printer shall verify with the appropriate licensing board that the prescriber possesses a license and current prescribing privileges which permits the prescribing of controlled substances with the federal Drug Enforcement Administration (DEA).

(h) Controlled substance prescription forms shall be provided directly to the prescriber either in person, by certified mail, or by a means that requires a signature signifying receipt of the package and provision of that signature to the security printer. Controlled substance prescription forms provided in person shall be restricted to established customers. Security printers shall obtain a photo identification from the customer and maintain a log of this information. Controlled substance prescription forms shall be shipped only to the prescriber's address on file and verified with the federal Drug Enforcement Administration or the Medical Board of California.

(i) Security printers shall retain ordering and delivery records in a readily retrievable manner for individual prescribers for three years.

(j) Security printers shall produce ordering and delivery records upon request by an authorized officer of the law as defined in Section 4017 of the Business and Professions Code.

(k) Security printers shall report any theft or loss of controlled substance prescription forms to the Department of Justice via fax or email within 24 hours of the theft or loss.

(*l*) (1) The department shall impose restrictions, sanctions, or penalties, subject to subdivisions (m) and (n), against security printers who are not in compliance with this division pursuant to regulations implemented pursuant to this division and shall revoke its approval of a security printer for a violation of this division or action that would permit a denial pursuant to subdivision (d) of this section.

(2) When the department revokes its approval, it shall notify the appropriate licensing boards and remove the security printer from the list of approved security printers.

(m) The following violations by security printers shall be punishable pursuant to subdivision (n):

(1) Failure to comply with the Security Printer Guidelines established by the Security Printer Program as a condition of approval.

(2) Failure to take reasonable precautions to prevent any dishonest act or illegal activity related to the access and control of security prescription forms.

(3) Theft or fraudulent use of a prescriber's identity in order to obtain security prescription forms.

(n) A security printer approved pursuant to subdivision (b) shall be subject to the following penalties for actions leading to the denial of a security printer application specified in subdivision (d) or for a violation specified in subdivision (m):

(1) For a first violation, a fine not to exceed one thousand dollars ($1,000).

(2) For a second or subsequent violation, a fine not to exceed two thousand five hundred dollars ($2,500) for each violation.

(3) For a third or subsequent violation, a filing of an administrative disciplinary action seeking to suspend or revoke security printer approval.

(o) In order to facilitate the standardization of all prescription forms and the serialization of prescription forms with unique identifiers, the Department of Justice may cease issuing new approvals of security printers to the extent necessary to achieve these purposes. The department may, pursuant to regulation, reduce the number of currently approved security printers to no fewer than three vendors. The department shall ensure that any reduction or limitation of approved security printers does not impact the ability of vendors to meet demand for prescription forms.

SEC. 3. Section 11162.1 of the Health and Safety Code is amended to read:

11162.1. (a) The prescription forms for controlled substances shall be printed with the following features:

(1) A latent, repetitive "void" pattern shall be printed across the entire front of the prescription blank; if a prescription is scanned or photocopied, the word "void" shall appear in a pattern across the entire front of the prescription.

(2) A watermark shall be printed on the backside of the prescription blank; the watermark shall consist of the words "California Security Prescription."

(3) A chemical void protection that prevents alteration by chemical washing.

(4) A feature printed in thermochromic ink.

(5) An area of opaque writing so that the writing disappears if the prescription is lightened.

(6) A description of the security features included on each prescription form.

(7) (A) Six quantity check off boxes shall be printed on the form so that the prescriber may indicate the quantity by checking the applicable box where the following quantities shall appear:

1–24
25–49
50–74
75–100
101–150
151 and over.

(B) In conjunction with the quantity boxes, a space shall be provided to designate the units referenced in the quantity boxes when the drug is not in tablet or capsule form.

(8) Prescription blanks shall contain a statement printed on the bottom of the prescription blank that the "Prescription is void if the number of drugs prescribed is not noted."

(9) The preprinted name, category of licensure, license number, federal controlled substance registration number, and address of the prescribing practitioner.

(10) Check boxes shall be printed on the form so that the prescriber may indicate the number of refills ordered.

(11) The date of origin of the prescription.

(12) A check box indicating the prescriber's order not to substitute.

(13) An identifying number assigned to the approved security printer by the Department of Justice.

(14) (A) A check box by the name of each prescriber when a prescription form lists multiple prescribers.

(B) Each prescriber who signs the prescription form shall identify himself or herself as the prescriber by checking the box by his or her name.

(15) A uniquely serialized number, in a manner prescribed by the Department of Justice.

(b) Each batch of controlled substance prescription forms shall have the lot number printed on the form and each form within that batch shall be numbered sequentially beginning with the numeral one.

(c) (1) A prescriber designated by a licensed health care facility, a clinic specified in Section 1200, or a clinic specified in subdivision (a) of Section 1206 that has 25 or more physicians or surgeons may order controlled substance prescription forms for use by prescribers when treating patients in that facility without the information required in paragraph (9) of subdivision (a) or paragraph (3) of this subdivision.

(2) Forms ordered pursuant to this subdivision shall have the name, category of licensure, license number, and federal controlled substance registration number of the designated prescriber and the name, address, category of licensure, and license number of the licensed health care facility the clinic specified in Section 1200, or the clinic specified in Section 1206 that has 25 or more physicians or surgeons preprinted on the form. Licensed health care facilities or clinics exempt under Section 1206 are not required to preprint the category of licensure and license number of their facility or clinic.

(3) Forms ordered pursuant to this section shall not be valid prescriptions without the name, category of licensure, license number, and federal controlled substance registration number of the prescriber on the form.

(4) (A) Except as provided in subparagraph (B), the designated prescriber shall maintain a record of the prescribers to whom the controlled substance prescription forms are issued, that shall include the name, category of licensure, license number, federal controlled substance registration number, and quantity of controlled substance prescription forms issued to each

prescriber. The record shall be maintained in the health facility for three years.

(B) Forms ordered pursuant to this subdivision that are printed by a computerized prescription generation system shall not be subject to subparagraph (A) or paragraph (7) of subdivision (a). Forms printed pursuant to this subdivision that are printed by a computerized prescription generation system may contain the prescriber's name, category of professional licensure, license number, federal controlled substance registration number, and the date of the prescription.

(d) Within the next working day following delivery, a security printer shall submit via Web-based application, as specified by the Department of Justice, all of the following information for all prescription forms delivered:

(1) Serial numbers of all prescription forms delivered.

(2) All prescriber names and Drug Enforcement Administration Controlled Substance Registration Certificate numbers displayed on the prescription forms.

(3) The delivery shipment recipient names.

(4) The date of delivery.

SEC. 4. Section 11165 of the Health and Safety Code is amended to read:

11165. (a) To assist health care practitioners in their efforts to ensure appropriate prescribing, ordering, administering, furnishing, and dispensing of controlled substances, law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II, Schedule III, and Schedule IV controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds in the CURES Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of, and Internet access to information regarding, the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe, order, administer, furnish, or dispense these controlled substances.

(b) The Department of Justice may seek and use grant funds to pay the costs incurred by the operation and maintenance of CURES. The department shall annually report to the Legislature and make available to the public the amount and source of funds it receives for support of CURES.

(c) (1) The operation of CURES shall comply with all applicable federal and state privacy and security laws and regulations.

(2) (A) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, provided that patient information, including any information that

may identify the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party, unless authorized by, or pursuant to, state and federal privacy and security laws and regulations. The Department of Justice shall establish policies, procedures, and regulations regarding the use, access, evaluation, management, implementation, operation, storage, disclosure, and security of the information within CURES, consistent with this subdivision.

(B) Notwithstanding subparagraph (A), a regulatory board whose licensees do not prescribe, order, administer, furnish, or dispense controlled substances shall not be provided data obtained from CURES.

(3) In accordance with federal and state privacy laws and regulations, a health care practitioner may provide a patient with a copy of the patient's CURES patient activity report as long as no additional CURES data is provided and keep a copy of the report in the patient's medical record in compliance with subdivision (d) of Section 11165.1.

(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as defined in the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the following information to the Department of Justice as soon as reasonably possible, but not more than seven days after the date a controlled substance is dispensed, in a format specified by the Department of Justice:

(1) Full name, address, and, if available, telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.

(2) The prescriber's category of licensure, license number, national provider identifier (NPI) number, if applicable, the federal controlled substance registration number, and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, NPI number, and federal controlled substance registration number.

(4) National Drug Code (NDC) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) International Statistical Classification of Diseases, 9th revision (ICD-9) or 10th revision (ICD-10) Code, if available.

(7) Number of refills ordered.

(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(9) Date of origin of the prescription.

(10) Date of dispensing of the prescription.

(11) The serial number for the corresponding prescription form, if applicable.

(e) The Department of Justice may invite stakeholders to assist, advise, and make recommendations on the establishment of rules and regulations necessary to ensure the proper administration and enforcement of the CURES database. All prescriber and dispenser invitees shall be licensed by one of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, in active practice in California, and a regular user of CURES.

(f) The Department of Justice shall, prior to upgrading CURES, consult with prescribers licensed by one of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, one or more of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, and any other stakeholder identified by the department, for the purpose of identifying desirable capabilities and upgrades to the CURES Prescription Drug Monitoring Program (PDMP).

(g) The Department of Justice may establish a process to educate authorized subscribers of the CURES PDMP on how to access and use the CURES PDMP.

SEC. 4.5. Section 11165 of the Health and Safety Code is amended to read:

11165. (a) To assist health care practitioners in their efforts to ensure appropriate prescribing, ordering, administering, furnishing, and dispensing of controlled substances, law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II, Schedule III, and Schedule IV controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds in the CURES Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of, and Internet access to information regarding, the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe, order, administer, furnish, or dispense these controlled substances.

(b) The Department of Justice may seek and use grant funds to pay the costs incurred by the operation and maintenance of CURES. The department shall annually report to the Legislature and make available to the public the amount and source of funds it receives for support of CURES.

(c) (1) The operation of CURES shall comply with all applicable federal and state privacy and security laws and regulations.

(2) (A) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, if patient information, including any information that may identify

the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party, unless authorized by, or pursuant to, state and federal privacy and security laws and regulations. The Department of Justice shall establish policies, procedures, and regulations regarding the use, access, evaluation, management, implementation, operation, storage, disclosure, and security of the information within CURES, consistent with this subdivision.

(B) Notwithstanding subparagraph (A), a regulatory board whose licensees do not prescribe, order, administer, furnish, or dispense controlled substances shall not be provided data obtained from CURES.

(3) The Department of Justice shall, no later than July 1, 2020, adopt regulations regarding the access and use of the information within CURES. The Department of Justice shall consult with all stakeholders identified by the department during the rulemaking process. The regulations shall, at a minimum, address all of the following in a manner consistent with this chapter:

(A) The process for approving, denying, and disapproving individuals or entities seeking access to information in CURES.

(B) The purposes for which a health care practitioner may access information in CURES.

(C) The conditions under which a warrant, subpoena, or court order is required for a law enforcement agency to obtain information from CURES as part of a criminal investigation.

(D) The process by which information in CURES may be provided for educational, peer review, statistical, or research purposes.

(4) In accordance with federal and state privacy laws and regulations, a health care practitioner may provide a patient with a copy of the patient's CURES patient activity report as long as no additional CURES data are provided and keep a copy of the report in the patient's medical record in compliance with subdivision (d) of Section 11165.1.

(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as defined in the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the following information to the Department of Justice as soon as reasonably possible, but not more than seven days after the date a controlled substance is dispensed, in a format specified by the Department of Justice:

(1) Full name, address, and, if available, telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.

(2) The prescriber's category of licensure, license number, national provider identifier (NPI) number, the federal controlled substance registration number, and the state medical license number of any prescriber using the

federal controlled substance registration number of a government-exempt facility, if provided.

(3) Pharmacy prescription number, license number, NPI number, and federal controlled substance registration number.

(4) National Drug Code (NDC) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) International Statistical Classification of Diseases, 9th revision (ICD-9) or 10th revision (ICD-10) Code, if available.

(7) Number of refills ordered.

(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(9) Date of origin of the prescription.

(10) Date of dispensing of the prescription.

(11) The serial number for the corresponding prescription form, if applicable.

(e) The Department of Justice may invite stakeholders to assist, advise, and make recommendations on the establishment of rules and regulations necessary to ensure the proper administration and enforcement of the CURES database. All prescriber and dispenser invitees shall be licensed by one of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, in active practice in California, and a regular user of CURES.

(f) The Department of Justice shall, prior to upgrading CURES, consult with prescribers licensed by one of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, one or more of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, and any other stakeholder identified by the department, for the purpose of identifying desirable capabilities and upgrades to the CURES Prescription Drug Monitoring Program (PDMP).

(g) The Department of Justice may establish a process to educate authorized subscribers of the CURES PDMP on how to access and use the CURES PDMP.

(h) (1) The Department of Justice may enter into an agreement with any entity operating an interstate data sharing hub, or any agency operating a prescription drug monitoring program in another state, for purposes of interstate data sharing of prescription drug monitoring program information.

(2) Data obtained from CURES may be provided to authorized users of another state's prescription drug monitoring program, as determined by the Department of Justice pursuant to subdivision (c), if the entity operating the interstate data sharing hub, and the prescription drug monitoring program of that state, as applicable, have entered into an agreement with the Department of Justice for interstate data sharing of prescription drug monitoring program information.

(3) Any agreement entered into by the Department of Justice for purposes of interstate data sharing of prescription drug monitoring program

information shall ensure that all access to data obtained from CURES and the handling of data contained within CURES comply with California law, including regulations, and meet the same patient privacy, audit, and data security standards employed and required for direct access to CURES.

(4) For purposes of interstate data sharing of CURES information pursuant to this subdivision, an authorized user of another state's prescription drug monitoring program shall not be required to register with CURES, if he or she is registered and in good standing with that state's prescription drug monitoring program.

(5) The Department of Justice shall not enter into an agreement pursuant to this subdivision until the department has issued final regulations regarding the access and use of the information within CURES as required by paragraph (3) of subdivision (c).

SEC. 5. Section 4.5 of this bill incorporates amendments to Section 11165 of the Health and Safety Code proposed by both this bill and Assembly Bill 1751. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 11165 of the Health and Safety Code, and (3) this bill is enacted after Assembly Bill 1751, in which case Section 4 of this bill shall not become operative.

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CONCURRENCE IN SENATE AMENDMENTS
AB 1753 (Low)
As Amended August 24, 2018
Majority vote

ASSEMBLY: 76-0 (May 29, 2018) SENATE: 39-0 (August 29, 2018)

Original Committee Reference: **B. & P.**

SUMMARY: Authorizes the Department of Justice (COJ) to cap the number of security printers approved to manufacture regulated prescription pads to three and allows DOJ to reduce or limit the number of printers to no fewer than three through regulation; requires that all prescription forms be uniquely serialized; and requires that the DOJ link prescription pad serial numbers to corresponding records in the state's prescription drug monitoring program (PDMP), Controlled substance Utilization Review and Evaluation System (CURES).

The Senate amendments add chaptering language to resolve potential conflicts with AB 1751 (Low) of the current legislative session.

EXISTING LAW:

1) Allows only a physician, dentist, podiatrist, veterinarian, naturopathic doctor, registered nurse, certified nurse-midwife, optometrist, or out-of-state prescriber to write or issue a prescription. (Health and Safety Code Section (HSC) 11150)

2) Requires that all prescription forms for controlled substance prescriptions be obtained from security printers approved by the DOJ and sets a number of parameters for the DOJ's approval process. (HSC 11161.5)

3) Provides that when a prescriber's authority to prescribe controlled substances is restricted, the law enforcement agency or licensing board that sought the restrictions shall provide the prescriber's name, category of licensure, license number, and the nature of the restrictions imposed on the prescriber to security printers, the DOJ, and the Board of Pharmacy. (HSC 11161.7)

4) Lists a number of required features that must be included for all prescription forms for controlled substances, including fraud-prevention identifiers, printing information, and information relating to the prescribing practitioner. (HSC 11162.1)

5) Criminalizes the counterfeiting of prescription pads and the possession of counterfeit prescription pads. (HSC 11162.5 to 11162.6)

6) Requires all prescriptions and dispensations of controlled substances to meet a series of requirements including use of a controlled substance prescription form, presence of a signature and date in ink, and the address of the patient. (HSC 11164)

7) Prohibits any person from obtaining or attempting to obtain a prescription for controlled substances, by fraud, deceit, misrepresentation, subterfuge, or the concealment of a material fact. (HSC 11173)

8) Enables security printers and prescribers to report stolen or lost prescription pads to the DOJ through CURES. (HSC 11165.3)

FISCAL EFFECT: According to the Senate Committee on Appropriations, one-time costs of $884,000 for the development of the web-based application, contract with the Department of Technology for external project approval, oversight, and tracking, network costs, and departmental services.

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author:

> The opioid crisis ravaging communities throughout our nation and California must first and foremost be addressed through solutions rooted in a public health approach. However, prescription drug abuse and diversion continues to be a pressing public safety issue as well. As instances of addiction to pharmaceutical opioids grows, criminal enterprises derive tremendous profit through prescription pad theft and fraud. Because current statute provides for little effective regulation of dozens of security printers entrusted with manufacturing these pads, it is challenging for law enforcement to track prescriptions that may have been written with counterfeit or stolen pads. AB 1753 will tighten existing controls involved in the security printers program and ensure that prescriptions filled using illicit pads can be linked to prescription data collected through the successful CURES database.

Background.

Security Printers and Prescription Pads. Under the DOJ's Security Prescription Printers Program, all paper prescriptions of any Schedule II through V controlled substance must use special tamper-resistant forms obtained from manufacturers approved by the DOJ. Vendors wishing to operate as approved security printers submit an application to the DOJ and are initially required to provide an applicant's name, address, and telephone number along with a description of the applicant's intended policies and procedures for ensuring that prescription pads are delivered only to valid prescribers. The DOJ then generally screens the applicant and any other individuals affiliated with the applicant's business for any disqualifying criminal history records. Once approved, printers are required to retain records for inspection by the DOJ and may have be fined or have their approval revoked for misconduct.

All prescription forms are required to contain a number of security features and identifying markers. However, this does not include a uniquely serialized number, and delivery information reported by security printers to the DOJ does not include information specifically identifying prescription pads through a serial number. This means that when prescription pads are lost or stolen, there is no way for the DOJ or law enforcement to effectively identify the circulation of prescriptions written on those pads. There is also no realistic method of linking a particular pad to dispensed prescriptions, even though the state tracks all Schedule II-IV drug prescriptions dispensed in California through CURES.

One of the stated challenges to requiring standardized serialization of prescription pads is that the number of approved security printers that are each individually manufacturing pads throughout the state without significant restriction or coordination. Approximately 43 security printers are currently approved by the DOJ and operating throughout the state. The DOJ has stated that it

believes this to be too many printers to substantially standardize the production of forms in a way that would allow for unique identifiers to be consistently applied in a way that can be tracked through CURES or any other system.

Allowing the DOJ to cap the number of approved security printers and reduce the number through regulation to three will provide for a more manageable amount of coordination between manufacturers. This will allow for prescription pads to be tracked by law enforcement when lost or stolen, and for serialized pads to be linked to CURES. The tighter regulation could also arguably make it easier for law enforcement to identify counterfeit or fraudulent prescription pads sold on the street.

Analysis Prepared by: Robert Sumner / B. & P. / (916) 319-3301 FN: 0005157

AB 1998

AMENDED IN SENATE JULY 2, 2018

AMENDED IN SENATE JUNE 19, 2018

AMENDED IN ASSEMBLY MAY 25, 2018

AMENDED IN ASSEMBLY APRIL 11, 2018

AMENDED IN ASSEMBLY MARCH 12, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL No. 1998

Introduced by Assembly Member Rodriguez

February 1, 2018

An act to add Section 11153.1 to the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 1998, as amended, Rodriguez. Opioids: safe prescribing policy.

Existing law, the Uniform Controlled Substances Act, classifies opioids as Schedule II controlled substances and places restrictions on the prescription of those drugs, including prohibiting refills and specifying the requirements of a prescription for these drugs. Violation of these provisions and the Uniform Controlled Substances Act is a misdemeanor.

This bill would require, by July 1, 2019, every health care ~~practitioner~~ *practitioner, with the exception of veterinarians,* who prescribes, ~~orders,~~ administers, or furnishes opioids classified as Schedule II and Schedule III to adopt, review, and periodically update a safe opioid prescribing policy, as specified. The bill would prohibit the safe opioid prescribing policy from placing a limitation on the prescription, ordering,

administration, or furnishing of opioids to patients with prescribed conditions. The bill would require a health care practitioner who determines, based on his or her professional judgment, that the safe prescribing policy is not appropriate for a specific patient's treatment, to provide adequate documentation in the patient's record to support the treatment decision. The bill would make the failure to establish or adopt a safe opioid prescribing policy to be referred to the appropriate state professional licensing board for administrative sanctions. Because violation of these provisions is also a crime, the bill would create a new crime, thereby imposing a state-mandated local program.

The bill would require the State Department of Public Health, utilizing data from the CURES database, to submit a report detailing progress toward the stated goals of declining opioid prescriptions, as specified.

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.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) The opioid epidemic is a public health crisis affecting not
4 only the State of California, but the entire country.
5 (b) According to the federal Centers for Disease Control and
6 Prevention, 66 percent of the drug overdose deaths in the United
7 States involve an opioid.
8 (c) In 2016, there were almost 2,000 overdose deaths due to
9 opioids alone, and nearly 4,000 emergency room visits due to
10 opioid overdoses.
11 (d) According to a 2018 University of Southern California study,
12 about 83.45 percent of opioid prescriptions originated from
13 physician offices.
14 (e) In 2016, there were 23 million opioid prescriptions in
15 California, a state that has nearly 40 million residents.

(f) According to data from the State Department of Public Health, opioid prescriptions declined by an average of three percent between 2014 and 2017.

SEC. 2. Section 11153.1 is added to the Health and Safety Code, to read:

11153.1. (a) It is the intent of the Legislature that, from July 1, 2019, to July 1, 2023, inclusive, opioid prescriptions in California for Schedule II and Schedule III, as defined in Sections 11055 and 11056 respectively, continue in a year-over-year downward trend consistent with the average trend established between 2014 and 2017.

(b) By July 1, 2019, every health care practitioner who prescribes, ~~orders,~~ administers, or furnishes opioids classified as Schedule II and Schedule III pursuant to Sections 11055 and 11056, respectively, shall establish or adopt a safe opioid prescribing policy, as described in subdivision (d). A group of practitioners, including a hospital pharmacy and therapeutics committee, may adopt a safe opioid prescribing policy that applies to all parties as part of a business affiliation or contract with an organized provider group.

(c) A health care practitioner or group of practitioners, including a hospital pharmacy and therapeutics committee, is deemed to have satisfied this section by adopting a nationally or professionally recognized guideline, or a guideline established by the state licensing board or commission that was updated after January 1, 2015, for the use of opioids for managing pain if the guideline meets the criteria specified in subdivision (d).

(d) The safe opioid prescribing policy shall be a written document promoting the appropriate dosage and duration of opioid prescriptions for *a health care provider's* patients, with the goal of reducing the overall prescription, ~~ordering,~~ administration, or furnishing of opioids to the lowest effective dose and the shortest duration necessary to treat the patient. The policy shall address, but not be limited to, all of the following:

(1) The appropriate dose and duration of prescriptions for adult patients, as applicable, experiencing acute pain.

(2) The appropriate dose and duration of prescriptions for pediatric patients, as applicable, experiencing acute pain.

(3) Alternatives to opioid treatment, including nonpharmacological treatment options and referral to specialty care, as appropriate.

(4) Recommendations for assessing patients' continued use of opioids for pain management.

(5) Recommendations for counseling patients on overdose and addiction risk and response.

(e) In addition to the requirements in subdivision (d), every policy shall include a requirement that the prescriber offer a prescription for naloxone hydrochloride or another drug approved by the United States Food and Drug Administration for the complete or partial reversal of opioid depression to a patient when one or more of the following conditions are present:

(1) The prescription dosage for the patient is 90 morphine ~~milligrams~~ *milligram equivalents* or more of an opioid medication per day.

(2) An opioid medication is prescribed concurrently with a prescription for benzodiazepine.

(3) The patient presents an increased risk for overdose, including a patient with a history of overdose, a patient with a history of substance use disorder, or a patient at risk of returning to a high dose of opioid medication to which the patient is no longer tolerant.

(f) The development of a safe opioid prescribing policy shall include review and consideration of evidence-based science, literature, research, and guidelines, including relevant recommendations and research from academia and consideration of existing guidelines and recommendations from groups including, but not limited to, the federal Centers for Disease Control and Prevention, the federal Centers for Medicare and Medicaid Services, the Medical Board of California, and the American Society of Addiction Medicine.

(g) The safe opioid prescribing policy shall be reviewed periodically and updated according to applicable scientific studies and available data.

(h) When a prescriber determines, based on his or her professional judgment, that the safe prescribing policy is not appropriate for a specific patient's treatment, the health care practitioner shall provide adequate documentation in the patient's record to support the treatment decision.

~~(i) A health care practitioner who prescribes, orders, administers, or furnishes opioids classified as Schedule II or Schedule III pursuant to Sections 11055 and 11056, respectively, to a hospital patient shall follow the guideline or policy of that hospital's pharmacy and therapeutics committee adopted pursuant to subdivision (b).~~

~~(j)~~

(i) The safe opioid prescribing policy shall not place limitations on the prescription, ordering, administration, or furnishing of opioids to patients undergoing treatment for chronic pain, cancer, substance use disorder, sickle cell disease with acute intermittent porphyria, hospice, *palliative care,* or end-of-life care.

~~(k)~~

(j) (1) A health care practitioner who fails to establish or adopt a safe opioid prescribing policy, as required by subdivision (b), shall be referred to the appropriate state professional licensing board solely for administrative sanctions, as deemed appropriate by that board.

(2) This section does not create a private right of action against a health care practitioner. This section does not limit a health care practitioner's liability for the negligent failure to diagnose or treat a patient.

~~(l)~~

(k) (1) By July 1, 2024, the State Department of Public Health shall submit a report to the Legislature and publish to the public, using data from the CURES database, detailing progress toward the goal stated in subdivision (a). The department may, and is encouraged to, contract with an independent academic entity, including the University of California, to prepare the report. The report shall address, but not be limited to, all of the following:

(A) The overall number of opioid prescriptions, rates of opioid prescription per 1,000 persons, and morphine milligram equivalents per year in the years 2019 to 2023, inclusive. This information shall be provided in total, and by prescribing license.

(B) The overall year-by-year change in opioid prescriptions, rates of opioid prescription per 1,000 persons, and morphine milligram equivalents from the years 2019 to 2023, inclusive.

(C) The progress made toward reducing the over-prescription of opioids.

(D) Recommendations for whether further reduction of opioid prescription is needed.

(E) Information, if available, on opioid prescriptions by geographic location.

(2) Before publishing the final report, the department shall provide an opportunity for feedback on the draft report by relevant stakeholders.

(3) The report submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(4) The requirement for submitting a report imposed under this subdivision is inoperative on July 1, 2028, pursuant to Section 10231.5 of the Government Code.

(l) This section does not apply to a veterinarian licensed pursuant to Chapter 11 (commencing with Section 4800) of Division 2 of the Business and Professions Code.

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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SENATE COMMITTEE ON APPROPRIATIONS
Senator Anthony Portantino, Chair
2017 - 2018 Regular Session

AB 1998 (Rodriguez) - Opioids: safe prescribing policy

Version: July 2, 2018

Policy Vote: B., P. & E.D. 9 - 0, HEALTH 9 - 0

Urgency: No

Mandate: Yes

Hearing Date: August 6, 2018

Consultant: Samantha Lui

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

Bill Summary: Requires, by July 1, 2019, health care practitioners who prescribe, order, administer, or furnish opioids to establish or adopt a safe opioid prescribing policy. Requires the Department of Public Health, by July 1, 2024, to submit a report to the Legislature and publish to the public, using data from the Controlled Substance Utilization Review and Evaluation System (CURES) database, detailing progress towards the goal of a downward trend in opioid prescriptions.

Fiscal Impact:

- No fiscal impact to Board of Pharmacy.
- Minor and absorbable workload associated with anticipated minor increase in enforcement work for the Board of Optometry, the Board of Podiatric Medicine, the Board of Registered Nursing, the Dental Board, the Medical Board, the Osteopathic Medical Board, and the Physician Assistant Board (the boards authorized to prescribe opioids). Absorbable IT impact (approximately $2,500 per Board but can be absorbed by redirecting existing maintenance resources).
- No impact to the Department of State Hospitals whose prescribing physicians include physicians, surgeons, and psychiatrists, and our hospital pharmacies before July 1, 2019. No anticipated special costs associated with compliance.
- The DOJ anticipates costs of $8,000 General Fund in fiscal year 2019-20 and $7,000 General Fund ongoing, in order to process the anticipated increase in arrest prints since the bill would create a new crime. The DOJ anticipates there would be an increase in the CalID program and overtime hours for the record management branch to coordinate with the Criminal Justice Statistics Center for National Incident-Based Reporting System (NIBRS) and Bureau of Criminal Statistics (BCS) codes.
- $156,000 (special fund) in fiscal year 2019-20 and $301,317 (special fund) in 2020-21 for Department of Public Health to develop the one-time report and monitor CURES. The funding could either be used administratively to establish positions in the department.

Background: The Department of Consumer Affairs (DCA) licenses and regulations health care professionals including: physicians and surgeons, dentists, veterinarians; registered nurses, nurse practitioners (NP) and certified nurse-midwives; physician

assistants (PA); osteopathic physicians and surgeons; naturopathic doctors (ND); optometrists; doctors of podiatric medicine; and, pharmacies, pharmacists and wholesalers of dangerous drugs or devices. A physician and surgeon may not prescribe, dispense, or administer dangerous drugs or controlled substances to a person he or she knows or reasonably believes is using or will use the drugs or substances for a nonmedical purpose.

The Department of Justice (DOJ) maintains the CURES database for the electronic monitoring of the prescribing and dispensing of Schedule II - IV controlled substances. Dispensing pharmacies and clinics must report specified information for each controlled substance. The purpose of CURES is to assist law enforcement and regulatory agencies in controlling diversion and abuse of Schedule II, III and IV controlled substances and for statistical analysis, education, and research. In addition, California law requires prescription forms for controlled substance prescriptions to be written on tamper-proof forms.

Proposed Law: The bill includes the following provisions, among others:

- Requires every health care practitioner, who furnishes opioids, to adopt a safe opioid prescribing policy. By July 1, 2019, every health care practitioner who prescribes, administers, or furnishes opioids classified as Schedule II and Schedule III pursuant to Sections 11055 and 11056, respectively, must establish or adopt a safe opioid prescribing policy, as defined. A group of practitioners, including a hospital pharmacy and therapeutics committee, may adopt a safe opioid prescribing policy that applies to all parties as part of a business affiliation or contract with an organized provider group. The bill exempts licensed veterinarians from the bill's provisions.

  A health care practitioner or group of practitioners, including a hospital pharmacy and therapeutics committee, is deemed to have satisfied this section by adopting a nationally or professionally recognized guideline, or a guideline established by the state licensing board or commission that was updated after January 1, 2015, for the use of opioids for managing pain if the guideline meets specified criteria.

- Defines safe opioid prescribing policy. The safe opioid prescribing policy must be a written document promoting the appropriate dosage and duration of opioid prescriptions for a health care provider's patients, with the goal of reducing the overall prescription, administration, or furnishing of opioids to the lowest effective dose and the shortest duration necessary to treat the patient. The policy must address specified information, including dosage and duration of prescription for patients, alternatives to opioid treatment, and recommendations for continued use of opioids for addiction risk and pain management.

  The development of a safe opioid prescribing policy must include review and consideration of evidence-based science, literature, research, and guidelines, including relevant recommendations and research from academia and consideration of existing guidelines and recommendations.

- Requires referral to licensing board for failure to adopt safe prescribing policy. A health care practitioner who fails to establish or adopt a safe opioid prescribing policy must be referred to the appropriate state professional licensing board solely for administrative sanctions, as deemed appropriate by that board. '

  The bill does not create a private right of action against a health care practitioner nor does it limit a health care practitioner's liability for the negligent failure to diagnose or treat a patient.

- Requires the Department of Public Health (CDPH) to submit a legislative report. By July 1, 2024, and until July 1, 2028, the State Department of Public Health must submit a report to the Legislature and publish to the public, using data from the CURES database. The department may, and is encouraged to, contract with an independent academic entity, including the University of California, to prepare the report with specified information.

Related Legislation: The Legislature has deliberated proposals related to opioids in recent past, including:

- SB 641 (Lara of 2017) prohibits the DOJ from releasing data in CURES to a law enforcement agency except pursuant to a warrant. SB 641 is pending consideration in Assembly Appropriations Committee.

- SB 1109 (Bates) requires warning labels for opioid prescription drug containers; requires that the Opioid Factsheet for Patients be provided to athletes engaged in after-school youth sports; requires that prescribers discuss the dangers of opioid abuse and addiction with a minor patient or their parent or guardian prior to prescribing an opioid; and requires that existing trainings for prescribers related to pain management include addiction risks associated with Schedule II drugs. SB 641 is pending consideration in Assembly Appropriations Committee.

- SB 1229 (Stone, 2018) requires pharmacists dispensing any opioid medication to a patient or the patient's agent for the first time to provide oral consultation before dispensing the medication and prohibits a pharmacist from dispensing the medication if the patient or the patient's agent declines the consultation. SB 1229 is pending in the Senate Business, Professions, and Economic Development Committee.

- AB 2741 (Burke, 2018) limits all opioid prescriptions for minors to a maximum of five days, with exceptions, and require a prescriber to discuss risks related to opioid medication with the minor and the minor's parent or guardian and obtain written consent prior to writing the prescription.

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AB 2078

AMENDED IN SENATE JUNE 21, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL No. 2078

Introduced by Assembly Member Daly

February 7, 2018

An act to amend Sections 243.4, 261, 286, 288a, and 289 of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 2078, as amended, Daly. Sex offenses: professional services.

Under existing law, a person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery punishable by imprisonment in a county jail for not more than one year or in the state prison for 2, 3, or 4 years, and a fine not to exceed $10,000. Under existing law, the crimes of rape, sodomy, oral copulation, and sexual penetration, when the victim was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration or oral copulation served a professional purpose, are punishable by imprisonment in the state prison for 3, 6, or 8 years.

This bill would expand the crime of sexual battery to apply to a person who performs professional services that entail having access to another person's body and who touches an intimate part of that person's body while performing those services, and the touching was against the person's will and for the purpose of sexual arousal, sexual gratification, or sexual abuse. The bill would expand the definitions of each of the

crimes of rape, sodomy, oral copulation, and sexual penetration to include any of those crimes performed against a victim's will by a professional whose services entail having access to the victim's body, if the conduct is performed by the professional while performing those services. By expanding the scope of these crimes, the bill would impose a state-mandated local program.

This bill would incorporate additional changes to Section 288a of the Penal Code proposed by SB 1494 to be operative as specified.

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.

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

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

1 SECTION 1. Section 243.4 of the Penal Code is amended to
2 read:
3 243.4. (a) Any person who touches an intimate part of another
4 person while that person is unlawfully restrained by the accused
5 or an accomplice, and if the touching is against the will of the
6 person touched and is for the purpose of sexual arousal, sexual
7 gratification, or sexual abuse, is guilty of sexual battery. A violation
8 of this subdivision is punishable by imprisonment in a county jail
9 for not more than one year, and by a fine not exceeding two
10 thousand dollars ($2,000); or by imprisonment in the state prison
11 for two, three, or four years, and by a fine not exceeding ten
12 thousand dollars ($10,000).
13 (b) Any person who touches an intimate part of another person
14 who is institutionalized for medical treatment and who is seriously
15 disabled or medically incapacitated, if the touching is against the
16 will of the person touched, and if the touching is for the purpose
17 of sexual arousal, sexual gratification, or sexual abuse, is guilty
18 of sexual battery. A violation of this subdivision is punishable by
19 imprisonment in a county jail for not more than one year, and by
20 a fine not exceeding two thousand dollars ($2,000); or by
21 imprisonment in the state prison for two, three, or four years, and
22 by a fine not exceeding ten thousand dollars ($10,000).

(c) (1) Any person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery.

(2) Any person who performs professional services that entail having access to another person's body and who touches an intimate part of that person while performing those services, and the touching is against the will of the person touched and for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery.

(3) A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year and by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the state prison for two, three, or four years and by a fine not exceeding ten thousand dollars ($10,000).

(d) Any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, causes another, against that person's will while that person is unlawfully restrained either by the accused or an accomplice, or is institutionalized for medical treatment and is seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars ($2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars ($10,000).

(e) (1) Any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery, punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. However, if the defendant was an employer and the victim was an employee of the defendant, the misdemeanor sexual battery shall be punishable by a fine not exceeding three thousand dollars ($3,000), by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Notwithstanding any other provision of law, any amount of a fine above two thousand dollars ($2,000)

which is collected from a defendant for a violation of this subdivision shall be transmitted to the State Treasury and, upon appropriation by the Legislature, distributed to the Department of Fair Employment and Housing for the purpose of enforcement of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), including, but not limited to, laws that proscribe sexual harassment in places of employment. However, in no event shall an amount over two thousand dollars ($2,000) be transmitted to the State Treasury until all fines, including any restitution fines that may have been imposed upon the defendant, have been paid in full.

(2) As used in this subdivision, "touches" means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim.

(f) As used in subdivisions (a), (b), (c), and (d), "touches" means physical contact with the skin of another person whether accomplished directly or through the clothing of the person committing the offense.

(g) As used in this section, the following terms have the following meanings:

(1) "Intimate part" means the sexual organ, anus, groin, or buttocks of any person, and the breast of a female.

(2) "Sexual battery" does not include the crimes defined in Section 261 or 289.

(3) "Seriously disabled" means a person with severe physical or sensory disabilities.

(4) "Medically incapacitated" means a person who is incapacitated as a result of prescribed sedatives, anesthesia, or other medication.

(5) "Institutionalized" means a person who is located voluntarily or involuntarily in a hospital, medical treatment facility, nursing home, acute care facility, or mental hospital.

(6) "Minor" means a person under 18 years of age.

(h) This section does not limit or prevent prosecution under any other law which also proscribes a course of conduct that also is proscribed by this section.

(i) In the case of a felony conviction for a violation of this section, the fact that the defendant was an employer and the victim

was an employee of the defendant shall be a factor in aggravation in sentencing.

(j) A person who commits a violation of subdivision (a), (b), (c), or (d) against a minor when the person has a prior felony conviction for a violation of this section shall be guilty of a felony, punishable by imprisonment in the state prison for two, three, or four years and a fine not exceeding ten thousand dollars ($10,000).

SEC. 2. Section 261 of the Penal Code is amended to read:

261. (a) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

(1) Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(2) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

(3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.

(4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets any one of the following conditions:

(A) Was unconscious or asleep.

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent

representation that the sexual penetration served a professional purpose when it served no professional purpose.

(5) Where a person submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.

(6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(7) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(8) Where the act is accomplished against the victim's will by a person while that person is performing professional services that entail having access to the victim's body.

(b) As used in this section, "duress" means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.

(c) As used in this section, "menace" means any threat, declaration, or act which shows an intention to inflict an injury upon another.

SEC. 3. Section 286 of the Penal Code is amended to read:

286. (a) Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy.

(b) (1) Except as provided in Section 288, any person who participates in an act of sodomy with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(2) Except as provided in Section 288, any person over 21 years of age who participates in an act of sodomy with another person who is under 16 years of age shall be guilty of a felony.

(c) (1) Any person who participates in an act of sodomy with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) (A) Any person who commits an act of sodomy when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of sodomy with another person who is under 14 years of age when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 9, 11, or 13 years.

(C) Any person who commits an act of sodomy with another person who is a minor 14 years of age or older when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(3) Any person who commits an act of sodomy where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(d) (1) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy when the act is accomplished against the victim's will by means of force or fear

of immediate and unlawful bodily injury on the victim or another person or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for five, seven, or nine years.

(2) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy upon a victim who is under 14 years of age, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 10, 12, or 14 years.

(3) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy upon a victim who is a minor 14 years of age or older, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(4) This subdivision does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(e) Any person who participates in an act of sodomy with any person of any age while confined in any state prison, as defined in Section 4504, or in any local detention facility, as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(f) (1) Any person who commits an act of sodomy, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(A) Was unconscious or asleep.

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(2) A person who performs professional services that entail having access to the victim's body and who commits an act of sodomy upon the victim while performing those services, and the act is against the victim's will, shall be punished by imprisonment in the state prison for three, six, or eight years.

(g) Except as provided in subdivision (h), a person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of sodomy, where the victim is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance, and this condition was

known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for three, six, or eight years.

(j) Any person who commits an act of sodomy, where the victim submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for three, six, or eight years.

(k) (1) Any person who commits an act of sodomy, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(*l*) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court, however, shall take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 4. Section 288a of the Penal Code is amended to read:

288a. (a) Oral copulation is the act of copulating the mouth of one person with the sexual organ or anus of another person.

(b) (1) Except as provided in Section 288, any person who participates in an act of oral copulation with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(2) Except as provided in Section 288, any person over 21 years of age who participates in an act of oral copulation with another person who is under 16 years of age is guilty of a felony.

(c) (1) Any person who participates in an act of oral copulation with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) (A) Any person who commits an act of oral copulation when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of oral copulation upon a person who is under 14 years of age, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(C) Any person who commits an act of oral copulation upon a minor who is 14 years of age or older, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 6, 8, or 10 years.

(D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(3) Any person who commits an act of oral copulation where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(d) (1) Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting that other person, commits an act of oral copulation (A) when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, or (B) where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, or (C) where the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and

this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for five, seven, or nine years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime described under paragraph (3), that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(2) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of oral copulation upon a victim who is under 14 years of age, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 10, 12, or 14 years.

(3) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of oral copulation upon a victim who is a minor 14 years of age or older, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(4) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(e) Any person who participates in an act of oral copulation while confined in any state prison, as defined in Section 4504 or in any local detention facility as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(f) (1) Any person who commits an act of oral copulation, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for a period of three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(A) Was unconscious or asleep.

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the oral copulation served a professional purpose when it served no professional purpose.

(2) A person who performs professional services that entail having access to the victim's body and who commits an act of oral copulation upon the victim while performing those services, and the act is against the victim's will, shall be punished by imprisonment in the state prison for three, six, or eight years.

(g) Except as provided in subdivision (h), any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison, for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare

and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of oral copulation, where the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(j) Any person who commits an act of oral copulation, where the victim submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(k) (1) Any person who commits an act of oral copulation, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(2) As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(*l*) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 4.5. Section 288a of the Penal Code is amended and renumbered to read:

~~288a.~~

287. (a) Oral copulation is the act of copulating the mouth of one person with the sexual organ or anus of another person.

(b) (1) Except as provided in Section 288, any person who participates in an act of oral copulation with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(2) Except as provided in Section 288, any person over 21 years of age who participates in an act of oral copulation with another person who is under 16 years of age is guilty of a felony.

(c) (1) Any person who participates in an act of oral copulation with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) (A) Any person who commits an act of oral copulation when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of oral copulation upon a person who is under 14 years of age, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(C) Any person who commits an act of oral copulation upon a minor who is 14 years of age or older, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 6, 8, or 10 years.

(D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(3) Any person who commits an act of oral copulation where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(d) (1) Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting that other person, commits an act of oral copulation (A) when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, or (B) where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, or (C) where the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for five, seven, or nine years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime described under paragraph (3), that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(2) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of oral copulation upon a victim who is under 14 years of age, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 10, 12, or 14 years.

(3) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of oral copulation upon a victim who is a minor 14 years of age or older, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(4) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(e) Any person who participates in an act of oral copulation while confined in any state prison, as defined in Section 4504 or

in any local detention facility as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

~~(f) Any~~

(f) (1) Any person who commits an act of oral copulation, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for a period of three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

~~(1)~~

(A) Was unconscious or asleep.

~~(2)~~

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

~~(3)~~

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

~~(4)~~

(D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the oral copulation served a professional purpose when it served no professional purpose.

(2) A person who performs professional services that entail having access to the victim's body and who commits an act of oral copulation upon the victim while performing those services, and the act is against the victim's will, shall be punished by imprisonment in the state prison for three, six, or eight years.

(g) Except as provided in subdivision (h), any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison, for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the

prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of oral copulation, where the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(j) Any person who commits an act of oral copulation, where the victim submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

~~(k) Any~~

(k) (1) Any person who commits an act of oral copulation, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by

imprisonment in the state prison for a period of three, six, or eight years.

~~As~~

(2) As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(*l*) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 5. Section 289 of the Penal Code is amended to read:

289. (a) (1) (A) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of sexual penetration upon a child who is under 14 years of age, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(C) Any person who commits an act of sexual penetration upon a minor who is 14 years of age or older, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 6, 8, or 10 years.

(D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(2) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to

retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) Except as provided in subdivision (c), any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(c) Any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(d) (1) Any person who commits an act of sexual penetration, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the

state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(A) Was unconscious or asleep.

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(2) A person who performs professional services that entail having access to the victim's body and who commits an act of sexual penetration upon the victim while performing those services, and the act is against the victim's will, shall be punished by imprisonment in the state prison for three, six, or eight years.

(e) Any person who commits an act of sexual penetration when the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(f) Any person who commits an act of sexual penetration when the victim submits under the belief that the person committing the act or causing the act to be committed is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(g) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(h) Except as provided in Section 288, any person who participates in an act of sexual penetration with another person who is under 18 years of age shall be punished by imprisonment in the state prison or in a county jail for a period of not more than one year.

(i) Except as provided in Section 288, any person over 21 years of age who participates in an act of sexual penetration with another person who is under 16 years of age shall be guilty of a felony.

(j) Any person who participates in an act of sexual penetration with another person who is under 14 years of age and who is more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(k) As used in this section:

(1) "Sexual penetration" is the act of causing the penetration, however slight, of the genital or anal opening of any person or causing another person to so penetrate the defendant's or another person's genital or anal opening for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object.

(2) "Foreign object, substance, instrument, or device" shall include any part of the body, except a sexual organ.

(3) "Unknown object" shall include any foreign object, substance, instrument, or device, or any part of the body, including a penis, when it is not known whether penetration was by a penis or by a foreign object, substance, instrument, or device, or by any other part of the body.

(*l*) As used in subdivision (a), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury or death.

(m) As used in this section, "victim" includes any person who the defendant causes to penetrate the genital or anal opening of the defendant or another person or whose genital or anal opening is caused to be penetrated by the defendant or another person and who otherwise qualifies as a victim under the requirements of this section.

SEC. 6. Section 4.5 of this bill incorporates amendments to Section 288a of the Penal Code proposed by both this bill and Senate Bill 1494. Section 4.5 shall only become operative if (1) both bills are enacted, without regard to the order of enactment, and become effective on or before January 1, 2019, and (2) each bill amends Section 288a of the Penal Code, in which case Section 4 of this bill shall not become operative.

~~SEC. 6.~~

SEC. 7. 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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SENATE COMMITTEE ON APPROPRIATIONS
Senator Anthony Portantino, Chair
2017 - 2018 Regular Session

AB 2078 (Daly) - Sex offenses: professional services

Version: June 21, 2018
Urgency: No
Hearing Date: August 6, 2018

Policy Vote: PUB. S. 7 - 0
Mandate: Yes
Consultant: Shaun Naidu

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

Bill Summary: AB 2078 would expand the crimes of rape, sodomy, oral copulation, and sexual penetration when committed by a professional while performing professional services on another person that entail having access to the other person's body. It also would increase the punishment for sexual battery by a person who performs professional services that entail having access to another person's body, as specified.

Fiscal Impact:

- State prison: Unknown, potential increase in state costs for new or longer commitments to state prison for persons found guilty of the crimes expanded upon by this bill or for which the punishment was increased. The proposed 2018-19 per capita cost to house a person in a state prison is $80,729 annually, with an annual marginal rate per inmate of between $10,000 and $12,000. The average contract-prison rate cost per inmate is over $30,000 annually. The actual costs would depend on how many defendants are sentenced to prison. (General Fund)

- Court: Unknown, potentially-significant workload cost pressures to the court to adjudicate charges brought against defendants for the expanded crimes. While the courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources. For example, the 2018 Budget Act appropriated $64 million from the General Fund to backfill continued reduction in fine and penalty revenue for trial court operations. (General Fund*)

*Trial Court Trust Fund

Background: Existing law provides that a person is guilty of sexual battery if he or she touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse while the victim is unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose. Additionally, existing law provides that a person who touches an intimate part of another person while that second person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. The aforementioned crimes are alternative felony-misdemeanor offenses and are punishable by incarceration in county jail for up to one year and a base fine of up to $2,000 or by imprisonment in state prison for two, three, or four years and a base fine of up to $10,000.

Additionally, any person who touches an intimate part of another person, if the touching is against the will of the person touched and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery, punishable by incarceration in county jail for up to six months and/or a base fine of up to $2,000.

Proposed Law: This bill would:

- Increase the punishment for sexual battery by a person who performs professional services that entail having access to another person's body and who touches an intimate part of that person's body while performing those services, and the touching was against the person's will and for the purpose of sexual arousal, sexual gratification, or sexual abuse to either:
    - Incarceration in county jail for up to one year and a base fine of up to $2,000.
    - Incarceration in state prison for two, three, or four years and a base fine of up to $10,000.
- Expand the definitions of each of the crimes of rape, sodomy, oral copulation, and sexual penetration to include any of those crimes performed against a victim's will by a professional whose services entail having access to the victim's body, if the conduct is performed by the professional while performing those services. These expanded crimes would be punishable by incarceration in state prison for three, six, or eight years.

Related Legislation: AB 860 (Daly, 2015) was substantially similar to this bill and was held on the Suspense File of this Committee.

Staff Comments: The fiscal impact of this bill cannot be known with certainty, as the actual impact will be dependent on numerous factors, including, but not limited to, judicial and prosecutorial discretion, the criminal history of the defendant, and the factors unique to each case. To the extent even one additional defendant is committed to state prison as a result of this bill, state incarceration costs would surpass the Suspense File threshold. Additionally, as the crimes expanded upon by this bill are punishable with the potential for incarceration, certain rights to the defendants are attached to the proceedings, including the right to a jury trial and the right to counsel (at public expense if the defendants are unable to afford the costs of representation) which could lead to lengthier court proceedings. Consequently, to the extent that the court adjudicates more than three of these expanded felony offenses, on average, costs to the court resulting from this bill would be significant.

California is subject to a federal court order to reduce its in-state adult institution population to 137.5 percent of design capacity. The state has undertaken efforts to implement a durable remedy to reduce and avoid prison overcrowding. On July 4, 2018, 115,306 inmates were housed in the state's thirty-five adult institutions, 6,286 were housed in in-state contract beds, and 2,810 inmates were housed in out-of-state facilities. The prison population changes daily as new inmates are admitted and others are released, but, on that date, the state's prison population was approximately 135.5 percent of design capacity. By potentially increasing the inmate population in in-state institutions, this bill could make it more difficult for the state to comply with the court order.

-- END --

AB 2088

STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Assembly Bill No. 2088

CHAPTER 275

An act to amend Section 123111 of the Health and Safety Code, relating to patient records.

[Approved by Governor September 6, 2018. Filed with Secretary of State September 6, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2088, Santiago. Patient records: addenda.

Existing law requires a health care provider to allow an adult patient who inspects his or her patient records to provide to the health care provider a written addendum with respect to any item or statement in his or her records that the patient believes to be incomplete or incorrect. Existing law authorizes any minor patient authorized by law to consent to a medical treatment to inspect his or her patient records, as specified. A violation of these provisions is punishable as a crime.

This bill would require a health care provider to allow a patient, regardless of his or her age, who inspects his or her patient records to provide to the health care provider a written addendum with respect to any item or statement in his or her records that the patient believes to be incomplete or incorrect. By increasing the scope of a crime, this bill would create a state-mandated local program. The bill would additionally correct an erroneous cross reference.

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 123111 of the Health and Safety Code is amended to read:

123111. (a) A patient who inspects his or her patient records pursuant to Section 123110 has the right to provide to the health care provider a written addendum with respect to any item or statement in his or her records that the patient believes to be incomplete or incorrect. The addendum shall be limited to 250 words per alleged incomplete or incorrect item in the patient's record and shall clearly indicate in writing that the patient requests the addendum to be made a part of his or her record.

(b) The health care provider shall attach the addendum to the patient's records and shall include that addendum if the health care provider makes a disclosure of the allegedly incomplete or incorrect portion of the patient's records to any third party.

(c) The receipt of information in a patient's addendum which contains defamatory or otherwise unlawful language, and the inclusion of this information in the patient's records, in accordance with subdivision (b), shall not, in and of itself, subject the health care provider to liability in any civil, criminal, administrative, or other proceeding.

(d) Subdivision (i) of Section 123110 and Section 123120 are applicable with respect to any violation of this section by a health care provider.

SEC. 2. 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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SENATE RULES COMMITTEE
Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: AB 2088
Author: Santiago (D)
Introduced: 2/7/18
Vote: 21

SENATE HEALTH COMMITTEE: 8-0, 6/13/18
AYES: Pan, Nguyen, Hernandez, Leyva, Mitchell, Monning, Nielsen, Roth
NO VOTE RECORDED: Newman

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 68-0, 4/12/18 (Consent) - See last page for vote

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SUBJECT: Patient records: addenda

SOURCE: California Association of Marriage and Family Therapists

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DIGEST: This bill permits a minor patient, in addition to the existing ability of an adult patient, to provide a written addendum to his or her medical records if the patient believes the records to be incomplete or incorrect.

ANALYSIS:

Existing law:

1) Requires, under the Patient Access to Health Records (PAHR) law, any adult patient of a health care provider, any minor patient authorized by law to consent to medical treatment, and any patient representative, to be entitled to inspect patient records upon presenting a health care provider with a written request for those records and upon payment of reasonable clerical costs incurred in locating and making the records available. Limits a patient who is a minor to inspect patient records pertaining only to health care of a type for which the minor is lawfully authorized to consent. [HSC §123110]

2) Defines "patient records" as records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. [HSC §123105]

3) Requires any patient or patient's representative to be entitled to copies of all or any portion of the patient records that he or she has a right to inspect, upon presenting a written request of the health care provider specifying the records to be copied, together with a fee to defray the cost of copying, that does not exceed $.25 per page of $.50 per page for records that are copied from microfilm and any additional reasonable clerical costs incurred in making the records available. [HSC §123110]

4) Requires any adult patient who inspects his or her patient records under PAHR to have the right to provide to the health care provider a written addendum with respect to any item or statement in his or her records that the patient believes to be incomplete or incorrect. Requires the addendum to be limited to 250 words per alleged incomplete or incorrect item in the patient's record and to clearly indicate in writing that the patient wishes the addendum to be made a part of his or her record. [HSC §123111]

5) Permits a minor who is 12 years of age or older to consent to mental health treatment or counseling services if, in the opinion of the attending professional, the minor is mature enough to participate intelligently in the mental health treatment or counseling services. [HSC §124260]

6) Permits a minor to consent to the minor's medical care or dental care if the minor is 15 years of age or older, is living apart from parents or guardians with or without their consent, and is managing his or her own financial affairs. [FC §6922]

7) Permits a minor to consent to medical care related to the prevention or treatment of a pregnancy, or for medical care related to the prevention of a sexually transmitted disease. [FC §6925 and §6926]

This bill revises a provision of law that permits an adult patient who inspects his or her patient records to provide the health care provider with a written addendum with respect to any item or statement in his or her records that the patient believes to be incomplete or incorrect, by deleting the word "adult," and thereby permitting

minor patients who are authorized by law to consent to medical treatment to also have the right to provide a written addendum.

Comments

1) *Author's statement.* According to the author, current law allows minors to consent to medical treatment under certain circumstances and gives them the right to inspect their treatment records, but only authorizes adult patients, not minors, to add their own brief statements to those records when they believe those records are incomplete or inaccurate. This bill simply authorizes minors who already have the right of inspection to add their own, short statement to their records.

Related/Prior Legislation

SB 241 (Monning, Chapter 513, Statutes of 2017) revised and recast provisions of law governing the right of patients to access and copy their medical records by conforming these requirements to the federal Health Information Portability and Accountability Act of 1996 requirements, including requiring health care providers to provide the records in an electronic format if they are maintained electronically and if the patient requests the records in an electronic format, more clearly specifying the reasonable clerical costs that can by charged by the providers, and by making other technical, clarifying and conforming changes.

SB 575 (Leyva, Chapter 626, Statutes of 2017) expanded a provision of law that entitles a patient to a copy, at no charge, of the relevant portion of the patient's records that are needed to support an appeal regarding eligibility for certain public benefit programs, by including initial applications in addition to appeals, and by expanding the list of public benefit programs to include In-Home Supportive Services, the California Work Opportunity and Responsibility to Kids program, CalFresh, and certain veterans related benefits.

SB 1903 (Speier, Chapter 1066, Statutes of 2000), among other provisions, authorized an adult patient to prepare an addendum to his or her patient records and required a health care provider to attach the addendum to the patient records.

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

SUPPORT: (Verified 7/2/18)

California Association of Marriage and Family Therapists (source)
Board of Behavioral Sciences

OPPOSITION: (Verified 7/2/18)

None received

ARGUMENTS IN SUPPORT: This bill is sponsored by the California Association of Marriage and Family Therapists (CAMFT), which states that although California does not give patients the right to amend their medical records, state law does give adult patients the right to add addendums to their records. However, CAMFT states that this right does not extend to minors, and this right to addend a treatment record is critical given that these records may be subject to disclosure and have the potential to impact patients' lives and their ability to pursue various endeavors. CAMFT states that since minor 12 years of age and older can consent to their own treatment, are generally the holders of the psychotherapist-patient privilege, and are entitled to inspect or copy their records, minors should have the right to addend their treatment records in situations where the patient believes the records are inaccurate or incomplete.

The Board of Behavioral Sciences states in support that it believes that minors who are able to consent to treatment and inspect their records should also be able to provide an addendum to those records, just as adults do.

ASSEMBLY FLOOR: 68-0, 4/12/18
AYES: Acosta, Aguiar-Curry, Travis Allen, Arambula, Baker, Berman, Bigelow, Bonta, Brough, Burke, Caballero, Calderon, Carrillo, Cervantes, Chau, Chávez, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Dahle, Daly, Eggman, Flora, Fong, Frazier, Friedman, Gallagher, Eduardo Garcia, Gipson, Gloria, Gonzalez Fletcher, Grayson, Harper, Holden, Irwin, Kalra, Kiley, Lackey, Levine, Maienschein, Mathis, Mayes, McCarty, Medina, Melendez, Muratsuchi, Nazarian, Obernolte, O'Donnell, Patterson, Quirk, Quirk-Silva, Reyes, Rodriguez, Rubio, Salas, Mark Stone, Thurmond, Ting, Voepel, Waldron, Weber, Wood, Rendon
NO VOTE RECORDED: Bloom, Cristina Garcia, Gray, Jones-Sawyer, Limón, Low, Mullin, Santiago, Steinorth

Prepared by: Vincent D. Marchand / HEALTH / (916) 651-4111
7/3/18 15:35:58

**** END ****

AB 2105

STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Assembly Bill No. 2105

CHAPTER 166

An act to add Section 3345.1 to the Civil Code, relating to punitive damages.

[Approved by Governor August 20, 2018. Filed with Secretary of State August 20, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2105, Maienschein. Punitive damages: minors.

Existing law provides that in specified civil actions brought by, on behalf of, or for the benefit of, senior citizens or disabled persons, as defined, the trier of fact must consider certain factors in determining the fine or penalty to be imposed. If the trier of fact makes an affirmative finding of any of these factors, existing law permits the imposition of a fine or penalty up to 3 times greater than authorized by statute, or, if the statute does not authorize a specific amount, up to 3 times greater than the amount the trier of fact would have imposed in the absence of that affirmative finding.

This bill would add similar provisions applicable to civil actions brought by, on behalf of, or for the benefit of, a minor or nonminor dependent, as defined, who is a victim of commereial sexual exploitation, as defined, against the person who committed the act and who is over 18 years of age, permitting imposition of a fine or penalty, payable to the victim, of up to 3 times greater than authorized by statute if specified findings are made by the trier of fact. The bill would also authorize a court, if no civil penalty is authorized by statute, to award a civil penalty not exceeding $50,000, and not less than $10,000, for each act of commercial sexual exploitation committed by the defendant upon making a specified affirmative finding, as specified.

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

SECTION 1. Section 3345.1 is added to the Civil Code, to read:

3345.1. (a) This section shall apply only in a civil action brought by, or on behalf of, or for the benefit of, a person who is a minor or nonminor dependent and is a victim of commercial sexual exploitation committed by a person who is over 18 years of age. For purposes of this section, the age of the victim, the status of the victim as a minor or nonminor dependent, and the age of the defendant is determined at the time of the defendant's act of commercial sexual exploitation of the victim.

(b) In a civil action brought by, on behalf of, or for the benefit of a minor, or nonminor dependent, against a person who engaged in any act of

commercial sexual exploitation of a minor or nonminor dependent, whenever a trier of fact is authorized by a statute, other than subdivision (c), to impose either a fine, or a civil penalty or other penalty, or any other remedy the purpose or effect of which is to punish or deter, and the amount of the fine, penalty, or other remedy is subject to the trier of fact's discretion, the trier of fact shall consider all of the following factors, in addition to other appropriate factors, in determining the amount of fine, civil penalty, or other penalty, or other remedy to impose. If the trier of fact makes an affirmative finding in regard to one or more of the following factors, it may impose a fine, civil penalty, or other penalty, or other remedy in an amount up to three times greater than authorized by the statute, or, if the statute does not authorize a specific amount, up to three times greater than the amount the trier of fact would impose in the absence of that affirmative finding:

(1) Whether the defendant's conduct was directed to more than one minor or nonminor dependent.

(2) Whether one or more minors or nonminor dependents suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(3) Whether the defendant knew or reasonably should have known that the victim was a minor or nonminor dependent. It shall not be a defense to imposition of fines, penalties, or other remedies pursuant to this paragraph that the defendant was unaware of the victim's age or status as a nonminor dependent at the time of the act.

(c) If the trier of fact is not authorized by statute to impose a civil penalty in an action described in subdivision (b), the court may award a civil penalty not exceeding fifty thousand dollars ($50,000), and not less than ten thousand dollars ($10,000), for each act of commercial sexual exploitation committed by the defendant upon making an affirmative finding in regard to one or more of the factors set forth in paragraphs (1) to (3), inclusive, of subdivision (b). This penalty may be imposed in addition to any other remedy available in law or in equity.

(d) Any penalty imposed pursuant to this section shall be paid to the victim of the act of sexual exploitation.

(e) It shall not be a defense to the imposition of fines or penalties pursuant to this section that the victim consented to the act of commercial sexual exploitation.

(f) If the victim is under 18 years of age, the court, in its discretion, may order that any penalty imposed pursuant to this section be held in trust for the victim and used exclusively for the benefit and well-being of the victim. When the victim reaches 18 years of age or is emancipated, the trust shall expire and any unspent remainder shall be the sole property of the victim.

(g) As used in this section, the following terms have the following meanings:

(1) "Commercial sexual exploitation" means an act committed for the purpose of obtaining property, money, or anything else of value in exchange for, or as a result of, a sexual act of a minor or nonminor dependent,

including, but not limited to, an act that would constitute a violation of any of the following:

(A) Sex trafficking of a minor in violation of subdivision (c) of Section 236.1 of the Penal Code.

(B) Pimping of a minor in violation of Section 266h of the Penal Code.

(C) Pandering of a minor in violation of subdivision (b) of Section 266i of the Penal Code.

(D) Procurement of a child under 16 years of age for lewd and lascivious acts in violation of Section 266j of the Penal Code.

(E) Solicitation of a child for a purpose that is either in violation of subparagraph (A) or pursuant to paragraph (3) of subdivision (b) of Section 647 of the Penal Code.

(F) An act of sexual exploitation described in subdivision (c) or (d) of Section 11165.1 of the Penal Code.

(2) "Nonminor dependent" has the same meaning as in subdivision (v) of Section 11400 of the Welfare and Institutions Code.

O

CONCURRENCE IN SENATE AMENDMENTS
AB 2105 (Maienschein)
As Amended June 25, 2018
Majority vote

ASSEMBLY: 70-0 (April 5, 2018) SENATE: 37-0 (July 2, 2018)

Original Committee Reference: **JUD.**

SUMMARY: Creates enhanced civil penalties, tripling any existing statutory civil penalty and providing an alternative $10,000 to $50,000 fine if no civil penalty is provided by statute, for acts that constitute "commercial sexual exploitation" of a minor or nonminor dependent. Specifically, **this bill**:

1) Clarifies that it only applies in civil actions brought by, on behalf of, or for the benefit of victims of commercial sexual exploitation who are minors or nonminor dependents against persons who engage in any act of commercial sexual exploitation of a minor or nonminor dependent.

2) Clarifies that for purposes of the bill, the status of the victim as a minor or nonminor dependent, and the age of the defendant is determined at the time of the defendant's act of commercial sexual exploitation of the victim.

3) Provides that in a civil action brought by, on behalf of, or for the benefit of a minor or nonminor dependent, whenever a trier of fact is authorized by a statute to impose either a fine, or a civil penalty or other penalty, or any other remedy the purpose or effect of which is to punish or deter, and the amount of the fine, penalty, or other remedy is subject to the trier of fact's discretion, the trier of fact shall consider all of the following factors, in addition to other appropriate factors, in determining the amount of fine, civil penalty, or other penalty, or other remedy to impose:

   a) Whether the defendant's conduct was directed to more than one minor or nonminor dependent;

   b) Whether one or more minors or nonminor dependents suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

   c) Whether the defendant knew or reasonably should have known that the victim was a minor or nonminor dependent. It shall not be a defense to imposition of fines, penalties, or other remedies pursuant to this paragraph that the defendant was unaware of the victim's age or status as a nonminor dependent at the time of the act.

4) Provides that if the trier of fact is not authorized by statute to impose a civil penalty in an action described in subdivision (b), the court may award a civil penalty not exceeding fifty thousand dollars ($50,000), and not less than ten thousand dollars ($10,000), for each act of commercial sexual exploitation committed by the defendant upon making an affirmative finding in regard to one or more of the factors set forth in paragraphs (1) to (3), inclusive, of subdivision (b). This penalty may be imposed in addition to any other remedy available in law or in equity.

5) Provides that any penalty imposed pursuant to this section shall be paid to the victim of the act of sexual exploitation.

6) Clarifies that it shall not be a defense to the imposition of fines or penalties pursuant to this section that the victim consented to the act of commercial sexual exploitation.

7) Provides that if the victim is under 18 years of age, the court, in its discretion, may order that any penalty imposed pursuant to this section be held in trust for the victim and used exclusively for the benefit and well-being of the victim. When the victim reaches 18 years of age or is emancipated, the trust shall expire and any unspent remainder shall be the sole property of the victim.

8) Provides that if the trier of fact makes an affirmative finding in regard to one or more of the factors set forth in 3), above, it may impose a fine, civil penalty, or other penalty, or other remedy in an amount up to three times greater than authorized by the statute, or, if the statute does not authorize a specific amount, up to three times greater than the amount the trier of fact would impose in the absence of that affirmative finding.

9) Provides that in the event that no civil penalty is authorized by the statute, the finder of fact may award a civil penalty not exceeding fifty thousand dollars ($50,000), and not less than ten thousand dollars ($10,000), for each act of commercial sexual exploitation committed by the defendant upon making an affirmative finding in regard to one or more of the factors set forth in 3), above, and allows the penalty to be imposed in addition to any other remedy available in law or in equity.

10) Clarifies that it is not a defense to the imposition of fines or penalties pursuant to this section that the victim consented to the act of commercial sexual exploitation.

11) Defines the following terms to have the following meanings:

    a) "Commercial sexual exploitation" is an act committed for the purpose of obtaining property or money, or anything else of value in exchange for, or as a result of, a sexual act of a minor or nonminor dependent, including but not limited to an act that would constitute a violation of one of the following:

        i) Sex trafficking of a minor in violation of Penal Code section 236.1(c).

        ii) Pimping of a minor in violation of Penal Code Section 266(h).

        iii) Pandering of a minor in violation of Penal Code Section 266(i) subdivision (b).

        iv) Procurement of a child under the age of 16 for lewd and lascivious acts in violation of Penal Code Section 266(j).

        v) Solicitation of a child for a purpose that is either in violation of Penal Code section 647(b), paragraph (3), subparagraph (A).

        vi) An act described in Penal Code Section 11165.1(d) or subdivision (c).

    b) "Nonminor dependent" has the same meaning as in Welfare and Institutions Code Section 11400(v).

The Senate amendments:

1) Require that any penalty imposed pursuant to this section shall be paid to the victim of the act of sexual exploitation.

2) Provide that if the victim is under 18 years of age, the court, in its discretion, may order that any penalty imposed pursuant to this section be held in trust for the victim and used exclusively for the benefit and well-being of the victim. When the victim reaches 18 years of age or is emancipated, the trust shall expire and any unspent remainder shall be the sole property of the victim.

3) Make other minor technical and conforming changes.

FISCAL EFFECT: None

COMMENTS: According to the author, the enhanced civil penalty authorized by this bill is intended to "target child sex purchasers, persons who traffic in children and others (e.g., motel operators, on-line listings) that cause harm to this vulnerable population. This population is equally (and in some cases more so) deserving of the protections already afforded to senior citizens and the disabled." The author describes the need for the bill as follows:

> The average age of entry for girls into prostitution or pornography is 12 to 14 years; for boys in California, the average age drops to 11 to 13 years old. These are not children who are passing as adults.. . .In San Diego alone, sex trafficking is estimated to be $810 million a year industry and we can see that criminal sanctions are not enough to stop these immoral businesses.

This Bill is Modeled on an Existing Statute That Authorizes Enhanced Penalties in Civil Actions for Defrauding Seniors. Existing law allows, in actions brought by, on behalf of, or for the benefit of senior citizens or disabled persons to redress unfair or deceptive acts or practices or unfair methods of competition, the tripling of a fine or civil penalty awarded to the plaintiff when the trier or fact determines that certain facts are present. Specifically, the finder of fact may triple the statutory fine in the event that it finds any of the following are present: (1) The defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons; (2) The defendant's conduct caused one or more senior citizens or disabled persons to suffer specific losses, including the loss or encumbrance of a primary residence, principal employment, or source of income; and (3) One or more senior citizens or disabled persons are substantially more vulnerable than other members of the public because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

Analysis Prepared by: Alison Merrilees / JUD. / (916) 319-2334 FN: 0003666

AB 2143

Assembly Bill No. 2143

Passed the Assembly August 23, 2018

_____

Chief Clerk of the Assembly

Passed the Senate August 20, 2018

_____

Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2018, at _____ o'clock ____M.

_____

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 128454 of the Health and Safety Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

AB 2143, Caballero. Mental health: Licensed Mental Health Service Provider Education Program.

Existing law establishes the Licensed Mental Health Service Provider Education Program within the Health Professions Education Foundation. Existing law authorizes a licensed mental health service provider, as defined, including, among others, a psychologist and a marriage and family therapist, who provides direct patient care in a publicly funded facility or a mental health professional shortage area to apply for grants under the program to reimburse his or her educational loans related to a career as a licensed mental health service provider, as specified. Existing law establishes the Mental Health Practitioner Education Fund in the State Treasury and provides that moneys in that fund are available, upon appropriation, for expenditure by the Office of Statewide Health Planning and Development for purposes of the program.

This bill would expand the program to apply to persons eligible under existing law who attain further education in order to practice as psychiatric-mental health nurse practitioners or physician assistants in psychiatric mental health settings, thereby allowing those practitioners to apply for grants under the program for reimbursement of those later-incurred educational loans.

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

SECTION 1. Section 128454 of the Health and Safety Code, as added by Section 9 of Chapter 557 of the Statutes of 2017, is amended to read:

128454. (a) There is hereby created the Licensed Mental Health Service Provider Education Program within the Health Professions Education Foundation.

(b) For purposes of this article, the following definitions shall apply:

(1) (A) "Licensed mental health service provider" means a psychologist licensed by the Board of Psychology, registered psychologist, postdoctoral psychological assistant, postdoctoral psychology trainee employed in an exempt setting pursuant to Section 2910 of the Business and Professions Code or employed pursuant to a State Department of Health Care Services waiver pursuant to Section 5751.2 of the Welfare and Institutions Code, marriage and family therapist, associate marriage and family therapist, licensed clinical social worker, associate clinical social worker, licensed professional clinical counselor, and associate professional clinical counselor.

(B) "Licensed mental health service provider" also includes a person described in subparagraph (A) who is currently fully licensed by his or her respective board and who has subsequently attained further education and now practices in either of the following capacities:

(i) As a nurse practitioner who is listed by the board as a "psychiatric mental health nurse" under Section 2732.05 of the Business and Professions Code.

(ii) A physician assistant licensed pursuant to Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, who works in a psychiatric mental health setting.

(2) "Mental health professional shortage area" means an area designated as such by the Health Resources and Services Administration (HRSA) of the United States Department of Health and Human Services.

(c) Commencing January 1, 2005, any licensed mental health service provider, including a mental health service provider who is employed at a publicly funded mental health facility or a public or nonprofit private mental health facility that contracts with a county mental health entity or facility to provide mental health services, who provides direct patient care in a publicly funded facility or a mental health professional shortage area may apply for grants under the program to reimburse his or her educational loans related to a career as a licensed mental health service provider.

(d) The Health Professions Education Foundation shall make recommendations to the director of the office concerning all of the following:

(1) A standard contractual agreement to be signed by the director and any licensed mental health service provider who is serving in a publicly funded facility or a mental health professional shortage area that would require the licensed mental health service provider who receives a grant under the program to work in the publicly funded facility or a mental health professional shortage area for at least one year.

(2) The maximum allowable total grant amount per individual licensed mental health service provider.

(3) The maximum allowable annual grant amount per individual licensed mental health service provider.

(e) The Health Professions Education Foundation shall develop the program, which shall comply with all of the following requirements:

(1) The total amount of grants under the program per individual licensed mental health service provider shall not exceed the amount of educational loans related to a career as a licensed mental health service provider incurred by that provider.

(2) The program shall keep the fees from the different licensed providers separate to ensure that all grants are funded by those fees collected from the corresponding licensed provider groups. A grant recipient who is a person described in subparagraph (B) of paragraph (1) of subdivision (b) shall have his or her grant funded by the fees collected from the corresponding licensed provider group described in subparagraph (A) of paragraph (1) of subdivision (b) of which he or she is a licensee.

(3) A loan forgiveness grant may be provided in installments proportionate to the amount of the service obligation that has been completed.

(4) The number of persons who may be considered for the program shall be limited by the funds made available pursuant to Section 128458.

(f) This section shall become operative on July 1, 2018.

Approved _____, 2018

_____

Governor

GOVERNOR'S VETO
AB 2143 (Caballero)
As Enrolled August 28, 2018
2/3 vote

ASSEMBLY:	70-0	(May 25, 2018)	SENATE:	39-0	(August 20, 2018)
ASSEMBLY	79-0	(August 23, 2018)			

Original Committee Reference: **B. & P.**

SUMMARY: Authorizes the licensed mental health service providers who may currently apply for educational loan repayment grants under the Licensed Mental Health Service Provider Education Program to apply for additional grants under the program if they subsequently attain licensure and currently practice as 1) a nurse practitioner registered as "psychiatric mental health nurses" with the Board of Registered Nursing or 2) a physician assistant who works in a psychiatric mental health setting.

The Senate amendments clarified that the applicants must be currently licensed as one of the existing types of mental health service providers under the program and deleted the urgency clause.

FISCAL EFFECT: According to the Senate Appropriations Committee, the Office of Statewide Health Planning and Development (OSHPD) notes a cost of $149,500 (Mental Health Practitioner Education Fund) in fiscal year 2019-2020, for a full-time limited limited-term (18 months) Staff Services Analyst in OSHPD's Health Professions Education Foundation (HPEF) to update program forms, applications, and regulations necessary to implement the bill.

COMMENTS:

Purpose. This bill is sponsored by the California Psychiatric Association. According to the author, "[w]ith some estimates that during any one year 20-25% of the population will benefit from mental health services, and 50% of our population over their lifetime will require those services, it is critical that we address the current and future needs of our citizens, particularly in underserved areas, most of which happen to be rural. Psychiatric expertise combines both mental health and medical training so that patients have access not only to psychotropic and other medications, but in adding a dimension of medical training, provides more integrated treatment of the physical and mental health needs of the patient. Encouraging licensed mental health professionals to also acquire medical training will bolster the psychiatric workforce, increase access to psychiatric services and allow more timely interventions when people need it the most."

Background. The Licensed Mental Health Service Provider Education Program (LMHSPEP) is one of several scholarship and loan repayment programs administered by the HPEF under OSHPD. Like the other HPEF programs, the LMHSPEP was statutorily created to encourage individuals from underrepresented communities to become health professionals and increase access to health providers in medically underserved areas.

According to the HPEF, an awardee under the LMHSPEP may receive up to $15,000 to repay educational loans for not less than a 12-month commitment practicing and providing direct patient care in an eligible site. Eligible sites include publicly funded or public mental health facilities, non-profit mental health facilities that contract with a county entity to provide mental health services, and designated mental health professions shortage areas.

By adding the specified practitioners to the list of licensees under the LMHSPEP, this bill seeks to increase the number of advanced practice medical professionals who specialize in mental health professionals practicing in designated shortage areas and incentivize mental health licensees to pursue additional licensure as a Physician assistant (PA) or a nurse practitioner (NP).

Physician Assistants. PAs provide health care services under the supervision of a physician and surgeon using delegation of services agreements (DSAs). PA functions include performing diagnostic, therapeutic, preventive, and health maintenance services. The Physician Assistant Board is the licensing entity under the Department of Consumer Affairs that licenses and regulates PAs. According to the DCA's *2017 Annual Report*, the PAB has over 10,000 licensed PAs. Currently, there is no specialty license or certification for PAs.

Psychiatric Mental Health NPs. Nurse practitioners are advanced practice registered nurses (APRNs). Registered nurses (RNs) that meet the additional training and education requirements may apply with the BRN to become APRNs. The BRN also tracks psychiatric mental health nurses for purposes of disability insurance policies. RNs and APRNs that meet the additional education and training may apply to become a BRN-listed psychiatric mental health nurse, but there is no additional scope of practice. According to the DCA's *2017 Annual Report*, the BRN has over 23,600 certified NPs and 324 psychiatric mental health nurses. It is unclear how many of the 324 psychiatric mental health nurses are also NPs.

GOVERNOR'S VETO MESSAGE:

> This bill would expand eligibility for educational loan reimbursement grants, through the Licensed Mental Health Provider Education Program, to mental health providers who further their education to become physician assistants or nurse practitioners in mental health facilities.
>
> Physician assistants and nurse practitioners are already eligible for educational loan repayment grants under the state's Advanced Healthcare Loan Repayment Program. Unfortunately, the loan repayment fund referenced in this bill lacks the necessary funding to pay for the hundreds of applications it currently receives. Adding more applicants as this bill requires just compounds the problem.

Analysis Prepared by: Vincent Chee / B. & P. / (916) 319-3301 FN: 0005241

AB 2483

AMENDED IN ASSEMBLY APRIL 9, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL No. 2483

Introduced by Assembly Member Voepel

February 14, 2018

An act to ~~add Chapter 10 (commencing with Section 473) to Division 1 of the Business and Professions~~ *amend Section 825 of the Government* Code, relating to ~~professions.~~ *liability.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2483, as amended, Voepel. ~~Department of Consumer Affairs: Office of Supervision of Occupational Boards.~~ *Indemnification of public officers and employees: antitrust awards.*

The Government Claims Act, except as provided, requires a public entity to pay any judgment or any compromise or settlement of a claim or action against an employee or former employee of the public entity if the employee or former employee requests the public entity to defend him or her against any claim or action against him or her for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity, the request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action. That act prohibits the payment of punitive or exemplary damages by a public entity, except as specified.

This bill would require a public entity to pay a judgment or settlement for treble damage antitrust awards against a member of a regulatory board within the Department of Consumer Affairs for an act or omission occurring within the scope of the member's official capacity as a member of that regulatory board. The bill would specify that treble

damages awarded pursuant to a specified federal law for violation of another federal law are not punitive or exemplary damages within the act.

~~Under existing law, the Department of Consumer Affairs is composed of various boards, bureaus, commissions, committees, and similarly constituted agencies that license and regulate the practice of various professions and vocations for the purpose of protecting the people of California. With certain exceptions, decisions of these entities with respect to setting standards, conducting examinations, passing candidates, and revoking licenses, are final and are not subject to review by the Director of Consumer Affairs.~~

~~This bill would establish an Office of Supervision of Occupational Boards within the department to exercise active supervision over a "covered board," defined as specific licensing and regulatory agencies within the department, to ensure compliance with specific policies established in the bill regarding licensing and enforcement (established policies). The bill would require the office, in the exercise of active supervision, to be involved in the development of a covered board's rules and policies, to disapprove the use of any board rule or policy and terminate any enforcement action that is not consistent with the established policies, and to review and affirmatively approve only rules, policies, and enforcement actions consistent with the established policies. The bill would require the office to review and approve or reject any rule, policy, enforcement action, or other occupational licensure action proposed by each covered board before adoption or implementation. The bill would establish procedures for complaints, investigation, remedial action, and appeal relating to a rule, policy, enforcement action, or other occupational licensure action of a covered board inconsistent with the established policies.~~

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

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

1 *SECTION 1. Section 825 of the Government Code is amended*
2 *to read:*
3 825. (a) Except as otherwise provided in this section, if an
4 employee or former employee of a public entity requests the public
5 entity to defend him or her against any claim or action against him
6 or her for an injury arising out of an act or omission occurring

within the scope of his or her employment as an employee of the public entity and the request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed.

If the public entity conducts the defense of an employee or former employee against any claim or action with his or her reasonable good-faith cooperation, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed. However, where the public entity conducted the defense pursuant to an agreement with the employee or former employee reserving the rights of the public entity not to pay the judgment, compromise, or settlement until it is established that the injury arose out of an act or omission occurring within the scope of his or her employment as an employee of the public entity, the public entity is required to pay the judgment, compromise, or settlement only if it is established that the injury arose out of an act or omission occurring in the scope of his or her employment as an employee of the public entity.

Nothing in this section authorizes a public entity to pay that part of a claim or judgment that is for punitive or exemplary damages.

(b) Notwithstanding subdivision (a) or any other provision of law, a public entity is authorized to pay that part of a judgment that is for punitive or exemplary damages if the governing body of that public entity, acting in its sole discretion except in cases involving an entity of the state government, finds all of the following:

(1) The judgment is based on an act or omission of an employee or former employee acting within the course and scope of his or her employment as an employee of the public entity.

(2) At the time of the act giving rise to the liability, the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent best interests of the public entity.

(3) Payment of the claim or judgment would be in the best interests of the public entity.

As used in this subdivision with respect to an entity of state government, "a decision of the governing body" means the

approval of the Legislature for payment of that part of a judgment that is for punitive damages or exemplary damages, upon recommendation of the appointing power of the employee or former employee, based upon the finding by the Legislature and the appointing authority of the existence of the three conditions for payment of a punitive or exemplary damages claim. The provisions of subdivision (a) of Section 965.6 shall apply to the payment of any claim pursuant to this subdivision.

The discovery of the assets of a public entity and the introduction of evidence of the assets of a public entity shall not be permitted in an action in which it is alleged that a public employee is liable for punitive or exemplary damages.

The possibility that a public entity may pay that part of a judgment that is for punitive damages shall not be disclosed in any trial in which it is alleged that a public employee is liable for punitive or exemplary damages, and that disclosure shall be grounds for a mistrial.

(c) Except as provided in subdivision (d), if the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10 (commencing with Section 3500) of Division ~~4 of Title 1,~~ *4,* the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(d) The subject of payment of punitive damages pursuant to this section or any other provision of law shall not be a subject of meet and confer under the provisions of Chapter 10 (commencing with Section 3500) of Division ~~4 of Title 1,~~ *4,* or pursuant to any other law or authority.

(e) Nothing in this section shall affect the provisions of Section 818 prohibiting the award of punitive damages against a public entity. This section shall not be construed as a waiver of a public entity's immunity from liability for punitive damages under Section 1981, 1983, or 1985 of Title 42 of the United States Code.

(f) (1) Except as provided in paragraph (2), a public entity shall not pay a judgment, compromise, or settlement arising from a claim or action against an elected official, if the claim or action is based on conduct by the elected official by way of tortiously

intervening or attempting to intervene in, or by way of tortiously influencing or attempting to influence the outcome of, any judicial action or proceeding for the benefit of a particular party by contacting the trial judge or any commissioner, court-appointed arbitrator, court-appointed mediator, or court-appointed special referee assigned to the matter, or the court clerk, bailiff, or marshal after an action has been filed, unless he or she was counsel of record acting lawfully within the scope of his or her employment on behalf of that party. Notwithstanding Section 825.6, if a public entity conducted the defense of an elected official against such a claim or action and the elected official is found liable by the trier of fact, the court shall order the elected official to pay to the public entity the cost of that defense.

(2) If an elected official is held liable for monetary damages in the action, the plaintiff shall first seek recovery of the judgment against the assets of the elected official. If the elected official's assets are insufficient to satisfy the total judgment, as determined by the court, the public entity may pay the deficiency if the public entity is authorized by law to pay that judgment.

(3) To the extent the public entity pays any portion of the judgment or is entitled to reimbursement of defense costs pursuant to paragraph (1), the public entity shall pursue all available creditor's remedies against the elected official, including garnishment, until that party has fully reimbursed the public entity.

(4) This subdivision shall not apply to any criminal or civil enforcement action brought in the name of the people of the State of California by an elected district attorney, city attorney, or attorney general.

(g) Notwithstanding subdivision (a), a public entity shall pay for a judgment or settlement for treble damage antitrust awards against a member of a regulatory board within the Department of Consumer Affairs for an act or omission occurring within the scope of the member's official capacity as a member of that regulatory board.

(h) For purposes of this section, treble damages awarded pursuant to the federal Clayton Act (Sections 12 to 27, inclusive, of Title 15 of, and Sections 52 and 53 of Title 29 of, the United States Code) for a violation of the federal Sherman Act (Sections 1 to 7, inclusive, of Title 15 of the United States Code) are not punitive or exemplary damages under this division.

~~SECTION 1. Chapter 10 (commencing with Section 473) is added to Division 1 of the Business and Professions Code, to read:~~

~~CHAPTER 10. OFFICE OF SUPERVISION OF OCCUPATIONAL BOARDS~~

~~473. The following are policies of the state:~~

~~(a) Occupational licensing laws should be construed and applied to increase economic opportunity, promote competition, and encourage innovation.~~

~~(b) Regulators should displace competition through occupational licensing only where less restrictive regulation will not suffice to protect consumers from present, significant, and substantiated harms that threaten public health, safety, or welfare.~~

~~(c) An occupational licensing restriction should be enforced against an individual only to the extent the individual sells goods and services that are included explicitly in the statute or regulation that defines the occupation's scope of practice.~~

~~473.1. As used in this chapter:~~

~~(a) "Covered board" means any entity listed in Section 101.~~

~~(b) "Office" means the Office of Supervision of Occupational Boards established in Section 473.2.~~

~~473.2. (a) There is hereby established an Office of Supervision of Occupational Boards within the department.~~

~~(b) (1) Notwithstanding Section 109, the office shall be responsible for exercising active supervision over each covered board to ensure compliance with the policies in Section 473.~~

~~(2) In exercising active supervision over covered boards under paragraph (1), the office shall independently do the following:~~

~~(A) Play a substantial role in the development of a covered board's rules and policies to ensure they benefit consumers and do not serve the private interests of providers of goods and services regulated by the covered board.~~

~~(B) Disapprove the use of any rule or policy of a covered board and terminate any enforcement action, including any action pending on January 1, 2019, that is not consistent with Section 473.~~

~~(C) Exercise control over each covered board by reviewing and affirmatively approving only rules, policies, and enforcement actions that are consistent with Section 473.~~

~~(D) Analyze existing and proposed rules and policies and conduct investigations to gain additional information to promote compliance with Section 473, including, but not limited to, less restrictive regulatory approaches.~~

~~(3) In exercising active supervision over covered boards under paragraph (1), the office shall be staffed by not fewer than one attorney who does not provide general counsel to any covered board.~~

~~(c) (1) Notwithstanding Section 109, the office shall review and approve or reject any rule, policy, enforcement action, or other occupational licensure action proposed by each covered board before the covered board may adopt or implement the rule, policy, enforcement action, or other occupational licensure action.~~

~~(2) For purposes of paragraph (1), approval by the office shall be express and silence or failure to act shall not constitute approval.~~

~~473.3. (a) Any person may file a complaint to the office about a rule, policy, enforcement action, or other occupational licensure action of a covered board that the person believes is not consistent with Section 473.~~

~~(b) Not later than 90 days after the date on which the office receives a complaint filed under paragraph (1), notwithstanding Section 109, the office shall investigate the complaint, identify remedies, and instruct the covered board to take action as the office determines to be appropriate, and respond in writing to the complainant.~~

~~(c) (1) There shall be no right to appeal a decision of the office under subdivision (b) unless the challenged rule, policy, enforcement action, or other occupational licensure action would prevent the complainant from engaging in a lawful occupation or employing or contracting others for the performance of a lawful occupation and the complainant has taken material steps in an attempt to engage in a lawful occupation or employ or contract others for the performance of a lawful occupation.~~

~~(2) Any appeal authorized under paragraph (1) shall be to the superior court.~~

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SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2017-2018 Regular Session

AB 2483 (Voepel)
Version: April 9, 2018
Hearing Date: June 26, 2018
Fiscal: Yes
Urgency: No
CK

SUBJECT

Indemnification of public officers and employees: antitrust awards

DESCRIPTION

This bill would remove a public entity's discretion and require it to pay any judgment or settlement for treble damage antitrust awards against a member of a regulatory board within the Department of Consumer Affairs for an act or omission occurring within the scope of the member's official capacity as a member of that regulatory board. Such treble awards would be statutorily determined not to be punitive damages.

BACKGROUND

Federal antitrust laws, including the Sherman Act and Clayton Act, have been interpreted to confer immunity to the states for otherwise unlawful anticompetitive actions when the states are acting in their sovereign capacity. In 2015, the United States Supreme Court issued its opinion in *North Carolina State Board of Dental Examiners v. FTC* (2015) ___U.S.___ (135 S.Ct. 1101, 1117). The case involved a complaint filed by the Federal Trade Commission that alleged the North Carolina State Board of Dental Examiners unreasonably restrained trade in violation of federal antitrust law when it took action to exclude nondentists from the market for teeth whitening services.

In *North Carolina,* the Supreme Court found that in order for state-action immunity to attach, a state must accept political accountability for the relevant anticompetitive actions it allows. The Court laid out the parameters of this immunity in relation to state boards. It determined that "a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal's* active supervision requirement in order to invoke state-action anti-trust immunity." The test for this "active supervision" is flexible and depends on a number of factors. Ultimately, the state must ensure sufficient oversight such that the actions of the board and its members can be said to effectuate state policy rather than the personal interests of the board members.

In the wake of *North Carolina*, there was concern in the Legislature that this holding would discourage Californians, including members of various professions, the "active market participants," from joining state boards for fear of antitrust liability. Various efforts sought to ensure there was not a "controlling number" of active market participants on these boards or to ensure that more thorough oversight was provided by the Department of Consumer Affairs, within which many of these boards are housed.

This bill would respond to this issue by insulating board members from any liability for antitrust violations by mandating the state indemnify them for treble damages imposed upon the members for violations of the Sherman and Clayton Antitrust Acts.

CHANGES TO EXISTING LAW

Existing law, the Sherman Act and the Clayton Antitrust Act, protect against anticompetitive conduct by prohibiting certain actions and providing any person who is injured by reason of anything forbidden in the antitrust laws with a cause of action in which the victim shall recover threefold the damages sustained, and the cost of suit, including reasonable attorney's fees. (15 U.S.C. Sec. 1 et seq. (the Sherman Act); 15 U.S.C. Sec. 12 et seq. and 29 U.S.C. Secs. 52-53 (the Clayton Act).)

Existing law provides that except as otherwise provided, if an employee or former employee of a public entity requests the public entity to defend them against any claim or action against them for an injury arising out of an act or omission occurring within the scope of their employment as an employee of the public entity and the request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed. (Gov. Code Sec. 825(a).)

Existing law provides that if a public entity conducts the defense of an employee or former employee, as specified, the public entity shall pay any judgment or settlement based thereon, unless there is a reservation of rights and the employee is found to have been working outside the scope of their employment when the injury occurred. However, the law makes clear that this does not authorize a public entity to pay that part of a claim or judgment that is for punitive or exemplary damages. (Gov. Code Sec. 825(a).)

Existing law provides that a public entity is authorized to pay that part of a judgment that is for punitive or exemplary damages if the governing body of that public entity, acting in its sole discretion except in cases involving an entity of the state government, finds all of the following:

- the judgment is based on an act or omission of an employee or former employee acting within the course and scope of his or her employment as an employee of the public entity;
- at the time of the act giving rise to the liability, the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent best interests of the public entity; and
- payment of the claim or judgment would be in the best interests of the public entity. (Gov. Code Sec. 825 (b).)

Existing law provides that except as otherwise provided, upon request of an employee or former employee, a public entity shall provide for the defense of any civil action or proceeding brought against the employee, in their official or individual capacity or both, on account of an act or omission in the scope of their employment as an employee of the public entity. (Gov. Code Sec. 995.)

Existing law provides that a public entity may refuse to provide for the defense of a civil action or proceeding brought against an employee or former employee if the public entity determines any of the following:

- the act or omission was not within the scope of the employee's employment;
- the employee acted or failed to act because of actual fraud, corruption, or actual malice; or
- the defense of the action or proceeding by the public entity would create a specific conflict of interest between the public entity and the employee or former employee. (Gov. Code Sec. 995.2.)

This bill would require a public entity to pay for a judgment or settlement for treble damage antitrust awards against a member of a regulatory board within the Department of Consumer Affairs for an act or omission occurring within the scope of the member's official capacity as a member of that regulatory board.

This bill would provide that treble damages awarded pursuant to the federal Clayton Act for a violation of the federal Sherman Act are not punitive or exemplary damages for purposes of the above provisions.

COMMENT

1. Stated need for the bill

According to the author, the "current problem is that members of the community are discouraged from being members of Boards, with concerns of possibly being sued while allowing the current board members to serve in longevity. Thus AB 2483 works to address this issue."

2. Removing the discretion of the state in determining whether to indemnify board members from antitrust penalties

Generally, board members, as employees of the state, are entitled to request and have the state defend them against any claim or action for an injury arising out of an act or omission occurring within the scope of their employment, as specified. (Gov. Code Secs. 825, 995) Current law also provides that the public entity must also pay any judgment or settlement that results from such claims. A public entity may refuse to defend an employee if it finds that the conduct underlying the claims was not carried out in the scope of the employees public employment; the conduct was based on actual fraud, corruption, or actual malice; or there is a conflict of interest between the public entity and employee created by the defense. (Gov. Code Sec. 995.2.)

However, a public entity is not required to pay that part of a claim or judgment that is for punitive or exemplary damages. (Gov. Code Sec. 825 (a).) The public entity may, in its sole discretion, pay for punitive or exemplary damages if the governing body of that public entity finds all of the following:

- the judgment is based on an act or omission of an employee or former employee acting within the course and scope of his or her employment as an employee of the public entity;
- at the time of the act giving rise to the liability, the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent best interests of the public entity; and
- payment of the claim or judgment would be in the best interests of the public entity. (Gov. Code Sec. 825 (b).)

Relevant here, violations of the federal antitrust statutes can result in treble damages for any damage sustained as a consequence of the violations, along with the cost of suit, including reasonable attorney's fees. (*See* 15 U.S.C. Sec. 15.) There is some ambiguity as to whether an award of these treble damages would be considered punitive damages, as used in the Government Code provisions discussed above.

Therefore, if a board member is found to have engaged in anticompetitive conduct in their role as a board member in violation of federal antitrust laws, resulting damages could fall within the provisions of state law that govern punitive or exemplary damages.

This bill would require a public entity to pay for a judgment or settlement for treble damages arising from an antitrust violation by a member of a regulatory board for conduct undertaken within the scope of their public employment with that board. It would make clear that any such treble damages awarded pursuant to the Clayton Act for violations of the Sherman Act are not punitive or exemplary damages.

The author argues that this change in law is necessary because Californians are discouraged from serving on these regulatory boards. In fact, in an opinion issued by

the Attorney General, which was requested in the wake of the *North Carolina* decision, it indicates that specifying such treble damages are not punitive damages could ease any concerns that potential board members could have. Therefore, such a change may be warranted.

However, there are also considerations weighing against such a change in the law. First, there is no evidence that regulatory boards are unable to recruit qualified members or that potential board members are concerned with this exposure to liability, something the author readily acknowledges.

Second, there is no evidence that any member of a California board has ever been subject to antitrust damages, justifying the lack of hesitance in joining these boards. Therefore, there does not seem to be a problem for this bill to fix.

Furthermore, under existing law, if a board member engaged in conduct so anticompetitive that it resulted in possibly the first such imposition of antitrust treble damages, and those damages were deemed punitive damages, the state would still have the discretion to indemnify that employee. The governing body of the entity could assess the circumstances of the case and indemnify the board member where it finds that the member acted in good faith, without actual malice and in the apparent best interests of the public entity; acted within the scope of their duties as a board member; and where the payment of the claim or judgment would be in the best interests of the public entity. This bill would essentially take away any discretion on the part of the Department of Consumer Affairs to determine that certain circumstances may not warrant indemnification.

If there is no evidence board members have engaged in actionable anticompetitive behavior heretofore, then there may not be sufficient reason to indemnify them from any liability should they engage in such behavior in the future.

Writing in opposition, CALPIRG, Responsive Law, and the University of San Diego's Center for Public Interest Law state:

> While the proposed bill may seem innocuous at first glance, it has dire implications for the public that most not be overlooked. . . . [W]e can tell you that this bill – which opens up the extremely deep pockets of a state with a $200 billion budget without imposing any concomitant reforms to fix the underlying problem – will most certainly increase the likelihood that antitrust lawsuits will be filed in California: on the taxpayers' dime.

Support: Board for Professional Engineers, Land Surveyors, and Geologists; Board of Registered Nursing; California Board of Accountancy; Contractors State License Board; Medical Board of California

Opposition: CALPIRG; Responsive Law; University of San Diego, Center for Public Interest Law

HISTORY

Source: Author

Related Pending Legislation: None Known

Prior Legislation: SB 1194 (Hill, 2016) would have authorized the director of the Department of Consumer Affairs to review specified actions of boards within the department to determine whether they further state policy, providing the "active supervision" that would arguably insulate members from antitrust actions. It would have also made the same changes this bill would make to Section 825 of the Government Code. The bill died in the Assembly Business and Professions Committee.

Prior Vote:

Assembly Floor (Ayes 71, Noes 0)
Assembly Appropriations Committee (Ayes 17, Noes 0)
Assembly Business and Professions Committee (Ayes 16, Noes 0)

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AB 2193

STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Assembly Bill No. 2193

CHAPTER 755

An act to add Section 1367.625 to, and to add Article 6 (commencing with Section 123640) to Chapter 2 of Part 2 of Division 106 to, the Health and Safety Code, and to add Section 10123.867 to the Insurance Code, relating to health care.

[Approved by Governor September 26, 2018. Filed with Secretary of State September 26, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2193, Maienschein. Maternal mental health.

Existing law provides for the licensure and regulation of various healing arts professions, including, but not limited to, physicians and surgeons, by various boards within the Department of Consumer Affairs. Existing law imposes certain fines and other penalties for, and authorizes these boards to take disciplinary action against licensees for, violations of the provisions governing those professions.

This bill would require, by July 1, 2019, a licensed health care practitioner who provides prenatal or postpartum care for a patient to offer to screen or appropriately screen a mother for maternal mental health conditions.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of that act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law requires health care service plan contracts and health insurance policies that provide hospital, medical, or surgical coverage to provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses, as defined, of a person of any age.

This bill would require health care service plans and health insurers, by July 1, 2019, to develop, consistent with sound clinical principles and processes, a maternal mental health program, as specified. Because a willful violation of the bill's requirement by a health care service plan would be a crime, the 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 1367.625 is added to the Health and Safety Code, to read:

1367.625. (a) By July 1, 2019, a health care service plan shall develop a maternal mental health program designed to promote quality and cost-effective outcomes. The program shall be developed consistent with sound clinical principles and processes. The program guidelines and criteria shall be made available upon request to medical providers, including a contracting obstetric provider.

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

(1) "Contracting obstetric provider" means an individual who is certified or licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or an initiative act referred to in that division, and who is contracted with the enrollee's health care service plan to provide services under the enrollee's plan contract.

(2) "Maternal mental health" means a mental health condition that occurs during pregnancy or during the postpartum period and includes, but is not limited to, postpartum depression.

(c) This section shall not apply to specialized health care service plans, except specialized behavioral health-only plans offering professional mental health services.

SEC. 2. Article 6 (commencing with Section 123640) is added to Chapter 2 of Part 2 of Division 106 of the Health and Safety Code, to read:

Article 6. Maternal Mental Health

123640. (a) By July 1, 2019, a licensed health care practitioner who provides prenatal or postpartum care for a patient shall ensure that the mother is offered screening or is appropriately screened for maternal mental health conditions.

(b) This section shall not apply to a licensed health care practitioner when providing emergency services or care, as defined in Section 1317.1.

(c) This section does not preclude any licensed or certified provider acting within his or her scope of practice from screening for maternal mental health conditions.

(d) For purposes of this section, the following definitions apply:

(1) "Maternal mental health condition" means a mental health condition that occurs during pregnancy or during the postpartum period and includes, but is not limited to, postpartum depression.

(2) "Health care practitioner" means a physician and surgeon, naturopathic doctor, nurse practitioner, physician assistant, nurse midwife, or a midwife licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or an initiative act referred to in that division and who is acting within his or her scope of practice.

SEC. 3. Section 10123.867 is added to the Insurance Code, to read:

10123.867. (a) By July 1, 2019, a health insurer shall develop a maternal mental health program designed to promote quality and cost-effective outcomes. The program shall be developed consistent with sound clinical principles and processes. The program guidelines and criteria shall be made available upon request to medical providers, including a contracting obstetric provider.

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

(1) "Contracting obstetric provider" means an individual who is certified or licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or an initiative act referred to in that division, and who is contracted with the insured's health insurer to provide services under the insured's health insurance policy.

(2) "Maternal mental health" means a mental health condition that occurs during pregnancy or during the postpartum period and includes, but is not limited to, postpartum depression.

(c) This section shall not apply to specialized health insurers, except behavioral health-only insurers that provide coverage for professional mental health services.

SEC. 4. 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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CONCURRENCE IN SENATE AMENDMENTS
AB 2193 (Maienschein)
As Amended August 17, 2018
Majority vote

ASSEMBLY: 68-0 (May 31, 2018) SENATE: 39-0 (August 27, 2018)

Original Committee Reference: **HEALTH**

SUMMARY: Requires a health care service plan (health plan) or insurer to develop a maternal mental health (MMH) program by July 1, 2019, and requires a licensed health care practitioner who provides prenatal or postpartum care for a patient to ensure the mother is offered screening or is appropriately screened for MMH conditions.

The Senate amendments:

1) Require a health plan or health insurer to develop a MMH program designed to promote quality and cost-effective outcomes, instead of requiring a health plan or health insurer to provide specified information to existing quality management programs. Require the MMH program to be developed consistent with sound clinical principles and process. Require the program guidelines and criteria to be made available upon request to medical providers, including a contracting obstetric provider.

2) Exempt specialized health plans and insurers, except behavioral health.

3) Require by July 1, 2019, a licensed health care practitioner who provides prenatal or postpartum care for a patient to ensure that the mother is offered screening or is appropriately screened for MMH conditions. Exempts emergency services or care, as specified.

4) State that this bill does not apply to a licensed health care practitioner when providing emergency services or care, as specified, and does not preclude any licensed or certified provider acting within his or her scope of practice from screening for MMH conditions.

FISCAL EFFECT: According to the Senate Appropriations Committee,

1) No fiscal impact to the California Department of Insurance.

2) No immediate impact on Medi-Cal managed care capitation rates because the requirements in this bill overlap with existing standards and requirements in Medi-Cal managed care contracts and professional practices. To the extent this bill improves monitoring and management of MMH treatment by managed care plans, utilization of these services and associated costs could increase. These additional costs could lead to rate increases in future years as the higher cost experience is captured for future years' rate setting. Future utilization changes and associated rate impact, if any, are indeterminate at this time but not expected to be significant.

3) The Department of Managed Health Care anticipates total costs of this bill to be approximately $309,000 Managed Care Fund (MCF) and 1.4 personnel years (PY) in fiscal year (FY) 2018-19, $92,000 MCF and 0.3 PY in FY 2019-20, $36,000 MCF and 0.2 PY in FY 2020-21, and the same amount annually thereafter, to conduct legal research and draft

analyses and legal memoranda to address issues that arise from the implementation of this bill, promulgate regulations, and compliance enforcement.

COMMENTS: According to the author, MMH disorders, including but not limited to postpartum depression, affect nearly one in five women. It is truly an epidemic that has allowed its victims to suffer in silence for too long, and this needs to change. This bill will shed light on this issue and increase screenings and treatment of MMH disorders, improving outcomes for California's mothers and their families.

1) **MMH**. MMH disorders, including depression, anxiety, and the much more rare but serious, postpartum psychosis, affect one in five women (20%), during pregnancy or the first year following childbirth. Among those living in poverty, up to 50% may be affected. Maternal depression is the most common complication of pregnancy in the United States, surpassing gestational diabetes and preeclampsia combined. Maternal depression presents a significant early risk to proper child development, the mother-infant bond, and the family. Maternal depression screening and treatment is an important tool to protect the child from the potential adverse physical and developmental effects of maternal depression. According to the American Academy of Pediatrics (AAP), screening mothers for maternal depression is a best practice for primary care pediatricians and can be integrated into the well-child care schedule, as well as included in the prenatal visit.

2) **Clinical recommendations for screening**. In May of 2015, the American Congress of Obstetricians and Gynecologists published Committee Opinion Number 630, recommending that clinicians screen patients at least once during the perinatal period for depression and anxiety symptoms using a standardized, validated tool. In January 2016, the United States Preventive Services Task Force (USPSTF) released a revised recommendation for depression screening of all adults, including pregnant and postpartum women. The USPSTF noted that screening should be implemented with adequate systems in place to ensure accurate diagnosis, effective treatment, and appropriate follow up. In February 2016, the National Council on Patient Safety in Women's Health Care issued the "Maternal Mental Health Bundle," providing high-level direction to health care providers in office and hospital settings on how to implement maternal mental health screening and treatment, and the most recent AAP "Bright Futures Guidelines" recommends postpartum depression screening from the one-month through the six-month well-child visit.

According to 2020 Moms write in support that this bill will make California one of a handful of states that require women to be screened for MMH disorders in line with recommendation to screen when systems for connecting patients to care and for follow-up exist. This bill is the first in the nation that asks health insurers and health plans to help through development of case management programs already in place by insurers for disorders like asthma, low back pain and eating disorders. The Women's Foundation of California indicates that ensuring this access is a critical step in the effort to achieve gender justice. Health Access California, also in support writes that this bill would make sure that case management has been developed for pregnant women to access relevant MMH information, once they have been determined to suffer from such conditions.

This bill as amended has no opposition.

AB 2487

STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Assembly Bill No. 2487

CHAPTER 301

An act to add Section 2190.6 to the Business and Professions Code, relating to healing arts.

[Approved by Governor September 7, 2018. Filed with Secretary of State September 7, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2487, McCarty. Physicians and surgeons: continuing education: opiate-dependent patient treatment and management.

Existing state law, the Medical Practice Act, establishes the Medical Board of California within the Department of Consumer Affairs. The board is responsible for the licensure and regulation of physicians and surgeons, and is required by the act to adopt and administer standards for the continuing education of those physicians and surgeons. Existing law requires all physicians and surgeons to complete a mandatory continuing education course on pain management and the treatment of terminally ill and dying patients, as provided.

Existing federal law, the Comprehensive Addiction Recovery Act of 2016, requires physicians and surgeons who dispense narcotic drugs for patient treatment to obtain a separate registration from the United States Attorney General. The United States Drug Enforcement Administration, within the federal Office of the Attorney General, administers the registration and requires physicians and surgeons to renew that registration at specified intervals. A physician and surgeon qualifies for a waiver of the registration if he or she is licensed under state law and completes at least one specified training, such as 8 hours of training in the treatment and management of opiate-dependent patients.

This bill would authorize a physician and surgeon to complete a one-time continuing education course on opiate-dependent patient treatment and management, as specified, as an alternative to the mandatory continuing education course on pain management and the treatment of terminally ill and dying patients.

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

SECTION 1. Section 2190.6 is added to the Business and Professions Code, to read:

2190.6. (a) As an alternative to Section 2190.5, a physician and surgeon may complete a one-time continuing education course of 12 credit hours in the subjects of treatment and management of opiate-dependent patients,

including eight hours of training in buprenorphine treatment, or other similar medicinal treatment, for opioid use disorders.

(b) A physician and surgeon who meets the requirements, as determined by the board, of a "qualifying physician" under clause (ii) of subparagraph (G) of paragraph (2) of subsection (g) of Section 823 of Title 21 of the United States Code, the Comprehensive Addiction Recovery Act of 2016 (Public Law 114-198), as that clause read on January 1, 2018, shall be deemed to have met the requirements of subdivision (a).

(c) A physician and surgeon who chooses to comply with this section as an alternative to Section 2190.5 shall complete the requirements of this section by his or her next license renewal date.

(d) The board shall determine whether a physician and surgeon has met the requirements of this section.

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CONCURRENCE IN SENATE AMENDMENTS
AB 2487 (McCarty)
As Amended August 6, 2018
Majority vote

ASSEMBLY: 51-18 (May 31, 2018) SENATE: 39-0 (August 20, 2018)

Original Committee Reference: **B. & P.**

SUMMARY: Authorizes a physician and surgeon to complete a one-time continuing education course on opiate-dependent patient treatment and management as an alternative to the mandatory education course on pain management and the treatment of terminally ill and dying patients.

The Senate amendments strike the requirement that physicians and surgeons authorized to prescribe controlled substances complete a course on opiate-dependent patient treatment and management, and instead allow for that course to be completed in lieu of an existing one-time required course on pain management and the treatment of terminally ill and dying patients.

EXISTING LAW:

1) Establishes the Medical Practice Act, which provides for the state's licensure and regulation of physicians and surgeons by the Medical Board of California (MBC). (Business and Professions Code Section (BPC) 2000 *et seq.*)

2) Includes among the MBC's responsibilities the administration of a continuing medical education program. (BPC 2004)

3) Requires the MBC to adopt and administer standards for the continuing education of its licensees; authorizes the MBC to set content standards for any education regarding the prevention and treatment of a chronic disease; and mandates that the board shall require each licensed physician and surgeon to demonstrate satisfaction of continuing education requirements at intervals of not less than four nor more than six years. (BPC 2190)

4) Authorizes the MBC's Division of Licensing to establish continuing medical education standards for courses that serve to maintain, develop, or increase the knowledge, skills, and professional performance that a physician and surgeon uses to provide care, or to improve the quality of care provided to patients. (BPC 2190.1)

5) Requires all physicians and surgeons to complete a continuing education course in pain management and the treatment of terminally ill and dying patients. (BPC 2190.5)

6) Prohibits physicians and surgeons from treating opioid dependency with buprenorphine, an opioid antagonist proven effective in medication-assisted treatment, unless they have secured a federal "X-waiver" through the Drug Enforcement Administration (DEA), which requires the physician and surgeon to meet certain training criteria. (United State Code Title 21, Section 823)

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author:

> AB 2487 equips the medical community to join the fight against the opioid epidemic by learning about the benefits of Medically Assisted Treatment (MAT), and buprenorphine specifically. We have seen the success that MAT brings to the people fighting an opioid addiction and want to ensure there are enough trained physicians to meet the needs of all Californians.

Background. *Opioid Abuse and Treatment.* In October of 2017, the White House declared the opioid crisis a public health emergency, formally recognizing what had long been understood to be a growing epidemic responsible for devastation in communities across the country. According to the Centers for Disease Control and Prevention, as many as 50,000 Americans died of an opioid overdose in 2016, representing a 28% increase over the previous year. Additionally, the number of Americans who died of an overdose of fentanyl and other opioids more than doubled during that time with nearly 20,000 deaths. These death rates compare to, and potentially exceed, those at the height of the AIDS epidemic.

In response to the rise in opioid abuse and overdose, a number of medication-assisted treatment options have been championed within the medical community. One such treatment is buprenorphine, frequently marketed under the brand name Subutex, as well as Suboxone when combined with naloxone. As an opioid classified as a Schedule III controlled substance, Buprenorphine can only be prescribed or administered by a licensed practitioner in possession of a DEA registration. However, there are additional federal restrictions on Buprenorphine not present for standard prescriptions of opioids. Under the federal Drug Addiction Treatment Act of 2000, only specially trained physicians are authorized to prescribe Buprenorphine through the "X-waiver" process. Absent certain circumstances, physicians may only use Buprenorphine in treatment if they have taken an approved course on the treatment and management of opiate-dependent patients as well as at least eight hours of instruction in buprenorphine treatment. The author's original intention with this bill was to increase the amount of education completed by physicians and surgeons that would count toward meeting the federal X-waiver requirements.

Continuing Medical Education. All physicians and surgeons licensed by the MBC must complete a minimum of 50 hours of approved continuing medical education during each two-year license renewal cycle. This requirement can be met by taking a variety of continuing education courses approved by the MBC. The only specifically required courses are a one-time, 12-hour training in pain management and the treatment of terminally ill patients, and a requirement that general internists and family physicians whose patient populations are over 25% 65 years of age and older must take at least 20% of their continuing education in the field of geriatric medicine. Otherwise, physician and surgeons have the discretion to select what courses to take to meet their education requirements.

As amended, this bill would not add additional continuing education requirements for physicians and surgeons. Instead, this bill would authorize physicians and surgeons to elect to take a course on opiate-dependent patient treatment and management in place of the current requirement for a course in pain management and the treatment of terminally ill patients. Doing so would arguably increase the amount of education taken in opiate-dependent patient treatment without increasing overall education requirements for licensees.

AB 2741

AMENDED IN SENATE JUNE 13, 2018

AMENDED IN SENATE MAY 24, 2018

AMENDED IN ASSEMBLY APRIL 2, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL No. 2741

Introduced by Assembly Member Burke
(Coauthors: Assembly Members Dahle and Cunningham)

February 16, 2018

An act to add Article 10.8 (commencing with Section 745) to Chapter 1 of Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2741, as amended, Burke. Prescription drugs: opioid medications: minors.

Existing law provides for the licensure and regulation of health care practitioners by various boards and requires prescription drugs to be ordered and dispensed in accordance with the Pharmacy Law. Existing law makes repeated acts of clearly excessive prescribing or administering of drugs or treatment unprofessional conduct for certain health care practitioners.

This bill ~~would~~ *would, with certain exceptions,* prohibit a prescriber, as defined, from prescribing more than a 5-day supply of opioid medication to a minor unless the prescription is for specified uses. The bill would also require a prescriber to take certain steps before prescribing a minor a course of treatment with opioid medication, including discussing opioid risks and obtaining verbal consent, except in specified instances. The bill would make a violation of the bill's

provisions unprofessional conduct and would subject the prescriber to discipline by the board charged with regulating his or her license.

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

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

1 SECTION 1. Article 10.8 (commencing with Section 745) is
2 added to Chapter 1 of Division 2 of the Business and Professions
3 Code, to read:
4
5 Article 10.8. Opioid Medication For Minors
6
7 745. (a) For purposes of this section, the following definitions
8 apply:
9 (1) "Opioid medication" means an opioid analgesic drug
10 product, including, but not limited to, an abuse-deterrent opioid
11 analgesic drug product.
12 (2) "Prescriber" means a person licensed, certified, registered,
13 or otherwise subject to regulation pursuant to this division, or an
14 initiative act referred to in this division, who is authorized to
15 prescribe opioid medication.
16 (b) A prescriber authorized to prescribe a Schedule II controlled
17 substance shall comply with this section when prescribing opioid
18 medication to a minor.
19 (c) A prescriber shall not prescribe more than a five-day supply
20 of opioid medication to a minor unless the prescription is for any
21 of the following:
22 (1) Management of pain associated with cancer.
23 (2) Use in palliative or hospice care.
24 (3) Management of chronic pain not associated with cancer.
25 (4) Treatment of a substance use disorder.
26 (5) Sickle cell disease.
27 (6) Acute intermittent porphyria.
28 (d) Except in the case of a prescription for a use listed in
29 subdivision (c), before prescribing a minor a course of treatment
30 with opioid medication, regardless of whether the dosage is
31 modified during that course of treatment, a prescriber shall do all
32 of the following:

(1) Assess whether the minor has taken or is currently taking prescription drugs for treatment of a substance use disorder.

(2) Discuss with the minor and the minor's parent or guardian, or other authorized adult, all of the following:

(A) The risks of addiction and overdose associated with opioid medication.

(B) The increased risk of addiction to opioid medication to individuals suffering from mental or substance abuse disorders.

(C) The dangers of taking opioid medication with benzodiazepines, alcohol, or other central nervous system depressants.

(D) Any other information deemed necessary by the prescriber.

(3) Obtain verbal consent for the prescription from the minor's parent or guardian, or authorized adult. The prescriber shall note the consent in the minor's record.

(e) Subdivision (c) and paragraph (3) of subdivision (d) shall not apply ~~if the minor's treatment with opioid medication meets either of the following criteria:~~

~~(1) The treatment is associated with, or incident to, a medical emergency as documented in the minor's medical record.~~

~~(2) In~~ *if,* the prescriber's professional judgment, complying with subdivision (c) or with paragraph (3) of subdivision (d), respectively, with respect to the minor's treatment would be detrimental to the minor's health or safety. The prescriber shall document in the minor's medical record the factor or factors which the prescriber believed constituted cause for not fulfilling the requirements of subdivision (c) or paragraph (3) of subdivision (d).

(f) This section shall not apply to emergency services and care as defined in Section 1317.1 of the Health and Safety Code.

~~(f)~~

(g) A violation of this section constitutes unprofessional conduct and grounds for disciplinary action by the prescriber's licensing board. Each licensing board established under this division, or under an initiative act referred to in this division, shall be charged with enforcing this section as it pertains to that board's prescribers.

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SENATE COMMITTEE ON
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT
Senator Jerry Hill, Chair
2017 - 2018 Regular

Bill No:	AB 2741	**Hearing Date:**	June 18, 2018
Author:	Burke		
Version:	June 13, 2018		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Sarah Mason		

Subject: Prescription drugs: opioid medications: minors

SUMMARY: Limits prescriptions of opioid medications to minors to a maximum of a five-day supply, with exceptions; requires practitioners to assess whether a minor has been prescribed treatment for a substance use disorder and discuss the risks and dangers associated with opioids with the minor and the minor's parent or guardian; and requires the prescriber to receive verbal consent from a minor's parent or guardian or authorized adult prior to prescribing a course of treatment with an opioid to a minor.

NOTE: **This bill was heard on June 11, 2018 and failed by a vote of 4-2. Reconsideration was granted.**

Existing law:

1) Establishes various practice acts in the Business and Professions Code (BPC) governed by various boards within the Department of Consumer Affairs (DCA) which provide for the licensing and regulation of health care professionals including: physicians and surgeons (under the Medical Practice Act), dentists (under the Dental Practice Act), veterinarians (under the Veterinary Medicine Practice Act); registered nurses, nurse practitioners (NP) and certified nurse-midwives (CNM) (under the Nursing Practice Act); physician assistants (PA) (under the Physician Assistant Practice Act); osteopathic physicians and surgeons (under the Osteopathic Medical Practice Act); naturopathic doctors (ND) (under the Naturopathic Doctors Act); optometrists (under the Optometry Practice Act); doctors of podiatric medicine (under the Podiatric Act) and; pharmacies, pharmacists and wholesalers of dangerous drugs or devices (under the Pharmacy Law). (Business and Professions Code (BPC) §§ 500 *et seq.*)

2) Provides that a physician and surgeon may not prescribe, dispense, or administer dangerous drugs or controlled substances to a person he or she knows or reasonably believes is using or will use the drugs or substances for a nonmedical purpose. (BPC § 2241)

3) Authorizes a physician and surgeon to prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain. Provides that a physician and surgeon shall not be subject to disciplinary action for prescribing, dispensing, or administering dangerous drugs or prescription controlled substances according to

certain requirements. Authorizes MBC to take any action against a physician and surgeon who violates laws related to inappropriate prescribing. Provides that a physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist. (BPC § 2241.5)

4) Requires the Division of Medical Quality (DMQ) within MBC, to develop standards before June 1, 2002 to ensure competent review in cases concerning the management, including, but not limited to, the undertreatment, undermedication, and overmedication of a patient's pain. (BPC § 2241.6)

5) Authorizes DMQ to consult with entities such as the American Pain Society, the American Academy of Pain Medicine, the California Society of Anesthesiologists, the California Chapter of the American College of Emergency Physicians, and any other medical entity specializing in pain control therapies to develop the standards utilizing, to the extent they are applicable, current authoritative clinical practice guidelines. (BPC § 2241.6)

6) Establishes the Uniform Controlled Substances Act which regulates controlled substances and defines opiate as any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. (Health and Safety Code (HSC) § 11020)

7) Classifies controlled substances in five schedules according to their danger and potential for abuse. (HSC § 11054-11058)

8) Prohibits any person other than a physician, dentist, podiatrist, veterinarian, ND (according to certain supervision and protocol requirements), pharmacist (according to certain authorizations, policies and procedures), CNM (if furnished or ordered incidentally to the provision of family planning services, routine health care or perinatal care, or care rendered consistent with the CNM's practice; occurs under physician and surgeon supervision; and is in accordance with standardized procedures or protocols as specified), NP (if it is consistent with a NP's educational preparation or for which clinical competency has been established and maintained; occurs under physician and surgeon supervision; and is in accordance with standardized procedures or protocols as specified); a pharmacist or registered nurse or PA acting within the scope of an experimental health workforce project authorized by the Office of Statewide Health Planning and Development (HSC § 128125 et seq.); an optometrist licensed under the Optometry Practice Act., or an out-of-state prescriber acting in an emergency situation from writing or issuing a prescription for a controlled substance. (Health and Safety Code (HSC) § 11150)

9) Specifies that a prescription for a controlled substance shall only be issued for a legitimate medical purpose and establishes responsibility for proper prescribing on the prescribing practitioner. States that a violation shall result in imprisonment for up to one year or a fine of up to $20,000, or both. (HSC § 11153)

10) Requires health practitioners who prescribe or administer a controlled substance classified in Schedule II to make a record containing the name and address of the patient, date, and the character, name, strength, and quantity of the controlled substance prescribed, as well as the pathology and purpose for which the controlled substance was administered or prescribed. (HSC § 11190 (a) and (b))

This bill:

1) Establishes requirements for prescribers authorized to prescribe Schedule II controlled substances when prescribing opioid medication to a minor, including prohibiting a prescriber from prescribing more than a five-day supply of opioid medication to a minor unless the prescription is for any of the following:

   a) Management of pain associated with cancer.

   b) Use in palliative or hospice care.

   c) Management of chronic pain not associated with cancer.

   d) Treatment of a substance use disorder.

   e) Sickle cell disease.

   f) Acute intermittent porphyria.

2) Requires a prescriber, except for prescriptions associated with a) – f) above, prior to prescribing a minor a course of treatment with opioid medication, regardless of whether the dosage is modified during that course of treatment, to do all of the following:

   a) Assess whether the minor has taken or is currently taking prescription drugs for treatment of a substance use disorder.

   b) Discuss with the minor and the minor's parent or guardian, or other authorized adult, the risks of addiction and overdose associated with opioid medication, the increased risk of addiction to opioid medication to individuals suffering from mental or substance abuse disorders, the dangers of taking opioid medication with benzodiazepines, alcohol, or other central nervous system depressants and any other information deemed necessary by the prescriber.

   c) Obtain verbal consent for the prescription from the minor's parent or guardian, or authorized adult. The prescriber shall note the consent in the minor's record.

3) Clarifies that the five-day supply provisions and verbal consent provisions of this bill do not apply if the minor's treatment is associated with emergency services and care documented in the minor's medical record or if, in the prescriber's professional judgment, complying with these provisions would be detrimental to the minor's health or safety. Requires the prescriber to document the rationale in the minor's medical record.

4) States that a violation of the requirements constitutes unprofessional conduct and grounds for disciplinary action by the prescriber's licensing board. Each licensing board established under this division, or under an initiative act referred to in this division, shall be charged with enforcing this section as it pertains to that board's prescribers.

FISCAL EFFECT: This bill is keyed fiscal by Legislative Counsel. According to the Assembly Committee on Appropriations analysis dated May 2, 2018, this bill will result in uncertain potential complaint investigation costs to MBC and enforcement costs to in the range of $100,000 annually and unknown, likely minor ongoing enforcement costs to health boards within the Department of Consumer Affairs that license prescribers, including the California Board of Podiatric Medicine, Board of Registered Nursing, and the Osteopathic Medical Board of California.

COMMENTS:

1. **Purpose.** The Author is the Sponsor of this bill. According to the Author, "In 2015, the amount of opioids prescribed was enough for every American to be medicated around the clock for 3 weeks. Several reputable health organizations, including the U.S. Food & Drug Administration (FDA) and the Center for Disease Control (CDC), all agree that overprescribing of opioid medications has directly contributed to the addiction crisis. In July 2017, the CDC released updated guidelines that recommended no more than a 3-day prescription for acute pain management. The Medical Board of California recommends opioids for acute pain management with minors only after non-opioid alternatives have failed."

   The Author notes that "Multiple studies site over-prescribing as a main contributor to the current opioid addiction epidemic. While pharmacists can utilize the partial-fill method if requested by the prescriber or patient, there still exists the problem of over-prescribing which leads to excessive amounts of opioid pills in the home which then creates opportunities for diversion and misuse. Despite recommendations by the CDC to limit prescriptions to 3-days for acute pain management, we've only seen a very slow decline in reductions of opioid prescribing practices. It is imperative that a prescription limit, along with other legislative solutions, be enacted."

2. **Controlled Substances**. Through the Controlled Substances Act of 1970, the federal government regulates the manufacture, distribution and dispensing of controlled substances. The act ranks into five schedules those drugs known to have potential for physical or psychological harm, based on three considerations: (a) their potential for abuse; (b) their accepted medical use; and, (c) their accepted safety under medical supervision.

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

   Schedule II controlled substances have a currently accepted medical use in treatment, or a currently accepted medical use with severe restrictions, and have a

high potential for abuse and psychological or physical dependence. Schedule II drugs can be narcotics or non-narcotic. Examples of Schedule II controlled substances include morphine, methadone, Ritalin, Demerol, Dilaudid, Percocet, Percodan, and Oxycontin.

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

Schedule V drugs have a low potential for abuse relative to substances listed in Schedule IV and consist primarily of preparations containing limited quantities of certain narcotics.

The three classes of prescription drugs that are most commonly abused are: opioids, which are most often prescribed to treat pain; central nervous system depressants, which are used to treat anxiety and sleep disorders; and stimulants, which are prescribed to treat the sleep disorder narcolepsy and attention-deficit hyperactivity disorder (ADHD). Each class can induce euphoria, and when administered by routes other than recommended, such as snorting or dissolving into liquid to drink or inject, can intensify that sensation.

Opioids, in particular, act on the same receptors as heroin and, therefore, can be highly addictive. Common opioids are: hydrocodone (Vicodin), oxycodone (OxyContin), propoxyphene (Darvon), hydromorphone (Dilaudid), meperidine (Demerol), and diphenoxylate (Lomotil).

3. **Prescription Drug Abuse.** For the past number of years, abuse of prescription drugs (taking a prescription medication that is not prescribed for you, or taking it for reasons or in dosages other than as prescribed) to get high has become increasingly prevalent. Results from the 2016 National Survey on Drug Use and Health found that 11.8 million people age 12 or older misused opioids in the past year, the vast majority of whom misused prescription pain relievers. Among people 12 or older who misused pain relievers in the past year, about half (53 percent) indicated that they obtained the last pain relievers they misused from a friend or relative.

   The National Institute on Drug Abuse (NIDA) reports young adults (age 18 to 25) are the biggest abusers of prescription opioid pain relievers, ADHD stimulants, and anti-anxiety drugs. In 2014, more than 1,700 young adults died from prescription drug (mainly opioid) overdoses, more than died from overdoses of any other drug, including heroin and cocaine combined, and many more needed emergency treatment. The nonmedical use of prescription drugs is highest among young adults. Six percent of 12- to 17- year-olds, 12 percent of 18- to 25- year-olds and 5 percent of persons age 26 or older used prescription drugs nonmedically in the past year.

   Abuse can stem from the fact that prescription drugs are legal and potentially more easily accessible, as they can be found at home in a medicine cabinet. Data shows that individuals who misuse prescription drugs, particularly teens, believe these

substances are safer than illicit drugs because they are prescribed by a health care professional and thus are safe to take under any circumstances. NIDA data states that in actuality, prescription drugs act directly or indirectly on the same brain systems affected by illicit drugs, thus, their abuse carries substantial addiction liability and can lead to a variety of other adverse health effects.

4. **Prescription Drug Deaths.** Prescription opioids continue to be involved in more overdose deaths than any other drug. NIDA reports that more than 1,700 young adults died from prescription drug overdose in 2014, a 4-fold increase from 1999, nearly 5 persons per day. According to the Centers for Disease Control (CDC), overdose deaths involving prescription opioids have quadrupled since 1999. CDC found that from 1999 to 2015, more than 183,000 people died in the U.S. from overdoses related to prescription opioids. CDC notes that the most common drugs involved in prescription opioid overdose deaths are methadone, oxycodone and hydrocodone. According to the CDC, among those who died from prescription opioid overdose between 1999 and 2014, overdose rates were highest among people aged 25 to 54, overdose rates were higher among non-Hispanic whites and American Indian or Alaskan Natives, compared to non-Hispanic blacks and Hispanics and men were more likely to die from overdose, but the mortality gap between men and women is closing.

5. **Guidelines for Prescribing Controlled Substances.** For certain types of medication, and certain types of medication prescribed to certain types of patients, guidelines on appropriate and safe prescribing practices can serve as a helpful tools for providers, patients and regulatory boards alike.

   In 2016, CDC issued a *Guideline for Prescribing Opioids for Chronic Pain*. According to CDC, the Guideline addresses patient-centered clinical practices including conducting thorough assessments, considering all possible treatments, closely monitoring risks, and safely discontinuing opioids. The three main focus areas in the Guideline include:

   - *Determining when to initiate or continue opioids for chronic pain* (Selection of non-pharmacologic therapy, nonopioid pharmacologic therapy, opioid therapy; Establishment of treatment goals; Discussion of risks and benefits of therapy with patients)

   - *Opioid selection, dosage, duration, follow-up, and discontinuation* (Selection of immediate-release or extended-release and long-acting opioids; Dosage considerations; Duration of treatment; Considerations for follow-up and discontinuation of opioid therapy)

   - *Assessing risk and addressing harms of opioid use* (Evaluation of risk factors for opioid-related harms and ways to mitigate patient risk; Review of prescription drug monitoring program (PDMP) data; Use of urine drug testing; Considerations for co-prescribing benzodiazepines; Arrangement of treatment for opioid use disorder)

   In 1994, MBC unanimously adopted a policy statement entitled "Prescribing Controlled Substances for Pain." Stemming from studies and discussions about

controlled substances, this policy statement was designed to provide guidance to improve prescriber standards for pain management, while simultaneously undermining opportunities for drug diversion and abuse. The guidelines outlined appropriate steps related to a patient's examination, treatment plan, informed consent, periodic review, consultation, records, and compliance with controlled substances laws. Subsequent to MBC's 1994 action, legislation that took effect in 2002 (AB 487, Aroner, Chapter 518, Statutes of 2001) created a task force to revisit the 1994 guidelines to develop standards assuring competent review in cases concerning the under-treatment and under-medication of a patient's pain and also required CE courses for physicians in the subjects of pain management and the treatment of terminally ill and dying patients. The passage of AB 2198 in 2006 (Houston, Chapter 350, Statutes of 2006) updated California law governing the use of drugs to treat pain by clarifying that health care professionals with a medical basis, including the treatment of pain, for prescribing, furnishing, dispensing, or administering dangerous drugs or prescription controlled substances, may do so without being subject to disciplinary action or prosecution.

MBC currently encourages all licensees to consult the policy statement and *Guidelines for Prescribing Controlled Substances for Pain* which were updated in 2014 based on input from a MBC Prescribing Task Force that held multiple meetings to identify best practices. According to the MBC website, "The board strongly urges physicians and surgeons to view effective pain management as a high priority in all patients, including children, the elderly, and patients who are terminally ill. Pain should be assessed and treated promptly, effectively and for as long as pain persists. The medical management of pain should be based on up-to-date knowledge about pain, pain assessment and pain treatment. Pain treatment may involve the use of several medications and non-pharmacological treatment modalities, often in combination. For some types of pain, the use of medications is emphasized and should be pursued vigorously; for other types, the use of medications is better de-emphasized in favor of other therapeutic modalities. Physicians and surgeons should have sufficient knowledge or utilize consultations to make such judgments for their patients. Medications, in particular opioid analgesics, are considered the cornerstone of treatment for pain associated with trauma, surgery, medical procedures, or cancer." MBC intends for the guidelines to educate physicians on effective pain management in California by avoiding under treatment, overtreatment, or other inappropriate treatment of a patient's pain. Reduction of prescription overdose deaths is also an objective of the updated guidelines.

In 2015, the Osteopathic Medical Board of California, which licenses and oversees osteopathic physicians and surgeons, adopted the 2014 MBC guidelines.

6. **Limits on Prescribing Controlled Substances**. In response to rising concerns about the quantity of certain prescriptions, a number of entities and states have attempted to address issues related to the amount of controlled substances that can be prescribed in a given time frame, with exceptions usually made for certain types of patients like those suffering from cancer or other terminal illnesses and diagnosed chronic pain conditions as a means of preventing abuse and death. Examples of states limiting controlled substance prescriptions, include: Maine, whose MaineCare (Maine's Medicaid) allowed a 45 day maximum prescription for

non-cancer pain beginning in April, 2012; Washington state (described in detail below); Rhode Island, which requires a physical examination prior to prescribing a controlled substance; Ohio, whose Medical Board guidelines recently were updated to include an 80mg/day Morphine Equivalent Dose/day (MED/d) dosing "yellow flag" and; Connecticut, whose workers compensation policy was updated in 2013 to advise that the total daily dose of opioids should not be increased above 90mg oral MED/d unless the patient improves in function, pain, or work capacity.

According to the National Conference of State Legislatures, a number of states have passed legislation setting limits on initial opioid prescriptions to a certain number of days' supply. NCSL found that of those laws, a seven days limit is most common, while some states limit prescriptions to three, five or 14 days. In 2016, Massachusetts became the first state in the nation to pass legislation limiting initial opioid prescriptions to a seven-day supply. Alaska, Connecticut, Indiana, Louisiana, Massachusetts, Nebraska, Pennsylvania and West Virginia also set limits specifically for minors. These laws set limits for any opioid prescription, rather than just the initial opioid prescription limit for adults, and may also require actions like discussing opioid risks with the minor and parent or guardian. Other states like New Hampshire, Ohio, Oregon, Vermont, Virginia, Washington and Wisconsin direct entities in the state such as the department of health/state health official or health care practitioner licensing boards to establish limits on opioid prescriptions. Rhode Island and Utah have prescribing limits in statute and allow other entities to adopt prescribing policies.

7. **Related Legislation This Year.** Prescription medicine used to treat pain has been the focus of ongoing discussions in the Legislature, as California and the nation face an epidemic of prescription drug abuse and related overdose deaths.

   SB 1109 (Bates) requires prescribers to take continuing education courses on the risks of addiction associated with the use of Schedule II controlled substances; requires additional warning labeling about the risks of addiction and overdose for opioid prescriptions; requires school districts, charter schools, and private schools that offer athletics programs, as well as youth sports organizations, to provide an information sheet to participants about the risk of opioid addiction that parents have to sign and return; and requires prescribers to discuss risks and dangers of opioids and opioid addiction with minors and their parents or guardians. (Status: *This bill is pending in the Assembly Committee on Health.*)

   AB 1998 (Rodriguez) requires every healthcare practitioner authorized to prescribe Schedule II and Schedule III opioids to adopt a safe prescribing policy. (Status: *This bill is also pending in this committee.)*

   AB 2760 (Wood) would require certain prescriptions for opioids to also include a co-prescription for naloxone. (Status: *This bill is also pending in this committee.*)

8. **Prior Related Legislation.** SB 419 (Portantino) contained similar language to provisions of this bill related to prescriber notification of and discussions with minor patients about opioid use when it was heard in this committee in 2017. (Status: *The measure was amended to deal with a different subject.*)

SB 482 (Lara, Chapter 708, Statutes of 2016) required a health care provider authorized to prescribe, order, administer, or furnish a controlled substance to consult the Controlled Substances Utilization Review and Evaluation System (CURES) prior to prescribing a Schedule II, III or IV drug to a patient for the first and at least once every four months thereafter if the substance remains part of the patient's treatment. The bill provided exemptions from the responsibility to consult the CURES system, including while a patient is admitted to a certain type of facility, if a patient receives a non-refillable five-day supply or less prescription in conjunction with a surgery, and in the event of a technological failure or inability to access the CURES system.

AB 623 (Wood) of 2015 would have prohibited a health care service plan or health insurer from requiring the use of opioid drug products that have no abuse-deterrent properties in order to access abuse-deterrent opioid drug products; would have required pharmacists to provide a patient receiving an opioid drug product information about proper storage and disposal of the drug; and, would have mandated that a plan and insurer may not prevent a provider from prescribing a less than 30-day supply of opioids analgesic drugs and to provide coverage, if otherwise covered, for the less than 30-day prescription. (Status: *The bill was held under submission in the Assembly Committee on Appropriations.*)

SB 500 (Lieu) of 2014 would have required the MBC to update prescriber standards for controlled substances once every five years and add the American Cancer Society, specialists in workers compensation, specialists in pharmacology and specialists in addiction medicine to the entities the MBC may consult with in developing the standards. (Status: *The bill was amended to deal with a different subject.*)

SB 1258 (DeSaulnier) of 2014 would have made several changes to the ways that controlled substances are prescribed and tracked in the CURES and would have required medical providers to use electronic prescribing systems, would have required additional reporting of controlled substance prescribing, and would have placed additional restrictions on the prescribing of controlled substances. (Status: *The bill was held in the Senate Committee on Appropriations.*)

9. **Arguments in Support.** AIDS Healthcare Foundation, a nonprofit service provider for people with or at risk of HIV, writes in support, stating "the Centers for Disease Control and Prevention has called attention to the fact that prescription opioids are correlative to increased HIV and STD rates....While we acknowledge that there is value in terms of pain management, the consequences of uncontrolled opioid use suggest that limitations on prescriptions are warranted and necessary."

   California Access Coalition, a statewide coalition of mental health and substance use disorder stakeholders, writes "we believe this process of governing opioid prescriptions for young people provides a good balance of care for the patient by allowing a prescriber to exceed the 5-day guidelines with justification, not tying the hands of the prescriber at the expense of the patient."

   The California Chamber of Commerce, states that "individuals covered by employer health insurance received $2.6 billion worth of treatment for opioid addiction and

overdoes in 2016, up from $273 million in 2004...Costs of such magnitude jeopardize an employer's ability to access affordable coverage for their employees and their dependents...AB 2741 offers individuals, families and employers a cost-effective preventive approach to the issue of overprescribing."

The California State Parent Teacher Association writes that "by limiting the number of days in an opioid prescription, most acute sever pain can still be managed. With shorter term use, the risk to health such as addiction, death by overdose and reservoir of unused doses can be reduced."

The California Dental Association, Medical Board of California, and Gatekeeper Innovation write that this bill would help educate parents and their children about the risks of opioid medications and is a good first step towards preventing minors from becoming addicted to opioids.

10. **Arguments in Opposition.** The American Academy of Pediatrics and the California Medical Association write "...AB 2741 is unnecessary, burdensome, and places the government between a patient and his or her physician. The determination that a minor, regardless of diagnosis, injury or other circumstance, will almost never require more than 5 days' worth of a classification of pain medication is not date-driven, evidence-based, nor is it an appropriate determination for this bill to make. It also puts in place an automatic determination of unprofessional conduct for a physician who fails to discuss all elements of the 'consultation' dictated in the bill regardless of their applicability to the patient. This determination would be applicable independent of patient outcome – creating a whole new level of liability for physicians."

    The American College of Obstetricians and Gynecologists District IX and the California Academy of Family Physicians in opposition, write that mandating the five-day limitation as the standard of care "remains problematic. This restriction places a blanket presumption that a treatment course longer than five days in excessive. Presumptions, such as this one, disrupts the doctor and patient relationship and impedes their ability to decide the best course of treatment."

    The California Chapter of the American College of Physicians, states that "this bill places an arbitrary limitation on physicians to only prescribe a 5-day supply of opioids to a minor patient unless they record additional information...California's emergency departments (ED) are already overburdened and overcrowded; mandatory reporting for each prescription of great than a 5-dat supply will add to the time spend away from patients and will cause additional backlog in the ED."

    The California Chronic Care Coalition, an alliance of non-profit, consumer health organizations, and provider groups, writes that "a significant concern is the chilling effect these laws have on physicians' willingness to even see" patients with chronic conditions. "Not only is our concern that our patients will not be able to obtain their needed medications, but that their actual medical care will suffer when physicians are intimidated or influenced by unnecessarily punitive measures."

11. **Proposed Author's Amendments.** In response to concerns raised by interested parties and opponents above and in order to further clarify the intent of the bill, the

Author has proposed the following changes to the bill (as outlined in the mockup below):

a) Clarify that prescriptions for the following are exempt from both the 5-day limit established by this bill and the requirement to obtain verbal consent:

- Management of pain associated with cancer
- Use in palliative or hospice care
- Management of chronic pain not associated with cancer
- Treatment of a substance use disorder
- Sickle cell disease
- Acute intermittent porphyria

b) Clarify that prescriptions exempt from the 5-day limit do not require any notation in a patient's medical record indicating why more than 5-days was prescribed.

c) Clarify that a violation of the provisions in this bill may constitute unprofessional conduct and may be grounds for disciplinary action by the prescriber's licensing board.

NOTE: ***Double-referral to Senate Rules Committee, second.***

SUPPORT AND OPPOSITION:

Support:

AIDS Healthcare Foundation
California Access Coalition
California Chamber of Commerce
California Dental Association
California State Parent Teachers Association
Gate Innovation
Medical Board of California

Opposition:

American Academy of Pediatrics
American College of Obstetricians and Gynecologists District IX
California Academy of Family Physicians
California Chapter of the American College of Emergency Physicians
California Chronic Care Coalition
California Medical Association

-- END --

Mockup of AB 2741 as proposed to be amended

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 10.8 (commencing with Section 745) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:

Article 10.8. Opioid Medication For Minors

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

(1) "Opioid medication" means an opioid analgesic drug product, including, but not limited to, an abuse-deterrent opioid analgesic drug product.

(2) "Prescriber" means a person licensed, certified, registered, or otherwise subject to regulation pursuant to this division, or an initiative act referred to in this division, who is authorized to prescribe opioid medication.

(b) A prescriber authorized to prescribe a Schedule II controlled substance shall comply with this section when prescribing opioid medication to a minor.

(c) A prescriber shall not prescribe more than a five-day supply of opioid medication to a minor. ~~unless the prescription is for any of the following:~~

(d) Subdivision (c) does not apply if the prescription is for any of the following:

(1) Management of pain associated with cancer.

(2) Use in palliative or hospice care.

(3) Management of chronic pain not associated with cancer.

(4) Treatment of a substance use disorder.

(5) Sickle cell disease.

(6) Acute intermittent porphyria.

~~(d)~~ ***(e)*** Except in the case of a prescription for a use listed in subdivision (c), before prescribing a minor a course of treatment with opioid medication, regardless of whether the dosage is modified during that course of treatment, a prescriber shall do all of the following:

(1) Assess whether the minor has taken or is currently taking prescription drugs for treatment of a substance use disorder.

(2) Discuss with the minor and the minor's parent or guardian, or other authorized adult, all of the following:

(A) The risks of addiction and overdose associated with opioid medication.

(B) The increased risk of addiction to opioid medication to individuals suffering from mental or substance abuse disorders.

(C) The dangers of taking opioid medication with benzodiazepines, alcohol, or other central nervous system depressants.

(D) Any other information deemed necessary by the prescriber.

(3) Obtain verbal consent for the prescription from the minor's parent or guardian, or authorized adult. The prescriber shall note the consent in the minor's record.

~~(e)~~ ***(f)*** Subdivision (c) and paragraph (3) of subdivision ~~(d)~~ ***(e)*** shall not apply ~~if the minor's treatment with opioid medication meets either of the following criteria:~~

~~(1)The treatment is associated with, or incident to, a medical emergency as documented in the minor's medical record.~~

~~(2)In~~ *if,* the prescriber's professional judgment, complying with subdivision (c) or with paragraph (3) of subdivision ~~(d)~~ ***(e)***, respectively, with respect to the minor's treatment would be detrimental to the minor's health or safety. The prescriber shall document in the minor's medical record the factor or factors which the prescriber believed constituted cause for not fulfilling the requirements of subdivision (c) or paragraph (3) of subdivision ~~(d)~~ ***(e)***.

~~(f)~~ ***(g)*** *This section shall not apply to emergency services and care as defined in Section 1317.1 of the Health and Safety Code.*

~~(f)~~

(h) A violation of this section ***may*** constitute~~s~~ unprofessional conduct and ***may be*** grounds for disciplinary action by the prescriber's licensing board. Each licensing board established under this division, or under an initiative act referred to in this division, shall be charged with enforcing this section as it pertains to that board's prescribers.

SB 790

SB 790 was gutted and amended on August 24, 2018.

This bill is no longer relevant to the healing arts.

SB 1298

AMENDED IN SENATE APRIL 4, 2018

SENATE BILL No. 1298

Introduced by Senator Skinner

February 16, 2018

An act to amend ~~Sections 11105, 11121, 11126, and 13300 of, to add Section 11128 to, and to repeal and add Section 11122 of,~~ *Section 11105 of* the Penal Code, relating to criminal records.

LEGISLATIVE COUNSEL'S DIGEST

SB 1298, as amended, Skinner. The Increasing Access to Employment Act.

~~(1) Existing~~

Existing law requires the Department of Justice to maintain state summary criminal history information, as defined, and requires the Attorney General to furnish state summary criminal history information to specified entities and ~~individuals if needed in the course of their duties.~~ *individuals, including an authorized entity for employment, licensing, or certification relative to community care facilities, residential care facilities, and other specified health facilities. Existing law requires the department to provide the requester with every conviction of an offense rendered against the applicant, except for a conviction for which relief was granted to a victim of human trafficking, as specified.*

This bill would ~~limit the information the department provides to specified requesters to more recent misdemeanors and felonies, generally within 5 years, and other information, as specified, including offenses for which registration as a sex offender is required. The bill would, for specified requesters, prohibit the disclosure of a conviction that has been dismissed, an arrest that was subsequently deemed a detention, or~~

~~an arrest that resulted in the successful completion of a diversion program, exoneration, or an arrest that has been sealed. The bill would specify what information is to be provided to a consumer reporting agency, as defined.~~ *prohibit the department from releasing, for these purposes, the record of convictions that were dismissed pursuant to specified provisions.*

Existing law requires the department to provide an agency, organization, or individual, including, but not limited to, a cable corporation, in-home supportive services recipient, or property security organization, requesting the information for specified employment purposes with every conviction for which registration as a sex offender is required and, except as specified, every conviction that occurred within 10 years of the date of the request or for which the person was incarcerated within 10 years of the request for information.

This bill would require that only convictions from the prior 7 years or for which the person was incarcerated or on probation or parole within 7 years of the request be provided.

Existing law requires, when state summary criminal history information is furnished as a result of specified requests, and the information is to be used for employment, licensing, or certification purposes, that the requester furnish the information to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision.

This bill would *instead* require the department to furnish a copy of the Criminal Offender Record Information (CORI) to the subject ~~when a state or federal summary criminal history information is requested and the information is to be used for employment, licensing, or certification purposes~~ *of the request* and would require the department to allow the subject a reasonable opportunity of not less than five days to challenge the accuracy or completeness of any matter contained in the CORI prior to furnishing a report to a third party. *The bill would require the department to make specified corrections prior to furnishing the information to the requester.*

~~Existing law requires a person who wants a copy of the his or her state summary criminal history information to obtain an application form furnished by the department and provide his or her fingerprints, in addition to other information specified by the department.~~

~~This bill would remove the requirement that a person submit fingerprints to obtain his or her state summary criminal history~~

~~information and would require only that information the department deems necessary.~~

~~(2) Existing law authorizes a person who desires to question the accuracy or completeness of any material matter contained in the record to submit a written request to the department and, if the accuracy of the source document is questioned, requires the department to forward it to the person or agency that furnished the questioned information. Existing law gives person or agency 30 days from the receipt of the written request for clarification, to review its information and forward to the department the results of the review. Under existing law, if the person or agency that created the source document concurs in the allegations of inaccuracy or incompleteness in the record, and finds that the error is material, it is required to correct its record and inform the department. Existing law provides the department 30 within which to inform the applicant of its correction of the record.~~

~~This bill would authorize an applicant to question the accuracy or completeness of any matter and, if the source document is questioned, would require the department, within 5 days, to verify the accuracy of the source document with the person or agency that furnished the questioned information. The bill would require the department to correct its record, destroy and purge the incorrect information if the department is unable to verify the accuracy or completeness of the source document and would require to destroy and purge the incorrect information. The bill would require the department to inform the applicant of the correction and destruction of the record within 10 days. The bill would also require a person or agency to which the incorrect record has been disseminated to, upon notification, correct the record accordingly and destroy and purge the incorrect information within 30 days. By increasing the requirements on local agencies that supply the source documents, this bill would impose a state-mandated local program.~~

~~(3) This bill would establish the Increasing Access to Employment Fund and would make funds available, upon appropriation, to the California Workforce Investment Board to administer a grant program aimed at improving rehabilitation, reentry, and employment and licensing outcomes for people with criminal convictions, as specified.~~

~~(4) Existing law requires the disclosure of local summary criminal history information by a local criminal justice agency to certain authorized entities and authorizes the disclosure of that information to other entities in specified circumstances.~~

~~The bill would require a local agency to disclose local summary criminal history information to the subject of the request or to an individual who is the subject of the record requested when needed in conjunction with an application to enter the United States or any foreign nation. By increasing the duties of local criminal justice agencies, this bill would impose a state-mandated local program. The bill would also reduce the entities to which local summary criminal history is required to be disclosed and to which that information is authorized to be disclosed, as specified.~~

~~Existing law prohibits a local criminal justice agency from releasing information under specified circumstances, including information concerning an arrest or detention followed by a dismissal or release without attempting to determine whether the individual was exonerated.~~

~~This bill would prohibit a local criminal justice agency from releasing information relating to convictions that were dismissed, arrests subsequently deemed a detention, arrests that resulted in the successful completion of a diversion program, exoneration, or arrests that were sealed. The bill would also limit the information that a local criminal justice agency can disclose to convictions for which registration as a sex offender is required, information concerning misdemeanor convictions that occurred before 2 years of the date of the request for information, and felony convictions that occurred before 5 years of the date of the request for information.~~

~~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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

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

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

1 SECTION 1. (a) This act shall be known, and may be cited,
2 as the Increasing Access to Employment Act.
3 (b) It is the intent of the Legislature that criminal conviction
4 records not operate as an automatic bar to employment, licensure,
5 and certification. It is the intent of the Legislature not to change

or impact in any way the role or authority of a licensing board or state agency to assess the fitness of applicants seeking licensure, certification, and employment pursuant to provisions of the Business and Professions Code, Health and Safety Code, Insurance Code, and Welfare and Institutions Code, as applicable. This act supercedes any statute, regulation, rule, or decision directing a licensing board, state agency, employer, or any other applicable person or entity, to obtain criminal history records in a manner that conflicts with the intent of this act.

(c) ~~It is the intent of the Legislature to create the Increasing Access to Employment Fund for rehabilitation and reentry services to improve prospects for licensing, certification, and professional employment for people with criminal conviction records.~~ Recidivism is reduced when people with criminal convictions are given the opportunity to secure employment and engage in a trade, occupation, or profession. It is in the interest of public safety to assist in the rehabilitation of criminal offenders by removing impediments and restrictions on an offenders' ability to obtain employment or engage in a trade, occupation, or profession when those impediments and restrictions are based solely upon the existence of a criminal record. Increasing opportunities for people with criminal records improves the economic well-being of families and communities and is a path to full employment in California.

SEC. 2. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person, ~~such as~~ *including* name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, sentencing information, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints ~~to or~~ *to,* investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and (b) of Section 830.5.

(3) District attorneys of the state.

(4) Prosecuting city attorneys or city prosecutors of a city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section ~~4852.08.~~ *4852.01.*

(9) A public defender or attorney of record when representing a person in a criminal case, or a parole, mandatory supervision pursuant to paragraph (5) of subdivision (h) of Section 1170, or postrelease community supervision revocation or revocation extension proceeding, and if authorized access by statutory or decisional law.

(10) An agency, officer, or official of the state if the state summary criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official ~~of the state~~ authorized by this paragraph to receive state summary criminal history information may also transmit fingerprint images and related

information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(11) A ~~city or~~ *city,* county, city and county, district, or an officer or official ~~thereof~~ *thereof,* if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the state summary criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The ~~city or~~ *city,* county, city and county, district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).

(13) A person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(14) Health officers of a city, county, city and county, or district when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(15) A managing or supervising correctional officer of a county jail or other county correctional facility.

(16) A humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of humane officers.

(17) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing state summary criminal history information, the agency shall delete or purge from the file

and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(18) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for a purpose other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(19) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving state summary criminal history information pursuant to this section.

(20) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(21) An officer providing conservatorship investigations pursuant to Sections 5351, 5354, and 5356 of the Welfare and Institutions Code.

(22) A court investigator providing investigations or reviews in conservatorships pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

(23) A person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code.

(24) A humane officer pursuant to Section 14502 of the Corporations Code for the purposes of performing his or her duties.

(25) A public agency described in subdivision (b) of Section 15975 of the Government Code, for the purpose of oversight and enforcement policies with respect to its contracted providers.

(26) (A) A state entity, or its designee, that receives federal tax information. A state entity or its designee that is authorized by this paragraph to receive state summary criminal history information also may transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation for the purpose of the state entity or its designee obtaining federal level criminal offender record information from the Department of Justice. This information shall be used only for the purposes set forth in Section 1044 of the Government Code.

(B) For purposes of this paragraph, "federal tax information," "state entity" and "designee" are as defined in paragraphs (1), (2), and (3), respectively, of subdivision (f) of Section 1044 of the Government Code.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) A public utility, as defined in Section 216 of the Public Utilities Code, that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data,

he or she shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To an illegal dumping enforcement officer as defined in subdivision (j) of Section 830.7.

(4) To a peace officer of another country.

(5) To *a* public ~~officers,~~ *officer,* other than *a* peace ~~officers,~~ *officer,* of the United States, ~~other states, or possessions or territories~~ *another state, or a possession or territory* of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, ~~other states, or possessions or territories~~ *the other state, or the possession or territory* of the United States if the information is needed for the performance of their official duties.

(6) To a person ~~when~~ *if* disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(7) The courts of the United States, other states, or territories or possessions of the United States.

(8) Peace officers of the United States, other states, or territories or possessions of the United States.

(9) To an individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or a foreign nation.

(10) (A) (i) A public utility, as defined in Section 216 of the Public Utilities Code, or a cable corporation as defined in subparagraph (B), if receipt of *state summary* criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment, may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and arrests for which the person is released on bail or on his or her own recognizance pending trial.

(ii) If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

(iii) State summary criminal history information is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

(iv) A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. A public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

(v) This section shall not be construed as imposing a duty upon public utilities or cable corporations to request state summary criminal history information on current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means a corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(11) To a campus of the California State University or the University of California, or a four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon

to a special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(12) To a foreign government, if requested by the individual who is the subject of the record requested, if needed in conjunction with the individual's application to adopt a minor child who is a citizen of that foreign nation. Requests for information pursuant to this paragraph shall be in accordance with the process described in Sections 11122 to 11124, inclusive. The response shall be provided to the foreign government or its designee and to the individual who requested the information.

(d) ~~Whenever~~ *When* an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) ~~Whenever~~ *When* state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, a person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 26190, and former Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and

improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or a state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting state summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or

has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided, however, that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(E) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(F) Sex offender registration status of the applicant.

(G) Sentencing information, if present in the department's records at the time of the response.

(*l*) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or ~~which~~ *that* did not result in a conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice ~~indicate~~ *indicate,* or if the genuine effort ~~reveals~~ *reveals,* that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention, or the subject was granted relief pursuant to Section 851.91.

(D) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(E) Sex offender registration status of the applicant.

(F) Sentencing information, if present in the department's records at the time of the response.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or a statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant, except a conviction for which relief has been granted pursuant to Section ~~1203.49.~~ *1203.4, 1203.4a, 1203.41, 1203.42, 1203.45, 1203.49, or 1170.9.*

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(D) Sex offender registration status of the applicant.

(E) Sentencing information, if present in the department's records at the time of the response.

(3) Notwithstanding the requirements of the sections referenced in paragraph ~~(1) of this subdivision,~~ *(1),* the Department of Justice shall not disseminate information about an arrest subsequently

deemed a detention or an arrest that resulted in the successful completion of a diversion program, exoneration, or a grant of relief pursuant to Section 851.91.

(n) (1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (10) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) A statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction, except a conviction for which relief has been granted pursuant to Section ~~1203.49,~~ *1203.4, 1203.4a, 1203.41, 1203.42, 1203.45, 1203.49, or 1170.9,* rendered against the applicant for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within ~~10~~ *seven* years of the date of the agency's request for information or the conviction is over ~~10~~ *seven* years old but the subject of the request was incarcerated *or on probation or parole* within ~~10~~ *seven* years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of the response.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 379 or 550 of the Financial Code, or a statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of an offense specified in Section 550 of the Financial Code, except a conviction for which relief has been granted pursuant to Section ~~1203.49.~~ *1203.4, 1203.4a, 1203.41, 1203.42, 1203.45, 1203.49, or 1170.9.*

(B) Every arrest for a violation or attempted violation of an offense specified in Section 550 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Sentencing information, if present in the department's records at the time of the response.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (*l*), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or a statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant, except a conviction for which relief has been granted pursuant to Section

~~1203.49.~~ *1203.4, 1203.4a, 1203.41, 1203.42, 1203.45, 1203.49, or 1170.9.*

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of the response.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (*l*), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent notification pursuant to Section 11105.2.

(r) This section does not require the Department of Justice to cease compliance with any other statutory notification requirements.

(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

(t) Whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual defined in subdivisions (k) to (p), inclusive, and the information is to be used for employment, licensing, or certification ~~purposes, the authorized agency, organization, or individual shall expeditiously furnish a copy of the information to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision. When furnished other than in person, the copy shall be delivered to the last contact information provided by the applicant.~~ *purposes, the department shall first furnish a copy of the Criminal Offender Record Information (CORI) to the subject of the request. After furnishing a copy to the subject, but prior to furnishing a report to a third party, the department shall allow the subject a reasonable opportunity of not less than five days to challenge the accuracy or completeness of any matter contained in the CORI. The department shall make the necessary corrections pursuant to*

Section 11126 prior to furnishing the information to the requesting agency, organization, or individual.

All matter omitted in this version of the bill appears in the bill as introduced in the Senate, February 16, 2018. (JR11)

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SENATE COMMITTEE ON APPROPRIATIONS
Senator Ricardo Lara, Chair
2017 - 2018 Regular Session

SB 1298 (Skinner) - The Increasing Access to Employment Act

Version: April 4, 2018
Urgency: No
Hearing Date: May 7, 2018

Policy Vote: PUB. S. 5 - 2, L. & I.R. 4 - 1
Mandate: No
Consultant: Shaun Naidu

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

Bill Summary: SB 1298 would, among other things, prohibit the Department of Justice (DOJ) from reporting specified records within a person's state summary criminal history information to specified requesters for employment, licensing, or certifying purposes and would require DOJ to provide the subject of the information with a copy of the summary information and at least five days to challenge its accuracy before releasing it to the requester.

Fiscal Impact: Unknown, potentially-major workload costs to DOJ to reprogram IT systems to make sure specified dismissed convictions are not reported to specified requesters for employment, licensing, and certification purposes and to make sure, for certain requesters, the summary information contains information from the most recent seven years instead of ten. Additional unknown, potentially-significant costs to the department in postage to mail summary information to the subjects and to process correction requests outside the traditional process and to track the time of when the information may be submitted to the requester. (General Fund)

Background: Existing law requires DOJ to maintain state summary criminal history information, as defined, and requires the Attorney General to furnish state summary criminal history information to specified entities and individuals for employment, licensing, or certification relative to community care facilities, residential care facilities, and other specified health facilities. The department must provide the requester with every conviction of an offense rendered against the applicant, except for a conviction for which relief was granted to a victim of human trafficking, as specified. Additionally, records that have been sealed by the court and specified dismissed cases are not disclosed.

Specific to some agencies, organizations, and individuals, including cable corporations, in-home supportive services recipients, or property security organizations that request the information for specified employment purposes, the department must provide every conviction for which registration pursuant to the Sex Offender Registration Act is required and, except as specified, every conviction that occurred within ten years of the date of the request or for which the person was incarcerated within ten years of the request for information.

When state summary criminal history information is furnished as a result of specified requests, and the information is to be used for employment, licensing, or certification purposes, the requester must furnish the information to the person who is the subject of

the information if the information is a basis for an adverse employment, licensing, or certification decision. Additionally, a person may request his or her own information from DOJ and may submit a request to correct any errors within his or her record.

Proposed Law: This bill would:

- Prohibit DOJ from releasing to community care facilities, residential care facilities, and other specified health facilities for employment, licensing, or certification purposes records of cases that were dismissed pursuant to specified provisions of law.
- Prohibit DOJ from releasing to cable corporations, in-home supportive services recipients, and property security organizations for employment, licensing, or certification purposes records of cases that were dismissed pursuant to specified provisions of law.
- Limit DOJ to reporting to cable corporations, in-home supportive services recipients, and property security organizations records related to convictions or convictions for which the subject of the request was on probation or parole supervision that were within seven years of the date of the request.
- Prohibit DOJ from releasing to specified financial institutions for employment, licensing, or certification purposes records of cases that were dismissed pursuant to specified provisions of law.
- Prohibit DOJ from releasing to transportation companies and other specified entities for employment, licensing, or certification purposes records of cases that were dismissed pursuant to specified provisions of law.
- Require DOJ, when a request for information has been made by specified entities for employment, licensing, or certification purposes, to first provide the subject of a state summary criminal history information with a copy of the information before providing the information to the requestor.
- Require DOJ to allow the subject of the information a reasonable opportunity of at least five days to challenge the accuracy or completeness of the any matter contained in the state summary criminal history information.
- Require DOJ to make any necessary corrections, as specified, before submitting the information to the requesting entity.

Related Legislation: SB 900 (Ortiz, Ch. 627, Stats. 2002) consolidated background check criteria for specified agencies for use for employment, licensing, or certification purposes.

Staff Comments: According to DOJ, there are over 45,000 agencies authorized to perform background checks. The department processes about 2 million state level background checks and 1.2 million federal level background checks annually. It is unknown how many of these requests are made by entities that would be affected by the limitations of access imposed by this, but it could be significant considering the number of open positions there are on a continual, ongoing basis in California for law enforcement, other public safety fields, cable corporations, in-home supportive services, community care facilities, residential care facilities, property security, financial institution, and positions in other affected industries.

-- END --

SB 1338

STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Senate Bill No. 1338

CHAPTER 518

An act to amend Sections 739 and 779.3 of, and to add Section 779.4 to, the Public Utilities Code, relating to energy rates.

[Approved by Governor September 18, 2018. Filed with Secretary of State September 18, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1338, Hueso. Electrical and gas corporations: rates.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations. Existing law authorizes the commission to fix the rates and charges for every public utility and requires that those rates and charges be just and reasonable. Existing law requires the commission to designate a baseline quantity of electricity and gas necessary for a significant portion of the reasonable energy needs of the average residential customer and requires that electrical corporations and gas corporations file rates and charges, to be approved by the commission, providing baseline rates that apply to the first and lowest block of an increasing block rate structure. Existing law additionally requires the commission to establish a standard allowance in addition to the baseline quantity of gas and electricity for residential customers dependent on life-support equipment. Existing law provides that this additional higher energy usage allowance be made available to a person who is being treated for a life-threatening illness or has a compromised immune system, if a licensed physician and surgeon or a person licensed pursuant to the Osteopathic Initiative Act certifies in writing to the utility that the additional heating or cooling allowance is medically necessary to sustain the life of the person or prevent deterioration of the person's medical condition.

This bill would authorize a physician assistant to certify in writing to the utility that the additional energy, heating, or cooling allowance is medically necessary to sustain the life of a person being treated for a life-threatening illness or a compromised immune system or to prevent deterioration of that person's medical condition.

Existing law prohibits a gas or electrical corporation from disconnecting service for nonpayment when (1) the customer or a member of the customer's household has a life-threatening condition or illness, (2) a licensed physician, a person licensed pursuant to the Osteopathic Initiative Act, or a nurse practitioner certifies that gas or electric service is medically necessary to sustain the life of the person or prevent deterioration of the person's medical condition, and (3) the customer is willing to enter into an amortization agreement, as provided.

This bill would revise (2) above to additionally prohibit disconnecting service where a physician assistant certifies that gas or electric service is medically necessary to sustain the life of the customer or member of the customer's family or to prevent deterioration of that person's medical condition. The bill would require the commission to develop rules requiring each of the 4 energy utilities that have the greatest number of customers in California to demonstrate that they are working with the medical community to increase marketing and outreach to persons eligible for the above-described medical baseline allowance.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime or expanding the application of a crime.

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 739 of the Public Utilities Code is amended to read:

739. (a) As used in this section:

(1) "Baseline quantity" means a quantity of electricity or gas allocated by the commission for residential customers based on from 50 to 60 percent of average residential consumption of these commodities, except that, for residential gas customers and for all-electric residential customers, the baseline quantity shall be established at from 60 to 70 percent of average residential consumption during the winter heating season. In establishing the baseline quantities, the commission shall take into account climatic and seasonal variations in consumption and the availability of gas service. The commission shall review and revise baseline quantities as average consumption patterns change in order to maintain these ratios and may do so during the rate case or other ratesetting proceeding of a gas corporation or electrical corporation. The commission shall make efforts to minimize bill volatility for residential customers, including all-electric residential customers. Those efforts may include modifying the length of the baseline seasons or defining additional baseline seasons.

(2) "Residential customer" means those customers receiving electrical or gas service pursuant to a domestic rate schedule and excludes industrial, commercial, and every other category of customer.

(b) The commission shall designate a baseline quantity of gas and electricity which is necessary to supply a significant portion of the reasonable energy needs of the average residential customer. In estimating those quantities, the commission shall take into account differentials in energy needs between customers whose residential energy needs are currently supplied by electricity alone or by both electricity and gas. The commission shall develop a separate baseline quantity for all-electric residential customers. For these purposes, "all-electric residential customers" are residential customers having electrical service only or whose space heating is provided by electricity, or both. The commission shall also take into account differentials in energy use by climatic zone and season.

(c) (1) The commission shall establish a standard limited allowance which shall be in addition to the baseline quantity of gas and electricity for residential customers dependent on life-support equipment, including, but not limited to, emphysema and pulmonary patients. A residential customer dependent on life-support equipment shall be allocated a higher energy allocation than the average residential customer.

(2) "Life-support equipment" means that equipment which utilizes mechanical or artificial means to sustain, restore, or supplant a vital function, or mechanical equipment which is relied upon for mobility both within and outside of buildings. "Life-support equipment," as used in this subdivision, includes all of the following: all types of respirators, iron lungs, hemodialysis machines, suction machines, electric nerve stimulators, pressure pads and pumps, aerosol tents, electrostatic and ultrasonic nebulizers, compressors, IPPB machines, and motorized wheelchairs.

(3) The limited allowance specified in this subdivision shall also be made available to paraplegic and quadriplegic persons in consideration of the increased heating and cooling needs of those persons.

(4) The limited allowance specified in this subdivision shall also be made available to multiple sclerosis patients in consideration of the increased heating and cooling needs of those persons.

(5) The limited allowance specified in this subdivision shall also be made available to scleroderma patients in consideration of the increased heating needs of those persons.

(6) The limited allowance specified in this subdivision shall also be made available to persons who are being treated for a life-threatening illness or have a compromised immune system, if a licensed physician and surgeon, a physician assistant practicing within his or her scope of practice in compliance with the Physician Assistant Practice Act (Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code), or a person licensed pursuant to the Osteopathic Initiative Act certifies in writing to the utility that the additional energy, heating, or cooling allowance, or both, is medically necessary to sustain the life of the person or prevent deterioration of the person's medical condition.

(d) (1) The commission shall require that every electrical and gas corporation file a schedule of rates and charges providing baseline rates. The baseline rates shall apply to the first or lowest block of an increasing

block rate structure which shall be the baseline quantity. In establishing these rates, the commission shall avoid excessive rate increases for residential customers, and shall establish an appropriate gradual differential between the rates for the respective blocks of usage.

(2) In establishing residential electric and gas rates, including baseline rates, the commission shall ensure that the rates are sufficient to enable the electrical corporation or gas corporation to recover a just and reasonable amount of revenue from residential customers as a class, while observing the principle that electricity and gas services are necessities, for which a low affordable rate is desirable and while observing the principle that conservation is desirable in order to maintain an affordable bill.

(3) At least until December 31, 2003, the commission shall require that all charges for residential electric customers are volumetric, and shall prohibit any electrical corporation from imposing any charges on residential consumption that are independent of consumption, unless those charges are in place prior to April 12, 2001.

(e) (1) Each electrical corporation and each gas corporation shall, in a timeframe consistent with each electrical and gas corporation's next general rate case, disclose on the billing statement of a residential customer all of the following:

(A) Cost per kilowatthour or gas therm per tier.

(B) Allocation of kilowatthour or gas therm per tier.

(C) Visual representation of usage and cost per tier.

(D) Usage comparison with prior periods.

(E) Itemized cost components in the bill to identify state and local taxes.

(F) Identification of delivery, generation, public purpose, and other charges.

(G) Contact information for the commission's Consumer Affairs Branch.

(2) An electrical corporation and a gas corporation shall make available online to residential customers both of the following:

(A) Examples of how conservation measures, including changing thermostat settings and turning off unused lights, could reduce energy usage and costs.

(B) Examples of how energy-saving devices and weatherization measures could reduce energy usage and costs.

(3) The commission may modify, adjust, or add to the requirements of this subdivision as the individual circumstances of each electrical corporation or gas corporation merits, or for master-meter customers, as individual circumstances merit.

(4) The commission shall, as part of the general rate case of an electrical corporation or gas corporation, assess opportunities to improve the quality of information contained in the utility's periodic billings.

(f) Wholesale electrical or gas purchases, and the rates charged therefor, are exempt from this section.

(g) Nothing contained in this section shall be construed to prohibit experimentation with alternative gas or electrical rate schedules for the purpose of achieving energy conservation.

SEC. 2. Section 779.3 of the Public Utilities Code is amended to read:

779.3. (a) A gas or electrical corporation shall not disconnect service for nonpayment by a residential customer receiving a medical baseline allowance pursuant to subdivision (c) of Section 739 who is financially unable to pay for service within the normal payment period, who is willing to enter into an amortization agreement with the corporation pursuant to subdivision (e) of Section 779 with respect to all charges that the customer is unable to pay, and who meets any of the following criteria:

(1) The customer or a member of the customer's household is under hospice care at home.

(2) The customer or a member of the customer's household depends upon life-support equipment, as defined in paragraph (2) of subdivision (c) of Section 739.

(3) The customer or a member of the customer's household has a life-threatening condition or illness, and a licensed physician, a person licensed pursuant to the Osteopathic Initiative Act, a physician assistant practicing within his or her scope of practiee in compliance with the Physician Assistant Practice Act (Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code), or a nurse practitioner certifies that gas or electric service is medically necessary to sustain the life of the person or prevent deterioration of the person's medical condition.

(b) The commission may identify strategies for reasonable cost recovery by a gas or electrical corporation for costs incurred in providing gas or electric service to customers whom the gas or electrical corporation was unable to disconnect due to compliance with this section.

(c) A gas or electrical corporation may institute a verification process to implement this section.

SEC. 3. Section 779.4 is added to the Public Utilities Code, to read:

779.4. (a) For purposes of this section, "energy utility" means an electrical corporation, a gas corporation, or an entity that is both an electrical corporation and a gas corporation.

(b) The commission shall develop rules requiring each of the four energy utilities that have the greatest number of customers in California to demonstrate that they are working with the medical community to increase marketing and outreach to persons eligible for the medical baseline allowance pursuant to subdivision (c) of Section 739.

(c) The commission shall consider policies to increase marketing and outreach programs to customers eligible for the medical baseline allowance pursuant to subdivision (c) of Section 739, in coordination with county public health departments.

SEC. 4. 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 erime 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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SENATE THIRD READING
SB 1338 (Hueso)
As Amended April 12, 2018
Majority vote

SENATE VOTE: 38-0

Committee	Votes	Ayes	Noes
Utilities	15-0	Holden, Patterson, Burke, Chen, Cunningham, Eggman, Gallagher, Eduardo Garcia, Mayes, Muratsuchi, Quirk, Reyes, Santiago, Ting, Friedman	
Appropriations	17-0	Gonzalez Fletcher, Bigelow, Bloom, Bonta, Brough, Calderon, Carrillo, Chau, Eggman, Fong, Friedman, Gallagher, Eduardo Garcia, Nazarian, Obernolte, Quirk, Reyes	

SUMMARY: Prohibits a gas or electric corporations (IOUs) from disconnecting service where a physician assistant certifies that gas or electric service is medically necessary to sustain the life of a customer or to prevent deterioration of that person's medical condition. This bill would also require the California Public Utilities Commission (CPUC) to develop rules requiring each of the four largest IOUs to demonstrate that they are working with the medical community to increase outreach to persons eligible for the medical baseline allowance. Specifically, **this bill**:

1) Authorizes a physician assistant (PA), as defined in existing law, to certify to a utility that the additional energy, heating or cooling allowance is medically necessary to sustain the life of the person or prevent deterioration of the person's medical condition.

2) Requires the CPUC to develop rules requiring each of the four energy utilities that have the greatest number of customers in California to demonstrate that they are working with the medical community to increase marketing and outreach to persons eligible for the medical baseline allowance.

3) Requires the CPUC to consider policies to increase marketing and outreach programs to customers eligible for the medical baseline allowance, in coordination with county public health departments.

FISCAL EFFECT:

According to the Assembly Appropriations Committee, minor costs likely less than $100,000 each year for two years, to CPUC to 1) develop rules requiring each of the four energy utilities that have the greatest number of customers in California to demonstrate that they are working with the medical community to increase marketing and outreach to persons eligible for the medical baseline allowance, and 2) consider policies to increase marketing and outreach

programs to customers eligible for the medical baseline allowance, in coordination with county public health departments.

COMMENTS:

Medical baseline. The medical baseline allowance provides residential customers who have qualifying medical conditions with additional energy allowance at the lowest tiered rate. Per statute, investor-owned utilities (IOUs) are required to provide additional baseline allowance of gas or electric service for customers facing specified medical conditions, including life-threatening conditions or who are on life support. Additionally, the medical baseline allowance provides these households with advance notice of power outages since members of the households may be dependent on power to survive. All IOUs currently administer medical baseline, and, as such, have existing processes for identifying these customers, including requiring physicians and other medical personnel to certify as to the medical condition. Customers on medical baseline are also provided the opportunity to amortize their bill payments, for a period up to 12 months, in order to avoid disconnection of service. IOUs are prohibited from disconnecting service to customers with life-threatening conditions, on life support or hospice care, and who cannot pay and are willing to enter into a payment schedule.

Low Enrollment. Currently less than 3% of California IOU customers are enrolled in the medical baseline allowance program. Allowing additional medical professionals, physician assistants, to certify an IOU customers' eligibility could have positive effect in enrolling individuals who lack access to a doctor. Additionally the bill requires IOUs to partner with county public health departments to identify eligible customers and conduct outreach. These efforts could lead to an increased enrollment in the medical baseline program.

Analysis Prepared by: Elle Hoxworth / U. & E. / (916) 319-2083 FN: 0004209

AB 2138

STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Assembly Bill No. 2138

CHAPTER 995

An act to amend, repeal, and add Sections 7.5, 480, 481, 482, 488, 493, and 11345.2 of, and to add Section 480.2 to, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 30, 2018. Filed with Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2138, Chiu. Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction.

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 or take disciplinary action against a licensee on the grounds that the applicant or licensee has, among other things, been convicted of a crime, as specified. Existing law provides that a person shall not be denied a license solely on the basis that the person has been convicted of a felony if he or she has obtained a certificate of rehabilitation or that the person has been convicted of a misdemeanor if he or she has met applicable requirements of rehabilitation developed by the board, as specified. Existing law also prohibits a person from being denied a license solely on the basis of a conviction that has been dismissed, as specified. Existing law requires a board to develop criteria to aid it when considering the denial, suspension, or revocation of a license to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates and requires a board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license.

This bill would revise and recast those provisions to instead authorize a board to, among other things, deny, revoke, or suspend a license on the grounds that the applicant or licensee has been subject to formal discipline, as specified, or convicted of a crime only if the applicant or licensee has been convicted of a crime within the preceding 7 years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or if the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding 7 years, except as specified. The bill would prohibit a board from

denying a person a license based on the conviction of a crime, or on the basis of acts underlying a conviction, as defined, for a crime, if the conviction has been dismissed or expunged, if the person has provided evidence of rehabilitation, if the person has been granted clemency or a pardon, or if an arrest resulted in a disposition other than a conviction.

The bill would require the board to develop criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession. The bill would require a board to consider whether a person has made a showing of rehabilitation if certain conditions are met. The bill would require a board to follow certain procedures when requesting or acting on an applicant's or licensee's criminal history information. The bill would also require a board to annually submit a report to the Legislature and post the report on its Internet Web site containing specified deidentified information regarding actions taken by a board based on an applicant or licensee's criminal history information.

Existing law authorizes a board to deny a license on the grounds that an applicant knowingly made a false statement of fact that is required to be revealed in the application for licensure.

This bill would prohibit a board from denying a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had the fact been disclosed.

Existing law authorizes a board, after a specified hearing requested by an applicant for licensure to take various actions in relation to denying or granting the applicant the license.

This bill would revise and recast those provisions to eliminate some of the more specific options that the board may take in these circumstances.

This bill would clarify that the existing above-described provisions continue to apply to the State Athletic Commission, the Bureau for Private Postsecondary Education, and the California Horse Racing Board.

This bill would also make necessary conforming changes.

This bill would make these provisions operative on July 1, 2020.

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

SECTION 1. Section 7.5 of the Business and Professions Code is amended to read:

7.5. (a) A conviction within the meaning of this code means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) of Section 480.

Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 2. Section 7.5 is added to the Business and Professions Code, to read:

7.5. (a) A conviction within the meaning of this code means a judgment following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) or (c) of Section 480.

(b) (1) Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(2) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(A) The State Athletic Commission.

(B) The Bureau for Private Postsecondary Education.

(C) The California Horse Racing Board.

(c) Except as provided in subdivision (b), this section controls over and supersedes the definition of conviction contained within individual practice acts under this code.

(d) This section shall become operative on July 1, 2020.

SEC. 3. 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.

(e) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 4. Section 480 is added to the Business and Professions Code, to read:

480. (a) Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application. However, the preceding seven-year limitation shall not apply in either of the following situations:

(A) The applicant was convicted of a serious felony, as defined in Section 1192.7 of the Penal Code or a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.

(B) The applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of the business or profession for which the application is made, pursuant to regulations adopted by the board, and for which the applicant is seeking licensure under any of the following:

(i) Chapter 1 (commencing with Section 5000) of Division 3.

(ii) Chapter 6 (commencing with Section 6500) of Division 3.

(iii) Chapter 9 (commencing with Section 7000) of Division 3.

(iv) Chapter 11.3 (commencing with Section 7512) of Division 3.

(v) Licensure as a funeral director or cemetery manager under Chapter 12 (commencing with Section 7600) of Division 3.

(vi) Division 4 (commencing with Section 10000).

(2) The applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years from the date of application based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code or a comparable dismissal or expungement.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis that he or she has been convicted of a crime, or on the basis of acts underlying a conviction for a crime, 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, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Section 482.

(c) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code, or a comparable dismissal or expungement. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof of the dismissal if it is not reflected on the report furnished by the Department of Justice.

(d) Notwithstanding any other provision of this code, a board shall not deny a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication.

(e) 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. A board shall not deny a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.

(f) A board shall follow the following procedures in requesting or acting on an applicant's criminal history information:

(1) A board issuing a license pursuant to Chapter 3 (commencing with Section 5500), Chapter 3.5 (commencing with Section 5615), Chapter 10 (commencing with Section 7301), Chapter 20 (commencing with Section 9800), or Chapter 20.3 (commencing with Section 9880), of Division 3, or Chapter 3 (commencing with Section 19000) or Chapter 3.1 (commencing

with Section 19225) of Division 8 may require applicants for licensure under those chapters to disclose criminal conviction history on an application for licensure.

(2) Except as provided in paragraph (1), a board shall not require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history. However, a board may request mitigating information from an applicant regarding the applicant's criminal history for purposes of determining substantial relation or demonstrating evidence of rehabilitation, provided that the applicant is informed that disclosure is voluntary and that the applicant's decision not to disclose any information shall not be a factor in a board's decision to grant or deny an application for licensure.

(3) If a board decides to deny an application for licensure based solely or in part on the applicant's conviction history, the board shall notify the applicant in writing of all of the following:

(A) The denial or disqualification of licensure.

(B) Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.

(C) That the applicant has the right to appeal the board's decision.

(D) The processes for the applicant to request a copy of his or her complete conviction history and question the accuracy or completeness of the record pursuant to Sections 11122 to 11127 of the Penal Code.

(g) (1) For a minimum of three years, each board under this code shall retain application forms and other documents submitted by an applicant, any notice provided to an applicant, all other communications received from and provided to an applicant, and criminal history reports of an applicant.

(2) Each board under this code shall retain the number of applications received for each license and the number of applications requiring inquiries regarding criminal history. In addition, each licensing authority shall retain all of the following information:

(A) The number of applicants with a criminal record who received notice of denial or disqualification of licensure.

(B) The number of applicants with a criminal record who provided evidence of mitigation or rehabilitation.

(C) The number of applicants with a criminal record who appealed any denial or disqualification of licensure.

(D) The final disposition and demographic information, consisting of voluntarily provided information on race or gender, of any applicant described in subparagraph (A), (B), or (C).

(3) (A) Each board under this code shall annually make available to the public through the board's Internet Web site and through a report submitted to the appropriate policy committees of the Legislature deidentified information collected pursuant to this subdivision. Each board shall ensure confidentiality of the individual applicants.

(B) A report pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.

(h) "Conviction" as used in this section shall have the same meaning as defined in Section 7.5.

(i) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(j) This section shall become operative on July 1, 2020.

SEC. 5. Section 480.2 is added to the Business and Professions Code, to read:

480.2. (a) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the grounds that the applicant has one of the following:

(1) Been convicted of a crime.

(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 Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing 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 Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board to evaluate the rehabilitation of a person when considering the denial of a license under paragraph (1) of subdivision (f).

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board 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) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it 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.

(e) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(f) (1) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to evaluate the rehabilitation of a person either when:

(A) Considering the denial of a license under this section.

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

(2) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

(g) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may take any of the following actions:

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

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

(3) Deny the license.

(4) Take other action in relation to denying or granting the license as the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board, in its discretion, may deem proper.

(h) Notwithstanding any other law, in a proceeding conducted by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

(i) Notwithstanding Section 7.5, 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 the Bureau for Private Postsecondary

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

(j) This section shall become operative on July 1, 2020.

SEC. 6. Section 481 of the Business and Professions Code is amended to read:

481. (a) Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 7. Section 481 is added to the Business and Professions Code, to read:

481. (a) Each board under this code shall develop criteria to aid it, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(b) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession a board regulates shall include all of the following:

(1) The nature and gravity of the offense.

(2) The number of years elapsed since the date of the offense.

(3) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

(c) A board shall not deny a license based in whole or in part on a conviction without considering evidence of rehabilitation submitted by an applicant pursuant to any process established in the practice act or regulations of the particular board and as directed by Section 482.

(d) Each board shall post on its Internet Web site a summary of the criteria used to consider whether a crime is considered to be substantially related to the qualifications, functions, or duties of the business or profession it regulates consistent with this section.

(e) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(f) This section shall become operative on July 1, 2020.

SEC. 8. Section 482 of the Business and Professions Code is amended to read:

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

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

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

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

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 9. Section 482 is added to the Business and Professions Code, to read:

482. (a) Each board under this code shall develop criteria to evaluate the rehabilitation of a person when doing either of the following:

(1) Considering the denial of a license by the board under Section 480.

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

(b) Each board shall consider whether an applicant or licensee has made a showing of rehabilitation if either of the following are met:

(1) The applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation.

(2) The board, applying its criteria for rehabilitation, finds that the applicant is rehabilitated.

(c) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(d) This section shall become operative on July 1, 2020.

SEC. 10. Section 488 of the Business and Professions Code is amended to read:

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

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

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

(3) Deny the license.

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

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 11. Section 488 is added to the Business and Professions Code, to read:

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

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

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

(3) Deny the license.

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

(b) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(c) This section shall become operative on July 1, 2020.

SEC. 12. Section 493 of the Business and Professions Code is amended to read:

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

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

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 13. Section 493 is added to the Business and Professions Code, to read:

493. (a) Notwithstanding any other law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact.

(b) (1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates shall include all of the following:

(A) The nature and gravity of the offense.

(B) The number of years elapsed since the date of the offense.

(C) The nature and duties of the profession.

(2) A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.

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

(d) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(e) This section shall become operative on July 1, 2020.

SEC. 14. Section 11345.2 of the Business and Professions Code is amended to read:

11345.2. (a) An individual shall not act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. Notwithstanding subdivision (c) of Section 480, if the individual's felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code, the bureau may allow the individual to act as a controlling person.

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 15. Section 11345.2 is added to the Business and Professions Code, to read:

11345.2. (a) An individual shall not act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. If the individual's felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code, the bureau may allow the individual to act as a controlling person.

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser

refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.

(c) This section shall become operative on July 1, 2020.

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CONCURRENCE IN SENATE AMENDMENTS
AB 2138 (Chiu and Low)
As Amended August 24, 2018
Majority vote

ASSEMBLY: 45-29 (May 31, 2018) SENATE: 24-13 (August 28, 2018)

Original Committee Reference: **B. & P.**

SUMMARY: Reduces barriers to licensure for individuals with prior criminal convictions by limiting a regulatory board's discretion to deny a new license application to cases where the applicant was formally convicted of a substantially related crime or subjected to formal discipline by a licensing board, with offenses older than seven years no longer eligible for license denial, with several enumerated exemptions.

The Senate amendments significantly narrowed the bill's applicability and scope through changes to the bill that do the following:

1) Extend the timeframe during which all substantially related criminal convictions may be considered from five years to seven years.

2) Replace the exemption from the seven-year washout period for "violent felony" convictions with a broader exemption for "serious felony" convictions.

3) Exempt convictions for crimes requiring registration as a Tier 1 or Tier 2 sex offender.

4) Exempt, for applicants seeking licenses that regularly involve a financially sensitive relationship with members of the public, financial crimes determined by the relevant board through rulemaking to be directly and adversely related to the licensed profession.

5) Restore current law allowing boards to deny an application for licensure where an applicant has a prior criminal conviction that is "substantially related" to the licensed profession.

6) Clarify that the seven-year washout period is tolled from date that the applicant was released from incarceration, when applicable.

7) Expressly authorize a board to deny an applicant for licensure who has been subject to discipline by a board either within or outside of California.

8) Strike all provisions in the bill modifying the authority of a board to suspend a license, revoke a license, or place a new or current license on probation.

9) Restore the ability of a board that does not conduct a fingerprint background check of its license applicants to require applicants to self-disclose their criminal histories.

10) Permit all other boards to request an applicant voluntarily provide details about his or her criminal history, provided that the applicant is informed that the applicant's decision not to disclose any information is not be a factor in a board's decision to grant the application.

11) Strike all provisions of the bill requiring boards to respond to petitions for changes to probation within 90 days.

12) Revise portions of the bill related to applicants who make a showing of rehabilitation to a board to simply require that a board consider that an applicant is rehabilitated if he or she has completed a criminal sentence without a violation of parole or probation, or has satisfied criteria for rehabilitation developed by the board.

13) Exempt from all changes made by the bill the State Athletic Commission, the Bureau for Private Postsecondary Education, and the Horse Racing Board.

14) Delay implementation of the entire bill until July 1, 2020.

EXISTING LAW:

1) Establishes the Department of Consumer Affairs (DCA) within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC) 100)

2) Enumerates various regulatory boards, bureaus, committees, and commissions under the DCA's jurisdiction. (BPC 101)

3) Authorizes a board to deny a professional license issued under its jurisdiction if the applicant has any of the following:

   a) Been convicted of a crime.

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

   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. (BPC 480)

4) Limits a board's authority to deny a license to instances where the applicant's crime or act is substantially related to the qualifications, functions, or duties of the profession for which application is made. (*Id.*)

5) States that 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. (*Id.*)

6) Permits a board to deny an application for a license 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. (*Id.*)

7) Prohibits a board from denying an application for a license solely based on a criminal conviction that has been dismissed. (*Id.*)

8) States that a person shall not be denied a license solely based on prior convictions for 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. (*Id.*)

9) Requires each board 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 Section 481)

10) Requires each board to develop criteria to evaluate the rehabilitation of a person for purposes of considering the denial of a license application or considering suspension or revocation of a current license. (BPC 482)

11) States that successful completion of any diversion program or successful completion of an alcohol and drug problem assessment program shall not prohibit a board from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest. (BPC 492)

12) Establishes that the record of conviction of a crime shall be conclusive evidence of the fact that the conviction occurred for purposes of a board's decision to deny an application for a license or suspend or revoke a current license, except a board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question. (BPC 493)

FISCAL EFFECT: According to the Senate Committee on Appropriations, varying fiscal impacts for each board under the DCA ranging from minor and absorbable to significant.

COMMENTS:

Purpose. This bill is sponsored by a coalition of criminal justice advocacy groups including the East Bay Community Law Center, Anti-Recidivism Coalition, Legal Services for Prisoners with Children, and Root & Rebound. According to the author:

> California has among the highest recidivism rates in the nation, with many low-level criminal offenders committing new crimes within a year of release. These factors play a significant role in the prison and jail overcrowding crisis that the Legislature has spent the past decade attempting to address. One of the root causes of high recidivism rates is the inability of prior offenders to secure gainful employment upon reentry. Nearly 30% of California jobs require licensure, certification, or clearance by an oversight board or agency for approximately 1,773 different occupations. All too often, qualified people are denied occupational licenses or have licenses revoked or suspended on the basis of prior arrests or convictions, many of which are old, unrelated to the job, or have been judicially dismissed. Alleviating barriers to occupational licensing is just one way California can reduce recidivism and provide economic opportunity to all its residents.

Background. *Board Discretion to Deny Applications for Licensure*. Due to the unique nature of each individual profession licensed and regulated by entities under the DCA, the various professional practice acts contain their own standards and enforcement criteria for individuals applying for or in receipt of special occupational privileges from the state. There are some umbrella statutes that govern the discretion of these regulatory bodies generally. For example, BPC 480 governs the authority of regulatory boards to deny applicants for licensure.

Under BPC 480, a board *may* deny a license within the purview of the DCA on the grounds that the applicant has one of the following:

1) Been convicted of a crime; boards may disqualify based on criminal history if 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.

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) 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.

BPC 480 specifies that a license may only be denied for prior misconduct if the disqualifying crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. The statute also states that a person may not be denied a license solely based on a conviction if he or she possesses a certificate of rehabilitation. Statute further clarifies that a dismissed conviction may not be grounds for disqualification for licensure.

These provisions are echoed in BPC 490, which deals with the discretion of a board to take disciplinary action against a current licensee for subsequent criminal activity. This code section makes specific reference to *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, a court decision dealing with licensees convicted of criminal misconduct. The Legislature has found and declared the holding in that case has "placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes." The Legislature therefore further found and declared that "this section establishes an independent basis for a board to impose discipline upon a licensee."

Criticism has been made over statute's allowance for boards and bureaus to deny a license to an individual who has "done any act involving honesty, fraud, or deceit" for self-benefit or harm to others. This broad discretion goes beyond criminal convictions, as well as non-criminal activity that is nevertheless afforded an element of due process, such as regulatory discipline. This authority has opened the door for many licensure applications to be denied based purely on alleged misconduct that has not been determined to have occurred through standard due process.

The discretion for boards and bureaus to deny licensure to applicants with criminal histories has also been criticized, despite the guarantee of due process afforded to these applicants prior to a crime being reflected on their record. In its report *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records*, the National Employment Law Project (NELP) discusses the arguably draconian nature of barriers to occupational entry based on criminal history. NELP's report refers to "a lack of transparency and predictability in the licensure decision-making process and confusion caused by a labyrinth of different restrictions" in regulatory schemes across the country.

California is specifically graded as "Needs Improvement," with recommendations including:

1) Expand blanket ban prohibition to all occupations with one overarching law.

2) Expand occupation-relatedness requirement to all.

3) Require consideration of the time elapsed since conviction.

4) Prohibit consideration of certain record information (arrests, lesser offenses, older offenses).

5) Require consideration of the applicant's rehabilitation.

In 2017, the Assembly Business and Professions Committee discussed barriers to licensure generally in its sunset background paper for the DCA. Specifically, the committee considered how criminal convictions eligible for license disqualification in California are limited in the sense that they must be "substantially related" to the profession into which the license allows entry. Concern was expressed that there is a "serious lack of clarity for applicants as to what 'substantially related' means and this determination is often left to the discretion of individual boards." The committee staff recommendation was for the DCA to take steps to improve transparency and consistency in the use of applicants' criminal histories by boards and bureaus.

Recidivism Reduction Policies. California has among the highest recidivism rates in the country. At the height of the state's prison overcrowding crisis, the percentage of incarcerated individuals becoming convicted of new crimes and returned to prison was close to 70%. This troubling statistic and its detrimental effects on society, the economy, and public safety – in addition to a court decision in *Brown v. Plata* regarding the inhumanity of overcrowded prisons – led to a variety of anti-recidivism policies in localities and statewide. Many of these policies focused on expanding economic opportunity for those with criminal conviction histories, seeking to "close the revolving door" of prisons.

In 2012, the White House under President Obama called for expanded policies encouraging successful reentry through postrelease employment. This included "ban the box" policies, referring to the deferment of disclosure of criminal history on initial applications for employment. These policies allow an applicant to proceed through a hiring process up until the final offer stage without their prior conviction being disclosed. The intent of this and other post-conviction reentry policies is to provide those convicted of crimes with economic opportunity following release, which in turn reduces criminal recidivism, improves public safety, and curbs over-incarceration. In 2013, AB 218 (Dickinson), Chapter 699 was signed into law as California's first "ban the box" legislation. The bill prohibited a state or local agency from asking an applicant to disclose information regarding a criminal conviction until the agency has determined the applicant meets the minimum employment qualifications for the position. This legislation was followed in 2017 by AB 1008 (McCarty), which extended the law to include private employers.

This bill would similarly improve economic opportunity for those with criminal convictions by increasing access to professional licensure. This bill does not broaden the state's "ban the box" laws to professional licensure, and it does not replicate those laws enacted for employment by a public or private entity. Applicants for licensure are not competitively evaluated and chosen based on professional strengths. Applicants are presumed eligible if they meet certain qualifications and if there is nothing to disqualify them. An applicant's criminal history is disclosed at the time of the application and this bill would not exclude or delay its consideration.

However, because current law enables boards to disqualify based on crimes that are "substantially related" to the profession, applicants are often unaware of what misconduct will render them ineligible for licensure. Further, many applications for licensure require self-disclosure of prior misconduct from applicants; in instances where applicants underestimate the

inclusivity of what crimes or acts will disqualify them, they may fail to voluntarily disclose that information. This lack of disclosure is in and of itself grounds to deny the application for licensure. The practice of requiring self-disclosure by applicants and then denying an application based on an applicant's inadequate self-incrimination is frequently regarded as the "candor trap."

Criminal Offenses Eligible for Consideration. This bill does not change the authority of an individual board to determine what crimes may be considered when denying a licensure application. The bill currently retains the discretion for each board to establish its own criteria to decide whether a crime is substantially related. The bill does mandate data collection and public reporting in regards to how criminal convictions are used to deny licenses. This information will guide policymakers in the event that more prescriptive reforms to what crimes are eligible for consideration are contemplated.

The bill institutes a seven-year "washout period" for convictions. Under these provisions, crimes older than seven years may no longer be considered for purposes of denying a licensure application. However, this washout period does not apply to serious felonies or crimes requiring registration as a Tier 1 or Tier 2 sex offender. The bill also allows the following licenses under the following boards whose licensees are frequently placed in a financially sensitive relationship with the public to add additional financial crimes to the washout period exemption through rulemaking:

1) Board of Accountancy

2) Fiduciaries Bureau

3) Department of Real Estate

4) Bureau of Security and Investigative Services

5) Contractors State License Board

6) Board of Real Estate Appraisers

7) Cemetery and Funeral Bureau

The bill's current seven-year washout period aligns with the standard for private employment, where background checks only go back seven years. It also roughly aligns with the point at which research suggests a nonviolent prior offender is no more likely to reoffend. Individuals convicted of crimes longer than seven years ago that are nonserious, nonviolent, nonsexual, and—for applicable boards—non-financial may still be placed on probation upon licensure, and may be subject to restrictions on practice included in conditions for probation or parole. Finally, the bill clarifies that the seven-year clock does not start until after an incarcerated inmate has been released from jail or prison.

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