Board of Chiropractic Examiners

Teleconference
Government Affairs & Strategic Planning Committee

April 7, 2016

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

NOTICE OF PUBLIC MEETING

TELECONFERENCE - GOVERNMENT AFFAIRS & STRATEGIC PLANNING COMMITTEE

April 7, 2016, 10:00 a.m.

One or more Committee Members will participate in this meeting at the teleconference sites listed below. Each teleconference location is accessible to the public and the public will be given an opportunity to address the Government Affairs and Strategic Planning Committee at each teleconference location. The public teleconference sites for this meeting are as follows:

Teleconference Meeting Locations:
901 P Street, Suite 142A
Sacramento, CA 95814
(Board Staff)

Julie Elginer, DrPH
Agoura Hills Library
29901 Ladyface Circle
Agoura Hills, CA 91301
(818) 889-2278

John Roza, D.C.
800 Douglas Blvd
Roseville, CA 95678
(916) 786-2267

Frank Ruffino
Department of Veterans Affairs
700 East Naples Court
Chula Vista, CA 91911
(619) 205-1415

AGENDA

1. **Call to Order**

2. **Approval of Minutes**
   a. March 10, 2016

3. **Update and Possible Action Regarding Legislation**
   a. AB 1992 (Jones) Pupil health: physical examinations
   b. AB 2407 (Chavez) Workers' Compensation
   c. AB 2744 (Gordon) Healing arts: referrals
   d. SB 1033 (Hill) Medical Board: disclosure of probationary status.
   e. SB 1155 (Morrell) Professions and vocations: licenses: military service
   f. SB 1217 (Stone) Healing arts: reporting requirements
   g. SB 1348 (Cannella) Licensure applications: military experience.

4. **Discussion of Dates for Future Committee Meetings**

5. **Public Comment For Items Not On The Agenda**
   Note: The Committee may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125, 11125.7(a).] Public comment is encouraged; however, if time constraints mandate, comments may be limited at the discretion of the Chair.

6. Future Agenda Items

7. Adjournment

GOVERNMENT AFFAIRS COMMITTEE
Julie Elginer, Dr. PH, Chair
John Roza, D.C.
Frank Ruffino, Public Member

The Board of Chiropractic Examiners' paramount responsibility is to protect the health, welfare, and safety of the public through licensure, education, and enforcement in chiropractic care.

Committee Meetings of the Board of Chiropractic Examiners are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda Items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Valerie James at (916) 263-5355 ext. 5362 or e-mail valerie.james@dca.ca.gov or send a written request to the Board of Chiropractic Examiners, 901 P Street, Ste. 142A Sacramento, CA 95814. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

Board of Chiropractic Examiners
TELECONFERENCE MEETING MINUTES
Government Affairs Committee
March 10, 2016

Teleconference Meeting Locations

Julie Elginer, DrPH
Board of Chiropractic Examiners
901 P Street, Suite 142A
Sacramento, CA 95814

Dionne McClain, D.C.
McClain Sports & Wellness Inc.
6360 Wilshire Blvd. #410
Los Angeles, CA 90048

Mr. Frank Ruffino
Department of Veterans Affairs
700 East Naples Court
Chula Vista, CA 91911

Committee Members Present
Julie Elginer, DrPH, Chair
Dionne McClain, D.C.
Frank Ruffino

Staff Present
Robert Puleo, Executive Officer
Linda Shaw, Assistant Executive Officer
Marcus McCarther, Policy Analyst
Valerie James, Management Services Technician

Call to Order
Dr. Elginer called the meeting to order at 10:01 a.m.

Roll Call
Dr. McClain called the roll. All Board members were present at the locations listed on the Agenda.

Approval of Minutes

MOTION: MR. RUFFINO MOVED TO APPROVE THE MINUTES.
SECOND: DR. MCCLAIN SECONDED THE MOTION
VOTE: (3-0) (DR. MCCLAIN – AYE, MR. RUFFINO – AYE, DR. ELGINER - AYE)
MOTION CARRIED (3 – 0)

Legislative Update

SB 1033 (Hill) Medical Board: disclosure of probationary status.

Mr. Puleo provided the committee with a summary of SB 1033.

Dr. Elginer explained that the Board is hugely supportive of the bill and has discussed this at previous meetings. Dr. Elginer asked if staff knew what positions other Boards intend to take on the bill.

Mr. Puleo shared that the California Medical Board (MBC) and California Medical Association have expressed concern with the concept of patient notification as it has been articulated in this bill. Mr. Puleo would not be surprised if the included Boards had similar concerns; however; the Boards have not been able to meet and take a position on this bill. Mr. Puleo expressed that he would reach out to the Executive Officers of the included healing arts boards to get a sense of positions the Boards may take.

Dr. Elginer: The bill would need to be amended because the BCE is not on BreeZe.

Mr. Puleo explained that the language referring to BreeZe was specific to the Medical Board and that staff would wait until after the bill was amended before requesting amendments.

Dr. Elginer discussed the data included on the bill analysis and suggested staff that pulls the same data to provide to the author's office for inclusion in any future fact sheet.

Dr. Elginer inquired about the potential impact the bill's implementation would have on staff processes.

Mr. Puleo responded that staff would need to amend the regulations related to discipline and probation. Staff would also reach out to legal counsel to determine if any additional sections were needed to accommodate the language contained in the bill. Most importantly, the bill is detailed regarding what the BCE and licensee would be required to do. Mr. Puleo explained that the bill language would probably be included verbatim into the regulation package, assuming the Board supports the bill. Also, the bill would create a legislative mandate that would make the regulatory process simple, requiring less justification of why the regulation was needed.

After reading line 11-15 of the SB 1033 bill text, Dr. Elginer asked Mr. Puleo if the BCE had the same "high risk" and "low risk" categories.

Mr. Puleo responded that the Board would only be subject to these provisions if it were added to these sections. Mr. Puleo shared that these determinations could be made after the author publishes the amendments to the bill. At that point, staff and legal counsel could determine whether a separate section was added to include the BCE or if amendments were needed.

Dr. Elginer referred to page 11 of the bill, sections 23-24. Dr. Elginer asked about the probation option to authorize community service as an alternative to probation. Dr. Elginer shared that

she had not seen and could not think of a case where in lieu of a set of sanctions for probation, a licensee could complete community service.

Mr. Puleo responded that there have been times where the Board has included as part of a stipulated settlement, a requirement that a licensee complete a prescribed number of community service hours as a part of his/her probation. Mr. Puleo further explained that the community service item is an optional probation condition and it would not be in lieu of other conditions but in addition to other prescribed terms.

Dr. McClain asked whether the Medical Board's main opposition to the bill had been addressed. Dr. McClain explained that it was her understanding that the MBC's main issue was disclosure to each patient as they come in.

Mr. Puleo responded that the issue has not been resolved. Further, the language still requires disclosure to every patient on every visit. Mr. Puleo shared that the MBC and CMA's concern is that it takes away from patient care. Also, time spent discussing probation and answering questions could take five or ten minutes of the fifteen minutes spent with the patient. Finally, Mr. Puleo explained that MBC has not met to discuss this.

Dr. Elginer discussed the new proposed language, line 28-29. Dr. Elginer explained that none of the language discussed ethical issues and wondered about fraud as a reason to be on probation. Dr. Elginer suggested that the list was not fully representative of why someone would be on probation.

Mr. Puleo explained that once the Board has been included in the bill, staff could address issues such as fraud with the author's office. Also, he explained, Legislative Counsel could be reaching out to DCA's Legal Office to answer some of these questions.

Motion: Mr. Ruffino moved to support SB 1033.
Second: Dr. Elginer seconded the motion.
Vote: (Aye: Dr. Elginer, Dr. McClain, Mr. Ruffino)
Motion Passes (3 – 0)

SB 1155 (Morrell) Professions and vocations: licenses: military service

Mr. Puleo provided the Committee with a summary of SB 1155.

Mr. Puleo shared that staff recommend a neutral position on the bill. Mr. Puleo is concerned that the bill requires existing licensees to subsidize the fee waiver but explained that the Board is definitely in favor of doing everything possible to assist honorably discharged military service members transition to the workforce and remove any barriers to entering the profession. However, Mr. Puleo explains, the Board is supported one-hundred percent by licensee fees and waiving fees on some would raise fees on all existing licensees. Further, the BCE does not have a large amount of former military applying for licensure and the amount waived would be about two-hundred dollars per applicant. Mr. Puleo shared that this is an insignificant amount of money but there may come a time where the BCE is required to waive fees or provide additional services to a specific group and the whole license population would have to pay for it.

Mr. Puleo expressed that in the future, the Legislature could serve all involved by including general fund dollars to cover these expenses.

Dr. Elginer referred to the SB 1155 bill analysis, bullet point four, asking if the requirement to ask every individual applicant whether they have served in the military or is currently serving in the military has any impact on the current application regulation pending at the Office of Administrative Law.

Mr. Puleo responded that the military service question had been amended into the application and that the Board is capturing this information.

Dr. Elginer shared that the bill language requires the establishment and maintenance of a fee waiver program. Dr. Elginer believes that language requires funds to be provided.

Mr. Puleo responded that without a specific appropriation, this is considered an unfunded mandate. The Legislature assumes that the program will absorb any additional cost and if it or the department were unable to absorb the cost, an additional appropriation would be requested.

Motion: Dr. Elginer moved to take a neutral position on SB 1155.
Second: Dr. McClain seconded the motion.
Vote: (Aye: Dr. Elginer, Dr. McClain, Mr. Ruffino)
Motion Passes (3 – 0)

SB 1217 (Stone) Healing arts: reporting requirements: professional liability resulting in death or personal injury

Mr. Puleo provided a summary of SB 1217.

Mr. Puleo shared that staff recommends a neutral position because raising the reporting requirement to ten thousand dollars could have no material impact on consumer protection. He explained that it could be more cost effective for a licensee and his/her attorney to settle a claim of less than ten thousand dollars than to go through litigation. Further, Mr. Puleo explained that many times the insurance company makes the decision of whether or not to settle a claim, leaving the doctor without an opportunity to defend him or herself.

Mr. Puleo also shared that there are times where there may be a judgment or settlement alleging patient harm and that the BCE should have an opportunity to review a report and determine whether a violation occurred. This is a policy call for the Board to make.

Dr. Elginer asked if anyone knew why the reporting threshold was set at ten thousand dollars.

Mr. Puleo responded that at the time the author's office was unable to provide information regarding the bill and that that information would be contained in the fact sheet.

Dr. Elginer asked if any consideration was given to taking a watch versus a neutral position on the bill.

Mr. Puleo responded that this is a decision for the Board. Members may need to have a discussion regarding their experiences with insurance companies settling cases or cases where someone makes a claim that was taken over by an insurance company. The Board will need to decide whether it believes that these cases can rise to a level that the Board needs to know. Mr. Puleo suggested consideration be given to cases where a disgruntled patient files a claim and settles, patient not satisfied, could happen repeatedly, rather than report, people paid off, repeat offender, the board doesn't know about.

Dr. Elginer explained that currently, without additional information from the author, the BCE is not in a position to take a position on this bill. However, Dr. Elginer agreed with Mr. Puleo that there may be cases of serial offenders, where the Board would need to be a part of the review process.

Dr. Elginer suggested the Committee takes a neutral position on the bill. Also, she requested that staff follow-up and discusses this bill at the following full Board meeting.

Motion: Dr. Elginer moved to take a neutral position on SB 1217.
Second: Mr. Ruffino seconded the motion.
Vote: (Aye: Dr. Elginer, Dr. McClain, Mr. Ruffino)
Motion Passes (3 – 0)

SB 1348 (Cannella) Licensure applications: military experience.

Mr. Puleo provides the Committee with a summary of SB 1348.

Mr. Puleo explained that the current bill, as introduced, does not apply to the BCE. The Board does not currently allow veterans to apply service credit toward licensure. This idea has been discussed in the past with a determination being made that a post-graduate degree is required before an applicant is eligible for licensure. Mr. Puleo expressed that any experience gained in the military would have been vetted during the application process for Chiropractic College. Currently, the Board is unaware of any military programs that are relevant to the practice of chiropractic.

Dr. Elginer suggested the bill language was similar to a prior bill on which the Board took an oppose unless amended position. Dr. Elginer suggested the Committee take a watch position.

Motion: Dr. Elginer moved to take a watch position on SB 1348.
Second: Dr. McClain seconded the motion.
Vote: (Aye: Dr. Elginer, Dr. McClain, Mr. Ruffino)
Motion Passes (3 – 0)

Discussion of Dates for Future Committee Meetings

Mr. Ruffino suggests April 7th or April 5th for the upcoming Committee meeting.

Public Comment For Items Not On The Agenda

There was no public comment on this agenda item.

Future Agenda Items

There were no future agenda items discussed.

Adjournment

Dr. Elginer adjourned the meeting at 10:51 am.

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

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Agenda Item 3
April 7, 2016

Legislative Update

Purpose of the item

This agenda item has been included to provide the Committee with an update on the bills staff is tracking during the current two-year legislative session. If necessary, the Committee will take a position on the bills discussed.

Action(s) requested

The Committee will be asked to review and discuss the bills provided below. If necessary, the Committee will have an opportunity to take a position on any new or previously discussed bill.

Background

Board staff is currently tracking multiple bills pertaining to disclosure of probationary status, agency reporting requirements, military licensure, and workers compensation.

Bills staff is tracking

Support

Bill	Author	Title	Status	Position
AB 1992	Jones	Pupil health: physical examinations	Ref. to B&P.	Support
AB 2407	Chavez	Workers' compensation	Ref. to Comm. on Insurance.	Support
SB 1033	Hill	Medical Board: disclosure of probationary status	Ref. to B&P. Hearing set for Apr. 11.	Support

Neutral

Bill	Author	Title	Status	Position
SB 1155	Morrell	Professions and vocations: licenses: military service.	Ref. to Coms. on B., P. & E.D. and V.A. Hearing set for Apr.4.	Comm: Neutral
SB 1217	Stone	Healing arts: reporting requirements: professional liability resulting in death or personal injury	Ref. to B&P & ED. Hearing set for Apr. 11.	Comm: Neutral

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Watch

Bill	Author	Title	Status	Position
SB 1348	Cannella	Licensure applications: military experience	Ref. to B&P & ED. Hearing set for Apr. 11.	Comm: Watch

Unreviewed Bill

Bill	Author	Title	Status	Position
AB 2744	Gordon	Healing arts: referrals	Ref. to B&P.	No position

Summary of Bills

Bill	Author	Summary	Amended
AB 1992	Jones	This bill would add chiropractors, naturopathic doctors, and nurse practitioners to the list of health care professionals authorized to perform a physical examination as a condition of participation in an interscholastic athletic program.	
AB 2407	Chavez	This bill would require medical providers treating injured workers with back injuries to assess the employee's level of risk for chronic back pain and determine if the criteria is met for a surgical consultation. This bill would specify that treatments that may be deemed appropriate after the assessment, including chiropractic manipulation.	
AB 2744	Gordon	This bill would provide that payment or receipt of consideration for advertising, in which a licensee offers or sells prepaid services, is not referral of patients.	
SB 1033	Hill	This bill would require the Medical Board of California (Board) through regulation to require a licensee on probation, for specific serious offenses, to disclose his or her probationary status to patients before each visit throughout the duration of probation. The bill would also require the Board to place each licensee's probation summary on various public documents and the Board's webpages.	3/17/16
SB 1155	Morrell	The bill would require every Board within DCA, to grant a fee waiver for the application for and issuance of an initial license to an individual who has been honorably discharged from the United States Armed Forces.	3/28/16
SB 1217	Stone	This bill would increase the reporting requirements from three thousand ($3,000) dollars to ten thousand dollars ($10,000) for any judgement or settlement requiring payment of damages for death or personal injury caused by a licensee's negligence, error, or omission in practice. The bill would also require Board files on individual licensees to include reported judgements or settlements with damages over $10,000.	
SB 1348	Cannella	This bill would require DCA licensing Board's that currently allow veterans to apply military experience and training toward licensing requirements, to modify their application to advise veterans about their ability to apply that military experience and training towards their licensure requirements.	

Recommendation(s)

Any staff recommendations regarding Committee action are included on each individual bill's analysis.

Next Step

Bills will be discussed at the next Board meeting.

Attachment(s)

SB 1033 (Hill) Medical Board: disclosure of probationary status
AB 2744 (Gordon) Healing arts: referrals

Recommendation(s)

Any staff recommendations regarding Committee action are included on each individual bill's analysis.

Next Step

Bills will be discussed at the next Board meeting.

Attachment(s)

SB 1033 (Hill) Medical Board: disclosure of probationary status
AB 2744 (Gordon) Healing arts: referrals

Board of Chiropractic Examiners
Bill Analysis

Bill Number: AB 2744
Author: Senator Richard Gordon
Bill Version: Introduced February 19, 2016
Subject: Healing arts: referrals
Sponsor: TBD
Status of Bill: Referred to the Senate Committee on B&P

Summary:

This bill would provide that payment or receipt of consideration for advertising, in which a licensee offers or sells prepaid services, is not referral of patients.

Existing Law:

- Provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs (DCA).
- Establishes that it is unlawful for licensed healing arts practitioners, except as specified, to offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person.
- Makes a violation of this provision a public offense punishable upon a first conviction by imprisonment, as specified, or a fine not exceeding $50,000, or by imprisonment and that fine.

This Bill Would:

- Provide that the payment or receipt of consideration for advertising, wherein a licensed healing arts practitioner offers or sells prepaid services, does not constitute a referral of services.
- Require the licensee to provide the purchaser with a full refund, if after consultation with the purchaser, the licensee determines that the pre-paid service is not appropriate for the purchaser.

Background:

After much discussion regarding whether or not licensed health care professionals using voucher or coupon based advertising (Groupon, Living Social, etc.) constituted a violation of Business and Professions Code Section 650, DCA disseminated Legal Opinion 12-06 (December 10, 2012), concluding that the use of coupon or voucher based advertising by a healing arts licensee automatically constituted a violation of section 650. The opinion was premised on the

way advertisers such as Groupon or Living Social conducted their voucher based advertising programs.

However, on September 13, 2016, DCA rescinded the previous opinion, thereby requiring healing arts boards to conduct their own individualized, case-by-case analysis to determine whether a coupon on voucher-based advertisement violated of BPC Section 650.

Since the September 2013 opinion, the BCE has taken a case-by-case approach to determine if violations of BPC Section 650 have occurred. Because the law is vague, it is very problematic for the board to make this determination. Investigating each advertisement and forwarding the evidence to the Attorney General (AG), to review is both time consuming and costly, especially since neither the AG nor the DCA has issued a legal opinion to guide the Board on making this determination.

Fiscal Impact:

BCE does not anticipate any fiscal impact to the fund due to this legislation. The legislation does not impact operations and any additional workload caused would be minor and absorbable.

Support & Opposition:

Support:

No support on file.

Opposition:

No opposition on file.

Arguments:

Pro:

- This bill makes explicit that providing payment for advertising the sale of pre-paid services from a health care practitioner is not considered a referral.
- Clarifying the law increases opportunities for licensees to reach more potential patients through cost-effective advertising with internet marketing companies.
- Lowering the cost of services, increases access to various health care services, including chiropractic.

Con:

- None

Committee's Recommended Position: **NEUTRAL**

The bill clarifies existing law that was being interpreted as prohibiting advertising via internet based marketing services such as Groupon and Living Social.

ASSEMBLY BILL No. 2744

Introduced by Assembly Member Gordon
(Coauthor: Senator Hill)

February 19, 2016

An act to amend Section 650 of the Business and Professions Code, relating to the healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2744, as introduced, Gordon. Healing arts: referrals.

Existing law provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs. Under existing law, it is unlawful for licensed healing arts practitioners, except as specified, to offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person. Existing law makes a violation of this provision a public offense punishable upon a first conviction by imprisonment, as specified, or a fine not exceeding $50,000, or by imprisonment and that fine.

This bill would provide that the payment or receipt of consideration for advertising, wherein a licensed healing arts practitioner offers or sells prepaid services, does not constitute a referral of services.

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

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

1 SECTION 1. Section 650 of the Business and Professions Code
2 is amended to read:
3 650. (a) Except as provided in Chapter 2.3 (commencing with
4 Section 1400) of Division 2 of the Health and Safety Code, the
5 offer, delivery, receipt, or acceptance by any person licensed under
6 this division or the Chiropractic Initiative Act of any rebate, refund,
7 commission, preference, patronage dividend, discount, or other
8 consideration, whether in the form of money or otherwise, as
9 compensation or inducement for referring patients, clients, or
10 customers to any person, irrespective of any membership,
11 proprietary interest, or coownership in or with any person to whom
12 these patients, clients, or customers are referred is unlawful.
13 (b) The payment or receipt of consideration for services other
14 than the referral of patients which is based on a percentage of gross
15 revenue or similar type of contractual arrangement shall not be
16 unlawful if the consideration is commensurate with the value of
17 the services furnished or with the fair rental value of any premises
18 or equipment leased or provided by the recipient to the payer.
19 (c) The offer, delivery, receipt, or acceptance of any
20 consideration between a federally qualified health center, as defined
21 in Section 1396d(*l*)(2)(B) of Title 42 of the United States Code,
22 and any individual or entity providing goods, items, services,
23 donations, loans, or a combination thereof to the health center
24 entity pursuant to a contract, lease, grant, loan, or other agreement,
25 if that agreement contributes to the ability of the health center
26 entity to maintain or increase the availability, or enhance the
27 quality, of services provided to a medically underserved population
28 served by the health center, shall be permitted only to the extent
29 sanctioned or permitted by federal law.
30 (d) Except as provided in Chapter 2.3 (commencing with Section
31 1400) of Division 2 of the Health and Safety Code and in Sections
32 654.1 and 654.2 of this code, it shall not be unlawful for any person
33 licensed under this division to refer a person to any laboratory,
34 pharmacy, clinic (including entities exempt from licensure pursuant
35 to Section 1206 of the Health and Safety Code), or health care
36 facility solely because the licensee has a proprietary interest or
37 coownership in the laboratory, pharmacy, clinic, or health care
38 facility, provided, however, that the licensee's return on investment

for that proprietary interest or coownership shall be based upon the amount of the capital investment or proportional ownership of the licensee which ownership interest is not based on the number or value of any patients referred. Any referral excepted under this section shall be unlawful if the prosecutor proves that there was no valid medical need for the referral.

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

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

(g) The payment or receipt of consideration for advertising, wherein a licensee offers or sells prepaid services, shall not constitute a referral of patients. To the extent the licensee determines, after consultation with the purchaser of the prepaid service, that a prepaid service is not appropriate for the purchaser, the licensee shall provide the purchaser a refund of the full purchase price.

~~(g)~~

(h) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, 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 pursuant to subdivision (h) of Section 1170 of the Penal Code, or by that imprisonment and a fine of fifty thousand dollars ($50,000).

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AMENDED IN SENATE MARCH 17, 2016

SENATE BILL **No. 1033**

Introduced by Senator Hill

February 12, 2016

An act to amend Sections 803.1, 2027, ~~and 2228 of~~ *2221, 2221.05, 2228, and 3663 of, and to add Sections 1006 and 4962 to,* the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1033, as amended, Hill. Medical Board: disclosure of probationary status.

Existing law, the Medical Practice Act, establishes the Medical Board of California for the licensing, regulation, and discipline of physicians and surgeons. *Existing law establishes the California Board of Podiatric Medicine within the Medical Board of California for the licensing, regulation, and discipline of podiatrists. Existing law, the Osteopathic Act, enacted by an initiative measure, establishes the Osteopathic Medical Board of California for the licensing and regulation of osteopathic physicians and surgeons and requires the Osteopathic Medical Board of California to enforce the Medical Practice Act with respect to its licensees. Existing law, the Naturopathic Doctors Act, establishes the Naturopathic Medicine Committee in the Osteopathic Medical Board of California for the licensing and regulation of naturopathic doctors. Existing law, the Chiropractic Act, enacted by an initiative measure, establishes the State Board of Chiropractic Examiners for the licensing and regulation of chiropractors. Existing law, the Acupuncture Licensure Act, establishes the Acupuncture Board for the licensing and regulation of acupuncturists.* Existing law authorizes ~~the board~~ *each of these regulatory agencies* to discipline ~~a~~

~~physician or a surgeon~~ *its licensee* by placing her or him on ~~probation, which may include requiring the physician or surgeon to complete specified trainings, examinations, or community service or restricting the extent, scope, or type of practice,~~ *probation,* as specified.

This bill would require ~~the board~~ *these regulatory entities* to require ~~a physician or surgeon~~ *licensee* to disclose *on a separate document* her or his probationary status to ~~patients before each~~ *a patient, the patient's guardian, or the health care surrogate prior to the patient's first* visit *following the probationary order* while the ~~physician or surgeon~~ *licensee* is on probation under specified circumstances, including ~~the board~~ *an accusation alleging, a statement of issues indicating, or an administrative law judge's legal conclusion* finding the ~~physician or surgeon~~ *licensee* committed gross negligence or the ~~physician or surgeon~~ *licensee* having been on probation ~~repeatedly,~~ *more than once,* among others. The bill would require the ~~board, by July 1, 2018, to adopt related regulations that include requiring the physician or surgeon~~ *licensee* to obtain from the patient a signed receipt containing specified information following the disclosure. *The bill would exempt a licensee from disclosing her or his probationary status prior to a visit or treatment if the patient is unable to comprehend the disclosure or sign an acknowledgment and a guardian or health care surrogate is unavailable. The bill would require in that instance that the doctor disclose his or her status as soon as either the patient can comprehend and sign the receipt or a guardian or health care surrogate is available to comprehend the disclosure and sign the receipt.*

Existing law requires the ~~board~~ *Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine* to disclose to an inquiring member of the public and to post on ~~its~~ *their* Internet Web ~~site~~ *sites* specified information concerning each ~~physician and surgeon,~~ *licensee* including revocations, suspensions, probations, or limitations on practice.

~~This~~

The bill would require ~~the board,~~ *the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, the Naturopathic Medicine Committee, and the Acupuncture Board* by July 1, 2018, to ~~include in each order of probation a written summary containing specified information~~ *develop a standardized format for listing specified information related to the probation* and to ~~include the summary in the disclosure~~ *provide that information* to an inquiring

member of the public, on any ~~board~~ documents informing the public of probation orders, and on a specified profile ~~web~~ *Internet Web* page of each ~~physician and surgeon~~ *licensee* subject to ~~probation.~~ *probation, as specified.*

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

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

1 SECTION 1. Section 803.1 of the Business and Professions
2 Code is amended to read:
3 803.1. (a) Notwithstanding any other provision of law, the
4 Medical Board of California, the Osteopathic Medical Board of
5 California, the California Board of Podiatric Medicine, and the
6 Physician Assistant Board shall disclose to an inquiring member
7 of the public information regarding any enforcement actions taken
8 against a licensee, including a former licensee, by the board or by
9 another state or jurisdiction, including all of the following:
10 (1) Temporary restraining orders issued.
11 (2) Interim suspension orders issued.
12 (3) Revocations, suspensions, probations, or limitations on
13 practice ordered by the board, including those made part of a
14 probationary order or stipulated agreement.
15 (4) Public letters of reprimand issued.
16 (5) Infractions, citations, or fines imposed.
17 (b) Notwithstanding any other provision of law, in addition to
18 the information provided in subdivision (a), the Medical Board of
19 California, the Osteopathic Medical Board of California, the
20 California Board of Podiatric Medicine, and the Physician Assistant
21 Board shall disclose to an inquiring member of the public all of
22 the following:
23 (1) Civil judgments in any amount, whether or not vacated by
24 a settlement after entry of the judgment, that were not reversed on
25 appeal and arbitration awards in any amount of a claim or action
26 for damages for death or personal injury caused by the physician
27 and surgeon's negligence, error, or omission in practice, or by his
28 or her rendering of unauthorized professional services.
29 (2) (A) All settlements in the possession, custody, or control
30 of the board shall be disclosed for a licensee in the low-risk
31 category if there are three or more settlements for that licensee

within the last 10 years, except for settlements by a licensee regardless of the amount paid where (i) the settlement is made as a part of the settlement of a class claim, (ii) the licensee paid in settlement of the class claim the same amount as the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in the context of a case where the complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action. All settlements in the possession, custody, or control of the board shall be disclosed for a licensee in the high-risk category if there are four or more settlements for that licensee within the last 10 years except for settlements by a licensee regardless of the amount paid where (i) the settlement is made as a part of the settlement of a class claim, (ii) the licensee paid in settlement of the class claim the same amount as the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in the context of a case where the complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action. Classification of a licensee in either a "high-risk category" or a "low-risk category" depends upon the specialty or subspecialty practiced by the licensee and the designation assigned to that specialty or subspecialty by the Medical Board of California, as described in subdivision (f). For the purposes of this paragraph, "settlement" means a settlement of an action described in paragraph (1) entered into by the licensee on or after January 1, 2003, in an amount of thirty thousand dollars ($30,000) or more.

(B) The board shall not disclose the actual dollar amount of a settlement but shall put the number and amount of the settlement in context by doing the following:

(i) Comparing the settlement amount to the experience of other licensees within the same specialty or subspecialty, indicating if it is below average, average, or above average for the most recent 10-year period.

(ii) Reporting the number of years the licensee has been in practice.

(iii) Reporting the total number of licensees in that specialty or subspecialty, the number of those who have entered into a settlement agreement, and the percentage that number represents of the total number of licensees in the specialty or subspecialty.

(3) Current American Board of Medical Specialties certification or board equivalent as certified by the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine.

(4) Approved postgraduate training.

(5) Status of the license of a licensee. By January 1, 2004, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall adopt regulations defining the status of a licensee. The board shall employ this definition when disclosing the status of a licensee pursuant to Section 2027. By July 1, 2018, the Medical Board of ~~California~~ *California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine* shall include the ~~summary of each probation order as written pursuant to~~ *information described in* subdivision ~~(e)~~ *(f)* of Section 2228.

(6) Any summaries of hospital disciplinary actions that result in the termination or revocation of a licensee's staff privileges for medical disciplinary cause or reason, unless a court finds, in a final judgment, that the peer review resulting in the disciplinary action was conducted in bad faith and the licensee notifies the board of that finding. In addition, any exculpatory or explanatory statements submitted by the licentiate electronically pursuant to subdivision (f) of that section shall be disclosed. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.

(c) Notwithstanding any other provision of law, the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall disclose to an inquiring member of the public information received regarding felony convictions of a physician and surgeon or doctor of podiatric medicine.

(d) The Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may by regulation establish categories of information that need not be disclosed to an inquiring member of the public because that information is unreliable or not sufficiently related to the licensee's professional practice. The Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the

Physician Assistant Board shall include the following statement when disclosing information concerning a settlement:

"Some studies have shown that there is no significant correlation between malpractice history and a doctor's competence. At the same time, the State of California believes that consumers should have access to malpractice information. In these profiles, the State of California has given you information about both the malpractice settlement history for the doctor's specialty and the doctor's history of settlement payments only if in the last 10 years, the doctor, if in a low-risk specialty, has three or more settlements or the doctor, if in a high-risk specialty, has four or more settlements. The State of California has excluded some class action lawsuits because those cases are commonly related to systems issues such as product liability, rather than questions of individual professional competence and because they are brought on a class basis where the economic incentive for settlement is great. The State of California has placed payment amounts into three statistical categories: below average, average, and above average compared to others in the doctor's specialty. To make the best health care decisions, you should view this information in perspective. You could miss an opportunity for high-quality care by selecting a doctor based solely on malpractice history.

When considering malpractice data, please keep in mind:

Malpractice histories tend to vary by specialty. Some specialties are more likely than others to be the subject of litigation. This report compares doctors only to the members of their specialty, not to all doctors, in order to make an individual doctor's history more meaningful.

This report reflects data only for settlements made on or after January 1, 2003. Moreover, it includes information concerning those settlements for a 10-year period only. Therefore, you should know that a doctor may have made settlements in the 10 years immediately preceding January 1, 2003, that are not included in this report. After January 1, 2013, for doctors practicing less than 10 years, the data covers their total years of practice. You should take into account the effective date of settlement disclosure as well as how long the doctor has been in practice when considering malpractice averages.

The incident causing the malpractice claim may have happened years before a payment is finally made. Sometimes, it takes a long time for a malpractice lawsuit to settle. Some doctors work primarily with high-risk patients. These doctors may have malpractice settlement histories that are higher than average because they specialize in cases or patients who are at very high risk for problems.

Settlement of a claim may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the doctor. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.

You may wish to discuss information in this report and the general issue of malpractice with your doctor."

(e) The Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall, by regulation, develop standard terminology that accurately describes the different types of disciplinary filings and actions to take against a licensee as described in paragraphs (1) to (5), inclusive, of subdivision (a). In providing the public with information about a licensee via the Internet pursuant to Section 2027, the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall not use the terms "enforcement," "discipline," or similar language implying a sanction unless the physician and surgeon has been the subject of one of the actions described in paragraphs (1) to (5), inclusive, of subdivision (a).

(f) The Medical Board of California shall adopt regulations no later than July 1, 2003, designating each specialty and subspecialty practice area as either high risk or low risk. In promulgating these regulations, the board shall consult with commercial underwriters of medical malpractice insurance companies, health care systems that self-insure physicians and surgeons, and representatives of the California medical specialty societies. The board shall utilize the carriers' statewide data to establish the two risk categories and the averages required by subparagraph (B) of paragraph (2) of subdivision (b). Prior to issuing regulations, the board shall convene public meetings with the medical malpractice carriers, self-insurers, and specialty representatives.

(g) The Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, *and* the Physician Assistant Board shall provide each licensee, including a former licensee under subdivision (a), with a copy of the text of any proposed public disclosure authorized by this section prior to release of the disclosure to the public. The licensee shall have 10 working days from the date the board provides the copy of the proposed public disclosure to propose corrections of factual inaccuracies. Nothing in this section shall prevent the board from disclosing information to the public prior to the expiration of the 10-day period.

(h) Pursuant to subparagraph (A) of paragraph (2) of subdivision (b), the specialty or subspecialty information required by this section shall group physicians by specialty board recognized pursuant to paragraph (5) of subdivision (h) of Section 651 unless a different grouping would be more valid and the board, in its statement of reasons for its regulations, explains why the validity of the grouping would be more valid.

(i) By July 1, 2018, the ~~board~~ *Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine* shall include ~~each licensee's probation summary written pursuant to subdivision (c)~~ *the information listed in subdivision (f)* of Section 2228 on any board documents informing the public of probation ~~orders,~~ *orders and probationary licenses,* including, but not limited to, newsletters.

SEC. 2. Section 1006 is added to the Business and Professions Code, to read:

1006. (a) Except as provided by subdivision (c), the State Board of Chiropractic Examiners shall require a licensee to disclose on a separate document her or his probationary status to a patient, the patient's guardian, or health care surrogate prior to the patient's first visit following the probationary order while the licensee is on probation in any of the following circumstances:

(1) The accusation alleges, the statement of issues indicates, or the legal conclusions of an administrative law judge find that the licensee is implicated in any of the following:

(A) Gross negligence.

(B) Repeated negligent acts involving a departure from the standard of care with multiple patients.

(C) Repeated acts of inappropriate and excessive prescribing of controlled substances, including, but not limited to, prescribing controlled substances without appropriate prior examination or without medical reason documented in medical records.

(D) Drug or alcohol abuse that threatens to impair a licensee's ability to practice medicine safely, including practicing under the influence of drugs or alcohol.

(E) Felony conviction arising from or occurring during patient care or treatment.

(F) Mental illness or other cognitive impairment that impedes a licensee's ability to safely practice medicine.

(2) The board ordered any of the following in conjunction with placing the licensee on probation:

(A) That a third-party chaperone be present when the licensee examines patients as a result of sexual misconduct.

(B) That the licensee submit to drug testing as a result of drug or alcohol abuse.

(C) That the licensee have a monitor.

(D) Restricting the licensee totally or partially from prescribing controlled substances.

(3) The licensee has not successfully completed a clinical training program or any associated examinations required by the board as a condition of probation.

(4) The licensee has been on probation more than once.

(b) The licensee shall obtain from each patient a signed receipt following the disclosure that includes a written explanation of how the patient can find further information on the licensee's probation on the board's Internet Web site.

(c) The licensee shall not be required to provide the disclosure prior to the visit as required by subdivision (a) if the patient is unconscious or otherwise unable to comprehend the disclosure and sign the receipt pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the receipt. In that instance, the licensee shall disclose her or his status as soon as either the patient can comprehend the disclosure and sign the receipt or a guardian or health care surrogate is available to comprehend the disclosure and sign the receipt.

(d) By July 1, 2018, the board shall develop a standardized format for listing the following information pursuant to subdivision (e):

(1) The listing of the causes for probation alleged in the accusation, the statement of issues, or the legal conclusions of an administrative law judge.

(2) The length of the probation and the end date.

(3) All practice restrictions placed on the licencee by the committee.

(e) By July 1, 2018, the board shall provide the information listed in subdivision (d) as follows:

(1) To an inquiring member of the public.

(2) On any board documents informing the public of probation orders and probationary licenses, including, but not limited to, newsletters.

(3) Upon availability of a licensee's BreEZe profile Internet Web page on the BreEZe system pursuant to Section 210, in plain view on the BreEZe profile Internet Web page of a licensee subject to probation or a probationary license.

~~SEC. 2.~~

SEC. 3. Section 2027 of the Business and Professions Code is amended to read:

2027. (a) The board shall post on its Internet Web site the following information on the current status of the license for all current and former licensees:

(1) Whether or not the licensee is presently in good standing.

(2) Current American Board of Medical Specialties certification or board equivalent as certified by the board.

(3) Any of the following enforcement actions or proceedings to which the licensee is actively subjected:

(A) Temporary restraining orders.

(B) Interim suspension orders.

(C) (i) Revocations, suspensions, probations, or limitations on practice ordered by the board or the board of another state or jurisdiction, including those made part of a probationary order or stipulated agreement.

(ii) By July 1, 2018, the ~~board~~ *board, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine* shall include, in plain view on the BreEZe profile ~~web~~ *Internet Web* page of each licensee subject to ~~probation, the~~

~~summary of each probation order as written pursuant to~~ *probation or a probationary license, the information described in* subdivision ~~(e)~~ *(f)* of Section 2228. For purposes of this subparagraph, a BreEZe profile ~~web~~ *Internet Web* page is a profile ~~web~~ *Internet Web* page on the BreEZe system pursuant to Section 210.

(D) Current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(E) Citations issued that have not been resolved or appealed within 30 days.

(b) The board shall post on its Internet Web site all of the following historical information in its possession, custody, or control regarding all current and former licensees:

(1) Approved postgraduate training.

(2) Any final revocations and suspensions, or other equivalent actions, taken against the licensee by the board or the board of another state or jurisdiction or the surrender of a license by the licensee in relation to a disciplinary action or investigation, including the operative accusation resulting in the license surrender or discipline by the board.

(3) Probation or other equivalent action ordered by the board, or the board of another state or jurisdiction, completed or terminated, including the operative accusation resulting in the discipline by the board.

(4) Any felony convictions. Upon receipt of a certified copy of an expungement order granted pursuant to Section 1203.4 of the Penal Code from a licensee, the board shall, within six months of receipt of the expungement order, post notification of the expungement order and the date thereof on its Internet Web site.

(5) Misdemeanor convictions resulting in a disciplinary action or accusation that is not subsequently withdrawn or dismissed. Upon receipt of a certified copy of an expungement order granted pursuant to Section 1203.4 of the Penal Code from a licensee, the board shall, within six months of receipt of the expungement order, post notification of the expungement order and the date thereof on its Internet Web site.

(6) Civil judgments issued in any amount, whether or not vacated by a settlement after entry of the judgment, that were not reversed on appeal, and arbitration awards issued in any amount, for a claim or action for damages for death or personal injury caused by the physician and surgeon's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services.

(7) Except as provided in subparagraphs (A) and (B), a summary of any final hospital disciplinary actions that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason. The posting shall provide any additional explanatory or exculpatory information submitted by the licensee pursuant to subdivision (f) of Section 805. The board shall also post on its Internet Web site a factsheet that explains and provides information on the reporting requirements under Section 805.

(A) If a licensee's hospital staff privileges are restored and the licensee notifies the board of the restoration, the information pertaining to the termination or revocation of those privileges shall remain posted on the Internet Web site for a period of 10 years from the restoration date of the privileges, and at the end of that period shall be removed.

(B) If a court finds, in a final judgment, that peer review resulting in a hospital disciplinary action was conducted in bad faith and the licensee notifies the board of that finding, the information concerning that hospital disciplinary action posted on the Internet Web site shall be immediately removed. For purposes of this subparagraph, "peer review" has the same meaning as defined in Section 805.

(8) Public letters of reprimand issued within the past 10 years by the board or the board of another state or jurisdiction, including the operative accusation, if any, resulting in discipline by the board.

(9) Citations issued within the last three years that have been resolved by payment of the administrative fine or compliance with the order of abatement.

(10) All settlements within the last five years in the possession, custody, or control of the board shall be disclosed for a licensee in the low-risk category if there are three or more settlements for that licensee within the last five years, and for a licensee in the high-risk category if there are four or more settlements for that

licensee within the last five years. Classification of a licensee in either a "high-risk category" or a "low-risk" category depends upon the specialty or subspecialty practiced by the licensee and the designation assigned to that specialty or subspecialty by the board pursuant to subdivision (f) of Section 803.1.

(A) For the purposes of this paragraph, "settlement" means a settlement in an amount of thirty thousand dollars ($30,000) or more of any claim or action for damages for death or personal injury caused by the physician and surgeon's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services.

(B) For the purposes of this paragraph, "settlement" does not include a settlement by a licensee, regardless of the amount paid, when (i) the settlement is made as a part of the settlement of a class claim, (ii) the amount paid in settlement of the class claim is the same amount paid by the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in the context of a case for which the complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action.

(C) The board shall not disclose the actual dollar amount of a settlement, but shall disclose settlement information in the same manner and with the same disclosures required under subparagraph (B) of paragraph (2) of subdivision (b) of Section 803.1.

(11) Appropriate disclaimers and explanatory statements to accompany the information described in paragraphs (1) to (10), inclusive, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(c) The board shall provide links to other Internet Web sites that provide information on board certifications that meet the requirements of subdivision (h) of Section 651. The board may also provide links to any other Internet Web sites that provide information on the affiliations of licensed physicians and surgeons. The board may provide links to other Internet Web sites on the Internet that provide information on health care service plans, health insurers, hospitals, or other facilities.

SEC. 4. Section 2221 of the Business and Professions Code is amended to read:

2221. (a) The board may deny a physician's and surgeon's certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her ~~license; or, the~~ *license.*

(b) The board in its sole discretion, may issue a probationary physician's and surgeon's certificate 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 licensee's activities shall be supervised by another physician and surgeon.

(2) Total or partial restrictions on drug prescribing privileges for controlled substances.

(3) Continuing medical or psychiatric treatment.

(4) Ongoing participation in a specified rehabilitation program.

(5) Enrollment and successful completion of a clinical training program.

(6) Abstention from the use of alcohol or drugs.

(7) Restrictions against engaging in certain types of medical practice.

(8) Compliance with all provisions of this chapter.

(9) Payment of the cost of probation monitoring.

(10) Disclosing probationary license status to patients, pursuant to subdivision (b) of Section 2228.

~~(b)~~

(c) The board may modify or terminate the terms and conditions imposed on the probationary certificate upon receipt of a petition from the *licensee; however, the provisions of subdivision (b) of Section 2228 are mandatory with any probationary* licensee. The board 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 board.

~~(c)~~

(d) The board shall deny a physician's and surgeon's certificate to an applicant who is required to register pursuant to Section 290 of the Penal Code. This subdivision does not apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

~~(d)~~

(e) An applicant shall not be eligible to reapply for a physician's and surgeon's certificate for a minimum of three years from the effective date of the denial of his or her application, except that the board may, in its discretion and for good cause demonstrated, permit reapplication after not less than one year has elapsed from the effective date of the denial.

SEC. 5. Section 2221.05 of the Business and Professions Code is amended to read:

2221.05. (a) Notwithstanding ~~subdivision~~ *subdivisions* (a) *and (b)* of Section 2221, the board may issue a physician's and surgeon's certificate to an applicant who has committed minor violations that the board deems, in its discretion, do not merit the denial of a certificate or require probationary status under Section 2221, and may concurrently issue a public letter of reprimand.

(b) A public letter of reprimand issued concurrently with a physician's and surgeon's certificate shall be purged three years from the date of issuance.

(c) A public letter of reprimand issued pursuant to this section shall be disclosed to an inquiring member of the public and shall be posted on the board's Internet Web site.

(d) Nothing in this section shall be construed to affect the board's authority to issue an unrestricted license.

~~SEC. 3.~~

SEC. 6. Section 2228 of the Business and Professions Code is amended to read:

2228. (a) The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

(1) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.

(2) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

(3) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

(4) Providing the option of alternative community service in cases other than violations relating to quality of care.

(b) The ~~board~~ *board or the California Board of Podiatric Medicine* shall require a licensee to disclose *on a separate document* her or his probationary status to ~~patients before each visit~~ *a patient, the patient's guardian, or health care surrogate prior to the patient's first visit following the probationary order* while the licensee is on probation in any of the following circumstances:

(1) The ~~board made a finding in the probation order~~ *accusation alleges, the statement of issues indicates, or the legal conclusions of an administrative law judge finds* that the licensee ~~committed~~ *is implicated in* any of the following:

(A) Gross negligence.

(B) Repeated negligent acts involving a departure from the standard of care with multiple patients.

(C) Repeated acts of inappropriate and excessive prescribing of controlled substances, including, but not limited to, prescribing controlled substances without appropriate prior examination or without medical reason documented in medical records.

(D) Drug or alcohol abuse that threatens to impair a licensee's ability to practice medicine safely, including practicing under the influence of drugs or alcohol.

(E) Felony conviction arising from or occurring during patient care or treatment.

(F) Mental illness or other cognitive impairment that impedes a licensee's ability to safely practice medicine.

(2) The board ordered any of the following in conjunction with placing the licensee on probation:

(A) That a ~~third party~~ *third-party* chaperone be present when the licensee examines patients as a result of sexual misconduct.

(B) That the licensee submit to drug testing as a result of drug or alcohol abuse.

(C) That the licensee have a monitor.

(D) Restricting totally or partially the licensee from prescribing controlled substances.

~~(E) Suspending the licensee from practice in cases related to quality of care.~~

(3) The licensee has not successfully completed a clinical training program or any associated examinations required by the board as a condition of probation.

(4) The licensee has been on probation ~~repeatedly.~~ *more than once.*

(c) The ~~board shall adopt regulations by July 1, 2018, to implement subdivision (b). The board shall include in these regulations a requirement that the~~ licensee *shall* obtain from each patient a signed receipt following the disclosure that includes a written explanation of how the patient can find further information on the licensee's ~~discipline~~ *probation* on the board's Internet Web site.

(d) A licensee shall not be required to provide the disclosure prior to a visit as required by subdivision (b) if the patient is unconscious or otherwise unable to comprehend the disclosure and sign the receipt pursuant to subdivision (c) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the receipt. In that instance, the licensee shall disclose her or his status as soon as either the patient can comprehend the disclosure and sign the receipt or a guardian or health care surrogate is available to comprehend the disclosure and sign the receipt.

~~(d)~~

(e) Section 2314 shall not apply to subdivision ~~(b) or (c).~~ *(b), (c), or (d).*

~~(e)~~

(f) By July 1, 2018, the board shall ~~include, in the first section of each order of probation, a standardized, single paragraph, plain-language summary that contains the accusations that led to the licensee's probation, the~~ *develop a standardized format for listing the following information pursuant to paragraph (5) of subdivision (b) of Section 803.1, subdivision (i) of Section 803.1, and clause (ii) of subparagraph (C) of paragraph (1) of subdivision (a) of Section 2027:*

(1) The listing of the causes for probation alleged in the accusation, the statement of issues, or the legal conclusions of an administrative law judge.

(2) The length of the probation and the end ~~date, and all~~ *date.*

(3) All practice restrictions placed on the licensee by the board.

SEC. 7. Section 3663 of the Business and Professions Code is amended to read:

3663. (a) The committee shall have the responsibility for reviewing the quality of the practice of naturopathic medicine carried out by persons licensed as naturopathic doctors pursuant to this chapter.

(b) The committee may discipline a naturopathic doctor for unprofessional conduct. After a hearing conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), the committee may deny, suspend, revoke, or place on probation the license of, or reprimand, censure, or otherwise discipline a naturopathic doctor in accordance with Division 1.5 (commencing with Section 475).

(c) Except as provided by subdivision (e), the committee shall require a naturopathic doctor to disclose on a separate document her or his probationary status to a patient, the patient's guardian, or health care surrogate prior to the patient's first visit following the probationary order while the naturopathic doctor is on probation in any of the following circumstances:

(1) The accusation alleges, the statement of issues indicates, or the legal conclusions of an administrative law judge find that the naturopathic doctor is implicated in any of the following:

(A) Gross negligence.

(B) Repeated negligent acts involving a departure from the standard of care with multiple patients.

(C) Repeated acts of inappropriate and excessive prescribing of controlled substances, including, but not limited to, prescribing controlled substances without appropriate prior examination or without medical reason documented in medical records.

(D) Drug or alcohol abuse that threatens to impair a naturopathic doctor's ability to practice medicine safely, including practicing under the influence of drugs or alcohol.

(E) Felony conviction arising from or occurring during patient care or treatment.

(F) Mental illness or other cognitive impairment that impedes a naturopathic doctor's ability to safely practice medicine.

(2) The committee ordered any of the following in conjunction with placing the naturopathic doctor on probation:

(A) That a third-party chaperone be present when the naturopathic doctor examines patients as a result of sexual misconduct.

(B) That the naturopathic doctor submit to drug testing as a result of drug or alcohol abuse.

(C) That the naturopathic doctor have a monitor.

(D) Restricting the naturopathic doctor totally or partially from prescribing controlled substances.

(3) The naturopathic doctor has not successfully completed a clinical training program or any associated examinations required by the committee as a condition of probation.

(4) The naturopathic doctor has been on probation more than once.

(d) The naturopathic doctor shall obtain from each patient a signed receipt following the disclosure that includes a written explanation of how the patient can find further information on the naturopathic doctor's probation on the committee's Internet Web site.

(e) The naturopathic doctor shall not be required to provide the disclosure prior to the visit as required by subdivision (c) if the patient is unconscious or otherwise unable to comprehend the disclosure or sign the receipt pursuant to subdivision (d) and a guardian or health care surrogate is unavailable to comprehend the disclosure or sign the receipt. In such an instance, the naturopathic doctor shall disclose her or his status as soon as either the patient can comprehend the disclosure and sign the receipt or a guardian or health care surrogate is available to comprehend the disclosure and sign the receipt.

(f) By July 1, 2018, the committee shall develop a standardized format for listing the following information pursuant to:

(1) The listing of the causes for probation alleged in the accusation, the statement of issues, or the legal conclusions of an administrative law judge.

(2) The length of the probation and the end date.

(3) All practice restrictions placed on the naturopathic doctor by the committee.

(g) By July 1, 2018, the committee shall provide the information listed in subdivision (f) as follows:

(1) To an inquiring member of the public.

(2) On any committee documents informing the public of probation orders and probationary licenses, including, but not limited to, newsletters.

(3) In plain view on the BreEZe profile Internet Web page of a naturopathic doctor subject to probation or a probationary license.

SEC. 8. Section 4962 is added to the Business and Professions Code, to read:

4962. (a) Except as provided by subdivision (c), the board shall require a licensee to disclose on a separate document her or his probationary status to a patient, the patient's guardian, or health care surrogate prior to the patient's first visit following the probationary order while the licensee is on probation in any of the following circumstances:

(1) The accusation alleges, the statement of issues indicates, or the legal conclusions of an administrative law judge find that the licensee is implicated in any of the following:

(A) Gross negligence.

(B) Repeated negligent acts involving a departure from the standard of care with multiple patients.

(C) Drug or alcohol abuse that threatens to impair a licensee's ability to practice acupuncture safely, including practicing under the influence of drugs or alcohol.

(D) Felony conviction arising from or occurring during patient care or treatment.

(E) Mental illness or other cognitive impairment that impedes a licensee's ability to safely practice acupuncture.

(2) The board ordered any of the following in conjunction with placing the licensee on probation:

(A) That a third-party chaperone be present when the licensee examines patients as a result of sexual misconduct.

(B) That the licensee submit to drug testing as a result of drug or alcohol abuse.

(C) That the licensee have a monitor.

(3) The licensee has not successfully completed a training program or any associated examinations required by the board as a condition of probation.

(4) The licensee has been on probation more than once.

(b) The licensee shall obtain from each patient a signed receipt following the disclosure that includes a written explanation of how

the patient can find further information on the licensee's probation on the board's Internet Web site.

(c) The licensee shall not be required to provide the disclosure prior to the visit as required by subdivision (a) if the patient is unconscious or otherwise unable to comprehend the disclosure or sign the receipt pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure or sign the receipt. In such an instance, the licensee shall disclose her or his status as soon as either the patient can comprehend the disclosure and sign the receipt or a guardian or health care surrogate is available to comprehend the disclosure and sign the receipt.

(d) Section 4935 shall not apply to subdivision (a) or (b).

(e) By July 1, 2018, the committee shall develop a standardized format for listing the following information pursuant to subdivision (f):

(1) The listing of the causes for probation alleged in the accusation, the statement of issues, or the legal conclusions of an administrative law judge.

(2) The length of the probation and the end date.

(3) All practice restrictions placed on the licencee by the committee.

(f) By July 1, 2018, the board shall provide the information listed in subdivision (e) as follows:

(1) To an inquiring member of the public.

(2) On any board documents informing the public of probation orders and probationary licenses, including, but not limited to, newsletters.

(3) Upon availability of a licensee's BreEZe profile Internet Web page on the BreEZe system pursuant to Section 210, in plain view on the BreEZe profile Internet Web page of a licensee subject to probation or a probationary license.

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