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Laws and Regulations Relating to the Practice of Physician Assistants

Issued by the

PHYSICIAN ASSISTANT COMMITTEE

MEDICAL BOARD OF CALIFORNIA

January 2011

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PHYSICIAN ASSISTANT PRACTICE ACT

AS CONTAINED IN
DIVISION 2, CHAPTER 7.7
BUSINESS AND PROFESSIONS CODE

and

PHYSICIAN ASSISTANT REGULATIONS

AS CONTAINED IN
TITLE 16, DIVISION 13.8
CALIFORNIA CODE OF REGULATIONS

2011

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The booklet is a compilation of the applicable laws and regulations regarding the practice of physician assistants. While every effort has been made to ensure that the booklet is current and accurate, readers are advised that the applicable laws and regulations are subject to revision. Should any difference or discrepancy occur, duly enacted laws or regulations shall take precedence over the information contained herein.

Business and Professions Codes may be accessed at www.leginfo.ca.gov
California Code of Regulations may be accessed at www.oal.ca.gov

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CHAPTER 7.7. PHYSICIAN ASSISTANTS

(Title amended by Stats. 1992, Ch. 427.)

Article 1. General Provisions

3500. Legislative Intent

In its concern with the growing shortage and geographic maldistribution of health care services in California, the Legislature intends to establish in this chapter a framework for development of a new category of health manpower—the physician assistant.

The purpose of this chapter is to encourage the more effective utilization of the skills of physicians, and physicians and podiatrists practicing in the same medical group practice, by enabling them to delegate health care tasks to qualified physician assistants where this delegation is consistent with the patient's health and welfare and with the laws and regulations relating to physician assistants.

This chapter is established to encourage the utilization of physician assistants by physicians, and by physicians and podiatrists practicing in the same medical group, and to provide that existing legal constraints should not be an unnecessary hindrance to the more effective provision of health care services. It is also the purpose of this chapter to allow for innovative development of programs for the education, training, and utilization of physician assistants.

(Amended by Stats. 1996, Ch. 454.)

3500.5. Title

This chapter shall be known and cited as the Physician Assistant Practice Act.

(Amended by Stats. 1989, Ch. 1104.)

3501. Definitions

As used in this chapter:

- (a) "Board" means the Medical Board of California.
- (b) "Approved program" means a program for the education of physician assistants that has been formally approved by the committee.
- (c) "Trainee" means a person who is currently enrolled in an approved program.
- (d) "Physician assistant" means a person who meets the requirements of this chapter and is licensed by the committee.
- (e) "Supervising physician" means a physician and surgeon licensed by the board or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.
- (f) "Supervision" means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.
- (g) "Committee" or "examining committee" means the Physician Assistant Committee.
- (h) "Regulations" means the rules and regulations as set forth in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.
- (i) "Routine visual screening" means uninvasive nonpharmacological simple testing for visual acuity, visual field defects, color blindness, and depth perception.
- (j) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.
- (k) "Delegation of services agreement" means the writing that delegates to a physician assistant from a supervising physician the medical services the physician assistant is authorized to perform consistent with subdivision (a) of Section 1399.540 of Title 16 of the California Code of Regulations.
- (l) "Other specified medical services" means tests or examinations performed or ordered by a physician assistant practicing in compliance with this chapter or regulations of the board promulgated under this chapter.
- (m) A physician assistant acts as an agent of the supervising physician when performing any activity authorized by this chapter or regulations promulgated by the board under this chapter.

(Amended by Stats. 2010, Ch. 512.)

3502. Services

(a) Notwithstanding any other provision of law, a physician assistant may perform those medical services as set forth by the regulations of the board when the services are rendered under the supervision of a licensed physician and surgeon who is not subject to a disciplinary condition imposed by the board prohibiting that supervision or prohibiting the employment of a physician assistant.

(b) Notwithstanding any other provision of law, a physician assistant performing medical services under the supervision of a physician and surgeon may assist a doctor of podiatric medicine who is a partner, shareholder, or employee in the same medical group as the supervising physician and surgeon. A physician assistant who assists a doctor of podiatric medicine pursuant to this subdivision shall do so only according to patient-specific orders from the supervising physician and surgeon. The supervising physician and surgeon shall be physically available to the physician assistant for consultation when such assistance is rendered. A physician assistant assisting a doctor of podiatric medicine shall be limited to performing those duties included within the scope of practice of a doctor of podiatric medicine.

(c) (1) A physician assistant and his or her supervising physician and surgeon shall establish written guidelines for the adequate supervision of the physician assistant. This requirement may be satisfied by the supervising physician and surgeon adopting protocols for some or all of the tasks performed by the physician assistant. The protocols adopted pursuant to this subdivision shall comply with the following requirements:

(A) A protocol governing diagnosis and management shall, at a minimum, include the presence or absence of symptoms, signs, and other data necessary to establish a diagnosis or assessment, any appropriate tests or studies to order, drugs to recommend to the patient, and education to be provided to the patient.

(B) A protocol governing procedures shall set forth the information to be provided to the patient, the nature of the consent to be obtained from the patient, the preparation and technique of the procedure, and the followup care.

(C) Protocols shall be developed by the supervising physician and surgeon or adopted from, or referenced to, texts or other sources.

(D) Protocols shall be signed and dated by the supervising physician and surgeon and the physician assistant.

(2) The supervising physician and surgeon shall review, countersign, and date a sample consisting of, at a minimum, 5 percent of the medical records of patients treated by the physician assistant functioning under the protocols within 30 days of the date of treatment by the physician assistant. The physician and surgeon shall select for review those cases that by diagnosis, problem, treatment, or procedure represent, in his or her judgment, the most significant risk to the patient.

(3) Notwithstanding any other provision of law, the board or committee may establish other alternative mechanisms for the adequate supervision of the physician assistant.

(d) No medical services may be performed under this chapter in any of the following areas:

(1) The determination of the refractive states of the human eye, or the fitting or adaptation of lenses or frames for the aid thereof.

(2) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, or orthoptics.

(3) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye.

(4) The practice of dentistry or dental hygiene or the work of a dental auxiliary as defined in Chapter 4 (commencing with Section 1600).

(e) This section shall not be construed in a manner that shall preclude the performance of routine visual screening as defined in Section 3501.

(Amended by Stats. 2007, Ch.376.)

3502.1. Prescription Transmittal Authority

(a) In addition to the services authorized in the regulations adopted by the board, and except as prohibited by Section 3502, while under the supervision of a licensed physician and surgeon or physicians and surgeons authorized by law to supervise a physician assistant, a physician assistant may administer or provide medication to a patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device pursuant to subdivisions (c) and (d).

(1) A supervising physician and surgeon who delegates authority to issue a drug order to a physician assistant may limit this authority by specifying the manner in which the physician assistant may issue delegated prescriptions.

(2) Each supervising physician and surgeon who delegates the authority to issue a drug order to a physician assistant shall first prepare and adopt, or adopt, a written, practice specific, formulary and protocols that specify all criteria for the use of a particular drug or device, and any contraindications for the selection. Protocols for Schedule II controlled substances shall address the diagnosis of illness, injury, or condition for which the Schedule II controlled substance is being administered, provided, or issued. The drugs listed in the protocols shall constitute the formulary and shall include only drugs that are appropriate for use in the type of practice engaged in by the supervising physician and surgeon. When issuing a drug order, the physician assistant is acting on behalf of and as an agent for a supervising physician and surgeon.

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(b) "Drug order" for purposes of this section means an order for medication that is dispensed to or for a patient, issued and signed by a physician assistant acting as an individual practitioner within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this section shall be treated in the same manner as a prescription or order of the supervising physician, (2) all references to "prescription" in this code and the Health and Safety Code shall include drug orders issued by physician assistants pursuant to authority granted by their supervising physicians and surgeons, and (3) the signature of a physician assistant on a drug order shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

(c) A drug order for any patient cared for by the physician assistant that is issued by the physician assistant shall either be based on the protocols described in subdivision (a) or shall be approved by the supervising physician and surgeon before it is filled or carried out.

(1) A physician assistant shall not administer or provide a drug or issue a drug order for a drug other than for a drug listed in the formulary without advance approval from a supervising physician and surgeon for the particular patient. At the direction and under the supervision of a physician and surgeon, a physician assistant may hand to a patient of the supervising physician and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon, manufacturer as defined in the Pharmacy Law, or a pharmacist.

(2) A physician assistant may not administer, provide, or issue a drug order to a patient for Schedule II through Schedule V controlled substances without advance approval by a supervising physician and surgeon for that particular patient unless the physician assistant has completed an education course that covers controlled substances and that meets standards, including pharmacological content, approved by the committee. The education course shall be provided either by an accredited continuing education provider or by an approved physician assistant training program. If the physician assistant will administer, provide, or issue a drug order for Schedule II controlled substances, the course shall contain a minimum of three hours exclusively on Schedule II controlled substances. Completion of the requirements set forth in this paragraph shall be verified and documented in the manner established by the committee prior to the physician assistant's use of a registration number issued by the United States Drug Enforcement Administration to the physician assistant to administer, provide, or issue a drug order to a patient for a controlled substance without advance approval by a supervising physician and surgeon for that particular patient.

(3) Any drug order issued by a physician assistant shall be subject to a reasonable quantitative limitation consistent with customary medical practice in the supervising physician and surgeon's practice.

(d) A written drug order issued pursuant to subdivision (a), except a written drug order in a patient's medical record in a health facility or medical practice, shall contain the printed name, address, and phone number of the supervising physician and surgeon, the printed or stamped name and license number of the physician assistant, and the signature of the physician assistant. Further, a written drug order for a controlled substance, except a written drug order in a patient's medical record in a health facility or a medical practice, shall include the federal controlled substances registration number of the physician assistant and shall otherwise comply with the provisions of Section 11162.1 of the Health and Safety Code. Except as otherwise required for written drug orders for controlled substances under Section 11162.1 of the Health and Safety Code, the requirements of this subdivision may be met through stamping or otherwise imprinting on the supervising physician and surgeon's prescription blank to show the name, license number, and if applicable, the federal controlled substances number of the physician assistant, and shall be signed by the physician assistant. When using a drug order, the physician assistant is acting on behalf of and as the agent of a supervising physician and surgeon.

(e) The medical record of any patient cared for by a physician assistant for whom the physician assistant's Schedule II drug order has been issued or carried out shall be reviewed and countersigned and dated by a supervising physician and surgeon within seven days.

(f) All physician assistants who are authorized by their supervising physicians to issue drug orders for controlled substances shall register with the United States Drug Enforcement Administration (DEA).

(g) The committee shall consult with the Medical Board of California and report during its sunset review required by Division 1.2 (commencing with Section 473) the impacts of exempting Schedule III and Schedule IV drug orders from the requirement for a physician and surgeon to review and countersign the affected medical record of a patient.

(Amended by Stats. 2007, Ch. 376.)

3502.2. Physical Examinations

Notwithstanding any other provision of law, a physician assistant may perform the physical examination and any other specified medical services that are required pursuant to Section 2881 of the Public Utilities Code and Sections 44336, 49406, 49423, 49455, 87408, 87408.5, and 87408.6 of the Education Code, practicing in compliance with this chapter, and may sign and attest to any certificate, card, form, or other documentation evidencing the examination or other specified medical services.

(Amended by Stats.2010, Ch. 512.)

3502.3. Delegation of Services Agreement

a) Notwithstanding any other provision of law, in addition to any other practices that meet the general criteria set forth in this chapter or the board's regulations for inclusion in a delegation of services agreement, a delegation of services agreement may authorize a physician assistant to do any of the following:

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

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

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

(Amended by Stats.2010, Ch. 512.)

3502.5. State of Emergency

Notwithstanding any other provision of law, a physician assistant may perform those medical services permitted pursuant to Section 3502 during any state of war emergency, state of emergency, or state of local emergency, as defined in Section 8558 of the Government Code, and at the request of a responsible federal, state, or local official or agency, or pursuant to the terms of a mutual aid operation plan established and approved pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code), regardless of whether the physician assistant's approved supervising physician is available to supervise the physician assistant, so long as a licensed physician is available to render the appropriate supervision. "Appropriate supervision" shall not require the personal or electronic availability of a supervising physician if that availability is not possible or practical due to the emergency. The local health officers and their designees may act as supervising physicians during emergencies without being subject to approval by the board. At all times, the local health officers or their designees supervising the physician assistants shall be licensed physicians and surgeons. Supervising physicians acting pursuant to this section shall not be subject to the limitation on the number of physician assistants supervised under Section 3516.

No responsible official or mutual aid operation plan shall invoke this section except in the case of an emergency that endangers the health of individuals. Under no circumstances shall this section be invoked as the result of a labor dispute or other dispute concerning collective bargaining.

(Added by Stats. 1993, Ch. 643.)

3503. Limitation

No person other than one who has been licensed to practice as a physician assistant shall practice as a physician assistant or in a similar capacity to a physician and surgeon or podiatrist or hold himself or herself out as a "physician assistant," or shall use any other term indicating or implying that he or she is a physician assistant.

(Amended by Stats. 2009, Ch. 308)

3503.5. Immunity from Liability

(a) A person licensed under this chapter who in good faith renders emergency care at the scene of an emergency that occurs outside both the place and course of that person's employment shall not be liable for any civil damage as a result of any acts or omissions by that person in rendering the emergency care.

(b) This section shall not be construed to grant immunity from civil damages to any person whose conduct in rendering emergency care is grossly negligent.

(c) In addition to the immunity specified in subdivision (a), the provisions of Article 17 (commencing with Section 2395) of Chapter 5 shall apply to a person licensed under this chapter when acting pursuant to delegated authority from an approved supervising physician.

(Added by Stats. 1998, Ch. 736.)

Article 2. Administration

3504. Physician Assistant Committee

There is established a Physician Assistant Committee of the Medical Board of California. The committee consists of nine members. This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date. The repeal of this section renders the committee subject to the review required by Division 1.2 (commencing with Section 473).

(Amended by Stats. 2007, Ch. 658.)

3504.1. Protection of the Public

Protection of the public shall be the highest priority for the Physician Assistant Committee of the Medical Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

(Added by Stats. 2002, Ch. 107.)

3505. Composition

The members of the committee shall include one member of the Medical Board of California, a physician representative of a California medical school, an educator participating in an approved program for the training of physician assistants, a physician who is an approved supervising physician of a physician assistant and who is not a member of any division of the Medical Board of California, three physician assistants, and two public members. Upon the first expiration of the term of the member who is a member of the Medical Board of California, that position shall be filled by a member of the Medical Board of California who is a physician member. Upon the first expiration of the term of the member who is a physician representative of a California medical school, that position shall be filled by a public member. Upon the first expiration of the term of the member who is an educator participating in an approved program for the training of physician assistants, that position shall be filled by a physician assistant. Upon the first expiration of the term of the member who is an approved supervising physician of a physician assistant and not a member of any division of the Medical Board of California, that position shall be filled by a public member. Following the expiration of the terms of the members described above, the committee shall include four physician assistants, one physician who is also a member of the Medical Board of California, and four public members. Each member of the committee shall hold office for a term of four years expiring on January 1st, and shall serve until the appointment and qualification of a successor or until one year shall have elapsed since the expiration of the term for which the member was appointed, whichever first occurs. No member shall serve for more than two consecutive terms. Vacancies shall be filled by appointment for the unexpired terms.

The Governor shall appoint the licensed members qualified as provided in this section and two public members. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member.

(Amended by Stats. 1998, Ch. 736.)

3506. Compensation

Each member of the committee shall receive a per diem and expenses as provided in Section 103.

(Added by Stats. 1975, Ch. 634.)

3507. Removal

The appointing power has power to remove from office any member of the committee, as provided in Section 106.

(Amended by Stats. 1982, Ch. 676.)

3508. Meetings

(a) The committee may convene from time to time as deemed necessary by the committee.

(b) Notice of each meeting of the committee shall be given at least two weeks in advance to those persons and organizations who express an interest in receiving such notification.

(c) The committee shall receive permission of the director to meet more than six times annually. The director shall approve such meetings that are necessary for the committee to fulfill its legal responsibilities.

(Amended by Stats. 2002, Ch. 664.)

3509. Duties of Committee

It shall be the duty of the committee to:

(a) Establish standards and issue licenses of approval for programs for the education and training of physician assistants.

(b) Make recommendations to the board concerning the scope of practice for physician assistants.

(c) Make recommendations to the board concerning the formulation of guidelines for the consideration of applications by licensed physicians to supervise physician assistants and approval of such applications.

(d) Require the examination of applicants for licensure as a physician assistant who meet the requirements of this chapter.

(Amended by Stats. 1989, Ch. 1104.)

3509.5. Officers

The committee shall elect annually a chairperson and a vice chairperson from among its members.

(Amended by Stats. 1983, Ch. 1026.)

3510. Regulations

The committee may adopt, amend, and repeal regulations as may be necessary to enable it to carry into effect the provisions of this chapter; provided, however, that the board shall adopt, amend, and repeal such regulations as may be necessary to enable it to implement the provisions of this chapter under its jurisdiction. All regulations shall be in accordance with, and not inconsistent with, the provisions of this chapter. Such regulations shall be adopted, amended, or repealed in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1983, Ch. 1026.)

3511. Quorum; Votes Required

Five members shall constitute a quorum for transacting any business. The affirmative vote of a majority of those present at a meeting of the committee shall be required to carry any motion.

(Amended by Stats. 1983, Ch. 1026.)

3512. Personnel

(a) Except as provided in Sections 159.5 and 2020, the committee shall employ within the limits of the Physician Assistant Fund all personnel necessary to carry out the provisions of this chapter including an executive officer who shall be exempt from civil service. The board and committee shall make all necessary expenditures to carry out the provisions of this chapter from the funds established by Section 3520. The committee may accept contributions to effect the purposes of this chapter.

(b) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

(Amended by Stats. 2007, Ch. 658.) @@@@

Article 3. Certification and Approval

3513. Duties of Committee

The committee shall recognize the approval of training programs for physician assistants approved by a national accrediting organization. Physician assistant training programs accredited by a national accrediting agency approved by the committee shall be deemed approved by the committee under this section. If no national accrediting organization is approved by the committee, the committee may examine and pass upon the qualification of, and may issue certificates of approval for, programs for the education and training of physician assistants that meet committee standards.

(Repealed and added by Stats. 1998, Ch. 736.)

3514.1. Guidelines for Licensure and Training Program Approval

(a) The committee shall formulate by regulation guidelines for the consideration of applications for licensure as a physician's assistant.

(b) The committee shall formulate by regulation guidelines for the approval of physician's assistant training programs.

(c) This section shall become operative on July 1, 2001.

(Added by Stats. 1998, Ch. 736.)

3516. Supervisor's Limitations

(a) Notwithstanding any other provision of law, a physician assistant licensed by the committee shall be eligible for employment or supervision by any physician and surgeon who is not subject to a disciplinary condition imposed by the board prohibiting that employment or supervision.

(b) No physician and surgeon shall supervise more than four physician assistants at any one time, except as provided in Section 3502.5.

(c) The board may restrict a physician and surgeon to supervising specific types of physician assistants including, but not limited to, restricting a physician and surgeon from supervising physician assistants outside of the field of specialty of the physician and surgeon.

(Amended by Stats. 2007, Ch. 376.)

3516.1. Medically Underserved Areas

(Repealed by Stats. 2007, Ch. 376.)

3516.5. Emergency Care Programs

(a) Notwithstanding any other provision of law and in accordance with regulations established by the board, the director of emergency care services in a hospital with an approved program for the training of emergency care physician assistants, may apply to the board for authorization under which the director may grant approval for emergency care physicians on the staff of the hospital to supervise emergency care physician assistants.

(b) The application shall encompass all supervising physicians employed in that service.

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(c) Nothing in this section shall be construed to authorize any one emergency care physician while on duty to supervise more than four physician assistants at any one time.

(d) A violation of this section by the director of emergency care services in a hospital with an approved program for the training of emergency care physician assistants constitutes unprofessional conduct within the meaning of Chapter 5 (commencing with Section 2000).

(e) A violation of this section shall be grounds for suspension of the approval of the director or disciplinary action against the director or suspension of the approved program under Section 3527.

(Amended by Stats. 2007, Ch. 376.)

3517. Examination

The committee shall require a written examination of physician assistants in the manner and under the rules and regulations as it shall prescribe, but the examination shall be conducted in that manner as to ensure that the identity of each applicant taking the examination will be unknown to all of the examiners until all examination papers have been graded. Except as otherwise provided in this chapter, or by regulation, no physician assistant applicant shall receive approval under this chapter without first successfully passing an examination given under the direction of the committee.

Examinations for licensure as a physician assistant may be required by the committee under a uniform examination system, and for that purpose the committee may make those arrangements with organizations furnishing examination material as may, in its discretion, be desirable. The committee shall, however, establish a passing score for each examination. The licensure examination for physician assistants shall be held by the committee at least once a year with such additional examinations as the committee deems necessary. The time and place of examination shall be fixed by the committee.

(Amended by Stats. 2009, Ch. 308)

3518. Registers

The committee shall keep current, two separate registers, one for approved supervising physicians and one for licensed physician's assistants, by specialty if applicable. These registers shall show the name of each licensee, his or her last known address of record, and the date of his or her licensure or approval. Any interested person is entitled to obtain a copy of the register in accordance with the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) upon application to the committee together with a sum as may be fixed by the committee, which amount shall not exceed the cost of this list so furnished.

(Amended by Stats. 2009, Ch.308)

3519. Requirements for Licensure

The committee shall issue under the name of the Medical Board of California a license to all physician assistant applicants who meet all of the following requirements:

- (a) Provide evidence of one of the following:
 - (1) Successful completion of an approved program.
 - (2) Successful completion in a medical school approved by the Division of Licensing of a resident course of professional instruction which meets the requirements of Sections 2088 and 2089.
- (b) Pass any examination required under Section 3517.
- (c) Not be subject to denial of licensure under Division 1.5 (commencing with Section 475) or Section 3527.
- (d) Pay all fees required under Section 3521.1.

(Amended by Stats. 1998, Ch. 878.)

3519.5. Probationary License

(a) The committee may issue under the name of the board a probationary license to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:

- (1) Practice limited to a supervised, structured environment where the applicant's activities shall be supervised by another physician assistant.
 - (2) Total or partial restrictions on issuing a drug order for controlled substances.
 - (3) Continuing medical or psychiatric treatment.
 - (4) Ongoing participation in a specified rehabilitation program.
 - (5) Enrollment and successful completion of a clinical training program.
 - (6) Abstention from the use of alcohol or drugs.
 - (7) Restrictions against engaging in certain types of medical services.
 - (8) Compliance with all provisions of this chapter.
- (b) The committee and the board may modify or terminate the terms and conditions imposed on the probationary license upon receipt of a petition from the licensee.

(c) Enforcement and monitoring of the probationary conditions shall be under the jurisdiction of the committee and the board.

These proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats. 2002, Ch. 1085.)

Article 4. Revenue

3520. Report to Controller

Within 10 days after the beginning of each calendar month the board shall report to the Controller the amount and source of all collections made under this chapter and at the same time pay all those sums into the State Treasury, where they shall be credited to the Physician Assistant Fund, which fund is hereby created. All money in the fund shall be used to carry out the purpose of this chapter.

(Amended by Stats. 2005, Ch. 74.)

3521. Fees—Supervising Physician

The fees to be paid for approval to supervise physician assistants are to be set by the committee as follows:

- (a) An application fee not to exceed fifty dollars (\$50) shall be charged to each physician and surgeon applicant.
- (b) An approval fee not to exceed two hundred fifty dollars (\$250) shall be charged to each physician and surgeon upon approval of an application to supervise physician assistants.
- (c) A biennial renewal fee not to exceed three hundred dollars (\$300) shall be paid for the renewal of an approval.
- (d) The delinquency fee is twenty-five dollars (\$25).
- (e) The duplicate approval fee is ten dollars (\$10).
- (f) The fee for a letter of endorsement, letter of good standing, or letter of verification of approval shall be ten dollars (\$10).

(Amended by Stats. 1991, Ch. 917.)

3521.1. Fees—Physician Assistant

The fees to be paid by physician assistants are to be set by the committee as follows:

- (a) An application fee not to exceed twenty-five dollars (\$25) shall be charged to each physician assistant applicant.
- (b) An initial license fee not to exceed two hundred fifty dollars (\$250) shall be charged to each physician assistant to whom a license is issued.
- (c) A biennial license renewal fee not to exceed three hundred dollars (\$300).
- (d) The delinquency fee is twenty-five dollars (\$25).
- (e) The duplicate license fee is ten dollars (\$10).
- (f) The fee for a letter of endorsement, letter of good standing, or letter of verification of licensure shall be ten dollars (\$10).

(Amended by Stats. 1991, Ch. 917.)

3521.2. Fees—Training Programs

The fees to be paid by physician assistant training programs are to be set by the committee as follows:

- (a) An application fee not to exceed five hundred dollars (\$500) shall be charged to each applicant seeking program approval by the committee.
- (b) An approval fee not to exceed one hundred dollars (\$100) shall be charged to each program upon its approval by the committee.

(Added by Stats. 1998, Ch. 878.)

3521.5. Report to Legislature

The committee shall report to the appropriate policy and fiscal committees of each house of the Legislature whenever the board approves a fee increase pursuant to Sections 3521 and 3521.1. The committee shall specify the reasons for each increase in the report. Reports prepared pursuant to this section shall identify the percentage of funds derived from an increase in fees pursuant to Senate Bill 1077 of the 1991–92 Regular Session (Chapter 917, Statutes of 1991) that will be used for investigational and enforcement activities by the board and committee.

(Amended by Stats. 1994, Ch. 146.)

3522. Approval Renewal—Supervising Physician

An approval to supervise physician assistants shall expire at 12 midnight on the last day of the birth month of the physician and surgeon during the second year of a two-year term if not renewed.

The board shall establish a cyclical renewal program, including, but not limited to, the establishment of a system of staggered expiration dates for approvals and a pro rata formula for the payment of renewal fees by physician and surgeon supervisors.

To renew an unexpired approval, the approved supervising physician and surgeon, on or before the date of

expiration, shall apply for renewal on a form prescribed by the board and pay the prescribed renewal fee.

(Amended by Stats. 1991, Ch. 917.)

3523. Birthdate Renewal—Physician Assistant

All physician assistant licenses shall expire at 12 midnight of the last day of the birth month of the licensee during the second year of a two-year term if not renewed.

The committee shall establish by regulation procedures for the administration of a birthdate renewal program, including, but not limited to, the establishment of a system of staggered license expiration dates and a pro rata formula for the payment of renewal fees by physician assistants affected by the implementation of the program.

To renew an unexpired license, the licensee shall, on or before the date of expiration of the license, apply for renewal on a form provided by the committee, accompanied by the prescribed renewal fee.

(Amended by Stats. 1998, Ch. 878, § 20 S.B.2239.)

3524. Renewal of Expired License or Approval

A license or approval that has expired may be renewed at any time within five years after its expiration by filing an application for renewal on a form prescribed by the committee or board, as the case may be, and payment of all accrued and unpaid renewal fees. If the license or approval is not renewed within 30 days after its expiration, the licensed physician assistant and approved supervising physician, as a condition precedent to renewal, shall also pay the prescribed delinquency fee, if any. Renewal under this section shall be effective on the date on which the application is filed, on the date on which all renewal fees are paid, or on the date on which the delinquency fee, if any, is paid, whichever occurs last. If so renewed, the license shall continue in effect through the expiration date provided in Section 3522 or 3523 which next occurs after the effective date of the renewal, when it shall expire, if it is not again renewed.

(Amended by Stats. 2001, Ch. 435.)

3524.5 Continuing Education

The committee may require a licensee to complete continuing education as a condition of license renewal under Section 3523 or 3524. The committee shall not require more than 50 hours of continuing education every two years. The committee shall, as it deems appropriate, accept certification by the National Commission on Certification of Physician Assistants (NCCPA), or another qualified certifying body, as determined by the committee, as evidence of compliance with continuing education requirements.

(Added by Stats. 2008, Ch. 76.)

3525. Suspended License

A suspended license is subject to expiration and shall be renewed as provided in this chapter. However, such renewal does not entitle such holder, to practice or otherwise violate the order or judgment by which the license was suspended.

A revoked license is subject to expiration as provided in this chapter. If the license is reinstated after expiration, the license holder, as a condition to reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated.

(Amended by Stats. 1988, Ch. 1448.)

3526. Failure to Renew Within Five Years

A person who fails to renew his or her license or approval within five years after its expiration may not renew it, and it may not be reissued, reinstated, or restored thereafter, but that person may apply for and obtain a new license or approval if he or she:

(a) Has not committed any acts or crimes constituting grounds for denial of licensure under Division 1.5 (commencing with Section 475).

(b) Takes and passes the examination, if any, which would be required of him or her if application for licensure was being made for the first time, or otherwise establishes to the satisfaction of the committee that, with due regard for the public interest, he or she is qualified to practice as a physician assistant.

(c) Pays all of the fees that would be required as if application for licensure was being made for the first time.

(Amended by Stats. 1998, Ch. 878.)

Article 5. Denial, Suspension and Revocation

3527. Causes for Denial, Suspension or Revocation

(a) The committee may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license after a hearing as required in Section 3528 for unprofessional conduct that includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the committee or the board.

(b) The committee may order the denial of an application for, or the suspension or revocation of, or the imposition of probationary conditions upon, an approved program after a hearing as required in Section 3528 for a violation of this chapter or the regulations adopted pursuant thereto.

(c) The board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon, an approval to supervise a physician assistant, after a hearing as required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the committee or the board.

(d) Notwithstanding subdivision (c), the Division of Medical Quality of the Medical Board of California, in conjunction with an action it has commenced against a physician and surgeon, may, in its own discretion and without the concurrence of the board, order the suspension or revocation of, or the imposition of probationary conditions upon, an approval to supervise a physician assistant, after a hearing as required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the committee or the board.

(e) The committee may order the denial of an application for, or the suspension or revocation of, or the imposition of probationary conditions upon, a physician assistant license, after a hearing as required in Section 3528 for unprofessional conduct that includes, except for good cause, the knowing failure of a licensee to protect patients by failing to follow infection control guidelines of the committee, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the committee shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the committee shall consult with the California Medical Board, the Board of Podiatric Medicine, the Board of Dental Examiners, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The committee shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(f) The committee may order the licensee to pay the costs of monitoring the probationary conditions imposed on the license.

(Amended by Stats. 2007, Ch. 588.)

3528. Proceedings

Any proceedings involving the denial, suspension, or revocation of the application for licensure or the license of a physician assistant, the application for approval or the approval of a supervising physician, or the application for approval or the approval of an approved program under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1998, Ch. 878.)

3529. Jurisdiction Over Disciplinary Matters

The committee may hear any matters filed pursuant to subdivisions (a) and (b) of Section 3527, or may assign any such matter to a hearing officer. The board may hear any matters filed pursuant to subdivision (c) of Section 3527, or may assign any such matter to a hearing officer. If a matter is heard by the committee or the board, the hearing officer who presided at the hearing shall be present during the committee's or board's consideration of the case, and, if requested assist and advise the committee or the board.

(Repealed and added by Stats. 1978, Ch. 250.)

3530. Reinstatement; Modification of Probation

(a) A person whose license or approval has been revoked or suspended, or who has been placed on probation, may petition the committee for reinstatement or modification of penalty, including modification or termination of probation, after a period of not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action:

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(1) At least three years for reinstatement of a license or approval revoked for unprofessional conduct, except that the committee may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license or approval revoked for mental or physical illness, or termination of probation of less than three years.

(b) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians licensed either by the Medical Board of California or the Osteopathic Medical Board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(c) The petition may be heard by the committee. The committee may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the committee that shall be acted upon in accordance with the Administrative Procedure Act.

(d) The committee or the administrative law judge hearing the petition, may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the license was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued, as the committee or administrative law judge finds necessary.

(e) The committee or administrative law judge, when hearing a petition for reinstating a license or approval or modifying a penalty, may recommend the imposition of any terms and conditions deemed necessary.

(f) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The committee may deny, without a hearing or argument, any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

(g) Nothing in this section shall be deemed to alter Sections 822 and 823.

(Amended by Stats. 2007, Ch. 588.)

3531. Conviction of Crime

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which is substantially related to the qualifications, functions, or duties of the business or profession to which the license was issued is deemed to be a conviction within the meaning of this chapter. The committee may order the license suspended or revoked, or shall decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

(Amended by Stats. 1988, Ch. 1448.)

Article 6. Penalties

3532. Penalty for Violation

Any person who violates Section 3502, 3503, 3515, or 3516 shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both.

(Amended by Stats. 1983, Ch. 1092.)

3533. Injunction

Whenever any person has engaged in any act or practice which constitutes an offense against this chapter, the superior court of any county, on application of the board, may issue an injunction or other appropriate order restraining such conduct. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure. The board or the committee may commence action in the superior court under the provisions of this section.

(Amended by Stats. 1982, Ch. 517.)

Article 6.5. Diversion of Impaired Physician Assistants

(Added by Stats. 1988, Ch. 385.)

3534. Legislative Intent

(a) It is the intent of the Legislature that the examining committee shall seek ways and means to identify and rehabilitate physician assistants whose competency is impaired due to abuse of dangerous drugs or alcohol so that they may be treated and returned to the practice of medicine in a manner which will not endanger the public health and safety.

(Added by Stats. 1988, Ch. 385.)

3534.1. Diversion Evaluation Committee

The examining committee shall establish and administer a diversion program for the rehabilitation of physician assistants whose competency is impaired due to the abuse of drugs or alcohol. The examining committee may contract with any other state agency or a private organization to perform its duties under this article. The examining committee may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. As used in this article, "committee" means a diversion evaluation committee. A committee created under this article operates under the direction of the diversion program manager, as designated by the executive officer of the examining committee. The program manager has the primary responsibility to review and evaluate recommendations of the committee.

(Amended by Stats. 2008, Ch. 548.)

3534.2. Composition

(a) Any committee established by the examining committee shall have at least three members. In making appointments to a committee the examining committee shall consider the appointments of persons who are either recovering of substance abuse and have been free from abuse for at least three years immediately prior to their appointment or who are knowledgeable in the treatment and recovery of substance abuse. The examining committee also shall consider the appointment of a physician and surgeon who is board certified in psychiatry.

(b) Appointments to a committee shall be by the affirmative vote of a majority of members appointed to the examining committee. Each appointment shall be at the pleasure of the examining committee for a term not to exceed four years. In its discretion, the examining committee may stagger the terms of the initial members so appointed.

(c) A majority of the members of a committee shall constitute a quorum for the transaction of business. Any action requires an affirmative vote of a majority of those members present at a meeting constituting at least a quorum. Each committee shall elect from its membership a chairperson and a vice chairperson. Notwithstanding Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to public meetings, a committee may convene in closed session to consider matters relating to any physician assistant applying for or participating in a diversion program, and a meeting which will be convened entirely in closed session need not comply with Section 11125 of the Government Code. A committee shall only convene in closed session to the extent it is necessary to protect the privacy of an applicant or participant. Each member of a committee shall receive a per diem and shall be reimbursed for expenses as provided in Section 103.

(Added by Stats. 1988, Ch. 385.)

3534.3. Duties and Responsibilities

Each committee has the following duties and responsibilities:

(a) To evaluate physician assistants who request participation in the program and to make recommendations to the program manager. In making recommendations, a committee shall consider any recommendations from professional consultants on the admission of applicants to the diversion program.

(b) To review and designate treatment facilities to which physician assistants in the diversion program may be referred, and to make recommendations to the program manager.

(c) The receipt and review of information concerning physician assistants participating in the program.

(d) To call meetings as necessary to consider the requests of physician assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the examining committee.

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(e) To consider whether each participant in the diversion program may with safety continue or resume the practice of medicine.

(f) To set forth in writing the terms and conditions of the diversion agreement that is approved by the program manager for each physician assistant participating in the program, including treatment, supervision, and monitoring requirements.

(g) To hold a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress, to prepare reports to be submitted to the examining committee, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a committee shall be considered a public employee. No examining committee or committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

(Amended by Stats. 2008, Ch. 548.)

3534.4. Criteria for Acceptance

Criteria for acceptance into the diversion program shall include all of the following: (a) the applicant shall be licensed as a physician assistant by the examining committee and shall be a resident of California; (b) the applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may affect his or her ability to practice medicine safely or competently; (c) the applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action; (d) the applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program; (e) the applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program; and (f) the applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her. An applicant may be denied participation in the program if the examining committee, the program manager, or a committee determines that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety, or welfare.

(Amended by Stats. 12008, Ch. 548.)

3534.5. Participant Termination

A participant may be terminated from the program for any of the following reasons: (a) the participant has successfully completed the treatment program; (b) the participant has failed to comply with the treatment program designated for him or her; (c) the participant fails to meet any of the criteria set forth in subdivision (d); or (d) it is determined that the participant has not substantially benefited from participation in the program or that his or her continued participation in the program creates too great a risk to the public health, safety, or welfare. Whenever an applicant is denied participation in the program or a participant is terminated from the program for any reason other than the successful completion of the program, and it is determined that the continued practice of medicine by that individual creates too great a risk to the public health and safety, that fact shall be reported to the executive officer of the examining committee and all documents and information pertaining to and supporting that conclusion shall be provided to the executive officer. The matter may be referred for investigation and disciplinary action by the examining committee. Each physician assistant who requests participation in a diversion program shall agree to cooperate with the recovery program designed for him or her. Any failure to comply with that program may result in termination of participation in the program.

The examination committee shall inform each participant in the program of the procedures followed in the program, of the rights and responsibilities of a physician assistant in the program, and the possible results of noncompliance with the program.

(Added by Stats. 1988, Ch. 385.)

3534.6. Additional Criteria by Regulation

In addition to the criteria and causes set forth in Section 3534.4, the examining committee may set forth in its regulations additional criteria for admission to the program or causes for termination from the program.

(Added by Stats. 1988, Ch. 385.)

3534.7. Confidentiality of Records

All examining committee and committee records and records of proceedings and participation of a physician assistant in a program shall be confidential and are not subject to discovery or subpoena.

(Added by Stats. 1988, Ch. 385.)

3534.8. Participation Fee

A fee may be charged for participation in the program.

(Added by Stats. 1988, Ch. 385.)

3534.9. Program Review

If the examining committee contracts with any other entity to carry out this section, the executive officer of the examining committee or the program manager shall review the activities and performance of the contractor on a biennial basis. As part of this review, the examining committee shall review files of participants in the program. However, the names of participants who entered the program voluntarily shall remain confidential, except when the review reveals misdiagnosis, case mismanagement, or noncompliance by the participant.

(Amended by Stats. 2008, Ch. 548.)

3534.10. Participation Not a Defense

Participation in a diversion program shall not be a defense to any disciplinary action which may be taken by the examining committee. This section does not preclude the examining committee from commencing disciplinary action against a physician assistant who is terminated unsuccessfully from the program under this section. That disciplinary action may not include as evidence any confidential information.

(Added by Stats. 1988, Ch. 385.)

Article 7. Osteopathic Physician Assistants

3535. Osteopathic Physician Assistants (operative July 1, 2001)

(a) Notwithstanding any other provision of law, physicians and surgeons licensed by the Osteopathic Medical Board of California may use or employ physician assistants provided (1) each physician assistant so used or employed is a graduate of an approved program and is licensed by the committee, and (2) the scope of practice of the physician assistant is the same as that which is approved by the Division of Licensing of the Medical Board of California for physicians and surgeons supervising physician assistants in the same or similar specialty.

(b) Any person who violates subdivision (a) shall be guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(c) This section shall become operative on July 1, 2001.

(Added by Stats. 1998, Ch. 736.)

Article 7.5. International Medical Graduate Physician Assistants

(Added by Stats. 1993, Ch. 1042.)

3537.10. Training Program

(a) Subject to the other provisions of this article, the Office of Statewide Health Planning and Development, hereafter in this article referred to as the office, shall coordinate the establishment of an international medical graduate physician assistant training program, to be conducted at an appropriate educational institution or institutions. The goal of the program shall be to place as many international medical graduate physician assistants in medically underserved areas as possible in order to provide greater access to care for the growing population of medically indigent and underserved. The method for accomplishing this goal shall be to train foreign medical graduates to become licensed as physician assistants at no cost to the participants in return for a commitment from the participants to serve full-time in underserved areas for a four-year period.

(b) By February 1, 1994, or one month after federal funds to implement this article become available, whichever occurs later, the office shall establish a training program advisory task force. The task force shall be comprised of representatives from all of the following groups:

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- (1) Physician assistant program directors.
- (2) Foreign medical graduates.
- (3) The California Academy of Physician Assistants.
- (4) Nonprofit community health center directors.
- (5) Physicians.
- (6) The committee, at the committee's option.

The office may, instead, serve solely as a consultant to the task force.

(c) The task force shall do all of the following:

- (1) Develop a recommended curriculum for the training program that shall be from 12 to 15 months in duration and shall, at a minimum, meet curriculum standards consistent with the committee's regulations. The program shall be subject to the committee's approval. By April 1, 1994, or three months after federal funds to implement this article become available, whichever occurs later, the curriculum shall be presented by the office to the Committee on Allied Health Education and Accreditation of the American Medical Association, or its successor organization, for approval.
- (2) Develop recommended admission criteria for participation in the pilot and ongoing program.
- (3) Assist in development of linkages with academic institutions for the purpose of monitoring and evaluating the pilot program.

(Added by Stats. 1993, Ch. 1042.)

3537.15. Pilot Program

(a) Prior to establishment of an ongoing international medical graduate physician assistant training program, the Office of Statewide Health Planning and Development shall coordinate the establishment of a pilot program commencing September 1, 1994, or eight months after federal funds to implement this article become available, whichever occurs later, to test the validity and effectiveness of the recommended training curriculum developed by the task force. The task force shall, with the advice and assistance of the academic institutions offering the pilot program curriculum, and subject to their approval, select 10 international medical graduates to participate in the pilot program.

(b) After two classes have graduated from the pilot program, the task force, with the advice and assistance of the academic institutions, shall evaluate the results of the pilot program, to determine whether a permanent program should be established. The office may modify curriculum as needed and make appropriate revisions in order to ensure program integrity and compliance with established standards. Any permanent international medical graduate physician assistant training program shall commence at the beginning of the year following the completion of the evaluation.

(Added by Stats. 1993, Ch. 1042.)

3537.20. Requirements

Any person who has satisfactorily completed the program established by this article shall be eligible for licensure by the committee as a "physician assistant" if the person has complied with all of the following requirements:

- (a) Has successfully completed the written examination required under Section 3517.
- (b) Has successfully completed the Test of English as a Foreign Language (TOEFL).

(Added by Stats. 1993, Ch. 1042.)

3537.25. Minimum Term of Service; Enforceable Agreement

Both the pilot and the ongoing training program shall provide training at no cost to the participants in return for a written, enforceable agreement by the participants to, upon obtaining licensure under this article, serve a minimum of four years as a full-time physician assistant in an area of California designated by the Office of Statewide Health Planning and Development as a medically underserved area pursuant to Section 3537.35.

(Added by Stats. 1993, Ch. 1042.)

3537.30. Default

(a) The Legislature recognizes that the goal of this program would be compromised if participants do not observe their commitments under this program to provide the required service in a medically underserved area. The goal of this program would not be met if all that it accomplished was merely to license physician assistants that served populations that are not medically underserved.

(b) Since damages would be difficult or impossible to ascertain in the event of default by the participant, this section shall set forth the extent of liquidated damages that shall be recoverable by the program in the case of default.

(c) In the case of default by a participant who has successfully completed the program and has obtained licensure under this article, the program shall collect the following damages from the participant:

- (1) The total cost expended by the program for the training of the applicant, and interest thereon from the date of default.
- (2) The total amount needed for the program to seek cover as set forth in subdivision (b) of Section 3537.35.
- (3) The costs of enforcement, including, but not limited to, the costs of collecting the liquidated damages, the costs of litigation, and attorney's fees.

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(d) The Attorney General may represent the office, or the committee, or both in any litigation necessitated by this article, or, if the Attorney General declines, the office, or the committee, or both may hire other counsel for this purpose.

(e) Funds collected pursuant to subdivision (c) shall be allocated as follows:

(1) Costs of training recovered pursuant to paragraph (1) of subdivision (c) shall be allocated to the office to be used upon appropriation for the continuing training program pursuant to this article.

(2) Costs of seeking cover recovered pursuant to paragraph (2) of subdivision (c) shall be deposited in the Physician Assistant Training Fund established pursuant to Section 3537.40 for the purposes of providing grants pursuant to subdivision (c) of Section 3537.35.

(3) Costs of enforcement recovered pursuant to paragraph (3) of subdivision (c) shall be allocated between the office, and the Attorney General, or other counsel, according to actual costs.

(Added by Stats. 1993, Ch. 1042.)

3537.35. The Office of Statewide Health Planning and Development

The Office of Statewide Health Planning and Development shall, in addition to other duties described in this article, do all of the following:

(a) Determine those areas of the state that are medically underserved in that they have a higher percentage of medically underserved and indigent persons and would benefit from the services of additional persons licensed as physician assistants.

(b) Determine the total cost of seeking cover as specified in paragraph (2) of subdivision (c) of Section 3537.30. To determine the cost, the office shall study the market forces that are at work creating the scarcity of these physician assistants in these medically underserved areas, and determine the annual level of additional funding that would be required by a health facility, clinic, or other health care provider in those areas to motivate a physician assistant to serve full-time in those underserved areas. This amount shall be calculated so that when added to the prevailing rate for these services in the underserved area, would make these positions so attractive that physician assistants would be motivated to serve in those areas. This amount, which shall equal the cost to the office to place a qualified physician assistant in the underserved area, times four years shall be the total cost of seeking cover.

(c) Provide grants, as funds become available in the Physician Assistant Training Fund, to applicant health care providers that provide services in medically underserved areas for the purpose of funding additional full-time physician assistant positions in those areas to provide services in lieu of defaulting physician assistants. Participating providers shall use these grants to attract physician assistants that are from outside the area and shall demonstrate that the grant actually increases the number of physician assistants serving the underserved population. The grantee shall demonstrate that the grant did not merely shift a physician assistant from one medically underserved area to another, but rather, resulted in a net increase in the number of physician assistants serving the underserved population as a whole. Licensees under this article shall not directly or indirectly receive grants under this section.

(Added by Stats. 1993, Ch. 1042.)

3537.40. Physician Assistant Training Fund

The Physician Assistant Training Fund is hereby created in the State Treasury for the purpose of receipt of funds collected pursuant to paragraph (2) of subdivision (c) of Section 3537.30. The Physician Assistant Training Fund shall be available to the Office of Statewide Health Planning and Development for the purpose of providing grants pursuant to subdivision (c) of Section 3537.35, upon appropriation by the Legislature.

(Added by Stats. 1993, Ch. 1042.)

3537.45. Fees

The program established pursuant to this article shall not be funded, directly or indirectly, from an increase in the fees charged to physician assistants, supervising physicians, or physician assistant training programs pursuant to Section 3521, 3521.1, or 3521.2. This article does not excuse physician assistants trained pursuant to this article or their supervising physicians from paying the fees established pursuant to Section 3521 or 3521.1.

(Added by Stats. 1993, Ch. 1042.)

3537.50. Federal Funding

No General Fund revenues shall be expended to carry out this article. The implementation of the pilot program and, if applicable, the permanent program established by this article shall be contingent upon the availability of federal funds, which do not divert or detract from funds currently utilized to underwrite existing physician assistant training programs or to fund existing functions of the committee. The new funding shall be sufficient to cover the full additional cost to the educational institution or institutions that establish the program or programs, the cost of tuition and attendance for the students in the program or programs, and any additional costs, including enforcement costs, that the office or the committee incurs as a result of implementing this article. Nothing in this article shall be construed as imposing any obligations upon the office, the committee, or any physician assistant training program in the absence of adequate funding as described in this section. Nothing in this article shall be construed either as precluding applicants for the

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program established by this article from seeking state or federal scholarship funds, or state and federal loan repayment funds available to physician assistant students, or as requiring that any applicants be granted preference in the award of those funds. Nothing in this article shall be construed as impairing the autonomy of any institution that offers a physician assistant training program.

(Added by Stats. 1993, Ch. 1042.)

Article 8. Physician Assistants Corporations

(Added by Stats. 1982, Ch. 1304.)

3540. Definition

A physician assistants corporation is a corporation which is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are certified physician assistants are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

With respect to a physician assistants corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code) is the committee.

(Amended by Stats. 1998, Ch. 736.)

3541. Unprofessional Conduct—Violations

It shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate any provision or term of this article, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws.

(Added by Stats. 1982, Ch. 1304.)

3542. Unprofessional Conduct

A physician assistant corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute or regulation, now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by these statutes and regulations to the same extent as a person holding a license under this chapter.

(Amended by Stats. 1994, Ch. 26.)

3543. Corporation Name

The name of a physician assistant corporation and any name or names under which it may render professional services shall contain the words "physician assistant," and wording or abbreviations denoting corporate existence.

(Amended by Stats. 1994, Ch. 26.)

3544. Shareholders, Directors and Officers

Except as provided in Sections 13401.5 and 13403 of the Corporations Code, each shareholder, director and officer of a physician assistant corporation, except an assistant secretary and an assistant treasurer, shall be a licensed person as defined in Section 13401 of the Corporations Code.

(Amended by Stats. 1994, Ch. 26.)

3545. Income

The income of a physician assistant corporation attributable to professional services rendered while a shareholder is a disqualified person, as defined in Section 13401 of the Corporations Code, shall not in any manner accrue to the benefit of the shareholder or his or her shares in the physician assistants corporation.

(Amended by Stats. 1994, Ch. 26.)

3546. Regulations

The board may adopt and enforce regulations to carry out the purposes and objectives of this article, including regulations requiring (a) that the bylaws of a physician assistant corporation shall include a provision whereby the capital stock of the corporation owned by a disqualified person (as defined in Section 13401 of the Corporations Code), or a deceased person, shall be sold to the corporation or to the remaining shareholders of the corporation within the time as the regulations may provide, and (b) that a physician assistant corporation shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.

(Amended by Stats. 1994, Ch. 26.)

Business and Professions Code

California Code of Regulations
**Division 13.8. Physician Assistant Committee
of the Medical Board of California**

Article 1. General Provisions

1399.500. Citation.

This chapter may be cited and referred to as the "Physician Assistant Regulations."

NOTE: Authority and reference cited: Section 3510, Business and Professions Code.

HISTORY:

1. Repealer of article 1 (sections 1399.500–1399.516, not consecutive) and new article 1 (sections 1399.500–1399.518, not consecutive) filed 8-23-79; effective thirtieth day thereafter (Register 79, No. 34). For history of former article, see Register 77, No. 48.
2. Amendment filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).
3. Renumbering of chapter 13.7 (sections 1399.500–1399.615, not consecutive) to chapter 13.8 filed 12-14-84; effective thirtieth day thereafter (Register 84, No. 50).
4. Editorial correction of division heading (Register 92, No. 6).
5. Change without regulatory effect amending section filed 3-3-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 9).

1399.501. Location of Office.

The principal offices of the Physician Assistant Committee are located at 2005 Evergreen Street, Suite 1100, Sacramento, California 95815.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Section 2019, Business and Professions Code.

HISTORY:

1. Amendment filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).
2. Change without regulatory effect filed 2-5-91 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 11).
3. Change without regulatory effect amending section filed 3-3-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 9).
4. Change without regulatory effect amending section filed 10-12-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 42).

1399.502. Definitions.

For the purposes of the regulations contained in this chapter, the terms

- (a) "Board" means the Division of Licensing of the Medical Board of California.
- (b) "Committee" means the Physician Assistant Committee.
- (c) "Code" means the Business and Professions Code.
- (d) "Physician assistant" means a person who is licensed by the committee as a physician assistant.
- (e) "Trainee" means a person enrolled and actively participating in an approved program of instruction for physician assistants.
- (f) "Approved program" means a program for the education and training of physician assistants which has been approved by the committee.
- (g) "Supervising physician" and "physician supervisor" mean a physician licensed by the division or a physician licensed by the Osteopathic Medical Board of California.
- (h) "Approved controlled substance education course" means an educational course approved by the Committee pursuant to section 1399.610.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Section 3510, Business and Professions Code.

HISTORY:

1. Amendment filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).
2. New subsection (g) filed 7-12-85; effective thirtieth day thereafter (Register 85, No. 28).
3. Change without regulatory effect filed 2-5-91 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 11).
4. Change without regulatory effect amending section filed 3-3-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 9).
5. New subsection (h) filed 10-17-2008; operative 10-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 42).t

1399.503. Delegation of Functions.

Except for those powers reserved exclusively to the "agency itself" under the Administrative Procedure Act, Section 11500, et seq. of the Government Code, the division or the committee, as the case may be, delegates and confers upon the executive officer of the Committee, or in his or her absence, the executive director of the Board, all functions necessary to the dispatch of business of the division and Committee in connection with investigative and administrative proceedings under their jurisdiction.

NOTE: Authority cited: Sections 2018 and 3510, Business and Professions Code. Reference: Sections 3528 and 3529, Business and Professions Code.

HISTORY:

1. Amendment filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).

1399.504. Prior Approval or Certification to Practice as a Physician's Assistant.

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NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 2141, 3503, 3514, 3515, 3517, and 3519, Business and Professions Code.

HISTORY:

1. Renumbering and amendment to section 1399.520 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).

1399.505. Prior Approval to Supervise.

NOTE: Authority cited: Section 2018, Business and Professions Code.

HISTORY:

1. Repealer filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).

1399.506. Filing of Applications.

(a) Applications for licensure as a physician assistant shall be filed on a form provided by the committee at its Sacramento office and accompanied by the fee required in section 1399.550.

(b) Applications for approval of programs for the education and training of physician assistants shall be filed on a form provided by the committee at its Sacramento office and accompanied by the fee required in section 1399.556.

NOTE: Authority cited: Sections 2018, 3510 and 3514, Business and Professions Code. Reference: Sections 3509, 3513 and 3514, Business and Professions Code.

HISTORY:

1. Amendment file 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).

2. Change without regulatory effect filed 2-5-91 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 11).

3. Change without regulatory effect amending section filed 3-3-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 9).

1399.507. Examination Required.

The written examination for licensure as a physician assistant is that administered by the National Commission on Certification of Physician Assistants. Successful completion requires that the applicant have achieved the passing score established by the committee for that examination. It is the responsibility of the applicant to ensure that certification of his or her examination score is received by the committee.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 851, 3515 and 3517, Business and Professions Code.

HISTORY:

1. Amendment filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).

2. Change without regulatory effect filed 2-5-91 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 11).

1399.508. Interim Approval.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 3514 and 3517, Business and Professions Code.

HISTORY:

1. Amendment filed 9-2-83; effective thirtieth day thereafter (Register 83, No. 39).

2. Amendment and lettering of first paragraph to subsection (a) and new subsection (b) filed 9-15-89; operative 10-15-89 (Register 89, No. 38).

3. Amendment filed 2-13-2003; operative 3-15-2003 (Register 2003, No. 7).

4. Change without regulatory effect repealing section filed 10-12-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 42).

1399.509. Billing for Medical Services Rendered by the Physician's Assistant.

NOTE: Authority cited: Section 2018, Business and Professions Code.

HISTORY:

1. Repealer filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).

1399.510. Patient Informed Consent.

NOTE: Authority cited: Sections 2018 and 3510, Business and Professions Code. Reference: Sections 3502 and 3513, Business and Professions Code.

HISTORY:

1. Amendment filed 12-30-81; effective thirtieth day thereafter (Register 82, No. 1).

2. Renumbering and amendment to section 1399.538 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).

1399.511. Notice of Change of Address.

(a) Each person or approved program holding a license or approval and each person or program who has an application on file with the board or the committee shall notify the committee at its office of any and all changes of mailing address within thirty (30) calendar days after each change, giving both the old and new address.

(b) If an address reported to the committee is a post office box, the licensee shall also provide the committee with a street address, but he or she may request that the second address not be disclosed to the public.

NOTE: Authority cited: Sections 3510 and 3514, Business and Professions Code. Reference: Sections 136, 3514 and 3522, Business and Professions Code.

HISTORY:

1. Change without regulatory effect filed 2-5-91 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 11).

2. Amendment of section and Note filed 6-7-2001; operative 7-1-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 23).

3. Change without regulatory effect amending subsection (a) filed 10-12-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 42).

1399.512. Review of Physician Assistant Applications; Processing Time.

(a) The committee shall inform an applicant for licensure as a physician assistant in writing within 28 days of receipt of an application whether the application is complete and accepted for filing or is deficient and what specific information is required.

(b) The committee shall inform an applicant for licensure as a physician assistant within 10 days after completion of the application, of its decision whether the applicant meets the requirements for licensure. "Completion of the application" means that a completed application form together with all required information, documentation and fees have been filed by the applicant.

(c) The minimum, median and maximum processing time for an application for licensure as a physician assistant from the time of receipt of the initial application until the committee makes a final decision on the application has been:

- (1) Minimum..... 4 days
- (2) Median 128 days
- (3) Maximum..... 994 days

(d) An applicant shall be deemed to have abandoned his or her licensure application if the application is not completed or if requested documents or information are not provided or if required fees are not paid, within one year from the date of filing or written request by the committee. An application submitted subsequent to an abandoned application shall be treated as a new application.

NOTE: Authority cited: Sections 3510 and 3514, Business and Professions Code; and Section 15376, Government Code. Reference: Section 3514, Business and Professions Code; and Section 15376, Government Code.

HISTORY:

- 1. New section filed 12-1-83; effective thirtieth day thereafter (Register 83, No. 49).
- 2. Change without regulatory effect filed 2-5-91 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 11).
- 3. Change without regulatory effect amending section filed 3-3-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 9).

1399.513. Advertising.

NOTE: Authority cited: Sections 651 and 3510, Business and Professions Code. Reference: Sections 651, 651.3 and 3527, Business and Professions Code.

HISTORY:

- 1. New section filed 4-10-80; effective thirtieth day thereafter (Register 80, No. 15).
- 2. Renumbering and amendment to section 1399.524 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).

1399.514. Denial, Suspension or Revocation of a Physician's Assistant's Certificate.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Section 3527, Business and Professions Code.

HISTORY:

- 1. Renumbering to section 1399.521 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).

1399.514. Renewal of License.

(a) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been convicted of any violation of the law in this or any other state, the United States, or other country, omitting traffic infractions under \$300 not involving alcohol, dangerous drugs, or controlled substances.

(b) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been denied a license or had a license disciplined by another licensing authority of this state, of another state, of any agency of the federal government, or of another country.

(c) Failure to comply with the requirements of this section renders any application for renewal incomplete and the license will not be renewed until the licensee demonstrates compliance with all requirements.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 141, 490, 3504.1, 3523, 3524, 3527 and 3531, Business and Professions Code.

HISTORY:

- 1. New section filed 10-5-2009; operative 11-4-2009 (Register 2009, No. 41). For prior history, see Register 83, No. 39.

1399.515. Denial, Suspension or Revocation of Approval to Supervise a Physician's Assistant.

NOTE: Authority cited: Section 3527, Business and Professions Code.

HISTORY:

- 1. Renumbering and amendment to section 1399.522 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).

1399.516. Substantial Relationship Criteria.

NOTE: Authority cited: Sections 481, 3510, and 3529, Business and Professions Code. Reference: Sections 480, 481, 490, 3527, 3529, and 3531, Business and Professions Code.

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HISTORY:

1. Renumbering and amendment to section 1399.525 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).

1399.517. Rehabilitation Criteria for Denials and Reinstatements.

NOTE: Authority cited: Sections 482, 3510, and 3529, Business and Professions Code. Reference: Sections 480, 482, 490, 3527, 3529, and 3531, Business and Professions Code.

HISTORY:

1. Renumbering and amendment to section 1399.526 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).

1399.518. Rehabilitation Criteria for Suspensions and Revocations.

NOTE: Authority cited: Sections 482, 3510, and 3529, Business and Professions Code. Reference: Sections 480, 482, 490, 3527, 3529, and 3531, Business and Professions Code.

HISTORY:

1. Renumbering and amendment to section 1399.527 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).

1399.519. Review of Applications for Approval as a Supervising Physician; Processing Time.

NOTE: Authority cited: Sections 2018 and 3514, Business and Professions Code; and Section 15376, Government Code. Reference: Section 3514, Business and Professions Code; and Section 15376, Government Code.

HISTORY:

1. New section filed 10-3-3; effective thirtieth day thereafter (Register 83, No. 43).
2. Repealer filed 3-3-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 9).

Article 2. Enforcement

1399.520. Practice as a Physician Assistant.

No person shall practice as a physician assistant in this state unless he or she is a trainee or is licensed to practice as a physician assistant by the committee.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Section 2052, 2061, 3515 and 3517, Business and Professions Code.

HISTORY:

1. Repealer of former section 1399.520, and renumbering and amendment of former section 1399.504 to section 1399.520 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39). For prior history, see Register 79, No. 34.
2. Amendment of article 2 heading filed 7-18-85; effective thirtieth day thereafter (Register 85, No. 32).
3. Change without regulatory effect filed 2-5-91 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 11).
4. Change without regulatory effect amending section filed 10-12-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 42).

1399.521. Denial, Suspension or Revocation of a Physician Assistant License.

In addition to the grounds set forth in section 3527, subd. (a), of the code the committee may deny, issue subject to terms and conditions, suspend, revoke or place on probation a physician assistant for the following causes:

(a) Any violation of the State Medical Practice Act which would constitute unprofessional conduct for a physician and surgeon.

(b) Using fraud or deception in passing an examination administered or approved by the committee.

(c) Practicing as a physician assistant under a physician who has been prohibited by the division or the Osteopathic Medical Board of California from supervising physician assistants.

(d) Performing medical tasks which exceed the scope of practice of a physician assistant as prescribed in these regulations.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Section 3527, Business and Professions Code.

HISTORY:

1. Repealer of former section 1399.521, and renumbering of former section 1399.514 to section 1399.521 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).
2. Change without regulatory effect filed 2-5-91 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 11).
3. Change without regulatory effect amending section filed 3-3-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 9).

1399.522. Denial, Suspension or Revocation of Approval to Supervise a Physician Assistant.

NOTE: Authority cited: Section 2018, Business and Professions Code. Reference: Section 3527, Business and Professions Code.

HISTORY:

1. Renumbering and amendment of former section 1399.522 to section 1399.545, and renumbering and amendment of former section 1399.515 to section 1399.522 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).
2. Change without regulatory effect filed 2-5-91 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 11).
3. Repealer filed 3-3-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 9).

1399.523. Disciplinary Guidelines.

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In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Physician Assistant Committee shall consider the disciplinary guidelines entitled "Physician Assistant Committee Manual of Model Disciplinary Guidelines and Model Disciplinary Orders" 3rd Edition (2007) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Physician Assistant Committee in its sole discretion determines that the facts of the particular case warrant such a deviation—for example: the presence of mitigating factors; the age of the case; evidentiary problems.

NOTE: Authority cited: Sections 3510, 3527, 3528, 3529, 3530, 3531, 3532 and 3533, Business and Professions Code; and Section 11400.20, Government Code. Reference: Section 11425.50(e), Government Code; and Sections 3527, 3528, 3529, 3530, 3531, 3532 and 3533, Business and Professions Code.

HISTORY:

1. New section filed 6-19-97; operative 6-19-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25). For prior history, see Register 83, No. 39.
2. Amendment filed 7-30-2002, operative 8-29-2002 (Register 2002, No. 31).
3. Amendment of Section and Note filed 5-12-2008, operative 6-11-2008 (Register 2008, No. 20).

1399.524. Advertising.

A licensed physician assistant may advertise the provisions of professional services authorized to be provided by such license in a manner authorized by Section 651 of the code so long as such advertising does not promote the excessive or unnecessary use of such services.

NOTE: Authority cited: Sections 651 and 3510, Business and Professions Code. Reference: Section 651, Business and Professions Code.

HISTORY:

1. Renumbering and amendment of former section 1399.524 to section 1399.530, and renumbering and amendment of former section 1399.513 to section 1399.524 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39). For prior history, see Registers 82, No. 1 and 79, No. 34.

1399.525. Substantial Relationship Criteria.

For the purposes of the denial, suspension or revocation of a license pursuant to division 1.5 (commencing with section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license under the Physician Assistant Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding such a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include, but are not limited to, the following:

- (a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Medical Practice Act.
- (b) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Physician Assistant Practice Act.
- (c) A conviction of child abuse.
- (d) Conviction as a sex offender.
- (e) Any crime or act involving the sale, gift, administration, or furnishing of narcotics or dangerous drugs or dangerous devices, as defined in Section 4022 of the code.
- (f) Conviction for assault and/or battery.
- (g) Conviction of a crime involving lewd conduct.
- (h) Conviction of a crime involving fiscal dishonesty.
- (i) Conviction for driving under the influence of drugs or alcohol.

NOTE: Authority cited: Sections 481, 2018 and 3510, Business and Professions Code. Reference cited: Sections 481, 3527 and 3531, Business and Professions Code.

HISTORY:

1. Renumbering and amendment of former section 1399.525 to section 1399.531, and renumbering and amendment of former section 1399.516 to section 1399.525 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39). For prior history, see Registers 82, No. 10 and 79, No. 34.
2. Change without regulatory effect filed 2-5-91 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 11).
3. Amendment of first paragraph and subsection (b) and new subsections (c)-(i) filed 5-9-2000; operative 6-8-2000 (Register 2000, No. 19).
4. Change without regulatory effect amending first paragraph filed 10-12-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 42).

1399.526. Rehabilitation Criteria for Denials and Reinstatements.

a) When considering the denial of a license under section 480 of the code, the committee or the board, as the case may be, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license, shall consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under section 480 of the code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsection (a) or (b).

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(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

(b) When considering a petition for reinstatement of a license under the provisions of section 11522 of the Government Code, the committee or board, as the case may be, shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in this section.

NOTE: Authority cited: Sections 482, 2018 and 3510, Business and Professions Code. Reference: Sections 482, 3527 and 3531, Business and Professions Code.

HISTORY:

1. Renumbering and amendment of former section 1399.526 to section 1399.535, and renumbering and amendment of former section 1399.517 to section 1399.526, filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).

2. Change without regulatory effect filed 2-5-91 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 11).

3. Change without regulatory effect amending subsections (a) and (b) filed 10-12-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 42).

1399.527. Rehabilitation Criteria for Suspensions and Revocations.

When considering the suspension or revocation of a license on the ground that a person holding a license under the Physician Assistant Practice Act has been convicted of a crime, the committee or the board, as the case may be, in evaluating the rehabilitation of such person and his or her eligibility for a license shall consider the following criteria:

(a) The nature and severity of the act(s) or offense(s).

(b) The total criminal record.

(c) The time that has elapsed since commission of the act(s) or offense(s).

(d) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.

(e) If applicable, evidence of expungement proceedings pursuant to section 1203.4 of the Penal Code.

(f) Evidence, if any of rehabilitation submitted by the licensee.

NOTE: Authority cited: Sections 482, 2018 and 3510, Business and Professions Code. Reference: Sections 482, 3527 and 3531, Business and Professions Code.

HISTORY:

1. Renumbering and amendment of former section 1399.527 to section 1399.536, and renumbering and amendment of former section 1399.518 to section 1399.527 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).

2. Change without regulatory effect filed 2-5-91 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 11).

3. Change without regulatory effect amending first paragraph filed 10-12-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 42).

Article 3. Education and Training

1399.528. Identification of a Primary Care Physician's Assistant and Trainees in Approved Programs.

HISTORY:

1. Renumbering and amendment to section 1399.539 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).

1399.530. General Requirements for an Approved Program.

(a) A program for instruction of physician assistants shall meet the following requirements for approval:

(1) The educational program shall be established in educational institutions accredited by an accrediting agency recognized by Council for Higher Education Accreditation ("CHEA") or its successor organization, or the U.S. Department of Education, Division of Accreditation, which are affiliated with clinical facilities that have been evaluated by the educational program.

(2) The educational program shall develop an evaluation mechanism to determine the effectiveness of its theoretical and clinical program.

(3) Course work shall carry academic credit; however, an educational program may enroll students who elect to complete such course work without academic credit.

(4) The medical director of the educational program shall be a physician who holds a current license to practice medicine from any state or territory of the United States or, if the program is located in California, holds a current California license to practice medicine.

(5) The educational program shall require a three-month preceptorship for each student in the outpatient practice of a physician or equivalent experience which may be integrated throughout the program or may occur as the final part of the educational program in accordance with Sections 1399.535 and 1399.536.

(6) Each program shall submit an annual report regarding its compliance with this section on a form provided by the committee.

(b) Those educational programs accredited by the Accreditation Review Commission on Education for the Physician Assistant ("ARC-PA") shall be deemed approved by the committee. Nothing in this section shall be construed to prohibit the committee from disapproving an educational program which does not comply with the requirements of this

article. Approval under this section terminates automatically upon termination of an educational program's accreditation of ARC-PA.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 3509 and 3513, Business and Professions Code.
HISTORY:

1. Renumbering and amendment of former section 1399.524 to section 1399.530 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).
2. Renumbering and amendment of former article 3 heading to article 4, redesignation of sections 1399.530–1399.532, 1399.535, 1399.536, 1399.538 and 1399.539 as new article 3, and amendment of section 1399.530(a) and (f) filed 7-18-85; effective thirtieth day thereafter (Register 85, No. 32).
3. Amendment filed 1-8-90; operative 2-7-90 (Register 90, No. 3).
4. Change without regulatory effect amending subsection (a) filed 7-25-94 pursuant to section 100, Title 1, California Code of Regulations (Register 94, No. 30).
5. Amendment filed 11-21-2000; operative 12-21-2000 (Register 2000, No. 47).
6. Change without regulatory effect amending section filed 3-3-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 9).

1399.531. Curriculum Requirements for an Approved Program for Primary Care Physician Assistants.

(a) The curriculum of a program for instruction of primary care physician assistants shall include adequate theoretical instruction in or shall require as prerequisites to entry into the program the following basic education core:

- (1) Chemistry
- (2) Mathematics, which includes coursework in algebra
- (3) English
- (4) Anatomy and Physiology
- (5) Microbiology
- (6) Sociology or cultural anthropology
- (7) Psychology

All instruction in the basic education core shall be at the junior college level or its equivalent with the exception of chemistry which may be at the junior college or high school level.

(b) The curriculum of an educational program shall also include or require as prerequisites adequate theoretical and clinical instruction which includes direct patient contact where appropriate, in the following clinical science core:

- (1) Community Health and Preventive Medicine
- (2) Mental Health
- (3) History taking and physical diagnosis
- (4) Management of common diseases (acute, chronic, and emergent) including first aid
- (5) Concepts in clinical medicine and surgery, such as:
 - growth and development
 - nutrition
 - aging
 - infection
 - allergy and sensitivity
 - tissue healing and repair
 - oncology
- (6) Common laboratory and screening techniques
- (7) Common medical and surgical procedures
- (8) Therapeutics, including pharmacology
- (9) Medical ethics and law
- (10) Medical socioeconomics
- (11) Counseling techniques and interpersonal dynamics

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference cited: Sections 3509 and 3513, Business and Professions Code.
HISTORY:

1. Renumbering and amendment of former Section 1399.525 to Section 1399.531 filed 9-20-83; effective thirtieth day thereafter (Register 83 No. 39).
2. Amendment filed 1-8-90; operative 2-7-90 (Register 90, No. 3).
3. Repealer of subsection (a)(1), subsection renumbering, amendment of paragraph preceding subsection (b) and repealer of subsection (c) filed 11-21-2000; operative 12-21-2000 (Register 2000, No.47).

1399.532. Requirements for an Approved Program for the Specialty Training of Physician Assistants.

A program for the specialty training of physician assistants shall meet the general requirements of Section 1399.530, except that a specialty training program need not be located in an educational institution and need not provide academic credit for its coursework, and shall either

- (a) accept only trainees who have completed a primary care training program; or,
- (b) provide the curriculum set forth in Section 1399.531 in addition to any specialty instruction it may provide.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 3509 and 3513, Business and Professions Code.

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HISTORY:

1. New section filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).
2. Amendment filed 3-17-87; effective thirtieth day thereafter (Register 87, No. 12).

1399.535. Requirements for Preceptorship Training.

An approved program shall have a preceptorship training program which meets the following criteria:

- (a) Continuous orientation of preceptors to the goals and purposes of the total educational program as well as the preceptorship training;
- (b) Establishment of a program whereby the preceptor shall not be the sole person responsible for the clinical instruction or evaluation of the preceptee.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 3509 and 3513, Business and Professions Code.

HISTORY: 1. Renumbering and amendment of former section 1399.526 to section 1399.535 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).

1399.536. Requirements for Preceptors.

(a) Preceptors participating in the preceptorship of an approved program shall:

(1) Be licensed physicians who are engaged in the practice of medicine which practice is sufficient to adequately expose preceptees to a full range of experience. The practice need not be restricted to an office setting but may take place in licensed facilities, such as hospitals, clinics, etc.

(2) Not have had the privilege to practice medicine terminated, suspended, or otherwise restricted as a result of a final disciplinary action (excluding judicial review of that action) by any state medical board or any agency of the federal government, including the military, within 5 years immediately preceding his or her participation in a preceptorship.

(3) By reason of medical education, specialty and nature of practice be sufficiently qualified to teach and supervise preceptees.

(4) Not be assigned to supervise more than one preceptee at a time.

(5) Teach and supervise the preceptee in accordance with the provisions and limitations of sections 1399.540 and 1399.541.

(6) Shall in conjunction with his or her use of a preceptee, charge a fee for only those personal and identifiable services which he or she, the preceptor, renders. The services of the preceptee shall be considered as part of the global services provided and there shall be no separate billing for the services rendered by the preceptee.

(7) Obtain the necessary patient consent as required in section 1399.538.

(b) It shall be the responsibility of the approved program to assure that preceptors comply with the foregoing requirements.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 3509 and 3513, Business and Professions Code.

HISTORY:

1. Renumbering and amendment of former section 1399.527 to section 1399.536 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).
2. Change without regulatory effect filed 2-5-91 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 11).
3. Amendment of subsection (a)(2) filed 11-21-2000; operative 12-21-2000 (Register 2000, No. 47).

1399.538. Patient Informed Consent.

No trainee including preceptees in any approved program shall render general medical services to any patient except in emergencies unless said patient has been informed that such services will be rendered by that trainee. In cases where the medical service to be rendered by the trainee is surgical in nature or where the trainee is to assist in a surgical procedure except in emergencies, the patient on each occasion shall be informed of the procedure to be performed by that trainee under the supervision of the program's instructors or physician preceptors and have consented in writing prior to performance to permit such rendering of the surgical procedure by the trainee. It shall be the responsibility of the approved educational program to assure that the instructors or physician preceptors obtain the necessary consent.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Section 3513, Business and Professions Code.

HISTORY:

1. Renumbering and amendment of former section 1399.510 to section 1399.538 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).

1399.539. Identification of Trainees in Approved Programs.

A trainee enrolled in an approved program for physician assistants shall at all times wear an identification badge on an outer garment and in plain view, which states the student's name and the title:

PHYSICIAN ASSISTANT STUDENT
or
PHYSICIAN ASSISTANT TRAINEE

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 3509 and 3513, Business and Professions Code.

HISTORY:

Article 4. Practice of Physician Assistants

1399.540. Limitation on Medical Services.

(a) A physician assistant may only provide those medical services which he or she is competent to perform and which are consistent with the physician assistant's education, training, and experience, and which are delegated in writing by a supervising physician who is responsible for the patients cared for by that physician assistant.

(b) The writing which delegates the medical services shall be known as a delegation of services agreement. A delegation of services agreement shall be signed and dated by the physician assistant and each supervising physician. A delegation of services agreement may be signed by more than one supervising physician only if the same medical services have been delegated by each supervising physician. A physician assistant may provide medical services pursuant to more than one delegation of services agreement.

(c) The committee or division or their representative may require proof or demonstration of competence from any physician assistant for any tasks, procedures or management he or she is performing.

(d) A physician assistant shall consult with a physician regarding any task, procedure or diagnostic problem which the physician assistant determines exceeds his or her level of competence or shall refer such cases to a physician.

NOTE: Authority cited: Sections 2018, 3502 and 3510, Business and Professions Code. Reference: Section 3502, Business and Professions Code. HISTORY:

1. Repealer and new section filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39). For prior history, see Register 79, No. 34.

2. Amendment filed 7-12-85; effective thirtieth day thereafter (Register 85, No. 28).

3. Renumbering and amendment of former Article 3 (sections 1399.540–1399.545, not consecutive) to Article 4 filed 7-18-85; effective thirtieth day thereafter (Register 85, No. 32).

4. Amendment filed 7-8-2008; operative 8-7-2008 (Register 2008, No. 28).

1399.541. Medical Services Performable.

Because physician assistant practice is directed by a supervising physician, and a physician assistant acts as an agent for that physician, the orders given and tasks performed by a physician assistant shall be considered the same as if they had been given and performed by the supervising physician. Unless otherwise specified in these regulations or in the delegation or protocols, these orders may be initiated without the prior patient specific order of the supervising physician. In any setting, including for example, any licensed health facility, out-patient settings, patients' residences, residential facilities, and hospices, as applicable, a physician assistant may, pursuant to a delegation and protocols where present:

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

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

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

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

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

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

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

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

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

(2) A physician assistant may also act as first or second assistant in surgery under the supervision of an approved supervising physician.

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

HISTORY:

Physician Assistant Regulations

1. Repealer of former section 1399.541 and renumbering and amendment of former section 1399.523 to section 1399.541 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39). For prior history, see Registers 82, No. 10; 80, No. 6; and 79, No. 34.
2. Amendment of subsection (h) filed 7-12-85; effective thirtieth day thereafter (Register 85, No. 28).
3. Amendment of subsection (f) filed 8-24-89; operative 9-23-89 (Register 89, No. 36).
4. Amendment filed 1-28-92; operative 2-27-92 (Register 92, No. 12).
5. Editorial correction of printing error in first paragraph (Register 92, No. 27).
6. Change without regulatory effect amending subsection (h) and Note filed 8-3-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 31).

1399.542. Delegated Procedures.

The delegation of procedures to a physician assistant under Section 1399.541, subsections (b) and (c) shall not relieve the supervising physician of primary continued responsibility for the welfare of the patient.

NOTE: Authority cited: Sections 2018 and 3502, Business and Professions Code. Reference: Section 3502, Business and Professions Code.

HISTORY:

1. Repealer and new section filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).

1399.543. Training to Perform Additional Medical Services.

A physician assistant may be trained to perform medical services which augment his or her current areas of competency in the following settings:

- (a) In the physical presence of a supervising physician who is directly in attendance and assisting the physician assistant in the performance of the procedure;
- (b) In an approved program;
- (c) In a medical school approved by the Division of Licensing under Section 1314;
- (d) In a residency or fellowship program approved by the Division of Licensing under Section 1321;
- (e) In a facility or clinic operated by the Federal government;
- (f) In a training program which leads to licensure in a healing arts profession or is approved as Category I continuing medical education or continuing nursing education by the Board of Registered Nursing.

NOTE: Authority cited: Sections 2018 and 3502, Business and Professions Code. Reference: Section 3502, Business and Professions Code.

HISTORY:

1. New section filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).
2. Amendment of first paragraph filed 1-28-92; operative 2-27-92 (Register 92, No. 12).
3. Change without regulatory effect amending section filed 3-3-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 9).

1399.545. Supervision Required.

- (a) A supervising physician shall be available in person or by electronic communication at all times when the physician assistant is caring for patients.
- (b) A supervising physician shall delegate to a physician assistant only those tasks and procedures consistent with the supervising physician's specialty or usual and customary practice and with the patient's health and condition.
- (c) A supervising physician shall observe or review evidence of the physician assistant's performance of all tasks and procedures to be delegated to the physician assistant until assured of competency.
- (d) The physician assistant and the supervising physician shall establish in writing transport and back-up procedures for the immediate care of patients who are in need of emergency care beyond the physician assistant's scope of practice for such times when a supervising physician is not on the premises.
- (e) A physician assistant and his or her supervising physician shall establish in writing guidelines for the adequate supervision of the physician assistant which shall include one or more of the following mechanisms:
 - (1) Examination of the patient by a supervising physician the same day as care is given by the physician assistant;
 - (2) Countersignature and dating of all medical records written by the physician assistant within thirty (30) days that the care was given by the physician assistant;
 - (3) The supervising physician may adopt protocols to govern the performance of a physician assistant for some or all tasks. The minimum content for a protocol governing diagnosis and management as referred to in this section shall include the presence or absence of symptoms, signs, and other data necessary to establish a diagnosis or assessment, any appropriate tests or studies to order, drugs to recommend to the patient, and education to be given the patient. For protocols governing procedures, the protocol shall state the information to be given the patient, the nature of the consent to be obtained from the patient, the preparation and technique of the procedure, and the follow-up care. Protocols shall be developed by the physician, adopted from, or referenced to, texts or other sources. Protocols shall be signed and dated by the supervising physician and the physician assistant. The supervising physician shall review, countersign, and date a minimum of 5% sample of medical records of patients treated by the physician assistant functioning under these protocols within thirty (30) days. The physician shall select for review those cases which by diagnosis, problem, treatment or procedure represent, in his or her judgment, the most significant risk to the patient;
 - (4) Other mechanisms approved in advance by the committee.
- (f) The supervising physician has continuing responsibility to follow the progress of the patient and to make sure that the physician assistant does not function autonomously. The supervising physician shall be responsible for all medical services provided by a physician assistant under his or her supervision.

NOTE: Authority cited: Sections 2018, 3502 and 3510, Business and Professions Code. Reference: Sections 3502 and 3516, Business and Professions Code.

HISTORY:

California Code of Regulations

1. Renumbering and amendment of former section 1399.522 to section 1399.545 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).
2. Amendment filed 7-12-85; effective thirtieth day thereafter (Register 85, No. 28).
3. Amendment of subsection (e)(3) and repealer of subsection (g) and relettering filed 1-28-92; operative 2-27-92 (Register 92, No. 12).
4. Change without regulatory effect repealing subsection (f) and relettering subsections filed 10-12-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 42).

1399.546. Reporting of Physician Assistant Supervision.

Each time a physician assistant provides care for a patient and enters his or her name, signature, initials, or computer code on a patient's record, chart or written order, the physician assistant shall also enter the name of his or her supervising physician who is responsible for the patient. When a physician assistant transmits an oral order, he or she shall also state the name of the supervising physician responsible for the patient.

NOTE: Authority cited: Sections 2018 and 3510, Business and Professions Code. Reference: Section 3502, Business and Professions Code.

HISTORY:

1. New section filed 1-4-87; effective thirtieth day thereafter (Register 87, No. 3).
2. Change without regulatory effect filed 2-5-91 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 11).
3. Change without regulatory effect amending section filed 3-3-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 9).

Article 5. Fees

1399.550. Physician Assistant Fees.

The following fees for physician assistants are established:

- (a) The application fee shall be \$25.00.
- (b) The fee for an initial license shall be \$200.00.
- (c) The fee for renewal of a license shall be \$300.00.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 3513, 3521 and 3521.1, Business and Professions Code.

HISTORY:

1. Repealer of article 4 designation and former section 1399.550, renumbering of former section 1399.612 to section 1399.550, and redesignation of new section 1399.550 to article 3 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).
2. Redesignation of sections 1399.550-1399.554 as article 5 (Register 85, No. 32). For History of former article 5 (sections 1399.560-1399.565), see Register 83, No. 39.
3. Change without regulatory effect filed 2-5-91 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 11).
4. Amendment of section and Note filed 5-11-2000; operative 6-10-2000 (Register 2000, No. 19).
5. Change without regulatory effect amending subsections (b) and (c) filed 10-12-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 42).

1399.551. Waiver of Initial License Fee.

NOTE: Authority cited: Sections 3510 and 3523, Business and Professions Code. Reference: Section 3523, Business and Professions Code.

HISTORY:

1. Repealer of former section 1399.551, renumbering and amendment of former section 1399.613 to section 1399.551, and redesignation of new section 1399.551 to article 3 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).
2. Change without regulatory effect filed 2-5-91 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 11).
3. Change without regulatory effect repealing section filed 8-21-2000 pursuant to section 100, Title 1, California Code of Regulations (Register 2000, No. 34).

1399.552. Conversion Renewal Schedule.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 3521.1 and 3523, Business and Professions Code.

HISTORY:

1. Repealer filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39).
2. New section filed 3-28-84; effective thirtieth day thereafter (Register 84, No. 13).
3. Repealer filed 2-6-91 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 11).

1399.553. Physician Supervisor Fees.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Section 3521, Business and Professions Code.

HISTORY:

1. Repealer of former section 1399.553, renumbering of former section 1399.610 to section 1399.553, and redesignation of new section 1399.553 to article 3 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39). For prior history, see Registers 82, No. 2; 80, No. 15; 79, No. 34; and 78, No. 17.
2. Amendment filed 3-28-84; effective thirtieth day thereafter (Register 84, No. 13).
3. Change without regulatory effect filed 2-5-91 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 11).
4. Amendment of subsections (b) and (c) filed 6-13-91; operative 7-13-91 (Register 91, No. 35).
5. Amendment filed 6-3-94; operative 7-5-94 (Register 94, No. 22).
6. Amendment of subsections (b) and (c) filed 7-29-96; operative 7-29-96 pursuant to Government Code 11343.4(d) (Register 96, No. 31).
7. Amendment filed 5-11-2000; operative 6-10-2000 (Register 2000, No. 19).
8. Repealer filed 3-3-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 9).

1399.554. Physician Supervisor Fees—Residents and Fellows.

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NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Section 152.6, Business and Professions Code.

HISTORY:

1. New section filed 7-18-85; effective thirtieth day thereafter (Register 85, No. 32). For prior history, see Register 84, No. 13.
2. Repealer filed 3-3-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 9).

1399.555. Expiration Date of Approvals.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Section 152.6, Business and Professions Code.

HISTORY:

1. Renumbering of former section 1399.615 to section 1399.555 and amendment of section heading filed 7-18-85; effective thirtieth day thereafter (Register 85, No. 32). For prior history, see Register 84, No. 13.
2. Repealer filed 3-3-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 9).

1399.556. Program Fees.

The following fees for physician assistants training programs are established:

- (a) The application fee for program approval shall be \$5.00.
- (b) The initial approval fee shall be \$5.00.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Section 3521.2, Business and Professions Code.

HISTORY:

1. Repealer of former section 1399.556, renumbering of former section 1399.614 to section 1399.556, and redesignation of new section 1399.556 to article 3 filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39). For prior history, see Register 79, No. 34.
2. Amendment filed 3-28-84; effective thirtieth day thereafter (Register 84, No. 13).
3. Change without regulatory effect filed 2-5-91 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 11).
4. Amendment of section and Note filed 6-7-2001; operative 7-1-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 23).
5. Change without regulatory effect amending subsections (a) and (b) filed 10-12-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 42).

1399.557. Diversion Program Participation Fee

- (a) Licensees required to participate in the diversion program as a condition of probation shall pay the full amount of the monthly participation fee charged by the contractor. Licensees voluntarily enrolling in the diversion program shall pay 75% of the monthly participation fee charged by the contractor. Each participant shall pay any and all other costs associated with the diversion program directly to the contractor, including, but not limited to, biological fluid test collection and sampling fees, support group fees, or subsequent evaluations.
- (b) The Committee may require the licensee to pay his or her share of the monthly participation fee directly to any contractor providing such services.
- (c) This section shall apply to licensees who enter or re-enter diversion on or after the effective date of this section.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: 3534.8, Business and Professions Code.

1399.560. Definition of an Emergency Care Physician's Assistant.

NOTE: Authority cited: Section 3510, Business and Professions Code.

HISTORY:

1. Repealer of article 5 (sections 1399.560–1399.565) filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39). For prior history, see Registers 82, No. 2; 80, No. 15; 79, No. 34; and 78, No. 17.

Article 6. Citations and Fines

1399.570. Authority to Issue Citations and Fines.

- (a) For purposes of this article, "executive officer" shall mean the executive officer of the committee.
- (b) The executive officer is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensed physician assistant of the statutes and regulations referred to in Section 1399.571.
- (c) A citation shall be issued whenever any fine is levied or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulations alleged to have been violated. The citation shall be served upon the individual personally or by certified mail return receipt requested.

NOTE: Authority cited: Sections 125.9, 148 and 3510, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

HISTORY:

1. Repealer of article 6 (sections 1399.570–1399.576) filed 9-20-83; effective thirtieth day thereafter (Register 83, No. 39). For prior history, see Registers 82, No. 2; 80, No. 15; and 79, No. 34).
2. New article 6 (sections 1399.570–1399.574) and section filed 2-21-96; operative 3-22-96 (Register 96, No. 8).

1399.571. Citable Offenses.

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(a) The executive officer shall consider the following factors when determining the amount of an administrative fine:

- (1) The good or bad faith exhibited by the cited person.
- (2) The nature and severity of the violation.
- (3) Evidence that the violation was willful.
- (4) History of violations of the same or similar nature.
- (5) The extent to which the cited person has cooperated with the committee.
- (6) The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his or her violation.

(7) Such other matters as justice may require.

(b) The executive officer may issue a citation under section 1399.570 for a violation of any of the following:

- (1) The Physician Assistant Practice Act (Business and Professions Code section 3500 et seq.).
- (2) A regulation adopted by the committee.
- (3) Any other statute or regulation upon which the committee may base a disciplinary action.

The fine for a violation shall be from \$100 to \$5000.

(c) In his or her discretion, the executive officer may issue a citation with an order of abatement without levying a fine for the first violation of any provision set forth above.

(d) For the issuance of a citation that includes an administrative fine in excess of \$2,500, including a citation issued pursuant to Section 1399.573, the executive officer shall determine that at least one of the following circumstances apply:

- (1) The citation involves a violation that presents an immediate threat to the health and safety of another person.
- (2) The citation involves multiple violations of the provisions specified in subdivision (b) that demonstrate a willful disregard of the law.
- (3) The citation involves a violation or violations perpetrated against a senior citizen, a person under 18 years of age, or disabled person.

NOTE:: Authority cited: Sections 125.9, 148 and 3510, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

HISTORY:

1. New section filed 2-21-96; operative 3-22-96 (Register 96, No. 8).
2. Amendment filed 10-30-2008; operative 11-29-2008 (Register 2008, No. 44).
3. Amendment of subsection (b), repealer and new subsections (b)(1)-(3) and repealer of subsections (b)(4)-(71) filed 5-13-2010; operative 6-12-2010 (Register 2010, No. 20).

1399.572. Compliance with Orders of Abatement

(a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the person cited may request an extension of time in which to complete the correction from the executive officer. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) When an order of abatement is not contested or if the order is repealed and the person cited does not prevail, failure to abate the violation charged within the time allowed shall constitute a violation and a failure to comply with the order of abatement. An order of abatement shall either be personally served or mailed by certified mail, return receipt requested. The time allowed for the abatement of a violation shall begin when the order of abatement is final and has been served or received. Such failure may result in disciplinary action being taken by the committee or other appropriate judicial relief being taken against the person cited.

NOTE: Authority cited: Sections 125.9, 148 and 3510, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

HISTORY:

1. New section filed 2-21-96; operative 3-22-96 (Register 96, No. 8).

1399.573. Citations for Unlicensed Practice.

The executive officer is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons, partnerships, corporations or associations who are performing or who have performed services for which licensure as a physician assistant is required under the Physician Assistant Practice Act. The executive officer is authorized to issue citations and orders of abatement and levy fines only in the case of a physician assistant who has practiced with a delinquent license. Each citation issued shall contain an order of abatement. Where appropriate, the executive officer shall levy a fine for such unlicensed activity in accordance with subdivision (b)(3) of Section 125.9 of the code. The provisions of Sections 1399.570 and 1399.572 shall apply to the issuance of citations for unlicensed activity under this subsection. The sanction authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

NOTE: Authority cited: Sections 125.9, 148 and 3510, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

HISTORY:

1. New section filed 2-21-96; operative 3-22-96 (Register 96, No. 8).

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2. Change without regulatory effect amending section filed 10-12-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 42).

1399.574. Contest of Citations.

(a) In addition to requesting a hearing as provided for in subdivision (b)(4) of Section 125.9 of the code, the person cited may, within 15 calendar days after service of the citation, notify the executive officer in writing of his or her request for an informal conference with the executive officer regarding the acts charged in the citation. The time allowed for the request shall begin the first day after the citation has been served.

(b) The executive officer shall, within 30 calendar days from the receipt of the request, hold an informal conference with the person cited and/or his or her legal counsel or authorized representative. The conference may be held telephonically. At the conclusion of the informal conference the executive officer may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The executive officer shall state in writing the reasons for his or her action and serve or mail a copy of his or her findings and decision to the person cited within 15 calendar days from the date of the informal conference, as provided in subsection (b) of section 1399.572. This decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.

(c) The person cited does not waive his or her request for a hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the executive officer. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within 30 calendar days in accordance with subdivision (b)(4) of Section 125.9 of the code.

NOTE: Authority cited: Sections 125.9, 148 and 3510, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

HISTORY:

1. New section filed 2-21-96; operative 3-22-96 (Register 96. No. 8).

Article 7. Approved Controlled Substance Education Courses

1399.610 Requirements for an Approved Controlled Substance Education Course to Administer, Provide or Issue a Drug Order for Schedule II – V Controlled Substances without Advance Approval From a Supervising Physician.

A controlled substance education course shall be deemed approved by the Committee if it meets all of the following criteria:

(a) The course includes all of the following learning objectives:

(1) Describes the applicable federal and state laws and regulations pertaining to the provision, administration and furnishing of controlled substances and the legal and professional relationship between a physician assistant and his or her supervising physician.

(A) This objective shall include a description of the applicable patient charting requirements and the use of secure drug order forms.

(2) Assessment strategies for the recognition, prevention and management of acute and chronic pain.

(3) Comparison of efficacy data and safety profiles which influence the selection, usage and conversion of pharmacological agents.

(4) The evaluation and comparison of the safety and efficacy profiles of controlled substances and the clinical rationale for their use.

(5) Describes disorders routinely requiring a therapeutic regimen of controlled substances for clinical management.

(6) Assessment of a controlled substance's potential for abuse and addiction, its psychosocial aspects, the recognition of the symptoms (including controlled substance-seeking behaviors) thereof and medically appropriate alternatives, if any,

(7) Evaluation of the response and compliance of the patient to the controlled substances.

(8) Provision of appropriate patient education regarding controlled substances.

For the purposes of this subdivision, "controlled substances" means Schedule II through Schedule V controlled substances.

(b) The course includes a comprehensive written examination, proctored by the course provider at the conclusion of the course, of the material presented. The licensee must successfully complete the examination to receive a certificate of completion issued pursuant to subdivision (b) of section 1399.612.

(c) The course is at least six (6) hours in duration, of which a minimum of three (3) hours shall be exclusively dedicated to Schedule II controlled substances. A course provider shall not include the time for the written examination specified in subdivision (b) in the (6) six hour requirement. The course shall be completed on or after January 1, 2008.

(d) The course is provided by one of following entities:

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- (1) A physician assistant program approved by the Committee in accordance with section 1399.530.
- (2) A continuing education provider approved by the Medical Board of California for Category I continuing medical education.
- (3) A Category I continuing education provider approved by American Academy of Physician Assistants.
- (4) A Category I continuing education provider approved by the American Medical Association, the California Medical Association and/or the American Osteopathic Association.

NOTE: Authority cited: Sections 3502, 3502.1, and 3510 Business and Professions Code. Reference: Sections 2058, 3502, 3502.1 and 3509, Business and Professions Code.

HISTORY:

1. New article 7 (sections 1399.610-1399.612) and section filed 10-17-2008; operative 10-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No.42). For prior history of article 7, sections 1399.580-1399.586 and article 10, sections 1399.610-1399.615, see Register 83, No. 39.

1399.612. Responsibilities of Course Providers and Attendees.

(a) A course provider of any controlled substance educational course intended to meet the requirements of section 1399.610 shall use qualified instructors and shall provide course attendees with a written course outline or syllabus, as applicable. For the purposes of this section, a qualified instructor is a person who holds a current valid license to practice in the appropriate healing arts discipline, is free from any disciplinary action by the applicable licensing jurisdiction, and is knowledgeable, current and skilled in the subject matter of the course, as evidenced through either of the following:

- (1) Experience in teaching similar subject matter content within two years immediately preceding the course; or,
 - (2) Has at least one year experience within the last two years in the specialized area in which he or she is teaching.
- (b) A controlled substance course provider shall issue a certificate of completion to each licensee who has successfully completed the course. A certificate of completion shall include the following information:

- (1) Name and license number of the physician assistant.
- (2) Course title and each instructor's name.
- (3) Provider's name and address.
- (4) Date of course completion.

(c) A controlled substance education course provider shall retain the following records for a period of four years in one location within the State of California or in a place approved by the Committee:

- (1) Course outlines of each course given.
- (2) The date and physical location for each course given.
- (3) The examination proctored at the conclusion of each course and the score of each physician assistant who took the examination.
- (4) Course instructor curriculum vitae or resumes.
- (5) The name and license number of each physician assistant taking an approved course and a record of any certificate of completion issued to a physician assistant.

A course provider shall make the records specified above available to the Committee upon request. A course provider may retain the records required by this subdivision in an electronic format.

(d) A physician assistant shall make his or her certificate of completion available for inspection upon the request of his or her employer or prospective employer, supervising physician or the Committee.

NOTE: Authority cited: Sections 3502 and 3510, Business and Professions Code. Reference: Sections 2058, 3502, 3502.1 and 3509, Business and Professions Code.

HISTORY:

1. New section filed 10-17-2008; operative 10-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 42). For prior history of section 1399.612, see Register 83, No. 39.
2. Change without regulatory effect redesignating second subsection (c)(1) as subsection (c)(2), renumbering subsections and amending newly designated subsection (c)(4) filed 10-12-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 42).

Article 8. Continuing Medical Education

1399.615. Continuing Medical Education Required

(a) A physician assistant who renews his or her license on or after January 1, 2011, is required to complete fifty (50) hours of approved continuing medical education during each two (2) year renewal period.

(b) The requirements of subdivision (a) shall be deemed satisfied if the physician assistant, at the time of renewal, is certified by the National Commission on Certification of Physician Assistants.

(c) Each physician assistant in order to renew his or her license at each renewal thereof shall report compliance with the provisions of this article by declaring upon application that he or she has complied with the continuing medical education requirements or that the provisions of subdivision (b) are applicable.

(d) Any physician assistant who does not complete the required hours of approved continuing medical education during the two-year period immediately preceding the expiration date of the license shall be ineligible for renewal of his

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or her license under section 1399.617, unless such physician assistant applies for and obtains a waiver pursuant to Section 1399.618 below.

(e) A physician assistant shall retain, for a period of four years after the acquisition of the necessary continuing medical education, records issued by an approved continuing medical education provider that indicate the title of the course or program attended, the dates of attendance and the hours assigned to the course or program, or if a physician assistant is certified by the National Commission on Certification of Physician Assistants at the time of license renewal, evidence of certification shall be retained for four (4) years after such certification is issued.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Section 3524.5, Business and Professions Code.

HISTORY:

1. New article 8 (sections 1399.615-1399.619) and section filed 5-13-2010; operative 6-12-2010 (Register 2010, No. 20).

1399.616. Approved Continuing Medical Education Programs

(a) Programs are approved by the committee for continuing medical education if they are designated as Category I (Preapproved) by one of the following sponsors:

(1) American Academy of Physician Assistants (AAPA).

(2) American Medical Association (AMA).

(3) American Osteopathic Association Council on Continuing Medical Education (AOACCME).

(4) American Academy of Family Physicians (AAFP).

(5) Accreditation Council for Continuing Medical Education (ACCME).

(6) A state medical society recognized by the ACCME.

(b) Continuing medical education obtained from a program other than those specified in subdivision (a) shall not satisfy the continuing education requirement in subdivision (a) of section 1399.615.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Section 3524.5, Business and Professions Code.

HISTORY:

1. New section filed 5-13-2010; operative 6-12-2010 (Register 2010, No. 20).

1399.617. Audit and Sanctions for Noncompliance

(a) The Committee may audit a random sample of physician assistants who have reported compliance with the continuing medical education requirement. Those physician assistants selected for audit shall be required to document their compliance with the continuing medical education requirements of this article and shall be required to provide to the Committee the records retained pursuant to subdivision (e) of section 1399.615, except that a physician assistant who complies with the continuing medical education requirements of certification by the National Commission on Certification of Physician Assistants need not provide such records if the Committee may obtain the records directly from the Commission.

(b) It shall constitute unprofessional conduct for any physician assistant to misrepresent his or her compliance with the provisions of this article.

(c) In addition to any enforcement action, any physician assistant who was found not to have completed the required number of hours of approved continuing medical education or was found not to hold a valid certification from the National Commission on Certification of Physician Assistants at the time of renewal will be required to make up any deficiency during the next biennial renewal period. Such physician assistant shall document to the Committee the completion of any deficient hours identified by the audit. Any physician assistant who fails to make up the deficient hours during the following renewal period shall be ineligible for renewal of his or her license to perform medical services until such time as the deficient hours of continuing medical education are documented to the Committee.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Section 3524.5, Business and Professions Code.

HISTORY:

1. New section filed 5-13-2010; operative 6-12-2010 (Register 2010, No. 20).

1399.618 Waiver of Continuing Medical Education Requirement

(a) The Committee or its designee may, in its discretion, exempt a licensee from the continuing medical education requirements for a renewal cycle, if the licensee cannot meet those requirements for reasons of health, military service, or undue hardship.

(b) Any licensee whose application for a waiver is denied by the Committee, shall be ineligible for active renewal of his or her license to perform medical services unless the licensee complies with the provisions of Section 1399.615.

Note: Authority cited: Section 3510, Business and Professions Code. Reference: Section 3524.5, Business and Professions Code.

HISTORY:

1. New section filed 5-13-2010; operative 6-12-2010 (Register 2010, No. 20).

1399.619. Inactive Status

(a) Upon written request, the Committee may grant inactive status to a licensee if, at the time of application for inactive status, the license is current and not suspended, revoked, or otherwise punitively restricted by the Committee.

(b) A licensee who is inactive shall not engage in any activity for which a license is required.

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(c) An inactive license shall be renewed during the same time period in which an active license is renewed. Any continuing medical education requirements for renewing a license are waived.

(d) The renewal fee for an inactive license is the same as the fee to renew an active license.

(e) To restore an inactive license to an active status, the holder shall do both of the following:

1) Pay the renewal fee.

2) Complete continuing medical education equivalent to that required for a single renewal period of an active license within the last two years prior to applying to restore the license to active status.

(f) The inactive status of any licensee does not deprive the Committee of its authority to institute or continue any disciplinary or enforcement action against the licensee.

(g) A license may be placed in inactive status if the licensee applies for renewal and pays all applicable fees, but fails to comply with the continuing medical education requirements of this article.

Note: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 118, 700-704, 3510, 3523, 3524 and 3524.5, Business and Professions Code.

HISTORY

1. New section filed 5-13-2010; operative 6-12-2010 (Register 2010, No. 20).

Excerpts From the California Business & Professions Code

123. Subversion of Licensing Examination

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

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

(b) Communicating with any other examinee during the administration of a licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination; or impersonating any examinee or having an impersonator take the licensing examination on one's behalf. Nothing in this section shall preclude prosecution under the authority provided for in any other provision of law. In addition to any other penalties, a person found guilty of violating this section, shall be liable for the actual damages sustained by the agency administering the examination not to exceed ten thousand dollars (\$10,000) and the costs of litigation.

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

123.5. Restraining Order

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

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

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

125. Conspiracy With Unlicensed Person

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

- (a) Allows his or her license to be used by that person.
- (b) Acts as his or her agent or partner.

125.6. Unprofessional Conduct - Discrimination

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

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

(3) Nothing in this section shall be interpreted to apply to discrimination by employers with regard to employees or prospective employees, nor shall this section authorize action against any club

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license issued pursuant to Article 4 (commencing with Section 23425) of Chapter 3 of Division 9 because of discriminatory membership policy.

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

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

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

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

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

125.9. Citations

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

(b) The system shall contain the following provisions:

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

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

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

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

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

(c) The system may contain the following provisions:

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

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

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

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

(Amended by Stats 2003, Ch. 788)

475. Applicability

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

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

(2) Conviction of a crime.

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

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

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

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

480. Grounds for Denial

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

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

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

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

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

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

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

482. Criteria for Rehabilitation

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

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

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

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

485. Procedure for Board Upon Denial

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

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

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

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

486. Reapplication After Denial

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

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

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

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

490. Conviction of a Crime-Substantial Relationship Criteria

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

496. Violation of Exam Security

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

580. Sale of Degree

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

581. Unlawful Procurement or Alteration

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

582. Use of Fraudulent Records

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

583. False Statements in Affidavits

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

584. Impersonation at Examinations

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

650. Consideration for Referrals Prohibited

(a) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under this division or the Chiropractic Initiative Act of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest or coownership in or with any person to whom these patients, clients, or customers are referred is unlawful.

(b) The payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual arrangement shall not be unlawful if the consideration is

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commensurate with the value of the services furnished or with the fair rental value of any premises or equipment leased or provided by the recipient to the payer.

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

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

(e) (1) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2, it shall not be unlawful to provide nonmonetary remuneration, in the form of hardware, software, or information technology and training services, necessary and used solely to receive and transmit electronic prescription information in accordance with the standards set forth in Section 1860D-4(e) of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (42 U.S.C. Sec. 1395w-104) in the following situations:

(A) In the case of a hospital, by the hospital to members of its medical staff.

(B) In the case of a group medical practice, by the practice to prescribing health care professionals that are members of the practice.

(C) In the case of Medicare prescription drug plan sponsors or Medicare Advantage organizations, by the sponsor or organization to pharmacists and pharmacies participating in the network of the sponsor or organization and to prescribing health care professionals.

(2) The exceptions set forth in this subdivision are adopted to conform state law with the provisions of Section 1860D-4(e)(6) of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (42 U.S.C. Sec. 1395w-104) and are limited to drugs covered under Part D of the federal Medicare Program that are prescribed to Part D eligible individuals (42 U.S.C. Sec. 1395w-101).

(3) The exceptions set forth in this subdivision shall not be operative until the regulations required to be adopted by the Secretary of the United States Department of Health and Human Services, pursuant to Section 1860D-4(e) of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (42 U.S.C. Sec. 1395W-104) are effective. If the California Health and Human Services Agency determines that regulations are necessary to ensure that implementation of the provisions of paragraph (1) is consistent with the regulations adopted by the Secretary of the United States Department of Health and Human Services, it shall adopt emergency regulations to that effect.

(f) "Health care facility" means a general acute care hospital, acute psychiatric hospital, skilled nursing facility, intermediate care facility, and any other health facility licensed by the State Department of Public Health under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code. (g) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding fifty thousand dollars (\$50,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison or by imprisonment in the state prison and a fine of fifty thousand dollars (\$50,000).

650.01. Prohibited Referrals: Financial Interests

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) If a referral, billing, or other solicitation is between one or more licensees who contract with a multispecialty clinic pursuant to subdivision (l) of Section 1206 of the Health and Safety Code or who conduct their practice as members of the same professional corporation or partnership, and the services are rendered on the same physical premises, or under the same professional corporation or partnership name, the requirements of this subdivision may be met by posting a conspicuous disclosure statement at the registration area or by providing a patient with a written disclosure statement.

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

(g) A violation of subdivision (a) shall be a misdemeanor. The Medical Board of California shall review the facts and circumstances of any conviction pursuant to subdivision (a) and take appropriate disciplinary action if the licensee has

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

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

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

650.02. Location of Practice: Financial Interest Disclosed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) A licensee may refer a person to any organization that owns or leases a health facility licensed pursuant to subdivision (a), (b), or (f) of Section 1250 of the Health and Safety Code if the licensee is not compensated for the patient referral, the licensee does not receive any payment from the recipient of the referral that is based or determined on the number or value of any patient referrals, and any equipment lease arrangement between the licensee and the referral recipient complies with the requirements of paragraph (2) of subdivision (b). For purposes of this paragraph, the ownership may be through stock or membership, and may be represented by a parent holding company that solely owns or controls both the health facility organization and the affiliated organization. (d) A licensee may refer a person to a nonprofit corporation that provides physician services pursuant to subdivision (l) of Section 1206 of the Health and Safety Code if the nonprofit corporation is controlled through membership by one or more health facilities or health facility systems and the amount of compensation or other transfer of funds from the health facility or nonprofit corporation to the licensee is fixed annually, except for adjustments caused by physicians joining or leaving the groups during the year, and is not based on the number of persons utilizing goods or services specified in Section 650.01.

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

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

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

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

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

(j) The prohibition of Section 650.01 shall not apply to a request by a pathologist for clinical diagnostic laboratory tests and pathological examination services, a request by a radiologist for diagnostic radiology services, or a request by a radiation oncologist for radiation therapy if those services are furnished by, or under the supervision of, the pathologist, radiologist, or radiation oncologist pursuant to a consultation requested by another physician.

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

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

650.1. Prohibited Arrangements: Pharmaceutical Services

(a) Any amount payable to any hospital, as defined in Section 4028, or any person or corporation prohibited from pharmacy permit ownership by subdivision (a) of Section 4111 under any rental, lease or service arrangement with respect to the furnishing or supply of pharmaceutical services and products, which is determined as a percentage, fraction, or portion of (1) the charges to patients or of (2) any measure of hospital or pharmacy revenue or cost, for pharmaceuticals and pharmaceutical services is prohibited.

(b) Any lease or rental arrangement existing on the effective date of this section shall be in full compliance with subdivision (a) by January 1, 1986.

(c) Any lease or rental agreement entered into prior to January 1, 1980, that extends beyond the effective date of this section shall be construed to be in compliance with this section until its expiration or the expiration of any option which is contained in any such lease or rental agreement provided that the lease or rental agreement contains provisions which limit pharmacy charges to the amounts not in excess of the prevailing charges in similar hospitals in the general geographic area.

(d) The California State Board of Pharmacy, the Medical Board of California, and the State Department of Health Services shall enforce this section and may require information from any person as is necessary for the enforcement of this section. It shall be the duty of the licensees of the respective regulatory agencies to produce the requisite

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evidence to show compliance with this section. Violations of this section shall be deemed to be the mutual responsibility of both lessee and lessor, and shall be grounds for disciplinary action or other sanctions against both.

651. Advertising: Fraudulent, Misleading, or Deceptive

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

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

(1) Contains a misrepresentation of fact.

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

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

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

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

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

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

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

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

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

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

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

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

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(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.

(5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields.

(i) For the purposes of this section, a dentist licensed under Chapter 4 (commencing with Section 1600) may not hold himself or herself out as a specialist, or advertise membership in or specialty recognition by an accrediting organization, unless the practitioner has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation, is eligible for examination by a national specialty board recognized by the American Dental Association, or is a diplomat of a national specialty board recognized by the American Dental Association.

(ii) A dentist licensed under Chapter 4 (commencing with Section 1600) shall not represent to the public or advertise accreditation either in a specialty area of practice or by a board not meeting the requirements of clause (i) unless the dentist has attained membership in or otherwise been credentialed by an accrediting organization that is recognized by the board as a bona fide organization for that area of dental practice. In order to be recognized by the board as a bona fide accrediting organization for a specific area of dental practice other than a specialty area of dentistry authorized under clause (i), the organization shall condition membership or credentialing of its members upon all of the following:

(I) Successful completion of a formal, full-time advanced education program that is affiliated with or sponsored by a university based dental school and is beyond the dental degree at a graduate or postgraduate level.

(II) Prior didactic training and clinical experience in the specific area of dentistry that is greater than that of other dentists.

(III) Successful completion of oral and written examinations based on psychometric principles.

(iii) Notwithstanding the requirements of clauses (i) and (ii), a dentist who lacks membership in or certification, diplomate status, other similar credentials, or completed advanced training approved as bona fide either by an American Dental Association recognized accrediting organization or by the board, may announce a practice emphasis in any other area of dental practice only if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement that he or she is a general dentist.

(iv) A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.

(B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board certified" in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicant's education, training, and experience.

For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon's licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.

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(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant's education, training, and experience. For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph, to be deposited in the State Treasury in the Podiatry Fund, pursuant to Section 2499. The fee shall not exceed the cost of administering this subparagraph.

(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.

(7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

(j) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section.

This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate relief.

(k) A physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) by the Medical Board of California who knowingly and intentionally violates this section may be cited and assessed an administrative fine not to exceed ten thousand dollars (\$10,000) per event. Section 125.9 shall govern the issuance of this citation and fine except that the fine limitations prescribed in paragraph (3) of subdivision (b) of Section 125.9 shall not apply to a fine under this subdivision.

654 Prohibited Arrangements: Opticians and Physicians

No person licensed under Chapter 5 (commencing with Section 2000) of this division may have any membership, proprietary interest or coownership in any form in or with any person licensed under Chapter 5.5 (commencing with Section 2550) of this division to whom patients, clients or customers are referred or any profit-sharing arrangements.

654.1. Prohibited Referrals

Persons licensed under Chapter 4 (commencing with Section 1600) of this division or licensed under Chapter 5 (commencing with Section 2000) of this division or licensed under any initiative act referred to in this division relating to osteopaths may not refer patients, clients, or customers to any clinical laboratory licensed under Section 1265 in which the licensee has any membership, proprietary interest, or coownership in any form, or has any profit-sharing arrangement, unless the licensee at the time of making such referral discloses in writing such interest to the patient, client, or customer. The written disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having any laboratory work or assignment performed.

This section shall not apply to persons who are members of a medical group which contracts to provide medical care to members of a group practice prepayment plan registered under the Knox-Keene Health Care Service Act of 1975, Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

This section shall not apply to any referral to a clinical laboratory which is owned and operated by a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

This section does not prohibit the acceptance of evaluation specimens for proficiency testing or referral of specimens or such assignment from one clinical laboratory to another clinical laboratory, either licensed or exempt under this chapter, providing the report indicates clearly the laboratory performing the test.

"Proprietary interest" does not include ownership of a building where space is leased to a clinical laboratory at the prevailing rate under a straight lease arrangement.

A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding ten thousand dollars (\$10,000), or by both such imprisonment and fine. A second or subsequent conviction shall be punishable by imprisonment in the state prison.

654.2. Prohibited Referrals and Billings

(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to charge, bill, or otherwise solicit payment from a patient on behalf of, or refer a patient to, an organization in which the licensee, or the licensee's immediate family, has a significant beneficial interest, unless the licensee first discloses in writing to the patient, that there is such an interest and advises the patient that the patient may choose any organization for the purpose of obtaining the services ordered or requested by the licensee.

(b) The disclosure requirements of subdivision (a) may be met by posting a conspicuous sign in an area which is likely to be seen by all patients who use the facility or by providing those patients with a written disclosure statement. Where referrals, billings, or other solicitations are between licensees who contract with multispecialty clinics pursuant to subdivision (l) of Section 1206 of the Health and Safety Code or who conduct their practice as members of the same professional corporation or partnership, and the services are rendered on the same physical premises, or under the same professional corporation or partnership name, the requirements of subdivision (a) may be met by posting a conspicuous disclosure statement at a single location which is a common area or registration area or by providing those patients with a written disclosure statement.

(c) On and after July 1, 1987, persons licensed under this division or under any initiative act referred to in this division shall disclose in writing to any third-party payer for the patient, when requested by the payer, organizations in which the licensee, or any member of the licensee's immediate family, has a significant beneficial interest and to which patients are referred. The third-party payer shall not request this information from the provider more than once a year.

Nothing in this section shall be construed to serve as the sole basis for the denial or delay of payment of claims by third party payers.

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

(1) "Immediate family" includes the spouse and children of the licensee, the parents of the licensee and licensee's spouse, and the spouses of the children of the licensee.

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(2) "Significant beneficial interest" means any financial interest that is equal to or greater than the lesser of the following:

- (A) Five percent of the whole.
- (B) Five thousand dollars (\$5,000).

(3) A third-party payer includes any health care service plan, self-insured employee welfare benefit plan, disability insurer, nonprofit hospital service plan, or private group or indemnification insurance program.

A third party payer does not include a prepaid capitated plan licensed under the Knox-Keene Health Care Service Plan Act of 1975 or Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(e) This section shall not apply to a "significant beneficial interest" which is limited to ownership of a building where the space is leased to the organization at the prevailing rate under a straight lease agreement or to any interest held in publicly traded stocks.

(f) (1) This section does not prohibit the acceptance of evaluation specimens for proficiency testing or referral of specimens or assignment from one clinical laboratory to another clinical laboratory, either licensed or exempt under this chapter, if the report indicates clearly the name of the laboratory performing the test.

(2) This section shall not apply to relationships governed by other provisions of this article nor is this section to be construed as permitting relationships or interests that are prohibited by existing law on the effective date of this section.

(3) The disclosure requirements of this section shall not be required to be given to any patient, customer, or his or her representative, if the licensee, organization, or entity is providing or arranging for health care services pursuant to a prepaid capitated contract with the State Department of Health Services.

655.5. Solicitation of Payment for Laboratory Services

(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division, or any clinical laboratory, or any health facility when billing for a clinical laboratory of the facility, to charge, bill, or otherwise solicit payment from any patient, client, or customer for any clinical laboratory service not actually rendered by the person or clinical laboratory or under his, her or its direct supervision unless the patient, client, or customer is apprised at the first time of the charge, billing, or solicitation of the name, address, and charges of the clinical laboratory performing the service. The first such written charge, bill, or other solicitation of payment shall separately set forth the name, address, and charges of the clinical laboratory concerned and shall clearly show whether or not the charge is included in the total of the account, bill, or charge. This subdivision shall be satisfied if the required disclosures are made to the third-party payer of the patient, client, or customer. If the patient is responsible for submitting the bill for the charges to the third-party payer, the bill provided to the patient for that purpose shall include the disclosures required by this section. This subdivision shall not apply to a clinical laboratory of a health facility or a health facility when billing for a clinical laboratory of the facility nor to a person licensed under this division or under any initiative act referred to in this division if the standardized billing form used by the facility or person requires a summary entry for all clinical laboratory charges. For purposes of this subdivision, "health facility" has the same meaning as defined in Section 1250 of the Health and Safety Code.

(b) Commencing July 1, 1994, a clinical laboratory shall provide to each of its referring providers, upon request, a schedule of fees for services provided to patients of the referring provider. The schedule shall be provided within two working days after the clinical laboratory receives the request. For the purposes of this subdivision, a "referring provider" means any provider who has referred a patient to the clinical laboratory in the preceding six-month period. Commencing July 1, 1994, a clinical laboratory that provides a list of laboratory services to a referring provider or to a potential referring provider shall include a schedule of fees for the laboratory services listed.

(c) It is also unlawful for any person licensed under this division or under any initiative act referred to in this division to charge additional charges for any clinical laboratory service that is not actually rendered by the licensee to the patient and itemized in the charge, bill, or other solicitation of payment. This section shall not be construed to prohibit any of the following:

(1) Any itemized charge for any service actually rendered to the patient by the licensee.

(2) Any summary charge for services actually rendered to a patient by a health facility, as defined in Section 1250 of the Health and Safety Code, or by a person licensed under this division or under any initiative act referred to in this division if the standardized billing form used by the facility or person requires a summary entry for all clinical laboratory charges.

(d) As used in this section, the term "any person licensed under this division" includes a person licensed under paragraph (1) of subdivision (a) of Section 1265, all wholly owned subsidiaries of the person, a parent company that wholly owns the person, and any subsidiaries wholly owned by the same parent that wholly owns the person. "Wholly owned" means ownership directly or through one or more subsidiaries. This section shall not apply to billings by a person licensed under paragraph (1) of subdivision (a) of Section 1265 when the person licensed under paragraph (1) of subdivision (a) of Section 1265 bills for services performed by any laboratory owned or operated by the person licensed under paragraph (1) of subdivision (a) of Section 1265.

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(e) This section shall not apply to any person or clinical laboratory who or which contracts directly with a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code, if the services are to be provided to members of the plan on a prepaid basis and without additional charge or liability on account thereof.

(f) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding ten thousand dollars (\$10,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison.

(g) (1) Notwithstanding subdivision (f), a violation of this section by a physician and surgeon for a first offense shall be subject to the exclusive remedy of reprimand by the Medical Board of California if the transaction that is the subject of the violation involves a charge for a clinical laboratory service that is less than the charge would have been if the clinical laboratory providing the service billed a patient, client, or customer directly for the clinical laboratory service, and if that clinical laboratory charge is less than the charge listed in the clinical laboratory's schedule of fees pursuant to subdivision (b).

(2) Nothing in this subdivision shall be construed to permit a physician and surgeon to charge more than he or she was charged for the laboratory service by the clinical laboratory providing the service unless the additional charge is for service actually rendered by the physician and surgeon to the patient.

680. Name Tags; Display

(a) Except as otherwise provided in this section, a health care practitioner shall disclose, while working, his or her name and practitioner's license status, as granted by this state, on a name tag in at least 18-point type. A health care practitioner in a practice or an office, whose license is prominently displayed, may opt to not wear a name tag. If a health care practitioner or a licensed clinical social worker is working in a psychiatric setting or in a setting that is not licensed by the state, the employing entity or agency shall have the discretion to make an exception from the name tag requirement for individual safety or therapeutic concerns. In the interest of public safety and consumer awareness, it shall be unlawful for any person to use the title "nurse" in reference to himself or herself and in any capacity, except for an individual who is a registered nurse, or a licensed vocational nurse, or as otherwise provided in Section 2800. Nothing in this section shall prohibit a certified nurse assistant from using his or her title.

(b) Facilities licensed by the State Department of Social Services, the State Department of Mental Health, or the State Department of Health Services, shall develop and implement policies to ensure that health care practitioners providing care in those facilities are in compliance with subdivision (a). The State Department of Social Services, the State Department of Mental Health, and the State Department of Health Services shall verify through periodic inspections that the policies required pursuant to subdivision (a) have been developed and implemented by the respective licensed facilities.

(c) For purposes of this article, "health care practitioner" means any person who engages in acts that are the subject of licensure or regulation under this division or under any initiative act referred to in this division.

714. Armed Forces: Medical Personnel

(a) A hospital may enter into an agreement with the Armed Forces of the United States to authorize a physician and surgeon, physician assistant, or registered nurse to provide medical care in the hospital if all of the following apply:

(1) The physician and surgeon, physician assistant, or registered nurse holds a valid license in good standing to provide medical care in the District of Columbia or any state or territory of the United States.

(2) The medical care is provided as part of a training or educational program designed to promote the combat readiness of the physician and surgeon, physician assistant, or registered nurse.

(3) The agreement complies with Section 1094 of Title 10 of the United States Code and any regulations or guidelines adopted pursuant to that section.

(b) A physician and surgeon, physician assistant, or registered nurse who is authorized to practice pursuant to subdivision (a) shall disclose, while working, on a name tag in at least 18-point type, his or her name and license status, his or her state of licensure, and a statement that he or she is a member of the Armed Forces of the United States.

(c) (1) If an agreement is entered into pursuant to subdivision (a), no board under this division that licenses physicians and surgeons, physician assistants, or registered nurses may require a person under subdivision (a) to obtain or maintain any license to practice his or her profession or render services in the State of California.

(2) Notwithstanding paragraph (1), a physician and surgeon, physician assistant, or registered nurse who enters into an agreement pursuant to subdivision (a) shall register with the board that licenses his or her respective health care profession in this state on a form provided by that board.

(d) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

810. Unprofessional Conduct: Insurance Fraud

(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code.

(c) (1) It shall constitute cause for automatic suspension of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has been convicted of any felony involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance, or has been convicted of any felony involving Medi-Cal fraud committed by the licensee or certificate holder in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program, pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to determine whether or not the license or certificate shall be suspended, revoked, or some other disposition shall be considered, including, but not limited to, revocation with the opportunity to petition for reinstatement, suspension, or other limitations on the license or certificate as the board deems appropriate.

(2) It shall constitute cause for automatic suspension and for revocation of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has more than one conviction of any felony arising out of separate prosecutions involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance, or in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to revoke the license or certificate and an order of revocation shall be issued unless the board finds mitigating circumstances to order some other disposition.

(3) It is the intent of the Legislature that paragraph (2) apply to a licensee or certificate holder who has one or more convictions prior to January 1, 2004, as provided in this subdivision.

(4) Nothing in this subdivision shall preclude a board from suspending or revoking a license or certificate pursuant to any other provision of law.

(5) "Board," as used in this subdivision, means the Dental Board of California, the Medical Board of California, the Board of Psychology, the State Board of Optometry, the California State Board of Pharmacy, the Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners.

(6) "More than one conviction," as used in this subdivision, means that the licensee or certificate holder has one or more convictions prior to January 1, 2004, and at least one conviction on or after that date, or the licensee or certificate holder has two or more convictions on or after January 1, 2004. However, a licensee or certificate holder who has one or more convictions prior to January 1, 2004, but who has no convictions and is currently licensed or holds a certificate after that date, does not have "more than one conviction" for the purposes of this subdivision.

(d) As used in this section, health care professional means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act.

(Amended by Stats 2004, Ch. 333)

2021. Directory/Reporting Address Change

(a) If the board publishes a directory pursuant to Section 112, it may require persons licensed pursuant to this chapter to furnish any information as it may deem necessary to enable it to compile the directory.

(b) Each licensee shall report to the board each and every change of address within 30 days after each change, giving both the old and new address. If an address reported to the board at the time of application for licensure or subsequently is a post office box, the applicant shall also provide the board with a street address. If another address is the licensee's address of record, he or she may request that the second address not be disclosed to the public.

(c) Each licensee shall report to the board each and every change of name within 30 days after each change, giving both the old and new names.

2052. "Unlawful Practice of Medicine" Defined

(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment.

(b) Any person who conspires with or aids or abets another to commit any act described in subdivision (a) is guilty of a public offense, subject to the punishment described in that subdivision.

(c) The remedy provided in this section shall not preclude any other remedy provided by law.

2054. Unlawful Representation as a Physician

(a) Any person who uses in any sign, business card, or letterhead, or, in an advertisement, the words "doctor" or "physician," the letters or prefix "Dr.," the initials "M.D.," or any other terms or letters indicating or implying that he or she is a physician and surgeon, physician, surgeon, or practitioner under the terms of this or any other law, or that he or she is entitled to practice hereunder, or who represents or holds himself or herself out as a physician and surgeon, physician, surgeon, or practitioner under the terms of this or any other law, without having at the time of so doing a valid, unrevoked, and unsuspended certificate as a physician and surgeon under this chapter, is guilty of a misdemeanor.

(b) A holder of a valid, unrevoked, and unsuspended certificate to practice podiatric medicine may use the phrases "doctor of podiatric medicine," "doctor of podiatry," and "podiatric doctor," or the initials "D.P.M.," and shall not be in violation of subdivision (a).

2069. Medical Assistants

(a) (1) Notwithstanding any other provision of law, a medical assistant may administer medication only by intradermal, subcutaneous, or intramuscular injections and perform skin tests and additional technical supportive services upon the specific authorization and supervision of a licensed physician and surgeon or a licensed podiatrist. A medical assistant may also perform all these tasks and services in a clinic licensed pursuant to subdivision (a) of Section 1204 of the Health and Safety Code upon the specific authorization of a physician assistant, a nurse practitioner, or a nurse-midwife.

(2) The supervising physician and surgeon at a clinic described in paragraph (1) may, at his or her discretion, in consultation with the nurse practitioner, nurse-midwife, or physician assistant provide written instructions to be followed by a medical assistant in the performance of tasks or supportive services. These written instructions may provide that the supervisory function for the medical assistant for these tasks or supportive services may be delegated to the nurse practitioner, nurse-midwife, or physician assistant within the standardized procedures or protocol, and that tasks may be performed when the supervising physician and surgeon is not onsite, so long as the following apply:

(A) The nurse practitioner or nurse-midwife is functioning pursuant to standardized procedures, as defined by Section 2725, or protocol. The standardized procedures or protocol shall be developed and approved by the supervising physician and surgeon, the nurse practitioner or nurse-midwife, and the facility administrator or his or her designee.

(B) The physician assistant is functioning pursuant to regulated services defined in Section 3502 and is approved to do so by the supervising physician or surgeon.

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

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

(2) "Specific authorization" means a specific written order prepared by the supervising physician and surgeon or the supervising podiatrist, or the physician assistant, the nurse practitioner, or the nurse-midwife as provided in subdivision (a), authorizing the procedures to be performed on a patient, which shall be placed in the patient's medical record, or a standing order prepared by the supervising physician and surgeon or the supervising podiatrist, or the physician assistant, the nurse practitioner, or the nurse-midwife as provided in subdivision (a), authorizing the procedures to be performed, the duration of which shall be consistent with accepted medical practice. A notation of the standing order shall be placed on the patient's medical record.

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

(A) A licensed physician and surgeon.

(B) A licensed podiatrist.

(C) A physician assistant, nurse practitioner, or nurse-midwife as provided in subdivision (a).

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

(c) Nothing in this section shall be construed as authorizing the licensure of medical assistants. Nothing in this section shall be construed as authorizing the administration of local anesthetic agents by a medical assistant. Nothing in this section shall be construed as authorizing the division to adopt any regulations that violate the prohibitions on diagnosis or treatment in Section 2052.

(d) Notwithstanding any other provision of law, a medical assistant may not be employed for inpatient care in a licensed general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code.

(e) Nothing in this section shall be construed as authorizing a medical assistant to perform any clinical laboratory test or examination for which he or she is not authorized by Chapter 3 (commencing with Section 1206.5). Nothing in this section shall be construed as authorizing a nurse practitioner, nurse-midwife, or physician assistant to be a laboratory director of a clinical laboratory, as those terms are defined in paragraph (7) of subdivision (a) of Section 1206 and subdivision (a) of Section 1209.

2070. Medical Assistants- Venipuncture

Notwithstanding any other provision of law, a medical assistant may perform venipuncture or skin puncture for the purposes of withdrawing blood upon specific authorization and under the supervision of a licensed physician and surgeon or a licensed podiatrist, or a physician assistant, a nurse practitioner, or a nurse-midwife as provided in subdivision (a) of Section 2069, if prior thereto the medical assistant has had at least the minimum amount of hours of appropriate training pursuant to standards established by the Division of Licensing. The medical assistant shall be issued a certificate by the training institution or instructor indicating satisfactory completion of the training required. A copy of the certificate shall be retained as a record by each employer of the medical assistant.

(Amended by Stats.2001, Ch. 358.)

2234. "Unprofessional Conduct" Defined

The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

(d) Incompetence.

(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(f) Any action or conduct which would have warranted the denial of a certificate.

(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

2234.1. Physician and Surgeons: Alternative or Complementary Medicine

(a) A physician and surgeon shall not be subject to discipline pursuant to subdivision (b), (c), or (d) of Section 2234 solely on the basis that the treatment or advice he or she rendered to a patient is alternative or complementary medicine, including the treatment of persistent Lyme Disease, if that treatment or advice meets all of the following requirements:

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(1) It is provided after informed consent and a good-faith prior examination of the patient, and medical indication exists for the treatment or advice, or it is provided for health or well-being.

(2) It is provided after the physician and surgeon has given the patient information concerning conventional treatment and describing the education, experience, and credentials of the physician and surgeon related to the alternative or complementary medicine that he or she practices.

(3) In the case of alternative or complementary medicine, it does not cause a delay in, or discourage traditional diagnosis of, a condition of the patient.

(4) It does not cause death or serious bodily injury to the patient.

(b) For purposes of this section, "alternative or complementary medicine," means those health care methods of diagnosis, treatment, or healing that are not generally used but that provide a reasonable potential for therapeutic gain in a patient's medical condition that is not outweighed by the risk of the health care method.

(c) Since the National Institute of Medicine has reported that it can take up to 17 years for a new best practice to reach the average physician and surgeon, it is prudent to give attention to new developments not only in general medical care but in the actual treatment of specific diseases, particularly those that are not yet broadly recognized in California.

2236. Conviction of a Crime

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

2241. Prescribing to Addicts

(a) A physician and surgeon may prescribe, dispense, or administer prescription drugs, including prescription controlled substances, to an addict under his or her treatment for a purpose other than maintenance on, or detoxification from, prescription drugs or controlled substances.

(b) A physician and surgeon may prescribe, dispense, or administer prescription drugs or prescription controlled substances to an addict for purposes of maintenance on, or detoxification from, prescription drugs or controlled substances only as set forth in subdivision (c) or in Sections 11215, 11217, 11217.5, 11218, 11219, and 11220 of the Health and Safety Code. Nothing in this subdivision shall authorize a physician and surgeon to 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.

(c) Notwithstanding subdivision (a), prescription drugs or controlled substances may also be administered or applied by a physician and surgeon, or by a registered nurse acting under his or her instruction and supervision, under the following circumstances:

(1) Emergency treatment of a patient whose addiction is complicated by the presence of incurable disease, acute accident, illness, or injury, or the infirmities attendant upon age.

(2) Treatment of addicts in state-licensed institutions where the patient is kept under restraint and control, or in city or county jails or state prisons.

(3) Treatment of addicts as provided for by Section 11217.5 of the Health and Safety Code.

(d) (1) For purposes of this section and Section 2241.5, "addict" means a person whose actions are characterized by craving in combination with one or more of the following:

(A) Impaired control over drug use.

(B) Compulsive use.

(C) Continued use despite harm.

(2) Notwithstanding paragraph (1), a person whose drug-seeking behavior is primarily due to the inadequate control of pain is not an addict within the meaning of this section or Section 2241.5.

2241.5 Intractable Pain Treatment Act

(a) A physician and surgeon may 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.

(b) No physician and surgeon shall be subject to disciplinary action for prescribing, dispensing, or administering dangerous drugs or prescription controlled substances in accordance with this section.

(c) This section shall not affect the power of the board to take any action described in Section 2227 against a physician and surgeon who does any of the following:

(1) Violates subdivision (b), (c), or (d) of Section 2234 regarding gross negligence, repeated negligent acts, or incompetence.

(2) Violates Section 2241 regarding treatment of an addict.

(3) Violates Section 2242 regarding performing an appropriate prior examination and the existence of a medical indication for prescribing, dispensing, or furnishing dangerous drugs.

(4) Violates Section 2242.1 regarding prescribing on the Internet.

(5) Fails to keep complete and accurate records of purchases and disposals of substances listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) or controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Sec. 801 et seq.), or pursuant to the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. A physician and surgeon shall keep records of his or her purchases and disposals of these controlled substances or dangerous drugs, including the date of purchase, the date and records of the sale or disposal of the drugs by the physician and surgeon, the name and address of the person receiving the drugs, and the reason for the disposal or the dispensing of the drugs to the person, and shall otherwise comply with all state recordkeeping requirements for controlled substances.

(6) Writes false or fictitious prescriptions for controlled substances listed in the California Uniform Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(7) Prescribes, administers, or dispenses in violation of this chapter, or in violation of Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210) of Division 10 of the Health and Safety Code.

(d) 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.

(e) Nothing in this section shall prohibit the governing body of a hospital from taking disciplinary actions against a physician and surgeon pursuant to Sections 809.05, 809.4, and 809.5.

2242. Prescribing Without Prior Examination

(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without a good faith prior examination and medical indication therefor, constitutes unprofessional conduct.

(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:

(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refilling.

(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code.

2250. Failure to Comply With Requirements for Sterilization

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The willful failure to comply with the requirements of Article 6 (commencing with Section 14191) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code and the regulations promulgated there under, relating to informed consent for sterilization procedures, constitutes unprofessional conduct.

2252. Violation of Laws Relating to Cancer Treatment

The violation of Chapter 4 (commencing with Section 109250) of Part 4 of Division 104 of the Health and Safety Code, or any violation of an injunction or cease and desist order issued under those provisions, relating to the treatment of cancer, constitutes unprofessional conduct.

2253. Laws Relating to Criminal Abortions

(a) Failure to comply with the Reproductive Privacy Act (Article 2.5 (commencing with Section 123460) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code) in performing, assisting, procuring or aiding, abetting, attempting, agreeing, or offering to procure an illegal abortion constitutes unprofessional conduct.

(b) (1) A person is subject to Sections 2052 and 2053 if he or she performs or assists in performing a surgical abortion, and at the time of so doing, does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon as provided in this chapter, or if he or she assists in performing a surgical abortion and does not have a valid, unrevoked, and unsuspended license or certificate obtained in accordance with some other provision of law that authorizes him or her to perform the functions necessary to assist in performing a surgical abortion.

(2) A person is subject to Sections 2052 and 2053 if he or she performs or assists in performing a nonsurgical abortion, and at the time of so doing, does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon as provided in this chapter, or does not have a valid, unrevoked, and unsuspended license or certificate obtained in accordance with some other provision of law that authorizes him or her to perform or assist in performing the functions necessary for a nonsurgical abortion.

(c) For purposes of this section, "nonsurgical abortion" includes termination of pregnancy through the use of pharmacological agents

2254. Violation of Laws Relating to Research on Aborted Products

The violation of Section 123440 of the Health and Safety Code, relating to research on aborted products of human conception, constitutes unprofessional conduct.

2255. Violation of Laws Relating to Patient Referrals

The violation of any provision of Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, relating to the unlawful referral of patients to extended care facilities, constitutes unprofessional conduct.

2256. Violation of Laws Relating to Patient Rights

Any intentional violation of Sections 5326.2 to 5326.8, inclusive, of the Welfare and Institutions Code, relating to the rights of involuntarily confined inpatients, constitutes unprofessional conduct.

2257. Violation of Laws Relating to Informed Consent for Breast Cancer Treatment

The violation of Section 109275 of the Health and Safety Code, relating to informed consent for the treatment of breast cancer, constitutes unprofessional conduct.

2258. Violation of Laws Relating to the Use of Laetrile

The violation of Section 1708.5 of the Health and Safety Code, relating to the use of laetrile or amygdalin with respect to cancer therapy, constitutes unprofessional conduct.

2259. Cosmetic Implant Act of 1992: Silicone Implants

(a) A physician and surgeon shall give each patient a copy of the standardized written summary, as developed pursuant to subdivision (e), describing silicone implants used in cosmetic, plastic, reconstructive, or similar surgery, before the physician and surgeon performs the surgery. A physician and surgeon may substitute, in place of the standardized written summary for silicone implants, written information authorized for use by the federal Food and Drug Administration prepared by the manufacturer based upon the physician package insert. The furnishing of a copy of the standardized written summary or written information shall constitute compliance with the requirements of this section.

(b) Prior to performance of surgery, the physician and surgeon shall note on the patient's chart that he or she has given the patient the standardized written summary or written information required by this section.

(c) The failure of a physician and surgeon to comply with this section constitutes unprofessional conduct. The provision of the standardized written summary or written information shall not alter, diminish, or modify existing duties of physicians and surgeons, including duties relating to informed consent. However, no physician and surgeon shall

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be liable as a distributor of a standardized written summary or written information alleged to contain erroneous or incomplete information.

(d) The facility where the surgery is performed shall not be responsible for enforcement of, or verification of, compliance with the requirements of this section.

(e) If the State Department of Health Services determines that the federal Food and Drug Administration has not authorized written information on silicone implants intended for the layperson, the state department shall develop a standardized written summary to inform the patient of the risks and possible side effects of silicone implants as used in cosmetic, plastic, reconstructive, or similar surgery. In developing these summaries, the state department shall do all of the following:

(1) Use only language that is simple and readily understood by a layperson.

(2) Include a disclaimer that the state in no way endorses any procedures, nor does the state claim to provide an exhaustive analysis of all the potential benefits or risks associated with any procedure.

(3) Provide only information approved by the federal Food and Drug Administration.

(f) The State Department of Health Services shall update the written summary described in subdivision (e) as determined necessary by the state department to protect the public health and safety.

(g) The Medical Board of California shall publish the standardized written summaries prepared pursuant to subdivision (e), and shall distribute copies of the summaries, upon request, to physicians and surgeons. The Medical Board of California shall make the summaries available for a fee not exceeding, in the aggregate, the actual costs to the State Department of Health Services and the Medical Board of California for developing, updating, publishing, and distributing the summaries. Physicians and surgeons performing surgical procedures described in subdivision (a) shall purchase the summaries from the Medical Board of California for distribution to their patients, as required in this section. Any person or entity may purchase the summaries if he, she, or it desires. The Medical Board of California shall fund the State Department of Health Services for the actual cost of developing and updating the summaries incurred by the State Department of Health Services, through an interagency agreement entered into between the Medical Board of California and the State Department of Health Services for that purpose.

The Medical Board of California and the State Department of Health Services may distribute the written information described in subdivision (a) if a manufacturer of silicone implants provides the board and state department with a sufficient number of copies of this information, as determined by the state department.

(h) Section 2314 shall not apply to this section.

(i) For purposes of this section, "silicone implant" means any implant containing silicone, including implants using a silicone gel or silicone shell. This definition includes implants using a saline solution with a silicone shell.

(j) A physician and surgeon shall not be responsible for complying with this section until the written summaries are published pursuant to subdivision (g).

2259.5. Cosmetic Implant Act of 1992: Collagen Injections

(a) A physician and surgeon shall give each patient a copy of the standardized written summary, as developed pursuant to subdivision (e), describing collagen injections used in cosmetic, plastic, reconstructive, or similar surgery, before the physician and surgeon performs the surgery. A physician and surgeon may substitute, in place of the standardized written summary for collagen injections, written information authorized for use by the federal Food and Drug Administration prepared by the manufacturer based upon the physician package insert. The furnishing of a copy of the standardized written summary or written information shall constitute compliance with the requirements of this section.

(b) Prior to the performance of surgery, the physician and surgeon shall note on the patient's chart that he or she has given the patient the standardized written summary or written information required by this section.

(c) The failure of a physician and surgeon to comply with this section constitutes unprofessional conduct. The provision of the standardized written summary or written information shall not alter, diminish, or modify existing duties relating to informed consent. However, no physician and surgeon shall be liable as a distributor of a standardized written summary or written information alleged to contain erroneous or incomplete information.

(d) The facility where the surgery is performed shall not be responsible for enforcement of, or verification of, compliance with the requirements of this section.

(e) If the State Department of Health Services determines that the federal Food and Drug Administration has not authorized written information intended for the layperson on collagen injections used in cosmetic, plastic, reconstructive, or similar surgery, the state department shall develop a standardized written summary to inform the patient of the risks and possible side effects of collagen injections as used in cosmetic, plastic, reconstructive, or similar surgery. In developing this summary, the state department shall do all of the following:

(1) Use only language that is simple and readily understood by a layperson.

(2) Include a disclaimer that the state in no way endorses any procedure, nor does the state claim to provide an exhaustive analysis of all the potential benefits or risks associated with any procedure.

(3) Identify the type of animal used to produce the collagen and identify the situations where the federal Food and Drug Administration has given its approval for the procedure.

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(4) Provide only information approved by the federal Food and Drug Administration.

(f) The State Department of Health Services shall update the written summary described in subdivision (e) as determined necessary by the state department to protect the public health and safety.

(g) The Medical Board of California shall publish the standardized written summary prepared pursuant to subdivision (e) and shall distribute copies of the summary, upon request, to physicians and surgeons. The Medical Board of California shall make the summary available for a fee not exceeding, in the aggregate, the actual costs to the State Department of Health Services and the Medical Board of California for developing, updating, publishing, and distributing the summary. A physician and surgeon performing surgical procedures described in subdivision (a) shall purchase the summary from the Medical Board of California for distribution to his or her patients, as required in this section. Any person or entity may purchase the summary if he, she, or it desires. The Medical Board of California shall fund the State Department of Health Services for the actual cost of developing and updating the summary incurred by the State Department of Health Services, through an interagency agreement entered into between the Medical Board of California and the State Department of Health Services.

The Medical Board of California and the State Department of Health Services may distribute the written information described in subdivision (a) if a manufacturer of collagen provides the board and state department with a sufficient number of copies of this information, as determined by the state department.

(h) Section 2314 shall not apply to this section.

(i) For purposes of this section, "collagen" includes, but is not limited to, any substance derived from animal protein, or combined with animal protein, that is implanted into the body for purposes of cosmetic, plastic, reconstructive, or similar surgery. However, "collagen" does not include absorbable gelatin medical devices intended for application to bleeding surfaces as a hemostatic or any other medical device used for purposes other than beautifying, promoting attractiveness, or altering the appearance of any part of the human body.

(j) A physician and surgeon shall not be responsible for complying with this section until the written summary is published pursuant to subdivision (g).

2259.7. Extraction and Postoperative Care Standards

The Medical Board of California shall adopt extraction and postoperative care standards in regard to body liposuction procedures performed by a physician and surgeon outside of a general acute care hospital, as defined in Section 1250 of the Health and Safety Code. In adopting those regulations, the Medical Board of California shall take into account the most current clinical and scientific information available. A violation of those extraction and postoperative care standards constitutes unprofessional conduct.

2260. Informed Consent: Transfer of Sperm or Ova

(a) A physician and surgeon who removes sperm or ova from a patient shall, before the sperm or ova are used for a purpose other than reimplantation in the same patient or implantation in the spouse of the patient, obtain the written consent of the patient as provided in subdivision (b).

(b) The consent required by subdivision (a) shall conform to all of the following requirements:

(1) The consent shall be in writing and shall contain the following statement: I (name of donor) do hereby donate (type and number, if applicable, of sperm or ova), to (name of clinic or other donee) for (specify purpose).

(2) The consent shall contain a statement by the donor that specifies the disposition of any unused donated material.

(3) The consent shall be signed by the patient and by the physician and surgeon who removes the sperm or ova.

(4) The physician and surgeon shall retain the original consent in the medical record of the patient and give a copy of the consent to the patient.

(5) The consent shall contain a notification to the patient that the written consent is an important document that should be retained with other vital records.

(6) If the procedure to remove the sperm or ova is performed in a hospital, the physician and surgeon shall provide a copy of the consent to the hospital.

(c) Nothing in this section shall affect the obligation of a physician and surgeon under current law to obtain the informed consent of a patient before performing a medical procedure on the patient that may significantly affect the patient's reproductive health or ability to conceive, or both.

(d) A violation of this section constitutes unprofessional conduct. Section 2314 shall not apply to this section.

(e) A physician and surgeon who fails, for the second time, to obtain any consent required in subdivision (a) or (b) before transferring sperm or ova from a provider of sperm or ova to a recipient, shall be assessed a civil penalty in an amount not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the individual whose required consent was not obtained. A separate penalty shall be assessed for each individual from whom the consent was not obtained. The penalties in this section shall be available in addition to any other remedies that may be available under other provisions of law.

2261. Making False Statements

Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct.

2262. Alteration of Medical Records

Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct.

In addition to any other disciplinary action, the Division of Medical Quality or the California Board of Podiatric Medicine may impose a civil penalty of five hundred dollars (\$500) for a violation of this section.

2263. Violation of Professional Confidence

The willful, unauthorized violation of professional confidence constitutes unprofessional conduct.

2264. Aiding Unlicensed Practice of Medicine Prohibited

The employing, directly or indirectly, the aiding, or the abetting of any unlicensed person or any suspended, revoked, or unlicensed practitioner to engage in the practice of medicine or any other mode of treating the sick or afflicted which requires a license to practice constitutes unprofessional conduct.

2271. False or Misleading Advertising

Any advertising in violation of Section 17500, relating to false or misleading advertising, constitutes unprofessional conduct.

2272. Advertising Without Use of Name

Any advertising of the practice of medicine in which the licensee fails to use his or her own name or approved fictitious name constitutes unprofessional conduct.

2273. Employment of Runners, Cappers, and Steerers

(a) Except as otherwise allowed by law, the employment of runners, cappers, steerers, or other persons to procure patients constitutes unprofessional conduct.

(b) A licensee shall have his or her license revoked for a period of 10 years upon a second conviction for violating any of the following provisions or upon being convicted of more than one count of violating any of the following provisions in a single case: Section 650 of this code, Section 750 or 1871.4 of the Insurance Code, or Section 549 or 550 of the Penal Code. After the expiration of this 10-year period, an application for license reinstatement may be made pursuant to Section 2307.

2274. Misuse of Titles

(a) The use by any licensee of any certificate, of any letter, letters, word, words, term, or terms either as a prefix, affix, or suffix indicating that he or she is entitled to engage in a medical practice for which he or she is not licensed constitutes unprofessional conduct.

(b) Nothing in this section shall be construed to prohibit a physician and surgeon from using the designations specified in this section if he or she has been issued a retired license under Section 2439.

2285. Practice Under False or Fictitious Name

The use of any fictitious, false, or assumed name, or any name other than his or her own by a licensee either alone, in conjunction with a partnership or group, or as the name of a professional corporation, in any public communication, advertisement, sign, or announcement of his or her practice without a fictitious-name permit obtained pursuant to Section 2415 constitutes unprofessional conduct. This section shall not apply to the following:

(a) Licensees who are employed by a partnership, a group, or a professional corporation that holds a fictitious name permit.

(b) Licensees who contract with, are employed by, or are on the staff of, any clinic licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(c) An outpatient surgery setting granted a certificate of accreditation from an accreditation agency approved by the medical board.

(d) Any medical school approved by the division or a faculty practice plan connected with the medical school.

(Amended by Stats 2003, Ch. 607)

2286. Purchase and Sale of Degrees and Certificates

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It shall constitute unprofessional conduct for any licensee to violate, to attempt to violate, directly or indirectly, to assist in or abet the violation of, or to conspire to violate any provision or term of Article 18 (commencing with Section 2400), of the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), or of any rules and regulations duly adopted under those laws.

2289. Impersonation – Practice of Medicine

The impersonation of another licensed practitioner or permitting or allowing another person to use his or her certificate to engage in the practice of medicine or podiatric medicine constitutes unprofessional conduct.

2400. Corporate Practice of Medicine

Corporations and other artificial legal entities shall have no professional rights, privileges, or powers. However, the Division of Licensing may in its discretion, after such investigation and review of such documentary evidence as it may require, and under regulations adopted by it, grant approval of the employment of licensees on a salary basis by licensed charitable institutions, foundations, or clinics, if no charge for professional services rendered patients is made by any such institution, foundation, or clinic.

2415. Fictitious Name Permits

(a) Any physician and surgeon or any doctor of podiatric medicine, as the case may be, who as a sole proprietor, or in a partnership, group, or professional corporation, desires to practice under any name that would otherwise be a violation of Section 2285 may practice under that name if the proprietor, partnership, group, or corporation obtains and maintains in current status a fictitious-name permit issued by the Division of Licensing, or, in the case of doctors of podiatric medicine, the California Board of Podiatric Medicine, under the provisions of this section.

(b) The division or the board shall issue a fictitious-name permit authorizing the holder thereof to use the name specified in the permit in connection with his, her, or its practice if the division or the board finds to its satisfaction that:

(1) The applicant or applicants or shareholders of the professional corporation hold valid and current licenses as physicians and surgeons or doctors of podiatric medicine, as the case may be.

(2) The professional practice of the applicant or applicants is wholly owned and entirely controlled by the applicant or applicants.

(3) The name under which the applicant or applicants propose to practice is not deceptive, misleading, or confusing.

(c) Each permit shall be accompanied by a notice that shall be displayed in a location readily visible to patients and staff. The notice shall be displayed at each place of business identified in the permit.

(d) This section shall not apply to licensees who contract with, are employed by, or are on the staff of, any clinic licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code or any medical school approved by the division or a faculty practice plan connected with that medical school.

(e) Fictitious-name permits issued under this section shall be subject to Article 19 (commencing with Section 2420) pertaining to renewal of licenses, except the division shall establish procedures for the renewal of fictitious-name permits every two years on an anniversary basis. For the purpose of the conversion of existing permits to this schedule the division may fix prorated renewal fees.

(f) The division or the board may revoke or suspend any permit issued if it finds that the holder or holders of the permit are not in compliance with the provisions of this section or any regulations adopted pursuant to this section. A proceeding to revoke or suspend a fictitious-name permit shall be conducted in accordance with Section 2230.

(g) A fictitious-name permit issued to any licensee in a sole practice is automatically revoked in the event the licensee's certificate to practice medicine or podiatric medicine is revoked.

(h) The division or the board may delegate to the executive director, or to another official of the board, its authority to review and approve applications for fictitious-name permits and to issue those permits.

(i) The California Board of Podiatric Medicine shall administer and enforce this section as to doctors of podiatric medicine and shall adopt and administer regulations specifying appropriate podiatric medical name designations.

(Amended by Stats 2003, Ch. 607)

4022. Dangerous Drug - Dangerous Device Defined

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

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(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

(Amended by Stats 2003, Ch.250)

4023. "Device" Defined

"Device" means any instrument, apparatus, machine, implant, in vitro reagent, or contrivance, including its components, parts, products, or the byproducts of a device, and accessories that are used or intended for either of the following:

(a) Use in the diagnosis, cure, mitigation, treatment, or prevention of disease in a human or any other animal.

(b) To affect the structure or any function of the body of a human or any other animal. For purposes of this chapter, "device" does not include contact lenses, or any prosthetic or orthopedic device that does not require a prescription.

4024. "Dispense" Defined

(a) Except as provided in subdivision (b), "dispense" means the furnishing of drugs or devices upon a prescription from a physician, dentist, optometrist, podiatrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or upon an order to furnish drugs or transmit a prescription from a certified nurse-midwife, nurse practitioner, physician assistant, naturopathic doctor pursuant to Section 3640.5, or pharmacist acting within the scope of his or her practice.

(b) "Dispense" also means and refers to the furnishing of drugs or devices directly to a patient by a physician, dentist, optometrist, podiatrist, or veterinarian, or by a certified nurse-midwife, nurse practitioner, naturopathic doctor, or physician assistant acting within the scope of his or her practice.

4060. Controlled Substance - Prescription Required; Exceptions

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, or a physician assistant to order his or her own stock of dangerous drugs and devices.

(Amended by Stats 2003, Ch. 191)

4061. Distribution of Drug as Sample; Written Request Required

(a) No manufacturer's sales representative shall distribute any dangerous drug or dangerous device as a complimentary sample without the written request of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. However, a certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, a physician assistant who functions pursuant to a protocol described in Section 3502.1, or a naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, may sign for the request and receipt of complimentary samples of a dangerous drug or dangerous device that has been identified in the standardized procedure, protocol, or practice agreement. Standardized procedures, protocols, and practice agreements shall include specific approval by a physician. A review process, consistent with the requirements of Section 2725, 3502.1, or 3640.5, of the complimentary samples requested and received by a nurse practitioner, certified nurse-midwife, physician assistant, or naturopathic doctor, shall be defined within the standardized procedure, protocol, or practice agreement.

(b) Each written request shall contain the names and addresses of the supplier and the requester, the name and quantity of the specific dangerous drug desired, the name of the certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor, if applicable, receiving the samples pursuant to this section, the date of receipt, and the name and quantity of the dangerous drugs or dangerous devices provided. These records shall be preserved by the supplier with the records required by Section 4059.

(c) Nothing in this section is intended to expand the scope of practice of a certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor.

4076. Prescription Container – Requirements for Labeling

(a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

(1) Except where the prescriber or the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure

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described in Section 2836.1, or protocol, the physician assistant who functions pursuant to Section 3502.1, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 orders otherwise, either the manufacturer's trade name of the drug or the generic name and the name of the manufacturer. Commonly used abbreviations may be used. Preparations containing two or more active ingredients may be identified by the manufacturer's trade name or the commonly used name or the principal active ingredients.

(2) The directions for the use of the drug.

(3) The name of the patient or patients.

(4) The name of the prescriber or, if applicable, the name of the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, the physician assistant who functions pursuant to Section 3502.1, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

(5) The date of issue.

(6) The name and address of the pharmacy, and prescription number or other means of identifying the prescription.

(7) The strength of the drug or drugs dispensed.

(8) The quantity of the drug or drugs dispensed.

(9) The expiration date of the effectiveness of the drug dispensed.

(10) The condition for which the drug was prescribed if requested by the patient and the condition is indicated on the prescription.

(11) (A) Commencing January 1, 2006, the physical description of the dispensed medication, including its color, shape, and any identification code that appears on the tablets or capsules, except as follows:

(i) Prescriptions dispensed by a veterinarian.

(ii) An exemption from the requirements of this paragraph shall be granted to a new drug for the first 120 days that the drug is on the market and for the 90 days during which the national reference file has no description on file.

(iii) Dispensed medications for which no physical description exists in any commercially available database.

(B) This paragraph applies to outpatient pharmacies only.

(C) The information required by this paragraph may be printed on an auxiliary label that is affixed to the prescription container.

(D) This paragraph shall not become operative if the board, prior to January 1, 2006, adopts regulations that mandate the same labeling requirements set forth in this paragraph.

(b) If a pharmacist dispenses a prescribed drug by means of a unit dose medication system, as defined by administrative regulation, for a patient in a skilled nursing, intermediate care, or other health care facility, the requirements of this section will be satisfied if the unit dose medication system contains the aforementioned information or the information is otherwise readily available at the time of drug administration.

(c) If a pharmacist dispenses a dangerous drug or device in a facility licensed pursuant to Section 1250 of the Health and Safety Code, it is not necessary to include on individual unit dose containers for a specific patient, the name of the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, the physician assistant who functions pursuant to Section 3502.1, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

(d) If a pharmacist dispenses a prescription drug for use in a facility licensed pursuant to Section 1250 of the Health and Safety Code, it is not necessary to include the information required in paragraph (11) of subdivision (a) when the prescription drug is administered to a patient by a person licensed under the Medical Practice Act (Chapter 5 (commencing with Section 2000)), the Nursing Practice Act (Chapter 6 (commencing with Section 2700)), or the Vocational Nursing Practice Act (Chapter 6.5 (commencing with Section 2840)), who is acting within his or her scope of practice.

17500. False or Misleading Advertising

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any

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person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment and fine.

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1204. Community Clinic

Clinics eligible for licensure pursuant to this chapter are primary care clinics and specialty clinics.

(a) (1) Only the following defined classes of primary care clinics shall be eligible for licensure:

(A) A "community clinic" means a clinic operated by a tax-exempt nonprofit corporation that is supported and maintained in whole or in part by donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods, or services. In a community clinic, any charges to the patient shall be based on the patient's ability to pay, utilizing a sliding fee scale. No corporation other than a nonprofit corporation, exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a community clinic; provided, that the licensee of any community clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a community clinic.

(B) A "free clinic" means a clinic operated by a tax-exempt, nonprofit corporation supported in whole or in part by voluntary donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods, or services. In a free clinic there shall be no charges directly to the patient for services rendered or for drugs, medicines, appliances, or apparatuses furnished. No corporation other than a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a free clinic; provided, that the licensee of any free clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a free clinic.

(2) Nothing in this subdivision shall prohibit a community clinic or a free clinic from providing services to patients whose services are reimbursed by third-party payers, or from entering into managed care contracts for services provided to private or public health plan subscribers, as long as the clinic meets the requirements identified in subparagraphs (A) and (B). For purposes of this subdivision, any payments made to a community clinic by a third-party payer, including, but not limited to, a health care service plan, shall not constitute a charge to the patient. This paragraph is a clarification of existing law.

(b) The following types of specialty clinics shall be eligible for licensure as specialty clinics pursuant to this chapter:

(1) A "surgical clinic" means a clinic that is not part of a hospital and that provides ambulatory surgical care for patients who remain less than 24 hours. A surgical clinic does not include any place or establishment owned or leased and operated as a clinic or office by one or more physicians or dentists in individual or group practice, regardless of the name used publicly to identify the place or establishment, provided, however, that physicians or dentists may, at their option, apply for licensure.

(2) A "chronic dialysis clinic" means a clinic that provides less than 24-hour care for the treatment of patients with end-stage renal disease, including renal dialysis services.

(3) A "rehabilitation clinic" means a clinic that, in addition to providing medical services directly, also provides physical rehabilitation services for patients who remain less than 24 hours. Rehabilitation clinics shall provide at least two of the following rehabilitation services: physical therapy, occupational therapy, social, speech pathology, and audiology services. A rehabilitation clinic does not include the offices of a private physician in individual or group practice.

(4) An "alternative birth center" means a clinic that is not part of a hospital and that provides comprehensive perinatal services and delivery care to pregnant women who remain less than 24 hours at the facility.

1645 Blood Transfusions; Informed Consent Procedures

a) Whenever there is a reasonable possibility, as determined by a physician and surgeon or doctor of podiatric medicine, that a blood transfusion may be necessary as a result of a medical or surgical procedure, the physician and surgeon or doctor of podiatric medicine, by means of a standardized written summary as most recently developed or revised by the State Department of Public Health pursuant to subdivision (e), shall inform, either directly or through a nurse practitioner, certified nurse midwife, or a physician assistant, who is licensed in the state and authorized to order a blood transfusion, the patient of the positive and negative aspects of receiving autologous blood and directed and nondirected homologous blood from volunteers. For purposes of this section, the term "autologous blood" includes, but is not limited to, predonation, intraoperative autologous transfusion, plasmapheresis, and hemodilution.

(b) The person who provided the patient with the standardized written summary pursuant to subdivision (a) shall note on the patient's medical record that the standardized written summary was given to the patient.

(c) Subdivisions (a) and (b) shall not apply when medical contraindications or a life-threatening emergency exists.

(d) When there is no life-threatening emergency and there are no medical contraindications, the physician and surgeon or doctor of podiatric medicine shall allow adequate time prior to the procedure for predonation to occur. Notwithstanding this chapter, if a patient waives allowing adequate time prior to the procedure for predonation to occur,

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a physician and surgeon or doctor of podiatric medicine shall not incur any liability for his or her failure to allow adequate time prior to the procedure for predonation to occur.

(e) The State Department of Public Health shall develop and annually review, and if necessary revise, a standardized written summary which explains the advantages, disadvantages, risks, and descriptions of autologous blood, and directed and nondirected homologous blood from volunteer donors. These blood options shall include, but not be limited to, the blood options described in subdivision (a). The summary shall be written so as to be easily understood by a layperson.

(f) The Medical Board of California shall publish the standardized written summary prepared pursuant to subdivision (e) by the State Department of Public Health and shall distribute copies thereof, upon request, to physicians and surgeons and doctors of podiatric medicine. The Medical Board of California shall make the summary available for a fee not exceeding in the aggregate the actual costs to the State Department of Public Health and the Medical Board of California for developing, updating, publishing and distributing the summary. Physicians and surgeons and doctors of podiatric medicine shall purchase the written summary from the Medical Board of California for, or purchase or otherwise receive the written summary from the Web site of the board or any other entity for, distribution to their patients as specified in subdivision (a). Clinics, health facilities, and blood collection centers may purchase the summary if they desire.

(g) Any entity may reproduce the written summary prepared pursuant to subdivision (e) by the State Department of Public Health and distribute the written summary to physicians and surgeons and doctors of podiatric medicine.

11190. Duty to Keep Records; Controlled Substances

(a) Every practitioner, other than a pharmacist, who prescribes or administers a controlled substance classified in Schedule II shall make a record that, as to the transaction, shows all of the following:

- (1) The name and address of the patient.
- (2) The date.
- (3) The character, including the name and strength, and quantity of controlled substances involved.

(b) The prescriber's record shall show the pathology and purpose for which the controlled substance was administered or prescribed.

(c) (1) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance that is dispensed by a prescriber pursuant to Section 4170 of the Business and Professions Code, the prescriber shall record and maintain the following information:

(A) Full name, address, and the 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 patient.

(B) The prescriber's category of licensure and license number; 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.

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

(D) Quantity of the controlled substance dispensed.

(E) ICD-9 (diagnosis code), if available.

(F) Number of refills ordered.

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

(H) Date of origin of the prescription.

(2) (A) Each prescriber that dispenses controlled substances shall provide the Department of Justice the information required by this subdivision on a weekly basis in a format set by the Department of Justice pursuant to regulation.

(B) The reporting requirement in this section shall not apply to the direct administration of a controlled substance to the body of an ultimate user.

(d) This section shall become operative on January 1, 2005.

(e) The reporting requirement in this section for Schedule IV controlled substances shall not apply to any of the following:

(1) The dispensing of a controlled substance in a quantity limited to an amount adequate to treat the ultimate user involved for 48 hours or less.

(2) The administration or dispensing of a controlled substance in accordance with any other exclusion identified by the United States Health and Human Service Secretary for the National All Schedules Prescription Electronic Reporting Act of 2005.

(f) Notwithstanding paragraph (2) of subdivision (c), the reporting requirement of the information required by this section for a Schedule II or Schedule III controlled substance, in a format set by the Department of Justice pursuant to regulation, shall be on a monthly basis for all of the following:

(1) The dispensing of a controlled substance in a quantity limited to an amount adequate to treat the ultimate user involved for 48 hours or less.

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(2) The administration or dispensing of a controlled substance in accordance with any other exclusion identified by the United States Health and Human Service Secretary for the National All Schedules Prescription Electronic Reporting Act of 2005.

11191. Records Retention

The record shall be preserved for three years. Every person who violates any provision of this section is guilty of a misdemeanor.

11215. Controlled Substances – Addict Treatment

(a) Except as provided in subdivision (b), any narcotic controlled substance employed in treating an addict for addiction shall be administered by:

(1) A physician and surgeon.

(2) A registered nurse acting under the instruction of a physician and surgeon.

(3) A physician assistant licensed pursuant to Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code acting under the patient-specific authority of his or her physician and surgeon supervisor approved pursuant to Section 3515 of the Business and Professions Code.

(b) When acting under the direction of a physician and surgeon, the following persons may administer a narcotic controlled substance orally in the treatment of an addict for addiction to a controlled substance:

(1) A psychiatric technician licensed pursuant to Chapter 10 (commencing with Section 4500) of Division 2 of the Business and Professions Code.

(2) A vocational nurse licensed pursuant to Chapter 6.5 (commencing with Section 2840) of Division 2 of the Business and Professions Code.

(3) A pharmacist licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code.

(c) Except as permitted in this section, no person shall order, permit, or direct any other person to administer a narcotic controlled substance to a person being treated for addiction to a controlled substance.

11362.5. Compassionate Act of 1996

(a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b) (1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a **physician** who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

(e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

11362.7. Definitions

For purposes of this article, the following definitions shall apply:

(a) **"Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.**

(b) "Department" means the State Department of Health Services.

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(c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

(g) "Identification card" means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(h) "Serious medical condition" means all of the following medical conditions:

(1) Acquired immune deficiency syndrome (AIDS).

(2) Anorexia.

(3) Arthritis.

(4) Cachexia.

(5) Cancer.

(6) Chronic pain.

(7) Glaucoma.

(8) Migraine.

(9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.

(10) Seizures, including, but not limited to, seizures associated with epilepsy.

(11) Severe nausea.

(12) Any other chronic or persistent medical symptom that either:

(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).

(B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(i) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

102795. Duty of Registering Death: Death Certificate

The medical and health section data and the time of death shall be completed and attested to by the physician and surgeon last in attendance, or in the case of a patient in a skilled nursing or intermediate care facility at the time of death, by the physician and surgeon last in attendance or by a licensed physician assistant under the supervision of the physician and surgeon last in attendance if the physician and surgeon or licensed physician assistant is legally authorized to certify and attest to these facts, and if the physician assistant has visited the patient within 72 hours of the patient's death. In the event the licensed physician assistant certifies the medical and health section data and the time of death, then the physician assistant shall also provide on the document the name of the last attending physician and surgeon and provide the coroner with a copy of the certificate of death. However, the medical health section data and the time of death shall be completed and attested to by the coroner in those cases in which he or she is required to complete the medical and health section data and certify and attest to these facts.

102800. Duty of Registering Death: Death Certificate Time Limits

The medical and health section data and the physician's or coroner's certification shall be completed by the attending physician within 15 hours after the death, or by the coroner within three days after examination of the body.

The physician shall within 15 hours after the death deposit the certificate at the place of death, or deliver it to the attending funeral director at his or her place of business or at the office of the physician.

Article 2.5 Reproductive Privacy Act

123460. Short Title

This article shall be known and may be cited as the Reproductive Privacy Act.

123462. Legislative Findings and Declarations

The Legislature finds and declares that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions. Accordingly, it is the public policy of the State of California that:

- (a) Every individual has the fundamental right to choose or refuse birth control.
- (b) Every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article.
- (c) The state shall not deny or interfere with a woman's fundamental right to choose to bear a child or to choose to obtain an abortion, except as specifically permitted by this article.

123464. Definitions

The following definitions shall apply for purposes of this chapter:

- (a) "Abortion" means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.
- (b) "Pregnancy" means the human reproductive process, beginning with the implantation of an embryo.
- (c) "State" means the State of California, and every county, city, town and municipal corporation, and quasi-municipal corporation in the state.
- (d) "Viability" means the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus' sustained survival outside the uterus without the application of extraordinary medical measures.

123466. Denial or Interference With a Woman's Right

The state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to protect the life or health of the woman.

123468. Unauthorized Abortions; Determination

The performance of an abortion is unauthorized if either of the following is true:

- (a) The person performing or assisting in performing the abortion is not a health care provider authorized to perform or assist in performing an abortion pursuant to Section 2253 of the Business and Professions Code.
- (b) The abortion is performed on a viable fetus, and both of the following are established:
 - (1) In the good faith medical judgment of the physician, the fetus was viable.
 - (2) In the good faith medical judgment of the physician, continuation of the pregnancy posed no risk to life or health of the pregnant woman.

Excerpts From the California Labor Code

3209.10. Worker's Compensation

(a) Medical treatment of a work-related injury required to cure or relieve the effects of the injury may be provided by a state licensed physician assistant or nurse practitioner, acting under the review or supervision of a physician and surgeon pursuant to standardized procedures or protocols within their lawfully authorized scope of practice. The reviewing or supervising physician and surgeon of the physician assistant or nurse practitioner shall be deemed to be the treating physician. For the purposes of this section, "medical treatment" includes the authority of the nurse practitioner or physician assistant to authorize the patient to receive time off from work for a period not to exceed three calendar days if that authority is included in a standardized procedure or protocol approved by the supervising physician. The nurse practitioner or physician assistant may cosign the Doctor's First Report of Occupational Injury or Illness. The treating physician shall make any determination of temporary disability and shall sign the report.

(b) The provision of subdivision (a) that requires the cosignature of the treating physician applies to this section only and it is not the intent of the Legislature that the requirement apply to any other section of law or to any other statute or regulation. Nothing in this section implies that a nurse practitioner or physician assistant is a physician as defined in Section 3209.3.

Excerpts From the California Penal Code

11160. Injuries by Firearms; Assaultive or Abusive Conduct

(a) Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, provides medical services for a physical condition to a patient whom he or she knows or reasonably suspects is a person described as follows, shall immediately make a report in accordance with subdivision (b):

(1) Any person suffering from any wound or other physical injury inflicted by his or her own act or inflicted by another where the injury is by means of a firearm.

(2) Any person suffering from any wound or other physical injury inflicted upon the person where the injury is the result of assaultive or abusive conduct.

(b) Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department shall make a report regarding persons described in subdivision (a) to a local law enforcement agency as follows:

(1) A report by telephone shall be made immediately or as soon as practically possible.

(2) A written report shall be prepared on the standard form developed in compliance with paragraph (4) of this subdivision, and Section 11160.2, and adopted by the agency or agencies designated by the Director of Finance pursuant to Section 13820, or on a form developed and adopted by another state agency that otherwise fulfills the requirements of the standard form. The completed form shall be sent to a local law enforcement agency within two working days of receiving the information regarding the person.

(3) A local law enforcement agency shall be notified and a written report shall be prepared and sent pursuant to paragraphs (1) and (2) even if the person who suffered the wound, other injury, or assaultive or abusive conduct has expired, regardless of whether or not the wound, other injury, or assaultive or abusive conduct was a factor contributing to the death, and even if the evidence of the conduct of the perpetrator of the wound, other injury, or assaultive or abusive conduct was discovered during an autopsy.

(4) The report shall include, but shall not be limited to, the following:

(A) The name of the injured person, if known.

(B) The injured person's whereabouts.

(C) The character and extent of the person's injuries.

(D) The identity of any person the injured person alleges inflicted the wound, other injury, or assaultive or abusive conduct upon the injured person.

(c) For the purposes of this section, "injury" shall not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restricted dangerous drug.

(d) For the purposes of this section, "assaultive or abusive conduct" shall include any of the following offenses:

(1) Murder, in violation of Section 187.

(2) Manslaughter, in violation of Section 192 or 192.5.

(3) Mayhem, in violation of Section 203.

(4) Aggravated mayhem, in violation of Section 205.

(5) Torture, in violation of Section 206.

(6) Assault with intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220.

(7) Administering controlled substances or anesthetic to aid in commission of a felony, in violation of Section 222.

(8) Battery, in violation of Section 242.

(9) Sexual battery, in violation of Section 243.4.

(10) Incest, in violation of Section 285.

(11) Throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or disfigure, in violation of Section 244.

(12) Assault with a stun gun or taser, in violation of Section 244.5.

(13) Assault with a deadly weapon, firearm, assault weapon, or machinegun, or by means likely to produce great bodily injury, in violation of Section 245.

(14) Rape, in violation of Section 261.

(15) Spousal rape, in violation of Section 262.

(16) Procuring any female to have sex with another man, in violation of Section 266, 266a, 266b, or 266c.

(17) Child abuse or endangerment, in violation of Section 273a or 273d.

(18) Abuse of spouse or cohabitant, in violation of Section 273.5.

(19) Sodomy, in violation of Section 286.

(20) Lewd and lascivious acts with a child, in violation of Section 288.

(21) Oral copulation, in violation of Section 288a.

(22) Sexual penetration, in violation of Section 289.

(23) Elder abuse, in violation of Section 368.

(24) An attempt to commit any crime specified in paragraphs (1) to (23), inclusive.

(e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of violence that is required to be reported pursuant to this section, and when there is an agreement among these persons to report as a team, the team may select by mutual agreement a member of the team to make a report by telephone and a single written report, as required by subdivision (b). The written report shall be signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(f) The reporting duties under this section are individual, except as provided in subdivision (e).

(g) No supervisor or administrator shall impede or inhibit the reporting duties required under this section and no person making a report pursuant to this section shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established, except that these procedures shall not be inconsistent with this article. The internal procedures shall not require any employee required to make a report under this article to disclose his or her identity to the employer.

(h) For the purposes of this section, it is the Legislature's intent to avoid duplication of information.

11161.5. Medical Crimes: Investigation and Prosecution

(a) It is the intent of the Legislature that on or before January 1, 2006, the California District Attorneys Association, in conjunction with interested parties, including, but not limited to, the Department of Justice, the California Narcotic Officers' Association, the California Police Chiefs' Association, the California State Sheriffs' Association, the California Medical Association, 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, the California Medical Board, the California Orthopedic Association, and other medical and patient advocacy entities specializing in pain control therapies, shall develop protocols for the development and implementation of interagency investigations in connection with a physician's prescription of medication to patients. The protocols are intended to assure the competent review of, and that relevant investigation procedures are followed for, the suspected undertreatment, undermedication, overtreatment, and overmedication of pain cases. Consideration shall be made for the special circumstances of urban and rural communities. The investigation protocol shall be designed to facilitate communication between the medical and law enforcement communities and the timely return of medical records pertaining to the identity, diagnosis, prognosis, or treatment of any patient that are seized by law enforcement from a physician who is suspected of engaging in or having engaged in criminal activity related to the documents.

(b) The costs incurred by the California District Attorneys Association in implementing this section shall be solicited and funded from nongovernmental entities.

(Added by Stats 2004, Ch. 864)

11166. Persons Authorized or Required to Report Child Abuse-Method of Reporting

(a) Except as provided in subdivision (d), a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send, fax, or electronically transmit a written followup report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent, faxed, or electronically transmitted even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) Any report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) If after reasonable efforts a mandated reporter is unable to submit an initial report by telephone, he or she shall immediately or as soon as is practicably possible, by fax or electronic transmission, make a one-time automated written report on the form prescribed by the Department of Justice, and shall also be available to respond to a telephone followup call by the agency with which he or she filed the report. A mandated reporter who files a one-time

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automated written report because he or she was unable to submit an initial report by telephone is not required to submit a written followup report.

(1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written followup report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.

(2) This subdivision shall not become operative until the CWS/CMS is updated to capture the information prescribed in this subdivision.

(3) This subdivision shall become inoperative three years after this subdivision becomes operative or on January 1, 2009, whichever ever occurs first.

(4) On the inoperative date of these provisions, a report shall be submitted to the counties and the Legislature by the Department of Social Services that reflects the data collected from automated one-time reports indicating the reasons stated as to why the automated one-time report was filed in lieu of the initial telephone report.

(5) Nothing in this section shall supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

(c) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(d) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(e) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practicably possible, by telephone and shall prepare and send, fax, or electronically transmit a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadoomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.

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(f) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).

(g) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9.

(h) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(i) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(j) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(k) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

12517.2. Vehicles: School Bus Drivers: Medical Report; Physical Examination

(a) Applicants for an original or renewal certificate to drive a schoolbus, school pupil activity bus, youth bus, general public paratransit vehicle, or farm labor vehicle shall submit a report of a medical examination of the applicant given not more than two years prior to the date of the application by a physician licensed to practice medicine. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration.

(b) Schoolbus drivers, within the same month of reaching the age of 65 and each 12th month thereafter, shall undergo a physical examination, pursuant to Section 12804.9, and submit a report of medical examination on a form as specified in subdivision (a).

14132.966. Services Provided by Physician Assistants

(a) Services provided by a physician assistant are a covered benefit under this chapter to the extent authorized by federal law and subject to utilization controls.

(b) Subject to subdivision (a), all services performed by a physician assistant within his or her scope of practice that would be a covered benefit if performed by a physician and surgeon shall be a covered benefit under this chapter.

(c) The department shall not impose chart review, countersignature, or other conditions of coverage or payment on a physician and surgeon supervising physician assistants that are more stringent than requirements imposed by Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code or regulations of the Medical Board of California promulgated under that chapter.