

Introduced by Senator FigueroaFebruary 22, 2006

An act to amend Sections 801, 801.1, 802, 803, 803.1, and 804 of, to add Section 801.01 to, and to repeal Sections 802.3, 803.2, 803.3, and 804.5 of, the Business and Professions Code, relating to the healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1438, as introduced, Figueroa. Healing arts: reporting requirements.

Existing law creates the Medical Board of California (Medical Board) and the Osteopathic Medical Board of California that issue a physician and surgeon's certificate to qualified applicants and regulate their practice. Existing law also creates the California Board of Podiatric Medicine (Podiatric Board) within the jurisdiction of the Medical Board, and the Division of Licensing of the Medical Board issues a certificate to practice podiatric medicine to qualified applicants while the Podiatric Board regulates their practice. Existing law requires an insurer providing professional liability insurance to a physician and surgeon and a governmental agency that self-insures a physician and surgeon or, if uninsured, the physician and surgeon himself or herself, to report information concerning settlements, arbitration awards, and judgments in malpractice actions to the practitioner's licensing board. Under existing law, those parties and a podiatrist are also required to report this information to the practitioner's licensing board if the settlement, arbitration award, or judgment is entered against, or paid by, the practitioner's employer, as defined.

This bill would recast these reporting provisions and would specify their application to actions or claims involving a podiatrist, requiring that they be reported to the Podiatric Board.

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 801 of the Business and Professions
 2 Code is amended to read:

3 801. (a) Every insurer providing professional liability
 4 insurance to a person who holds a license, certificate, or similar
 5 authority from or under any agency mentioned in subdivision (a)
 6 of Section 800 (except as provided in subdivisions (b), (c), *and*
 7 (d), ~~and (e)~~) shall send a complete report to that agency as to any
 8 settlement or arbitration award over three thousand dollars
 9 (\$3,000) of a claim or action for damages for death or personal
 10 injury caused by that person’s negligence, error, or omission in
 11 practice, or by his or her rendering of unauthorized professional
 12 services. The report shall be sent within 30 days after the written
 13 settlement agreement has been reduced to writing and signed by
 14 all parties thereto or within 30 days after service of the arbitration
 15 award on the parties.

16 ~~(b) Every insurer providing professional liability insurance to~~
 17 ~~a physician and surgeon licensed pursuant to Chapter 5~~
 18 ~~(commencing with Section 2000) or the Osteopathic Initiative~~
 19 ~~Act shall send a complete report to the Medical Board of~~
 20 ~~California or the Osteopathic Medical Board of California, as~~
 21 ~~appropriate, as to any settlement over thirty thousand dollars~~
 22 ~~(\$30,000); or arbitration award of any amount; or civil judgment~~
 23 ~~of any amount, whether or not vacated by a settlement after entry~~
 24 ~~of the judgment, that was not reversed on appeal; of a claim or~~
 25 ~~action for damages for death or personal injury caused by that~~
 26 ~~person’s negligence, error, or omission in practice, or by his or~~
 27 ~~her rendering of unauthorized professional services. A settlement~~
 28 ~~over thirty thousand dollars (\$30,000) shall also be reported if the~~
 29 ~~settlement is based on the licensee’s negligence, error, or~~
 30 ~~omission in practice, or by the licensee’s rendering of~~
 31 ~~unauthorized professional services, and a party to the settlement~~
 32 ~~is a corporation, medical group, partnership, or other corporate~~

1 ~~entity in which the licensee has an ownership interest or that~~
2 ~~employs or contracts with the licensee. The report shall be sent~~
3 ~~within 30 days after the written settlement agreement has been~~
4 ~~reduced to writing and signed by all parties thereto, within 30~~
5 ~~days after service of the arbitration award on the parties, or~~
6 ~~within 30 days after the date of entry of the civil judgment.~~

7 (e) Every insurer providing professional liability insurance to
8 a person licensed pursuant to Chapter 13 (commencing with
9 Section 4980) or Chapter 14 (commencing with Section 4990)
10 shall send a complete report to the Board of Behavioral Science
11 Examiners as to any settlement or arbitration award over ten
12 thousand dollars (\$10,000) of a claim or action for damages for
13 death or personal injury caused by that person's negligence,
14 error, or omission in practice, or by his or her rendering of
15 unauthorized professional services. The report shall be sent
16 within 30 days after the written settlement agreement has been
17 reduced to writing and signed by all parties thereto or within 30
18 days after service of the arbitration award on the parties.

19 ~~(d)~~

20 (c) Every insurer providing professional liability insurance to
21 a dentist licensed pursuant to Chapter 4 (commencing with
22 Section 1600) shall send a complete report to the Dental Board of
23 California as to any settlement or arbitration award over ten
24 thousand dollars (\$10,000) of a claim or action for damages for
25 death or personal injury caused by that person's negligence,
26 error, or omission in practice, or rendering of unauthorized
27 professional services. The report shall be sent within 30 days
28 after the written settlement agreement has been reduced to
29 writing and signed by all parties thereto or within 30 days after
30 service of the arbitration award on the parties.

31 (e)

32 (d) Every insurer providing liability insurance to a veterinarian
33 licensed pursuant to Chapter ~~60 11~~ (commencing with Section
34 ~~4825 4800~~) shall send a complete report to the Veterinary
35 Medical Board of any settlement or arbitration award over ten
36 thousand dollars (\$10,000) of a claim or action for damages for
37 death or injury caused by that person's negligence, error, or
38 omission in practice, or rendering of unauthorized professional
39 service. The report shall be sent within 30 days after the written
40 settlement agreement has been reduced to writing and signed by

1 all parties thereto or within 30 days after service of the arbitration
2 award on the parties.

3 ~~(f)~~

4 (e) The insurer shall notify the claimant, or if the claimant is
5 represented by counsel, the insurer shall notify the claimant's
6 attorney, that the report required by subdivision (a), (b), *or* (c), ~~or~~
7 ~~(d)~~ has been sent to the agency. If the attorney has not received
8 this notice within 45 days after the settlement was reduced to
9 writing and signed by all of the parties, the arbitration award was
10 served on the parties, or the date of entry of the civil judgment,
11 the attorney shall make the report to the agency.

12 ~~(g)~~

13 (f) Notwithstanding any other provision of law, no insurer
14 shall enter into a settlement without the written consent of the
15 insured, except that this prohibition shall not void any settlement
16 entered into without that written consent. The requirement of
17 written consent shall only be waived by both the insured and the
18 insurer. This section shall only apply to a settlement on a policy
19 of insurance executed or renewed on or after January 1, 1971.

20 SEC. 2. Section 801.01 is added to the Business and
21 Professions Code, to read:

22 801.01. (a) A report, as described in subdivision (f), shall be
23 sent to the Medical Board of California, the Osteopathic Medical
24 Board, or the California Board of Podiatric Medicine, with
25 respect to a licensee of the board as to the following:

26 (1) A settlement over thirty thousand dollars (\$30,000) or
27 arbitration award of any amount or a civil judgment of any
28 amount, whether or not vacated by a settlement after entry of the
29 judgment, that was not reversed on appeal, of a claim or action
30 for damages for death or personal injury caused by the licensee's
31 negligence, error, or omission in practice, or by his or her
32 rendering of unauthorized professional services.

33 (2) A settlement over thirty thousand dollars (\$30,000) if it is
34 based on the licensee's negligence, error, or omission in practice,
35 or by the licensee's rendering of unauthorized professional
36 services, and a party to the settlement is a corporation, medical
37 group, partnership, or other corporate entity in which the licensee
38 has an ownership interest or that employs or contracts with the
39 licensee.

1 (b) The report described in subdivision (a) shall be sent by one
2 of the following parties:

3 (1) The insurer providing professional liability insurance to the
4 licensee for the matter described in the report.

5 (2) The licensee, or his or her counsel, if the licensee does not
6 possess professional liability insurance for the matter described
7 in the report.

8 (3) A state or local governmental agency that self-insures the
9 licensee for the matter described in the report.

10 (4) The appropriate party described in paragraph (1), (2), or
11 (3) shall send the report required by subdivision (a) if the
12 judgment, settlement agreement, or arbitration award is entered
13 against or paid by the employer of the licensee and not entered
14 against or paid by the licensee. “Employer,” as used in this
15 paragraph, means a professional corporation, a group practice, a
16 health care facility or clinic licensed or exempt from licensure
17 under the Health and Safety Code, a licensed health care service
18 plan, a medical care foundation, an educational institution, a
19 professional institution, a professional school or college, a
20 general law corporation, a public entity, or a nonprofit
21 organization that employs, retains, or contracts with a licensee
22 referred to in this section. Nothing in this paragraph shall be
23 construed to authorize the employment of, or contracting with,
24 any licensee in violation of Section 2400.

25 (c) The report described in subdivision (a) shall be sent to the
26 Medical Board of California, the Osteopathic Medical Board of
27 California, or the California Board of Podiatric Medicine, as
28 appropriate, within 30 days after the written settlement
29 agreement has been reduced to writing and signed by all parties
30 thereto, within 30 days after service of the arbitration award on
31 the parties, or within 30 days after the date of entry of the civil
32 judgment.

33 (d) If an insurer is required under subdivision (b) to send the
34 report, the insurer shall notify the claimant, or if the claimant is
35 represented by counsel, the claimant’s counsel, that the insurer
36 has sent the report to the Medical Board of California, the
37 Osteopathic Medical Board of California, or the California Board
38 of Podiatric Medicine. If the claimant, or his or her counsel, has
39 not received this notice within 45 days after the settlement was
40 reduced to writing and signed by all of the parties or the

1 arbitration award was served on the parties or the date of entry of
2 the civil judgment, the claimant or the claimant's counsel shall
3 make the report to the appropriate board.

4 (e) If the licensee or his or her counsel is required under
5 subdivision (b) to send the report, the licensee or his or her
6 counsel shall send a copy of the report to the claimant or to his or
7 her counsel if he or she is represented by counsel. If the claimant
8 or his or her counsel has not received a copy of the report within
9 45 days after the settlement was reduced to writing and signed by
10 all of the parties or the arbitration award was served on the
11 parties or the date of entry of the civil judgment, the claimant or
12 the claimant's counsel shall make the report required by
13 subdivision (a) to the appropriate board. Failure of the licensee or
14 claimant, or counsel representing the licensee or claimant, to
15 comply with this subdivision is a public offense punishable by a
16 fine of not less than fifty dollars (\$50) and not more than five
17 hundred dollars (\$500). A knowing and intentional failure to
18 comply with this subdivision or a conspiracy or collusion not to
19 comply with this subdivision, or to hinder or impede any other
20 person in the compliance, is a public offense punishable by a fine
21 of not less than five thousand dollars (\$5,000) and not more than
22 fifty thousand dollars (\$50,000).

23 (f) (1) The Medical Board of California, the Osteopathic
24 Medical Board of California, and the California Board of
25 Podiatric Medicine, may develop a prescribed form for the report
26 required by this section.

27 (2) The report required by this section shall include the
28 following information:

29 (A) The name and last known business and residential
30 addresses of every plaintiff or claimant involved in the matter,
31 whether or not the person received an award under the
32 settlement, arbitration, or judgment.

33 (B) The name and last known business and residential address
34 of every physician and surgeon or doctor of podiatric medicine
35 who was alleged to have acted improperly, whether or not that
36 person was a named defendant in the action and whether or not
37 that person was required to pay any damages pursuant to the
38 settlement, arbitration award, or judgment.

39 (C) The name, address, and principal place of business of
40 every insurer providing professional liability insurance to any

1 person described in subparagraph (B), and the insured’s policy
2 number.

3 (D) The name of the court in which the action or any part of
4 the action was filed, and the date of filing and case number of
5 each action.

6 (E) A brief description or summary of the facts of each claim,
7 charge, or allegation including the date of occurrence.

8 (F) The name and last known business address of each
9 attorney who represented a party in the settlement, arbitration, or
10 civil action, including the name of the client he or she
11 represented.

12 (G) The amount of the judgment and the date of its entry; the
13 amount of the arbitration award, the date of its service on the
14 parties, and a copy of the award document; or the amount of the
15 settlement and the date it was reduced to writing and signed by
16 all parties.

17 (H) The specialty or subspecialty of the physician and surgeon
18 or the doctor of podiatric medicine who was the subject of the
19 claim or action.

20 (I) Any other information the Medical Board of California, the
21 Osteopathic Medical Board of California, or the California Board
22 of Podiatric Medicine may, by regulation, require.

23 (3) Every professional liability insurer, self-insured
24 governmental agency, or licensee or his or her counsel that
25 makes a report under this section and has received a copy of any
26 written patient medical or hospital records prepared by the
27 treating physician and surgeon or podiatrist, or the staff of the
28 treating physician and surgeon, podiatrist, or hospital, describing
29 the medical condition, history, care, or treatment of the person
30 whose death or injury is the subject of the report, or a copy of
31 any deposition in the matter that discusses the care, treatment, or
32 medical condition of the person, shall include with the report,
33 copies of the records and depositions, subject to reasonable costs
34 to be paid by the Medical Board of California the Osteopathic
35 Medical Board of California, or the California Board of Podiatric
36 Medicine. If confidentiality is required by court order and, as a
37 result, the reporter is unable to provide the records and
38 depositions, documentation to that effect shall accompany the
39 original report. The applicable board may, upon prior notification
40 of the parties to the action, petition the appropriate court for

1 modification of any protective order to permit disclosure to the
2 board. A professional liability insurer, self-insured governmental
3 agency, or licensee or his or her counsel shall maintain the
4 records and depositions referred to in this paragraph for at least
5 one year from the date of filing of the report required by this
6 section.

7 (g) If the board, within 60 days of its receipt of a report filed
8 under this section, notifies a person named in the report, that
9 person shall maintain for the period of three years from the date
10 of filing of the report any records he or she has as to the matter in
11 question and shall make those records available upon request to
12 the board to which the report was sent.

13 (h) Notwithstanding any other provision of law, no insurer
14 shall enter into a settlement without the written consent of the
15 insured, except that this prohibition shall not void any settlement
16 entered into without that written consent. The requirement of
17 written consent shall only be waived by both the insured and the
18 insurer.

19 SEC. 3. Section 801.1 of the Business and Professions Code
20 is amended to read:

21 801.1. (a) Every state or local governmental agency that self
22 insures a person who holds a license, certificate or similar
23 authority from or under any agency mentioned in subdivision (a)
24 of Section 800 (except a person licensed pursuant to Chapter 3
25 (commencing with Section 1200) or Chapter 5 (commencing
26 with Section 2000) of ~~Division 2~~ or the Osteopathic Initiative
27 Act) shall send a complete report to that agency as to any
28 settlement or arbitration award over three thousand dollars
29 (\$3,000) of a claim or action for damages for death or personal
30 injury caused by that person's negligence, error or omission in
31 practice, or rendering of unauthorized professional services. The
32 report shall be sent within 30 days after the written settlement
33 agreement has been reduced to writing and signed by all parties
34 thereto or within 30 days after service of the arbitration award on
35 the parties.

36 ~~(b) Every state or local governmental agency that self-insures~~
37 ~~a physician and surgeon licensed pursuant to Chapter 5~~
38 ~~(commencing with Section 2000) of Division 2 or the~~
39 ~~Osteopathic Initiative Act shall send a complete report to the~~
40 ~~Medical Board of California or the Osteopathic Medical Board of~~

1 ~~California, as appropriate, as to any settlement or arbitration~~
2 ~~award over thirty thousand dollars (\$30,000) of a claim or action~~
3 ~~for damages for death or personal injury caused by that person's~~
4 ~~negligence, error or omission in practice, or rendering of~~
5 ~~unauthorized professional services. A settlement over thirty~~
6 ~~thousand dollars (\$30,000) shall also be reported if the settlement~~
7 ~~is based on the licensee's negligence, error, or omission in~~
8 ~~practice or by his or her rendering of unauthorized professional~~
9 ~~services, and a party to the settlement is a corporation, medical~~
10 ~~group, partnership, or other corporate entity in which the licensee~~
11 ~~has an ownership interest or that employs or contracts with the~~
12 ~~licensee. The report shall be sent within 30 days after the written~~
13 ~~settlement agreement has been reduced to writing and signed by~~
14 ~~all parties thereto or within 30 days after service of the arbitration~~
15 ~~award on the parties.~~

16 ~~(e) Every state or local governmental agency that self-insures~~
17 ~~a person licensed pursuant to Chapter 13 (commencing with~~
18 ~~Section 4980) or Chapter 14 (commencing with Section 4990)~~
19 ~~shall send a complete report to the Board of Behavioral Science~~
20 ~~Examiners as to any settlement or arbitration award over ten~~
21 ~~thousand dollars (\$10,000) of a claim or action for damages for~~
22 ~~death or personal injury caused by that person's negligence,~~
23 ~~error, or omission in practice, or rendering of unauthorized~~
24 ~~professional services. The report shall be sent within 30 days~~
25 ~~after the written settlement agreement has been reduced to~~
26 ~~writing and signed by all parties thereto or within 30 days after~~
27 ~~service of the arbitration award on the parties.~~

28 SEC. 4. Section 802 of the Business and Professions Code is
29 amended to read:

30 802. (a) Every settlement, judgment, or arbitration award
31 over three thousand dollars (\$3,000) of a claim or action for
32 damages for death or personal injury caused by negligence, error
33 or omission in practice, or by the unauthorized rendering of
34 professional services, by a person who holds a license,
35 certificate, or other similar authority from an agency mentioned
36 in subdivision (a) of Section 800 (except a person licensed
37 pursuant to Chapter 3 (commencing with Section 1200) or
38 Chapter 5 (commencing with Section 2000) of Division 2) or the
39 Osteopathic Initiative ~~Act~~ *Act*) who does not possess professional
40 liability insurance as to that claim shall, within 30 days after the

1 written settlement agreement has been reduced to writing and
2 signed by all the parties thereto or 30 days after service of the
3 judgment or arbitration award on the parties, be reported to the
4 agency that issued the license, certificate, or similar authority. A
5 complete report shall be made by appropriate means by the
6 person or his or her counsel, with a copy of the communication to
7 be sent to the claimant through his or her counsel if the person is
8 so represented, or directly if he or she is not. If, within 45 days of
9 the conclusion of the written settlement agreement or service of
10 the judgment or arbitration award on the parties, counsel for the
11 claimant (or if the claimant is not represented by counsel, the
12 claimant himself or herself) has not received a copy of the report,
13 he or she shall himself or herself make the complete report.
14 Failure of the licensee or claimant (or, if represented by counsel,
15 their counsel) to comply with this section is a public offense
16 punishable by a fine of not less than fifty dollars (\$50) or more
17 than five hundred dollars (\$500). Knowing and intentional failure
18 to comply with this section or conspiracy or collusion not to
19 comply with this section, or to hinder or impede any other person
20 in the compliance, is a public offense punishable by a fine of not
21 less than five thousand dollars (\$5,000) nor more than fifty
22 thousand dollars (\$50,000).

23 ~~(b) Every settlement over thirty thousand dollars (\$30,000), or~~
24 ~~judgment or arbitration award of any amount, of a claim or action~~
25 ~~for damages for death or personal injury caused by negligence,~~
26 ~~error or omission in practice, or by the unauthorized rendering of~~
27 ~~professional services, by a physician and surgeon licensed~~
28 ~~pursuant to Chapter 5 (commencing with Section 2000) of~~
29 ~~Division 2, or the Osteopathic Initiative Act, who does not~~
30 ~~possess professional liability insurance as to the claim shall,~~
31 ~~within 30 days after the written settlement agreement has been~~
32 ~~reduced to writing and signed by all the parties thereto or 30 days~~
33 ~~after service of the judgment or arbitration award on the parties,~~
34 ~~be reported to the agency that issued the license, certificate, or~~
35 ~~similar authority. A settlement over thirty thousand dollars~~
36 ~~(\$30,000) shall also be reported if the settlement is based on the~~
37 ~~licensee's negligence, error, or omission in practice or his or her~~
38 ~~rendering of unauthorized professional services, and a party to~~
39 ~~the settlement is a corporation, medical group, partnership, or~~
40 ~~other corporate entity in which the licensee has an ownership~~

1 ~~interest or that employs or contracts with the licensee. A~~
2 ~~complete report including the name and license number of the~~
3 ~~physician and surgeon shall be made by appropriate means by the~~
4 ~~person or his or her counsel, with a copy of the communication to~~
5 ~~be sent to the claimant through his or her counsel if he or she is~~
6 ~~so represented, or directly if he or she is not. If, within 45 days of~~
7 ~~the conclusion of the written settlement agreement or service of~~
8 ~~the judgment or arbitration award on the parties, counsel for the~~
9 ~~claimant (or if the claimant is not represented by counsel, the~~
10 ~~claimant himself or herself) has not received a copy of the report,~~
11 ~~he or she shall himself or herself make the complete report.~~
12 ~~Failure of the physician and surgeon or claimant (or, if~~
13 ~~represented by counsel, their counsel) to comply with this section~~
14 ~~is a public offense punishable by a fine of not less than fifty~~
15 ~~dollars (\$50) nor more than five hundred dollars (\$500).~~
16 ~~Knowing and intentional failure to comply with this section or~~
17 ~~conspiracy or collusion not to comply with this section, or to~~
18 ~~hinder or impede any other person in the compliance, is a public~~
19 ~~offense punishable by a fine of not less than five thousand dollars~~
20 ~~(\$5,000) nor more than fifty thousand dollars (\$50,000).~~

21 (e) ~~Every settlement, judgment, or arbitration award over ten~~
22 ~~thousand dollars (\$10,000) of a claim or action for damages for~~
23 ~~death or personal injury caused by negligence, error, or omission~~
24 ~~in practice, or by the unauthorized rendering of professional~~
25 ~~services, by a marriage and family therapist or clinical social~~
26 ~~worker licensed pursuant to Chapter 13 (commencing with~~
27 ~~Section 4980) or Chapter 14 (commencing with Section 4990)~~
28 ~~who does not possess professional liability insurance as to that~~
29 ~~claim shall within 30 days after the written settlement agreement~~
30 ~~has been reduced to writing and signed by all the parties thereto~~
31 ~~or 30 days after service of the judgment or arbitration award on~~
32 ~~the parties be reported to the agency that issued the license,~~
33 ~~certificate, or similar authority. A complete report shall be made~~
34 ~~by appropriate means by the person or his or her counsel, with a~~
35 ~~copy of the communication to be sent to the claimant through his~~
36 ~~or her counsel if he or she is so represented, or directly if he or~~
37 ~~she is not. If, within 45 days of the conclusion of the written~~
38 ~~settlement agreement or service of the judgment or arbitration~~
39 ~~award on the parties, counsel for the claimant (or if he or she is~~
40 ~~not represented by counsel, the claimant himself or herself) has~~

1 not received a copy of the report, he or she shall himself or
2 herself make a complete report. Failure of the marriage and
3 family therapist or clinical social worker or claimant (or, if
4 represented by counsel, their counsel) to comply with this section
5 is a public offense punishable by a fine of not less than fifty
6 dollars (\$50) nor more than five hundred dollars (\$500).
7 Knowing and intentional failure to comply with this section, or
8 conspiracy or collusion not to comply with this section or to
9 hinder or impede any other person in that compliance, is a public
10 offense punishable by a fine of not less than five thousand dollars
11 (\$5,000) nor more than fifty thousand dollars (\$50,000).

12 SEC. 5. Section 802.3 of the Business and Professions Code
13 is repealed.

14 ~~802.3. Every report of a settlement required by Sections 801,~~
15 ~~801.1, and 802 shall specify the specialty or subspecialty of the~~
16 ~~physician and surgeon involved.~~

17 SEC. 6. Section 803 of the Business and Professions Code is
18 amended to read:

19 803. (a) ~~(1)~~ Except as provided in ~~paragraph (2)~~ *subdivision*
20 *(b)*, within 10 days after a judgment by a court of this state that a
21 person who holds a license, certificate, or other similar authority
22 from the Board of Behavioral Science Examiners or from an
23 agency mentioned in subdivision (a) of Section 800 (except a
24 person licensed pursuant to Chapter 3 (commencing with Section
25 1200)) has committed a crime, or is liable for any death or
26 personal injury resulting in a judgment for an amount in excess
27 of thirty thousand dollars (\$30,000) caused by his or her
28 negligence, error or omission in practice, or his or her rendering
29 unauthorized professional services, the clerk of the court that
30 rendered the judgment shall report that fact to the agency that
31 issued the license, certificate, or other similar authority.

32 ~~(2)~~

33 *(b)* For purposes of a physician and surgeon who has
34 committed a crime, or is liable for any death or personal injury
35 resulting in a judgment of any amount caused by his or her
36 negligence, error or omission in practice, or his or her rendering
37 unauthorized professional services, the clerk of the court that
38 rendered the judgment shall report that fact to the agency that
39 issued the license.

1 ~~(b) Every insurer providing professional liability insurance to~~
2 ~~a physician and surgeon licensed pursuant to Chapter 5~~
3 ~~(commencing with Section 2000) shall send a complete report~~
4 ~~including the name and license number of the physician and~~
5 ~~surgeon to the Medical Board of California or the Osteopathic~~
6 ~~Medical Board of California as to any judgment of a claim for~~
7 ~~damages for death or personal injury caused by that licensee's~~
8 ~~negligence, error, or omission in practice, or rendering of~~
9 ~~unauthorized professional services. The report shall be sent~~
10 ~~within 30 calendar days after entry of judgment.~~

11 ~~(c) Notwithstanding any other provision of law, the Medical~~
12 ~~Board of California, the Osteopathic Medical Board of~~
13 ~~California, and the California Board of Podiatric Medicine shall~~
14 ~~disclose to an inquiring member of the public information~~
15 ~~received pursuant to subdivision (a) regarding felony convictions~~
16 ~~of, and judgments against, a physician and surgeon or doctor of~~
17 ~~podiatric medicine. The Division of Medical Quality, the~~
18 ~~Osteopathic Medical Board of California, and the California~~
19 ~~Board of Podiatric Medicine may formulate appropriate~~
20 ~~disclaimers or explanatory statements to be included with any~~
21 ~~information released, and may, by regulation, establish categories~~
22 ~~of information that need not be disclosed to the public because~~
23 ~~that information is unreliable or not sufficiently related to the~~
24 ~~licensee's professional practice.~~

25 SEC. 7. Section 803.1 of the Business and Professions Code
26 is amended to read:

27 803.1. (a) Notwithstanding any other provision of law, the
28 Medical Board of California, the Osteopathic Medical Board of
29 California, and the California Board of Podiatric Medicine shall
30 disclose to an inquiring member of the public information
31 regarding any enforcement actions taken against a licensee by
32 either board or by another state or jurisdiction, including all of
33 the following:

- 34 (1) Temporary restraining orders issued.
- 35 (2) Interim suspension orders issued.
- 36 (3) Revocations, suspensions, probations, or limitations on
37 practice ordered by the board, including those made part of a
38 probationary order or stipulated agreement.
- 39 (4) Public letters of reprimand issued.
- 40 (5) Infractions, citations, or fines imposed.

1 (b) Notwithstanding any other provision of law, in addition to
2 the information provided in subdivision (a), the Medical Board of
3 California, the Osteopathic Medical Board of California, and the
4 California Board of Podiatric Medicine shall disclose to an
5 inquiring member of the public all of the following:

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

13 (2) (A) All settlements in the possession, custody, or control
14 of the board shall be disclosed for a licensee in the low-risk
15 category if there are three or more settlements for that licensee
16 within the last 10 years, except for settlements by a licensee
17 regardless of the amount paid where (i) the settlement is made as
18 a part of the settlement of a class claim, (ii) the licensee paid in
19 settlement of the class claim the same amount as the other
20 licensees in the same class or similarly situated licensees in the
21 same class, and (iii) the settlement was paid in the context of a
22 case where the complaint that alleged class liability on behalf of
23 the licensee also alleged a products liability class action cause of
24 action. All settlements in the possession, custody, or control of
25 the board shall be disclosed for a licensee in the high-risk
26 category if there are four or more settlements for that licensee
27 within the last 10 years except for settlements by a licensee
28 regardless of the amount paid where (i) the settlement is made as
29 a part of the settlement of a class claim, (ii) the licensee paid in
30 settlement of the class claim the same amount as the other
31 licensees in the same class or similarly situated licensees in the
32 same class, and (iii) the settlement was paid in the context of a
33 case where the complaint that alleged class liability on behalf of
34 the licensee also alleged a products liability class action cause of
35 action. Classification of a licensee in either a "high-risk
36 category" or a "low-risk category" depends upon the specialty or
37 subspecialty practiced by the licensee and the designation
38 assigned to that specialty or subspecialty by the Medical Board
39 of California, as described in subdivision ~~(e)~~ (f). For the purposes
40 of this paragraph, "settlement" means a settlement of an action

1 described in paragraph (1) entered into by the licensee on or after
2 January 1, 2003, in an amount of thirty thousand dollars
3 (\$30,000) or more.

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

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

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

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

17 (3) Current American Board of Medical Specialty certification
18 or board equivalent as certified by the Medical Board of
19 California, the Osteopathic Medical Board of California, or the
20 California Board of Podiatric Medicine.

21 (4) Approved postgraduate training.

22 (5) Status of the license of a licensee. By January 1, 2004, the
23 Medical Board of California, the Osteopathic Medical Board of
24 California, and the California Board of Podiatric Medicine shall
25 adopt regulations defining the status of a licensee. The board
26 shall employ this definition when disclosing the status of a
27 licensee pursuant to Section 2027.

28 (6) Any summaries of hospital disciplinary actions that result
29 in the termination or revocation of a licensee's staff privileges for
30 medical disciplinary cause or reason.

31 (c) *Notwithstanding any other provision of law, the Medical*
32 *Board of California, the Osteopathic Medical Board of*
33 *California, and the California Board of Podiatric Medicine shall*
34 *disclose to an inquiring member of the public information*
35 *received pursuant to subdivision (b) of Section 803 regarding*
36 *felony convictions of a physician and surgeon or doctor of*
37 *podiatric medicine.*

38 (d) The Medical Board of California, the Osteopathic Medical
39 Board of California, and the California Board of Podiatric
40 Medicine may formulate appropriate disclaimers or explanatory

1 statements to be included with any information released, and may
2 by regulation establish categories of information that need not be
3 disclosed to an inquiring member of the public because that
4 information is unreliable or not sufficiently related to the
5 licensee's professional practice. The Medical Board of
6 California, the Osteopathic Medical Board of California, and the
7 California Board of Podiatric Medicine shall include the
8 following statement when disclosing information concerning a
9 settlement:

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

31 When considering malpractice data, please keep in mind:

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

37 This report reflects data only for settlements made on or after
38 January 1, 2003. Moreover, it includes information concerning
39 those settlements for a 10-year period only. Therefore, you
40 should know that a doctor may have made settlements in the 10

1 years immediately preceding January 1, 2003, that are not
2 included in this report. After January 1, 2013, for doctors
3 practicing less than 10 years, the data covers their total years of
4 practice. You should take into account the effective date of
5 settlement disclosure as well as how long the doctor has been in
6 practice when considering malpractice averages.

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

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

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

21 (d)

22 (e) The Medical Board of California, the Osteopathic Medical
23 Board of California, and the California Board of Podiatric
24 Medicine shall, by regulation, develop standard terminology that
25 accurately describes the different types of disciplinary filings and
26 actions to take against a licensee as described in paragraphs (1) to
27 (5), inclusive, of subdivision (a). In providing the public with
28 information about a licensee via the Internet pursuant to Section
29 2027, the Medical Board of California, the Osteopathic Medical
30 Board of California, and the California Board of Podiatric
31 Medicine shall not use the terms “enforcement,” “discipline,” or
32 similar language implying a sanction unless the physician and
33 surgeon has been the subject of one of the actions described in
34 paragraphs (1) to (5), inclusive, of subdivision (a).

35 (e)

36 (f) The Medical Board of California shall adopt regulations no
37 later than July 1, 2003, designating each specialty and
38 subspecialty practice area as either high risk or low risk. In
39 promulgating these regulations, the board shall consult with
40 commercial underwriters of medical malpractice insurance

1 companies, health care systems that self-insure physicians and
 2 surgeons, and representatives of the California medical specialty
 3 societies. The board shall utilize the carriers’ statewide data to
 4 establish the two risk categories and the averages required by
 5 subparagraph (B) of paragraph (2) of subdivision (b). Prior to
 6 issuing regulations, the board shall convene public meetings with
 7 the medical malpractice carriers, self-insurers, and specialty
 8 representatives.

9 (f)

10 (g) The Medical Board of California, the Osteopathic Medical
 11 Board of California, and the California Board of Podiatric
 12 Medicine shall provide each licensee with a copy of the text of
 13 any proposed public disclosure authorized by this section prior to
 14 release of the disclosure to the public. The licensee shall have 10
 15 working days from the date the board provides the copy of the
 16 proposed public disclosure to propose corrections of factual
 17 inaccuracies. Nothing in this section shall prevent the board from
 18 disclosing information to the public prior to the expiration of the
 19 10-day period.

20 (g)

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

28 SEC. 8. Section 803.2 of the Business and Professions Code
 29 is repealed.

30 ~~803.2. Every entry of settlement agreement over thirty~~
 31 ~~thousand dollars (\$30,000), or judgment or arbitration award of~~
 32 ~~any amount, of a claim or action for damages for death or~~
 33 ~~personal injury caused by, or alleging, the negligence, error, or~~
 34 ~~omission in practice, or the unauthorized rendering of~~
 35 ~~professional services, by a physician and surgeon or doctor of~~
 36 ~~podiatric medicine licensed pursuant to Chapter 5 (commencing~~
 37 ~~with Section 2000) or the Osteopathic Initiative Act, when that~~
 38 ~~judgment, settlement agreement, or arbitration award is entered~~
 39 ~~against, or paid by, the employer of that licensee and not the~~
 40 ~~licensee himself or herself, shall be reported to the appropriate~~

1 board by the entity required to report the information in
2 accordance with Sections 801, 801.1, 802, and 803 as an entry of
3 judgment, settlement, or arbitration award against the negligent
4 licensee. This report shall include the name and license number
5 of the physician and surgeon.

6 “Employer” as used in this section means a professional
7 corporation, a group practice, a health care facility or clinic
8 licensed or exempt from licensure under the Health and Safety
9 Code, a licensed health care service plan, a medical care
10 foundation, an educational institution, a professional institution,
11 a professional school or college, a general law corporation, a
12 public entity, or a nonprofit organization that employs, retains, or
13 contracts with a licensee referred to in this section. Nothing in
14 this section shall be construed to authorize the employment of, or
15 contracting with, any licensee in violation of Section 2400.

16 SEC. 9. Section 803.3 of the Business and Professions Code
17 is repealed.

18 ~~803.3. Any arbitration under a health care service plan~~
19 ~~contract for any death or personal injury resulting in an award for~~
20 ~~an amount in excess of thirty thousand dollars (\$30,000) shall be~~
21 ~~a judgment for purposes of subdivision (b) of Section 803.~~

22 SEC. 10. Section 804 of the Business and Professions Code is
23 amended to read:

24 804. (a) Any agency to whom reports are to be sent under
25 Section 801, 801.1, 802, or 803, may develop a prescribed form
26 for the making of the reports, usage of which it may, but need
27 not, by regulation, require in all cases.

28 (b) A report required to be made by Sections 801, 801.1, or
29 802 shall be deemed complete only if it includes the following
30 information: (1) the name and last known business and
31 residential addresses of every plaintiff or claimant involved in the
32 matter, whether or not each plaintiff or claimant recovered
33 anything; (2) the name and last known business and residential
34 addresses of every physician or provider of health care services
35 who was claimed or alleged to have acted improperly, whether or
36 not that person was a named defendant and whether or not any
37 recovery or judgment was had against that person; (3) the name,
38 address, and principal place of business of every insurer
39 providing professional liability insurance as to any person named
40 in (2), and the insured’s policy number; (4) the name of the court

1 in which the action or any part of the action was filed along with
2 the date of filing and docket number of each action; (5) a brief
3 description or summary of the facts upon which each claim,
4 charge or judgment rested including the date of occurrence; (6)
5 the names and last known business and residential addresses of
6 every person who acted as counsel for any party in the litigation
7 or negotiations, along with an identification of the party whom
8 said person represented; (7) the date and amount of final
9 judgment or settlement; and (8) any other information the agency
10 to whom the reports are to be sent may, by regulation, require.

11 (c) Every person named in the report, who is notified by the
12 board within 60 days of the filing of the report, shall maintain for
13 the period of three years from the filing of the report any records
14 he or she has as to the matter in question and shall make those
15 available upon request to the agency with which the report was
16 filed.

17 ~~(d) Every professional liability insurer that makes a report~~
18 ~~under Section 801, or self-insured governmental agency that~~
19 ~~makes a report pursuant to Section 801.1, and has received a~~
20 ~~copy of any written patient medical or hospital records prepared~~
21 ~~by the treating physician or the staff of the treating physician or~~
22 ~~hospital, describing the medical condition, history, care, or~~
23 ~~treatment of the person whose death or injury is the subject of the~~
24 ~~claim prompting the Section 801 or 801.1 report, or a copy of~~
25 ~~any depositions in the matter that discuss the care, treatment, or~~
26 ~~medical condition of the person, shall provide with the report~~
27 ~~copies of the records and depositions, subject to reasonable costs~~
28 ~~to be paid by the Medical Board of California to the insurer,~~
29 ~~except when confidentiality is required by court order. If~~
30 ~~confidentiality is required by court order and, as a result, the~~
31 ~~insurer is unable to provide the records and depositions,~~
32 ~~documentation to that effect shall accompany the original report.~~
33 ~~The applicable board may, upon prior notification of the parties~~
34 ~~to the action, petition the appropriate court for modification of~~
35 ~~any protective order to permit disclosure to the board. A~~
36 ~~professional liability insurer or self-insured governmental agency~~
37 ~~shall maintain the records and depositions referred to in this~~
38 ~~subdivision for at least one year from the date of the Section 801~~
39 ~~or 801.1 report.~~

1 SEC. 11. Section 804.5 of the Business and Professions Code
2 is repealed.

3 ~~804.5. The Medical Board of California may request a~~
4 ~~licensee, health care facility, self-insured governmental agency,~~
5 ~~or professional liability insurer that is required pursuant to~~
6 ~~Section 804 to comply with a request for medical records of a~~
7 ~~patient, or a copy of any depositions in a case that discusses the~~
8 ~~care, treatment, or medical condition of a person, to permit~~
9 ~~representatives of the board to obtain copies of these records~~
10 ~~from the custodians of these records subject to reasonable costs~~
11 ~~to be paid by the Medical Board of California.~~

O