

AMENDED IN SENATE APRIL 18, 2005

**SENATE BILL**

**No. 231**

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**Introduced by Senator Figueroa**

February 15, 2005

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~~An act to amend Section 2001 of the Business and Professions Code, relating to the healing arts. An act to amend Sections 802, 802.1, 805.2, 2001, 2019, 2020, 2027, 2220.08, 2225, and 2435 of, and to add Sections 2026 and 2357 to, the Business and Professions Code, to repeal Section 364.1 of the Code of Civil Procedure, and to amend Sections 11371, 11508, 12529, and 12529.5 of, and to add Section 11508.1 to, the Government Code, relating to healing arts, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 231, as amended, Figueroa. ~~Medical Board of California:~~  
~~duration~~ *Healing arts: Medical Board of California.*

*(1) Existing law provides for the licensing and regulation of various healing arts practitioners by professional boards within the Department of Consumer Affairs. Existing law requires that specified settlements and any arbitration awards of malpractice claims or in malpractice actions against a licensee be reported to the appropriate licensing board by the licensee or claimant, or their counsel. Under existing law, a failure to comply with this requirement is a crime punishable by specified fines.*

*This bill would also require any judgment in a malpractice action against a licensee to be reported to the appropriate licensing board by the licensee or the claimant, or their counsel, and would make a failure to comply with this requirement a crime. Because the bill would create a new crime, it would impose a state-mandated local program. The bill would also require the Little Hoover Commission to*

*study the public policy implications of the laws requiring public disclosure of malpractice lawsuits and settlements against licensees of the Medical Board of California, and to complete the study by December 31, 2007.*

*(2) The Medical Practice Act provides for licensing and regulation of physicians and surgeons by the Medical Board of California. Under existing law, the provisions creating the board and providing for the appointment of an executive director become inoperative on July 1, 2006, and are repealed on January 1, 2007.*

*This bill would extend these provisions to July 1, 2010, and January 1, 2011, respectively.*

*(3) Existing law requires a physician and surgeon to report certain matters to the Medical Board in writing within 30 days, including the conviction of any felony, and including any verdict of guilty, or plea of guilty or no contest. A failure to make a report is a crime.*

*This bill would also require a physician and surgeon to report his or her conviction of a misdemeanor substantially related to the qualifications, functions, or duties of a physician and surgeon, including any verdict of guilty, or plea of guilty or no contest. Because the bill would expand the scope of an existing crime, the bill would impose a state-mandated local program.*

*(4) Existing law requires the Medical Board to post certain information regarding its licensees on the Internet, including whether or not a licensee has been subject to discipline by the board of another state or jurisdiction.*

*This bill would also require the posting of prior disciplinary action taken by the board and of any misdemeanor conviction that is substantially related to the qualifications, functions, or duties of a physician and surgeon.*

*(5) Existing law requires the Medical Board to contract with the Institute for Medical Quality for a comprehensive study of the existing peer review process for discipline of physicians and surgeons. Under these provisions, a written report was to be submitted to the Medical Board and the Legislature by November 1, 2003.*

*This bill instead would require the Medical Board to contract with an independent entity for this comprehensive study, to be completed by July 31, 2007, and would state that the completion of the study is to be among the highest priorities of the Medical Board.*

*(6) Existing law authorizes legal proceedings against the Medical Board to be instituted in either Sacramento, Los Angeles, San Diego,*

or San Francisco, which are the authorized locations for offices of the Medical Board.

This bill would establish venue for mandate actions filed against the board in the above-listed city that is closest to the city in which the administrative hearing has been held or is scheduled to be held.

(7) Existing law generally requires complaints received by the Medical Board that involve quality of care to be reviewed by one or more medical experts and to meet other criteria before they are referred to a field office of the board for investigation.

This bill would exempt new complaints relating to a physician and surgeon who is the subject of a pending accusation or investigation, or who is on probation, from these referral requirements.

(8) Existing law requires a licensee of the Medical Board to produce documents requested by the Attorney General or investigators of the board within 15 days.

This bill would authorize the board to impose fines for noncompliance with these requirements.

(9) Existing law provides for the Medical Board to oversee diversion programs for physicians and surgeons with alcohol and drug abuse problems.

This bill would require the Bureau of State Audits to conduct a thorough audit of the Medical Board's diversion programs by July 1, 2006. The bill would terminate the authority of the board to maintain a diversion program after July 1, 2007, unless the Legislature extends this authority by statute.

(10) Existing law provides for the Medical Board to fix the amount of the initial and biennial licensure fees for physicians and surgeons at a sum not to exceed \$610. Fees are deposited into the Contingent Fund of the Medical Board, which is continuously appropriated to the board.

This bill would authorize the Medical Board to increase the initial licensing fee to not more than \$800 and the biennial renewal fee to an unspecified amount. The bill would also delete certain provisions requiring the board to charge various examination fees. By providing for an increase in licensure fees deposited into a continuously appropriated fund, the bill would thereby make an appropriation.

(11) Existing law provides that an action based upon the professional negligence of a physician and surgeon or doctor of podiatric medicine may not be commenced unless a specified 90-day notice is also sent to the Medical Board or the Board of Podiatric

*Medicine at the same time it is sent to the defendant. Existing law requires each board, as applicable, to maintain the notice as a confidential part of a potential investigation file.*

*This bill would repeal this provision.*

*(12) Existing law creates within the Office of Administrative Hearings a Medical Quality Hearing Panel consisting of administrative law judges with medical training, to hear administrative law matters involving physicians and surgeons. Existing law requires decisions of this panel and associated court decisions to be published in a quarterly "Medical Discipline Report," subject to funding being appropriated by the Legislature.*

*This bill would delete the requirement for publishing this report.*

*(13) Existing law, under the Administrative Procedure Act, provides for administrative hearings involving certain state agencies including the Medical Board to be held in certain locations throughout the state based upon where a transaction occurred or whether the respondent resides with a certain district of the Court of Appeal.*

*This bill would delete the references to the districts of the Court of Appeal relative to hearings requested by the Medical Board and would instead refer to hearing facilities maintained by the Office of Administrative Hearings.*

*(14) Existing law creates the Health Quality Enforcement Section within the Department of Justice with the primary responsibility of prosecuting proceedings against licensees and applicants within the jurisdiction of the Medical Board and various other boards.*

*This bill would also make investigation of licensees and applicants a primary responsibility of the Health Quality Enforcement Section. The bill would make other related changes to these and other provisions.*

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

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

~~Existing law, the Medical Practice Act, creates the Medical Board of California to license and regulate physicians and surgeons. Under the act, the provision creating the board becomes inoperative on July 1, 2006, and is repealed on January 1, 2007.~~

~~This bill would extend the operation of this particular provision to an unspecified date.~~

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

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

1     ~~SECTION 1. Section 2001 of the Business and Professions~~  
2     ~~Code is amended to read:~~  
3     ~~SECTION 1. Section 802 of the Business and Professions~~  
4     ~~Code is amended to read:~~  
5     802. (a) Every settlement, *judgment*, or arbitration award  
6     over three thousand dollars (\$3,000) of a claim or action for  
7     damages for death or personal injury caused by negligence, error  
8     or omission in practice, or by the unauthorized rendering of  
9     professional services, by a person who holds a license, certificate  
10    or other similar authority from an agency mentioned in  
11    subdivision (a) of Section 800 (except a person licensed pursuant  
12    to Chapter 3 (commencing with Section 1200) or Chapter 5  
13    (commencing with Section 2000) of Division 2) or the  
14    Osteopathic Initiative Act who does not possess professional  
15    liability insurance as to that claim shall, within 30 days after the  
16    written settlement agreement has been reduced to writing and  
17    signed by all the parties thereto or 30 days after service of the  
18    *judgment or* arbitration award on the parties, be reported to the  
19    agency that issued the license, certificate, or similar authority. A  
20    complete report shall be made by appropriate means by the  
21    person or his or her counsel, with a copy of the communication to  
22    be sent to the claimant through his or her counsel if the person is  
23    so represented, or directly if he or she is not. If, within 45 days of  
24    the conclusion of the written settlement agreement or service of  
25    the *judgment or* arbitration award on the parties, counsel for the  
26    claimant (or if the claimant is not represented by counsel, the  
27    claimant himself or herself) has not received a copy of the report,  
28    he or she shall himself or herself make the complete report.  
29    Failure of the ~~physician licensee~~ or claimant (or, if represented  
30    by counsel, their counsel) to comply with this section is a public  
31    offense punishable by a fine of not less than fifty dollars (\$50) or  
32    more than five hundred dollars (\$500). Knowing and intentional  
33    failure to comply with this section or conspiracy or collusion not

1 to comply with this section, or to hinder or impede any other  
2 person in the compliance, is a public offense punishable by a fine  
3 of not less than five thousand dollars (\$5,000) nor more than fifty  
4 thousand dollars (\$50,000).

5 (b) Every settlement over thirty thousand dollars (\$30,000), *or*  
6 *judgment* or arbitration award of any amount, of a claim or action  
7 for damages for death or personal injury caused by negligence,  
8 error or omission in practice, or by the unauthorized rendering of  
9 professional services, by a physician and surgeon licensed  
10 pursuant to Chapter 5 (commencing with Section 2000) of  
11 Division 2, or the Osteopathic Initiative Act, who does not  
12 possess professional liability insurance as to the claim shall,  
13 within 30 days after the written settlement agreement has been  
14 reduced to writing and signed by all the parties thereto or 30 days  
15 after service of the *judgment or* arbitration award on the parties,  
16 be reported to the agency that issued the license, certificate or  
17 similar authority. A settlement over thirty thousand dollars  
18 (\$30,000) shall also be reported if the settlement is based on the  
19 licensee's negligence, error, or omission in practice or his or her  
20 rendering of unauthorized professional services, and a party to  
21 the settlement is a corporation, medical group, partnership, or  
22 other corporate entity in which the licensee has an ownership  
23 interest or that employs or contracts with the licensee. A  
24 complete report including the name and license number of the  
25 physician and surgeon shall be made by appropriate means by the  
26 person or his or her counsel, with a copy of the communication to  
27 be sent to the claimant through his or her counsel if he or she is  
28 so represented, or directly if he or she is not. If, within 45 days of  
29 the conclusion of the written settlement agreement or service of  
30 the *judgment or* arbitration award on the parties, counsel for the  
31 claimant (or if the claimant is not represented by counsel, the  
32 claimant himself or herself) has not received a copy of the report,  
33 he or she shall himself or herself make the complete report.  
34 Failure of the physician or claimant (or, if represented by  
35 counsel, their counsel) to comply with this section is a public  
36 offense punishable by a fine of not less than fifty dollars (\$50)  
37 nor more than five hundred dollars (\$500). Knowing and  
38 intentional failure to comply with this section or conspiracy or  
39 collusion not to comply with this section, or to hinder or impede  
40 any other person in the compliance, is a public offense

1 punishable by a fine of not less than five thousand dollars  
2 (\$5,000) nor more than fifty thousand dollars (\$50,000).

3 (c) Every settlement, *judgment*, or arbitration award over ten  
4 thousand dollars (\$10,000) of a claim or action for damages for  
5 death or personal injury caused by negligence, error, or omission  
6 in practice, or by the unauthorized rendering of professional  
7 services, by a marriage and family therapist or clinical social  
8 worker licensed pursuant to Chapter 13 (commencing with  
9 Section 4980) or Chapter 14 (commencing with Section 4990)  
10 who does not possess professional liability insurance as to that  
11 claim shall within 30 days after the written settlement agreement  
12 has been reduced to writing and signed by all the parties thereto  
13 or 30 days after service of the *judgment or* arbitration award on  
14 the parties be reported to the agency that issued the license,  
15 certificate, or similar authority. A complete report shall be made  
16 by appropriate means by the person or his or her counsel, with a  
17 copy of the communication to be sent to the claimant through his  
18 or her counsel if he or she is so represented, or directly if he or  
19 she is not. If, within 45 days of the conclusion of the written  
20 settlement agreement or service of the *judgment or* arbitration  
21 award on the parties, counsel for the claimant (or if he or she is  
22 not represented by counsel, the claimant himself or herself) has  
23 not received a copy of the report, he or she shall himself or  
24 herself make a complete report. Failure of the marriage and  
25 family therapist or clinical social worker or claimant (or, if  
26 represented by counsel, their counsel) to comply with this section  
27 is a public offense punishable by a fine of not less than fifty  
28 dollars (\$50) nor more than five hundred dollars (\$500).  
29 Knowing and intentional failure to comply with this section, or  
30 conspiracy or collusion not to comply with this section or to  
31 hinder or impede any other person in that compliance, is a public  
32 offense punishable by a fine of not less than five thousand dollars  
33 (\$5,000) nor more than fifty thousand dollars (\$50,000).

34 *SEC. 2. Section 802.1 of the Business and Professions Code*  
35 *is amended to read:*

36 802.1. (a) A physician and surgeon shall report any of the  
37 following to the Medical Board of California in writing within 30  
38 days:

39 (1) The bringing of an indictment or information charging a  
40 felony against the physician and surgeon.

1 (2) The conviction of the physician and surgeon, including any  
2 verdict of guilty, or plea of guilty or no contest, of any felony.

3 (3) *The conviction of the physician and surgeon, including*  
4 *any verdict of guilty, or plea of guilty or no contest, of any*  
5 *misdemeanor substantially related to the qualifications,*  
6 *functions, or duties of a physician and surgeon, as defined by the*  
7 *board.*

8 (b) Failure to make a report required by this section shall be a  
9 public offense punishable by a fine not to exceed five thousand  
10 dollars (\$5,000).

11 *SEC. 3. Section 805.2 of the Business and Professions Code*  
12 *is amended to read:*

13 805.2. (a) It is the intent of the Legislature to provide for a  
14 comprehensive study of the peer review process as it is  
15 conducted by peer review bodies defined in paragraph (1) of  
16 subdivision (a) of Section 805, in order to evaluate the continuing  
17 validity of Section 805 and Sections 809 to 809.8, inclusive, and  
18 their relevance to the conduct of peer review in California. The  
19 Medical Board of California shall contract with ~~the Institute for~~  
20 ~~Medical Quality~~ *an independent entity* to conduct this study,  
21 which shall include, but not be limited to, the following  
22 components:

23 (1) A comprehensive description of the various steps of and  
24 decisionmakers in the peer review process as it is conducted by  
25 peer review bodies throughout the state, including the role of  
26 other related committees of acute care health facilities and clinics  
27 involved in the peer review process.

28 (2) A survey of peer review cases to determine the incidence  
29 of peer review by peer review bodies, and whether they are  
30 complying with the reporting requirement in Section 805.

31 (3) A description and evaluation of the roles and performance  
32 of various state agencies, including the State Department of  
33 Health Services and occupational licensing agencies that regulate  
34 healing arts professionals, in receiving, reviewing, investigating,  
35 and disclosing peer review actions, and in sanctioning peer  
36 review bodies for failure to comply with Section 805.

37 (4) An assessment of the cost of peer review to licentiates and  
38 the facilities which employ them.

39 (5) An assessment of the time consumed by the average peer  
40 review proceeding, including the hearing provided pursuant to

1 Section 809.2, and a description of any difficulties encountered  
2 by either licentiates or facilities in assembling peer review bodies  
3 or panels to participate in peer review decisionmaking.

4 (6) An assessment of the need to amend Section 805 and  
5 Sections 809 to 809.8, inclusive, to ensure that they continue to  
6 be relevant to the actual conduct of peer review as described in  
7 paragraph (1), and to evaluate whether the current reporting  
8 requirement is yielding timely and accurate information to aid  
9 licensing boards in their responsibility to regulate and discipline  
10 healing arts practitioners when necessary, and to assure that peer  
11 review bodies function in the best interest of patient care.

12 (7) Recommendations of additional mechanisms to stimulate  
13 the appropriate reporting of peer review actions under Section  
14 805.

15 (8) Recommendations regarding the Section 809 hearing  
16 process to improve its overall effectiveness and efficiency.

17 (b) The ~~Institute of Medical Quality~~ *independent entity* shall  
18 exercise no authority over the peer review processes of peer  
19 review bodies. However, peer review bodies, health care  
20 facilities, health care clinics, and health care service plans shall  
21 cooperate with the ~~institute~~ *independent entity* and provide data,  
22 information, and case files as requested in the timeframes  
23 specified by the ~~institute~~ *independent entity*.

24 (c) The ~~institute~~ *independent entity* shall work in cooperation  
25 with and under the general oversight of the Medical Director of  
26 the Medical Board of California and shall submit a written report  
27 with its findings and recommendations to the board and the  
28 Legislature no later than ~~November 1, 2003~~ *July 31, 2007*.

29 (d) *Completion of the peer review study pursuant to this*  
30 *section shall be among the highest priorities of the Medical*  
31 *Board of California, and the board shall ensure that it is*  
32 *completed no later than July 31, 2007.*

33 *SEC. 4. Section 2001 of the Business and Professions Code is*  
34 *amended to read:*

35 2001. There is in the Department of Consumer Affairs a  
36 Medical Board of California that consists of 21 members, nine of  
37 whom shall be public members.

38 The Governor shall appoint 19 members to the board, subject  
39 to confirmation by the Senate, seven of whom shall be public  
40 members. The Senate Rules Committee and the Speaker of the

1 Assembly shall each appoint a public member, and their initial  
2 appointment shall be made to fill, respectively, the first and  
3 second public member vacancies that occur on or after January 1,  
4 1983.

5 This section shall become inoperative on July 1, ~~2006~~ 2010,  
6 and, as of January 1, ~~2007~~ 2011, is repealed, unless a later  
7 enacted statute, which becomes effective on or before January 1,  
8 ~~2007~~ 2011, deletes or extends the dates on which it becomes  
9 inoperative and is repealed. The repeal of this section renders the  
10 board subject to the review required by Division 1.2  
11 (commencing with Section 473).

12 *SEC. 5. Section 2019 of the Business and Professions Code is*  
13 *amended to read:*

14 2019. (a) The office of the board shall be in the City of  
15 Sacramento. Suboffices may be established in the Cities of Los  
16 Angeles, San Diego, and San Francisco or the environs of ~~such~~  
17 *these* cities. Legal proceedings against the board shall be  
18 instituted in any one of these four cities. The board may also  
19 establish other suboffices as it may deem necessary and such  
20 records as may be necessary may be transferred temporarily to  
21 any suboffices.

22 (b) *Legal proceedings against the board shall be instituted in*  
23 *Sacramento, Los Angeles, San Diego, or San Francisco. For*  
24 *mandate actions filed against the board pursuant to Section 1085*  
25 *or 1094.5 of the Code of Civil Procedure, venue shall be in the*  
26 *city designated in this subdivision that is closest to the city in*  
27 *which the administrative hearing has been held, or if a hearing*  
28 *has not yet commenced, the city closest to the city in which the*  
29 *administrative hearing is scheduled to be held pursuant to*  
30 *Section 11508 of the Government Code.*

31 *SEC. 6. Section 2020 of the Business and Professions Code is*  
32 *amended to read:*

33 2020. The board may employ an executive director exempt  
34 from the provisions of the Civil Service Act and may also  
35 employ investigators, legal counsel, medical consultants, and  
36 other assistance as it may deem necessary to carry into effect this  
37 chapter. The board may fix the compensation to be paid for  
38 services subject to the provisions of applicable state laws and  
39 regulations and may incur other expenses as it may deem

1 necessary. Investigators employed by the board shall be provided  
2 special training in investigating medical practice activities.

3 The Attorney General shall act as legal counsel for the board  
4 for any judicial and administrative proceedings and his or her  
5 services shall be a charge against it.

6 This section shall become inoperative on July 1, ~~2006~~ 2010, and,  
7 as of January 1, ~~2007~~ 2011, is repealed, unless a later enacted  
8 statute, which becomes effective on or before January 1, ~~2007~~  
9 2011, deletes or extends the dates on which it becomes  
10 inoperative and is repealed.

11 *SEC. 7 Section 2026 is added to the Business and Professions*  
12 *Code, to read:*

13 2026. *The board shall request the Little Hoover Commission*  
14 *to study the public policy implications of the laws requiring*  
15 *public disclosure of malpractice lawsuits and settlements against*  
16 *licensees of the board. This study shall be commenced as soon as*  
17 *possible and completed no later than December 31, 2007.*

18 *SEC. 8. Section 2027 of the Business and Professions Code is*  
19 *amended to read:*

20 2027. (a) On or after July 1, 2001, ~~unless otherwise~~  
21 ~~authorized by the Department of Information Technology~~  
22 ~~pursuant to Executive Order D-3-99~~, the board shall post on the  
23 Internet the following information in its possession, custody, or  
24 control regarding licensed physicians and surgeons:

25 (1) With regard to the status of the license, whether or not the  
26 licensee is in good standing, subject to a temporary restraining  
27 order (TRO), subject to an interim suspension order (ISO), or  
28 subject to any of the enforcement actions set forth in Section  
29 803.1.

30 (2) With regard to prior discipline, whether or not the licensee  
31 has been subject to discipline *by the board or* by the board of  
32 another state or jurisdiction, as described in Section 803.1.

33 (3) Any felony convictions reported to the board after January  
34 3, 1991.

35 (4) All current accusations filed by the Attorney General,  
36 including those accusations that are on appeal. For purposes of  
37 this paragraph, “current accusation” shall mean an accusation  
38 that has not been dismissed, withdrawn, or settled, and has not  
39 been finally decided upon by an administrative law judge and the  
40 Medical Board of California unless an appeal of that decision is

1 pending. *The board may post all accusations that are not*  
2 *dismissed or withdrawn.*

3 (5) Any malpractice judgment or arbitration award reported to  
4 the board after January 1, 1993.

5 (6) Any hospital disciplinary actions that resulted in the  
6 termination or revocation of a licensee's hospital staff privileges  
7 for a medical disciplinary cause or reason.

8 (7) *Any misdemeanor conviction that is substantially related to*  
9 *the qualifications, functions, or duties of a physician and*  
10 *surgeon.*

11 (8) Appropriate disclaimers and explanatory statements to  
12 accompany the above information, including an explanation of  
13 what types of information are not disclosed. These disclaimers  
14 and statements shall be developed by the board and shall be  
15 adopted by regulation.

16 ~~(8)~~

17 (9) Any information required to be disclosed pursuant to  
18 Section 803.1.

19 (b) (1) From January 1, 2003, the information described in  
20 paragraphs (1) (other than whether or not the licensee is in good  
21 standing), (2), (4), (5), and ~~(7)~~ (8) of subdivision (a) shall remain  
22 posted for a period of 10 years from the date the board obtains  
23 possession, custody, or control of the information, and after the  
24 end of that period shall be removed from being posted on the  
25 board's Internet Web site. Information in the possession, custody,  
26 or control of the board prior to January 1, 2003, shall be posted  
27 for a period of 10 years from January 1, 2003. Settlement  
28 information shall be posted as described in paragraph (2) of  
29 subdivision (b) of Section 803.1.

30 (2) The information described in paragraphs (3) and (6) of  
31 subdivision (a) shall not be removed from being posted on the  
32 board's Internet Web site. Notwithstanding the provisions of this  
33 paragraph, if a licensee's hospital staff privileges are restored and  
34 the licensee notifies the board of the restoration, the information  
35 pertaining to the termination or revocation of those privileges, as  
36 described in paragraph (6) of subdivision (a), shall remain posted  
37 for a period of 10 years from the restoration date of the  
38 privileges, and at the end of that period shall be removed from  
39 being posted on the board's Internet Web site.

1 (c) The board shall provide links to other Web sites on the  
2 Internet that provide information on board certifications that  
3 meet the requirements of subdivision (b) of Section 651. The  
4 board may provide links to other Web sites on the Internet that  
5 provide information on health care service plans, health insurers,  
6 hospitals, or other facilities. The board may also provide links to  
7 any other sites that would provide information on the affiliations  
8 of licensed physicians and surgeons.

9 *SEC. 9. Section 2220.08 of the Business and Professions*  
10 *Code is amended to read:*

11 2220.08. (a) Except for reports received by the board  
12 pursuant to Section 805 that may be treated as complaints by the  
13 board *and new complaints relating to a physician and surgeon*  
14 *who is the subject of a pending accusation or investigation or*  
15 *who is on probation*, any complaint determined to involve quality  
16 of care, before referral to a field office for further investigation,  
17 shall meet the following criteria:

18 (1) It shall be reviewed by one or more medical experts with  
19 the pertinent education, training, and expertise to evaluate the  
20 specific standard of care issues raised by the complaint to  
21 determine if further field investigation is required.

22 (2) It shall include the review of the following, which shall be  
23 requested by the board:

24 (A) Relevant patient records.

25 (B) The statement or explanation of the care and treatment  
26 provided by the physician and surgeon.

27 (C) Any additional expert testimony or literature provided by  
28 the physician and surgeon.

29 (D) Any additional facts or information requested by the  
30 medical expert reviewers that may assist them in determining  
31 whether the care rendered constitutes a departure from the  
32 standard of care.

33 (b) If the board does not receive the information requested  
34 pursuant to paragraph (2) of subdivision (a) within 10 working  
35 days of requesting that information, the complaint may be  
36 reviewed by the medical experts and referred to a field office for  
37 investigation without the information.

38 (c) Nothing in this section shall impede the board's ability to  
39 seek and obtain an interim suspension order or other emergency  
40 relief.

1 (d) The enforcement monitor shall in its initial report address  
2 whether a complaint received by the board relating to a physician  
3 and surgeon who is the subject of a pending investigation,  
4 accusation, or on probation should be reviewed pursuant to this  
5 section or referred directly to field investigation.

6 *SEC. 10. Section 2225 of the Business and Professions Code*  
7 *is amended to read:*

8 2225. (a) Notwithstanding Section 2263 and any other  
9 provision of law making a communication between a physician  
10 and surgeon or a podiatrist and his or her patients a privileged  
11 communication, those provisions shall not apply to investigations  
12 or proceedings conducted under this chapter. Members of the  
13 board, the Senior Assistant Attorney General of the Health  
14 Quality Enforcement Section, members of the California Board  
15 of Podiatric Medicine, and deputies, employees, agents, and  
16 representatives of the board or the Board of Podiatric Medicine  
17 and the Senior Assistant Attorney General of the Health Quality  
18 Enforcement Section shall keep in confidence during the course  
19 of investigations, the names of any patients whose records are  
20 reviewed and may not disclose or reveal those names, except as  
21 is necessary during the course of an investigation, unless and  
22 until proceedings are instituted. The authority of the board of the  
23 Board of Podiatric Medicine and the Health Quality Enforcement  
24 Section to examine records of patients in the office of a physician  
25 and surgeon or a podiatrist is limited to records of patients who  
26 have complained to the board or the Board of Podiatric Medicine  
27 about that licensee.

28 (b) Notwithstanding any other provision of law, the Attorney  
29 General and his or her investigative agents, and investigators and  
30 representatives of the board or the Board of Podiatric Medicine,  
31 may inquire into any alleged violation of the Medical Practice  
32 Act or any other federal or state law, regulation, or rule relevant  
33 to the practice of medicine or podiatric medicine, whichever is  
34 applicable, and may inspect documents relevant to those  
35 investigations in accordance with the following procedures:

36 (1) Any document relevant to an investigation may be  
37 inspected, and copies may be obtained, where patient consent is  
38 given.

39 (2) Any document relevant to the business operations of a  
40 licensee, and not involving medical records attributable to

1 identifiable patients, may be inspected and copied where relevant  
2 to an investigation of a licensee.

3 (c) In all cases where documents are inspected or copies of  
4 those documents are received, their acquisition or review shall be  
5 arranged so as not to unnecessarily disrupt the medical and  
6 business operations of the licensee or of the facility where the  
7 records are kept or used.

8 (d) Where documents are requested from licensees in  
9 accordance with this section by the Attorney General or his or  
10 her agents or deputies, or investigators of the board or the Board  
11 of Podiatric Medicine, they shall be provided within 15 days of  
12 receipt of the request, unless the licensee is unable to provide the  
13 documents within this time period for good cause. Failure to  
14 produce requested documents or copies thereof, after being  
15 informed of the required deadline, shall constitute unprofessional  
16 conduct. *The board may use its authority to cite and fine a  
17 physician and surgeon for any violation of this section that  
18 occurs between the 16th day after receipt of the request through  
19 the 20th day after receipt of the request, and may use any  
20 additional authority it has to fine a physician and surgeon for  
21 any delay longer than 20 days.*

22 (e) Searches conducted of the office or medical facility of any  
23 licensee shall not interfere with the recordkeeping format or  
24 preservation needs of any licensee necessary for the lawful care  
25 of patients.

26 *SEC. 11. Section 2357 is added to the Business and  
27 Professions Code, to read:*

28 *2357. The Bureau of State Audits shall conduct a thorough  
29 audit of the board's diversion program, which audit shall be  
30 completed by July 1, 2006. Notwithstanding any other provision  
31 of law, the authority of the board to maintain the diversion  
32 program shall terminate on July 1, 2007, unless extended by the  
33 Legislature by statute.*

34 *SEC. 12. Section 2435 of the Business and Professions Code  
35 is amended to read:*

36 2435. The following fees apply to the licensure of physicians  
37 and surgeons:

38 (a) Each applicant for a certificate based upon a national board  
39 diplomate certificate, each applicant for a certificate based on  
40 reciprocity, and each applicant for a certificate based upon

1 written examination, shall pay a nonrefundable application and  
2 processing fee, as set forth in subdivision (b), at the time the  
3 application is filed.

4 (b) The application and processing fee shall be fixed by the  
5 Division of Licensing by May 1 of each year, to become  
6 effective on July 1 of that year. The fee shall be fixed at an  
7 amount necessary to recover the actual costs of the licensing  
8 program as projected for the fiscal year commencing on the date  
9 the fees become effective.

10 ~~(e) Each applicant for a certificate by written examination,~~  
11 ~~unless otherwise provided by this chapter, shall pay an~~  
12 ~~examination fee fixed by the board, which shall equal the actual~~  
13 ~~cost to the board of the purchase of the written examination~~  
14 ~~furnished by the organization pursuant to Section 2176, plus the~~  
15 ~~actual cost to the board of administering the written examination.~~  
16 ~~The actual cost to the board of administering the written~~  
17 ~~examination that shall be charged to the applicant shall not~~  
18 ~~exceed one hundred dollars (\$100). The board may charge the~~  
19 ~~examination fee provided for in this section for any subsequent~~  
20 ~~reexamination of the applicant.~~

21 ~~(d) The board shall charge each applicant who is required to~~  
22 ~~take the oral examination as a condition of licensure an oral~~  
23 ~~examination fee that is equal to the amount necessary to recover~~  
24 ~~the actual cost of that examination. The board shall charge the~~  
25 ~~oral examination fee provided for in this subdivision for any~~  
26 ~~subsequent oral examination taken by the applicant.~~

27 ~~(e)–~~

28 (c) Each applicant who qualifies for a certificate, as a  
29 condition precedent to its issuance, in addition to other fees  
30 required herein, shall pay an initial license fee, if any. The initial  
31 license fee shall be fixed by the board at an amount not to exceed  
32 ~~six eight hundred ten dollars (\$610) (\$800)~~, in accordance with  
33 paragraph (2) of subdivision ~~(f)~~ (d). Any applicant enrolled in an  
34 approved postgraduate training program shall be required to pay  
35 only 50 percent of the initial license fee.

36 ~~(f)–~~

37 (d) (1) The biennial renewal fee shall be fixed by the board at  
38 an amount not to exceed ~~six hundred ten dollars (\$610)~~ \_\_\_\_\_, in  
39 accordance with paragraph (2).

1 (2) The board shall fix the biennial renewal fee and the initial  
2 license fee so that, together with the amounts from other  
3 revenues, the reserve balance in the board's contingent fund shall  
4 be equal to approximately two months of annual authorized  
5 expenditures. Any change in the renewal and initial license fees  
6 shall be effective upon a determination by the board, by  
7 emergency regulations adopted pursuant to Section 2436, that  
8 changes in the amounts are necessary to maintain a reserve  
9 balance in the board's contingent fund equal to two months of  
10 annual authorized expenditures in the state fiscal year in which  
11 the expenditures are to occur.

12 ~~(g)~~

13 (e) Notwithstanding Section 163.5, the delinquency fee shall  
14 be 10 percent of the biennial renewal fee.

15 ~~(h)~~

16 (f) The duplicate certificate and endorsement fees shall each  
17 be fifty dollars (\$50), and the certification and letter of good  
18 standing fees shall each be ten dollars (\$10).

19 ~~(i)~~

20 (g) It is the intent of the Legislature that, in setting fees  
21 pursuant to this section, the board shall seek to maintain a reserve  
22 in the Contingent Fund of the Medical Board of California equal  
23 to approximately two months' operating expenditures.

24 ~~(j)~~

25 (h) The board shall report to the appropriate policy and fiscal  
26 committees of each house of the Legislature whenever the board  
27 proposes or approves a fee increase pursuant to this section. The  
28 board shall specify the reasons for each increase and identify the  
29 percentage of funds to be derived from an increase in the fees  
30 that will be used for investigation or enforcement related  
31 activities by the board.

32 *SEC. 13. Section 364.1 of the Code of Civil Procedure is*  
33 *repealed.*

34 ~~364.1. No action based upon the professional negligence of a~~  
35 ~~physician and surgeon or doctor of podiatric medicine may be~~  
36 ~~commenced unless the 90-day prior notice required by Section~~  
37 ~~364 is also sent to the Medical Board of California or the Board~~  
38 ~~of Podiatric Medicine, as applicable, at the same time it is sent to~~  
39 ~~the defendant. The Medical Board of California or the Board of~~

1 Podiatric Medicine shall maintain the notice as a confidential part  
2 of a potential investigation file.

3 *SEC. 14. Section 11371 of the Government Code is amended*  
4 *to read:*

5 11371. (a) There is within the Office of Administrative  
6 Hearings a Medical Quality Hearing Panel, consisting of no  
7 fewer than five full-time administrative law judges. The  
8 administrative law judges shall have medical training as  
9 recommended by the Division of Medical Quality of the Medical  
10 Board of California and approved by the Director of the Office of  
11 Administrative Hearings.

12 (b) The director shall determine the qualifications of panel  
13 members, supervise their training, and coordinate the publication  
14 of a reporter of decisions pursuant to this section. The panel shall  
15 include only those persons specifically qualified and shall at no  
16 time constitute more than 25 percent of the total number of  
17 administrative law judges within the Office of Administrative  
18 Hearings. If the members of the panel do not have a full  
19 workload, they may be assigned work by the Director of the  
20 Office of Administrative Hearings. When the medically related  
21 case workload exceeds the capacity of the members of the panel,  
22 additional judges shall be requested to be added to the panels as  
23 appropriate. When this workload overflow occurs on a temporary  
24 basis, the Director of the Office of Administrative Hearings shall  
25 supply judges from the Office of Administrative Hearings to  
26 adjudicate the cases.

27 ~~(c) The decisions of the administrative law judges of the panel,~~  
28 ~~together with any court decisions reviewing those decisions, shall~~  
29 ~~be published in a quarterly "Medical Discipline Report," to be~~  
30 ~~funded upon appropriation by the Legislature from the~~  
31 ~~Contingent Fund of the Medical Board of California.~~

32 ~~(d)~~ The administrative law judges of the panel shall have  
33 panels of experts available. The panels of experts shall be  
34 appointed by the Director of the Office of Administrative  
35 Hearings, with the advice of the Medical Board of California.  
36 These panels of experts may be called as witnesses by the  
37 administrative law judges of the panel to testify on the record  
38 about any matter relevant to a proceeding and subject to  
39 cross-examination by all parties, and Section 11430.30 does not  
40 apply in a proceeding under this section. The administrative law

1 judge may award reasonable expert witness fees to any person or  
2 persons serving on a panel of experts, which shall be paid from  
3 the Contingent Fund of the Medical Board of California upon  
4 appropriation by the Legislature.

5 *SEC. 15. Section 11508 of the Government Code is amended*  
6 *to read:*

7 11508. (a) The agency shall consult the office, and subject to  
8 the availability of its staff, shall determine the time and place of  
9 hearing. The hearing shall be held in Oakland if the transaction  
10 occurred or the respondent resides within the First or Sixth  
11 Appellate District, in the County of Los Angeles if the  
12 transaction occurred or the respondent resides within the Second  
13 or Fourth Appellate District other than the County of Imperial or  
14 San Diego, in the County of Sacramento if the transaction  
15 occurred or the respondent resides within the Third or Fifth  
16 Appellate District, and in the County of San Diego if the  
17 transaction occurred or the respondent resides within the Fourth  
18 Appellate District in the County of Imperial or San Diego.

19 (b) Notwithstanding subdivision (a):

20 (1) If the transaction occurred in a district other than that of  
21 respondent's residence, the agency may select the county  
22 appropriate for either district.

23 (2) The agency may select a different place nearer the place  
24 where the transaction occurred or the respondent resides.

25 (3) The parties by agreement may select any place within the  
26 state.

27 (c) The respondent may move for, and the administrative law  
28 judge has discretion to grant or deny, a change in the place of the  
29 hearing. A motion for a change in the place of the hearing shall  
30 be made within 10 days after service of the notice of hearing on  
31 the respondent.

32 (d) *This section does not apply to hearings requested by the*  
33 *Medical Board of California.*

34 *SEC. 16. Section 11508.1 is added to the Government Code,*  
35 *to read:*

36 11508.1. (a) *The Medical Board of California shall consult*  
37 *the office, and subject to the availability of its staff, shall*  
38 *determine the time and place of hearing. The hearing shall be*  
39 *held at hearing facilities maintained by the office in Sacramento,*

1 *Oakland, Los Angeles, or San Diego whenever specifically*  
2 *requested by the board.*

3 *(b) (1) If the transaction occurred in an area other than that*  
4 *of the respondent's residence, the board may select the place*  
5 *appropriate for the where the transaction occurred.*

6 *(2) The board may select a different place nearer the place*  
7 *where the transaction occurred or the respondent resides.*

8 *(3) The parties by agreement may select any place within the*  
9 *state.*

10 *(c) Notwithstanding subdivision (a), the respondent may move*  
11 *for, and the administrative law judge has discretion to grant or*  
12 *deny, a change in the place of the hearing to a location that is*  
13 *closest to where the transaction occurred or the respondent*  
14 *resides. A motion for a change in the place of the hearing shall*  
15 *be made within 10 days after service of the notice of hearing on*  
16 *the respondent. Any order granting a change of venue shall state*  
17 *the reasons therefor in writing.*

18 *SEC. 17. Section 12529 of the Government Code is amended*  
19 *to read:*

20 12529. (a) There is in the Department of Justice the Health  
21 Quality Enforcement Section. The primary responsibility of the  
22 section is to *investigate and* prosecute proceedings against  
23 licensees and applicants within the jurisdiction of the Medical  
24 Board of California including all committees under the  
25 jurisdiction of the board or a division of the board, including the  
26 Board of Podiatric Medicine, and the Board of Psychology, ~~and~~  
27 ~~to provide ongoing review of the investigative activities~~  
28 ~~conducted in support of those prosecutions, as provided in~~  
29 ~~subdivision (b) of Section 12529.5.~~

30 (b) The Attorney General shall appoint a Senior Assistant  
31 Attorney General of the Health Quality Enforcement Section.  
32 The Senior Assistant Attorney General of the Health Quality  
33 Enforcement Section shall be an attorney in good standing  
34 licensed to practice in the State of California, experienced in  
35 prosecutorial or administrative disciplinary proceedings and  
36 competent in the management and supervision of attorneys  
37 performing those functions.

38 (c) The Attorney General shall ensure that the Health Quality  
39 Enforcement Section is staffed with a sufficient number of  
40 experienced and able employees that are capable of handling the

1 most complex and varied types of disciplinary actions against the  
2 licensees of the division or board.

3 (d) Funding for the Health Quality Enforcement Section shall  
4 be budgeted in consultation with the Attorney General from the  
5 special funds financing the operations of the Medical Board of  
6 California, the California Board of Podiatric Medicine, and the  
7 committees under the jurisdiction of the Medical Board of  
8 California or a division of the board, and the Board of  
9 Psychology, with the intent that the expenses be proportionally  
10 shared as to services rendered.

11 *SEC. 18. Section 12529.5 of the Government Code is*  
12 *amended to read:*

13 12529.5. (a) All complaints or relevant information  
14 concerning licensees that are within the jurisdiction of the  
15 Medical Board of California or the Board of Psychology shall be  
16 made available to the Health Quality Enforcement Section.

17 ~~(b) The Senior Assistant Attorney General of the Health~~  
18 ~~Quality Enforcement Section shall assign attorneys to assist the~~  
19 ~~division and the boards in intake and investigations and to direct~~  
20 ~~discipline-related prosecutions. Attorneys shall be assigned to~~  
21 ~~work closely with each major intake and investigatory unit of the~~  
22 ~~boards, to assist in the evaluation and screening of complaints~~  
23 ~~from receipt through disposition and to assist in developing~~  
24 ~~uniform standards and procedures for the handling of complaints~~  
25 ~~and investigations.~~

26 ~~A deputy attorney general of the Health Quality Enforcement~~  
27 ~~Section shall frequently be available on location at each of the~~  
28 ~~working offices at the major investigation centers of the boards,~~  
29 ~~to provide consultation and related services and engage in case~~  
30 ~~review with the boards' investigative, medical advisory, and~~  
31 ~~intake staff. The Senior Assistant Attorney General and deputy~~  
32 ~~attorneys general working at his or her direction shall consult as~~  
33 ~~appropriate with the investigators of the boards, medical~~  
34 ~~advisors, and executive staff in the investigation and prosecution~~  
35 ~~of disciplinary cases.~~

36 ~~(e) The Senior Assistant Attorney General or his or her deputy~~  
37 ~~attorneys general shall assist the boards, division, or allied health~~  
38 ~~committees, including the Board of Podiatric Medicine, in~~  
39 ~~designing and providing initial and in-service training programs~~  
40 ~~for staff of the division, boards, or allied health committees,~~

1 including, but not limited to, information collection and  
2 investigation.

3 ~~(d)~~

4 (c) The determination to bring a disciplinary proceeding  
5 against a licensee of the division or the boards shall be made by  
6 the executive officer of the division, the board, or allied health  
7 committee, including the Board of Podiatric Medicine, or the  
8 Board of Psychology, as appropriate in consultation with the  
9 senior assistant.

10 *SEC. 19. No reimbursement is required by this act pursuant*  
11 *to Section 6 of Article XIII B of the California Constitution*  
12 *because the only costs that may be incurred by a local agency or*  
13 *school district will be incurred because this act creates a new*  
14 *crime or infraction, eliminates a crime or infraction, or changes*  
15 *the penalty for a crime or infraction, within the meaning of*  
16 *Section 17556 of the Government Code, or changes the definition*  
17 *of a crime within the meaning of Section 6 of Article XIII B of the*  
18 *California Constitution.*

19 ~~2001. There is in the Department of Consumer Affairs a~~  
20 ~~Medical Board of California that consists of 21 members, nine of~~  
21 ~~whom shall be public members:~~

22 ~~The Governor shall appoint 19 members to the board, subject~~  
23 ~~to confirmation by the Senate, seven of whom shall be public~~  
24 ~~members. The Senate Rules Committee and the Speaker of the~~  
25 ~~Assembly shall each appoint a public member, and their initial~~  
26 ~~appointment shall be made to fill, respectively, the first and~~  
27 ~~second public member vacancies that occur on or after January 1,~~  
28 ~~1983.~~

29 ~~This section shall become inoperative on \_\_\_\_\_, and, as of \_\_\_\_\_,~~  
30 ~~is repealed, unless a later enacted statute, which becomes~~  
31 ~~effective on or before \_\_\_\_\_, deletes or extends the dates on which~~  
32 ~~it becomes inoperative and is repealed. The repeal of this section~~  
33 ~~renders the board subject to the review required by Division 1.2~~  
34 ~~(commencing with Section 473).~~