

Senate Bill No. 1441

CHAPTER 548

An act to amend Sections 1695.1, 1695.5, 1695.6, 1697, 1698, 2361, 2365, 2366, 2367, 2369, 2663, 2665, 2666, 2770.1, 2770.7, 2770.8, 2770.11, 2770.12, 3501, 3534.1, 3534.3, 3534.4, 3534.9, and 4371 of, and to add Article 3.6 (commencing with Section 315) to Chapter 4 of Division 1 of, the Business and Professions Code, relating to health care.

[Approved by Governor September 28, 2008. Filed with
Secretary of State September 28, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1441, Ridley-Thomas. Healing arts practitioners: substance abuse.

Existing law requires various healing arts licensing boards, including the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, the Osteopathic Medical Board of California, and the California State Board of Pharmacy to establish and administer diversion or recovery programs or diversion evaluation committees for the rehabilitation of healing arts practitioners whose competency is impaired due to the abuse of drugs or alcohol, and gives the diversion evaluation committees certain duties related to termination of a licensee from the diversion program and reporting termination, designing treatment programs, denying participation in the program, reviewing activities and performance of contractors, determining completion of the program, and purging and destroying records, as specified. Existing law requires the California State Board of Pharmacy to contract with one or more qualified contractors to administer the pharmacists recovery program and requires the board to review the pharmacists recovery program on a quarterly basis, as specified.

This bill would establish in the Department of Consumer Affairs the Substance Abuse Coordination Committee, which would be comprised of the executive officers of the department's healing arts licensing boards, as specified, and a designee of the State Department of Alcohol Drug Programs. The bill would require the committee to formulate, by January 1, 2010, uniform and specific standards in specified areas that each healing arts board would be required to use in dealing with substance-abusing licensees. The bill would specify that the program managers of the diversion programs for the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, and the Osteopathic Medical Board of California, as designated by the executive officers of those entities, are responsible for certain duties, including, as specified, duties related to termination of a licensee from the diversion program, the review and evaluation of recommendations of the committee,

approving the designs of treatment programs, denying participation in the program, reviewing activities and performance of contractors, and determining completion of the program. The bill would also provide that diversion evaluation committees created by any of the specified boards or committees operate under the direction of the program manager of the diversion program, and would require those diversion evaluation committees to make certain recommendations. The bill would require the executive officer of the California State Board of Pharmacy to designate a program manager of the pharmacists recovery program, and would require the program manager to review the pharmacists recovery program quarterly and to work with the contractors, as specified. The bill would set forth provisions regarding entry of a registered nurse into the diversion program and the investigation and discipline of registered nurses who are in, or have been in, the diversion program, and would require registered nurses in the diversion program to sign an agreement of understanding regarding withdrawal or termination from the program, as specified.

The bill would specify that the diversion program responsibilities imposed on licensing boards under these provisions shall be considered current operating expenses of those boards.

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

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) Substance abuse is an increasing problem in the health care professions, where the impairment of a health care practitioner for even one moment can mean irreparable harm to a patient.

(b) Several health care licensing boards have “diversion programs” designed to identify substance-abusing licensees, direct them to treatment and monitoring, and return them to practice in a manner that will not endanger the public health and safety.

(c) Substance abuse monitoring programs, particularly for health care professionals, must operate with the highest level of integrity and consistency. Patient protection is paramount.

(d) The diversion program of the Medical Board of California, created in 1981, has been subject to five external performance audits in its 27-year history and has failed all five audits, which uniformly concluded that the program has inadequately monitored substance-abusing physicians and has failed to promptly terminate from the program, and appropriately refer for discipline, physicians who do not comply with the terms and conditions of the program, thus placing patients at risk of harm.

(e) The medical board’s diversion program has failed to protect patients from substance-abusing physicians, and the medical board has properly decided to cease administering the program effective June 30, 2008.

(f) The administration of diversion programs created at other health care boards has been contracted to a series of private vendors, and none of those

vendors has ever been subject to a performance audit, such that it is not possible to determine whether those programs are effective in monitoring substance-abusing licensees and assisting them to recover from their addiction in the long term.

(g) Various health care licensing boards have inconsistent or nonexistent standards that guide the way they deal with substance-abusing licensees.

(h) Patients would be better protected from substance-abusing licensees if their regulatory boards agreed to and enforced consistent and uniform standards and best practices in dealing with substance-abusing licensees.

SEC. 2. It is the intent of the Legislature that:

(a) Pursuant to Section 156.1 of the Business and Professions Code and Section 8546.7 of the Government Code, that the Department of Consumer Affairs conduct a thorough audit of the effectiveness, efficiency, and overall performance of the vendor chosen by the department to manage diversion programs for substance-abusing licensees of health care licensing boards created in the Business and Professions Code, and make recommendations regarding the continuation of the programs and any changes or reforms required to ensure that individuals participating in the programs are appropriately monitored, and the public is protected from health care practitioners who are impaired due to alcohol or drug abuse or mental or physical illness.

(b) The audit shall identify, by type of board licensee, the percentage of self-referred participants, board-referred participants, and board-ordered participants. The audit shall describe in detail the diversion services provided by the vendor, including all aspects of bodily fluids testing, including, but not limited to, frequency of testing, randomness, method of notice to participants, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, such as whether the collection process is observed by the collector, location of testing, and average timeframe from the date of the test to the date the result of the test becomes available; group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by program participants; standards used in determining whether inpatient or outpatient treatment is necessary; and, if applicable, worksite monitoring requirements and standards. The audit shall review the timeliness of diversion services provided by the vendor; the thoroughness of documentation of treatment, aftercare, and monitoring services received by participants; and the thoroughness of documentation of the effectiveness of the treatment and aftercare services received by participants. In determining the effectiveness and efficiency of the vendor, the audit shall evaluate the vendor's approval process for providers or contractors that provide diversion services, including specimen collectors, group meeting facilitators, and worksite monitors; the vendor's disapproval of providers or contractors that fail to provide effective or timely diversion services; and the vendor's promptness in notifying the boards when a participant fails to comply with the terms of his or her

diversion contract or the rules of the board's program. The audit shall also recommend whether the vendor should be more closely monitored by the department, including whether the vendor should provide the department with periodic reports demonstrating the timeliness and thoroughness of documentation of noncompliance with diversion program contracts and regarding its approval and disapproval of providers and contractors that provide diversion services.

(c) The vendor and its staff shall cooperate with the department and shall provide data, information, and case files as requested by the department to perform all of his or her duties. The provision of confidential data, information, and case files from health care-related boards and the vendor to the department shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files. It is the Legislature's intent that the audit be completed by June 30, 2010, and on subsequent years thereafter as determined by the department.

SEC. 3. Article 3.6 (commencing with Section 315) is added to Chapter 4 of Division 1 of the Business and Professions Code, to read:

Article 3.6. Uniform Standards Regarding Substance-Abusing Healing
Arts Licensees

315. (a) For the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department's healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Alcohol and Drug Programs. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.

(b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

(c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:

(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

(2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic

evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

(3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.

(4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomicity, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

(5) Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

(7) Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

(8) Procedures to be followed when a licensee tests positive for a banned substance.

(9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

(10) Specific consequences for major violations and minor violations. In particular, the committee shall consider the use of a "deferred prosecution" stipulation similar to the stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.

(11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.

(12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

(13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors;

standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.

(14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

(16) Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

SEC. 4. Section 1695.1 of the Business and Professions Code is amended to read:

1695.1. As used in this article:

(a) "Board" means the Board of Dental Examiners of California.

(b) "Committee" means a diversion evaluation committee created by this article.

(c) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 5. Section 1695.5 of the Business and Professions Code is amended to read:

1695.5. (a) The board shall establish criteria for the acceptance, denial, or termination of licentiates in a diversion program. Unless ordered by the board as a condition of licentiate disciplinary probation, only those licentiates who have voluntarily requested diversion treatment and supervision by a committee shall participate in a diversion program.

(b) A licentiate who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (f).

(c) A licentiate under current investigation by the board may also request entry into the diversion program by contacting the board's Diversion Program Manager. The Diversion Program Manager may refer the licentiate requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licentiate to enter into the diversion program, the Diversion Program Manager may require the licentiate, while under current investigation for any violations of the Dental Practice Act or other violations, to execute a statement of understanding that states that the licentiate understands that his or her violations of the Dental Practice Act or other statutes that would otherwise be the basis for discipline, may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a licentiate are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 1681 of the Business and Professions Code,

or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board shall close the investigation without further action if the licentiate is accepted into the board's diversion program and successfully completes the requirements of the program. If the licentiate withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any licentiate for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All licentiates shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any licentiate terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A licentiate who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 6. Section 1695.6 of the Business and Professions Code is amended to read:

1695.6. A committee created under this article operates under the direction of the program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those licentiates who request to participate in the diversion program according to the guidelines prescribed by the board and to make recommendations. In making the recommendations, a committee shall consider the recommendations of any licentiates designated by the board to serve as consultants on the admission of the licentiate to the diversion program.

(b) To review and designate those treatment facilities to which licentiates in a diversion program may be referred.

(c) To receive and review information concerning a licentiate participating in the program.

(d) To consider in the case of each licentiate participating in a program whether he or she may with safety continue or resume the practice of dentistry.

(e) To perform such other related duties, under the direction of the board or program manager, as the board may by regulation require.

SEC. 7. Section 1697 of the Business and Professions Code is amended to read:

1697. Each licentiate who requests participation in a diversion program shall agree to cooperate with the treatment program designed by the committee and approved by the program manager and to bear all costs related to the program, unless the cost is waived by the board. Any failure to comply with the provisions of a treatment program may result in termination of the licentiate's participation in a program.

SEC. 8. Section 1698 of the Business and Professions Code is amended to read:

1698. (a) After the committee and the program manager in their discretion have determined that a licentiate has been rehabilitated and the diversion program is completed, the committee shall purge and destroy all records pertaining to the licentiate's participation in a diversion program.

(b) Except as authorized by subdivision (f) of Section 1695.5, all board and committee records and records of proceedings pertaining to the treatment of a licentiate in a program shall be kept confidential and are not subject to discovery or subpoena.

SEC. 9. Section 2361 of the Business and Professions Code is amended to read:

2361. As used in this article:

(a) "Board" means the Osteopathic Medical Board of California.

(b) "Diversion program" means a treatment program created by this article for osteopathic physicians and surgeons whose competency may be threatened or diminished due to abuse of drugs or alcohol.

(c) "Committee" means a diversion evaluation committee created by this article.

(d) "Participant" means a California licensed osteopathic physician and surgeon.

(e) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 10. Section 2365 of the Business and Professions Code is amended to read:

2365. (a) The board shall establish criteria for the acceptance, denial, or termination of participants in the diversion program. Unless ordered by the board as a condition of disciplinary probation, only those participants who have voluntarily requested diversion treatment and supervision by a committee shall participate in the diversion program.

(b) A participant who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (f).

(c) A participant under current investigation by the board may also request entry into the diversion program by contacting the board's Diversion Program Manager. The Diversion Program Manager may refer the participant requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licentiate to enter into the

diversion program, the Diversion Program Manager may require the licensee, while under current investigation for any violations of the Medical Practice Act or other violations, to execute a statement of understanding that states that the licensee understands that his or her violations of the Medical Practice Act or other statutes that would otherwise be the basis for discipline may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a participant are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 2239, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board may close the investigation without further action if the licensee is accepted into the board's diversion program and successfully completes the requirements of the program. If the participant withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation may be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any participant for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All participants shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licensee presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any participant terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A participant who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 11. Section 2366 of the Business and Professions Code is amended to read:

2366. A committee created under this article operates under the direction of the diversion program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those licensees who request participation in the program according to the guidelines prescribed by the board, and to make recommendations.

(b) To review and designate those treatment facilities and services to which a participant in the program may be referred.

(c) To receive and review information concerning participants in the program.

(d) To consider whether each participant in the treatment program may safely continue or resume the practice of medicine.

(e) To prepare quarterly reports to be submitted to the board, which include, but are not limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance and a cost analysis of the program.

(f) To promote the program to the public and within the profession, including providing all current licentiates with written information concerning the program.

(g) To perform such other related duties, under the direction of the board or the program manager, as the board may by regulation require.

SEC. 12. Section 2367 of the Business and Professions Code is amended to read:

2367. (a) Each licensee who requests participation in a treatment program shall agree to cooperate with the treatment program designed by the committee and approved by the program manager. The committee shall inform each participant in the program of the procedures followed, the rights and responsibilities of the participant, and the possible results of noncompliance with the program. Any failure to comply with the treatment program may result in termination of participation.

(b) Participation in a program under this article shall not be a defense to any disciplinary action which may be taken by the board. Further, no provision of this article shall preclude the board from commencing disciplinary action against a licensee who is terminated from a program established pursuant to this article.

SEC. 13. Section 2369 of the Business and Professions Code is amended to read:

2369. (a) After the committee and the program manager, in their discretion, have determined that a participant has been rehabilitated and the program is completed, the committee shall purge and destroy all records pertaining to the participation in a treatment program.

(b) Except as authorized by subdivision (f) of Section 2365, all board and committee records and records of proceedings pertaining to the treatment of a participant in a program shall be confidential and are not subject to discovery or subpoena except in the case of discovery or subpoena in any criminal proceeding.

SEC. 14. Section 2663 of the Business and Professions Code is amended to read:

2663. The board shall establish and administer a diversion program for the rehabilitation of physical therapists and physical therapist assistants whose competency is impaired due to the abuse of drugs or alcohol. The board may contract with any other state agency or a private organization to perform its duties under this article. The board may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. Any diversion evaluation committee established by the board shall operate under the direction of the diversion program manager, as designated by the executive officer of the board. The program manager has

the primary responsibility to review and evaluate recommendations of the committee.

SEC. 15. Section 2665 of the Business and Professions Code is amended to read:

2665. Each diversion evaluation committee has the following duties and responsibilities:

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

(b) To review and designation of treatment facilities to which physical therapists and physical therapist assistants in the diversion program may be referred.

(c) To receive and review information concerning physical therapists and physical therapist assistants participating in the program.

(d) Calling meetings as necessary to consider the requests of physical therapists and physical therapist assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the board.

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

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

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

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

SEC. 16. Section 2666 of the Business and Professions Code is amended to read:

2666. (a) Criteria for acceptance into the diversion program shall include all of the following:

(1) The applicant shall be licensed as a physical therapist or approved as a physical therapist assistant by the board and shall be a resident of California.

(2) The applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may affect his or her ability to practice physical therapy safely or competently.

(3) The applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action.

(4) The applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program.

(5) The applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program.

(6) The applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

Any applicant may be denied participation in the program if the board, the program manager, or a diversion evaluation committee determines that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety, or welfare.

(b) A participant may be terminated from the program for any of the following reasons:

(1) The participant has successfully completed the treatment program.

(2) The participant has failed to comply with the treatment program designated for him or her.

(3) The participant fails to meet any of the criteria set forth in subdivision (a) or (c).

(4) It is determined that the participant has not substantially benefited from participation in the program or that his or her continued participation in the program creates too great a risk to the public health, safety, or welfare. Whenever an applicant is denied participation in the program or a participant is terminated from the program for any reason other than the successful completion of the program, and it is determined that the continued practice of physical therapy by that individual creates too great a risk to the public health, safety, and welfare, that fact shall be reported to the executive officer of the board and all documents and information pertaining to and supporting that conclusion shall be provided to the executive officer. The matter may be referred for investigation and disciplinary action by the board. Each physical therapist or physical therapy assistant who requests participation in a diversion program shall agree to cooperate with the recovery program designed for him or her. Any failure to comply with that program may result in termination of participation in the program.

The diversion evaluation committee shall inform each participant in the program of the procedures followed in the program, of the rights and responsibilities of a physical therapist or physical therapist assistant in the program, and the possible results of noncompliance with the program.

(c) In addition to the criteria and causes set forth in subdivision (a), the board may set forth in its regulations additional criteria for admission to the program or causes for termination from the program.

SEC. 17. Section 2770.1 of the Business and Professions Code is amended to read:

2770.1. As used in this article:

(a) “Board” means the Board of Registered Nursing.

(b) “Committee” means a diversion evaluation committee created by this article.

(c) “Program manager” means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 18. Section 2770.7 of the Business and Professions Code is amended to read:

2770.7. (a) The board shall establish criteria for the acceptance, denial, or termination of registered nurses in the diversion program. Only those registered nurses who have voluntarily requested to participate in the diversion program shall participate in the program.

(b) A registered nurse under current investigation by the board may request entry into the diversion program by contacting the board. Prior to authorizing a registered nurse to enter into the diversion program, the board may require the registered nurse under current investigation for any violations of this chapter or any other provision of this code to execute a statement of understanding that states that the registered nurse understands that his or her violations that would otherwise be the basis for discipline may still be investigated and may be the subject of disciplinary action.

(c) If the reasons for a current investigation of a registered nurse are based primarily on the self-administration of any controlled substance or dangerous drug or alcohol under Section 2762, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drug for self-administration that does not involve actual, direct harm to the public, the board shall close the investigation without further action if the registered nurse is accepted into the board’s diversion program and successfully completes the requirements of the program. If the registered nurse withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the board.

(d) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any registered nurse for any unprofessional conduct committed before, during, or after participation in the diversion program.

(e) All registered nurses shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when the program manager or diversion evaluation committee determines the licensee presents a threat to the public’s health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(f) Any registered nurse terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the

diversion program. A registered nurse who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 19. Section 2770.8 of the Business and Professions Code is amended to read:

2770.8. A committee created under this article operates under the direction of the diversion program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those registered nurses who request participation in the program according to the guidelines prescribed by the board, and to make recommendations.

(b) To review and designate those treatment services to which registered nurses in a diversion program may be referred.

(c) To receive and review information concerning a registered nurse participating in the program.

(d) To consider in the case of each registered nurse participating in a program whether he or she may with safety continue or resume the practice of nursing.

(e) To call meetings as necessary to consider the requests of registered nurses to participate in a diversion program, and to consider reports regarding registered nurses participating in a program.

(f) To make recommendations to the program manager regarding the terms and conditions of the diversion agreement for each registered nurse participating in the program, including treatment, supervision, and monitoring requirements.

SEC. 20. Section 2770.11 of the Business and Professions Code is amended to read:

2770.11. (a) Each registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by the committee and approved by the program manager. Any failure to comply with the provisions of a rehabilitation program may result in termination of the registered nurse's participation in a program. The name and license number of a registered nurse who is terminated for any reason, other than successful completion, shall be reported to the board's enforcement program.

(b) If the program manager determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the program manager shall report the name and license number, along with a copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding.

SEC. 21. Section 2770.12 of the Business and Professions Code is amended to read:

2770.12. (a) After the committee and the program manager in their discretion have determined that a registered nurse has successfully completed the diversion program, all records pertaining to the registered nurse's participation in the diversion program shall be purged.

(b) All board and committee records and records of a proceeding pertaining to the participation of a registered nurse in the diversion program shall be kept confidential and are not subject to discovery or subpoena, except as specified in subdivision (b) of Section 2770.11 and subdivision (c).

(c) A registered nurse shall be deemed to have waived any rights granted by any laws and regulations relating to confidentiality of the diversion program, if he or she does any of the following:

(1) Presents information relating to any aspect of the diversion program during any stage of the disciplinary process subsequent to the filing of an accusation, statement of issues, or petition to compel an examination pursuant to Article 12.5 (commencing with Section 820) of Chapter 1. The waiver shall be limited to information necessary to verify or refute any information disclosed by the registered nurse.

(2) Files a lawsuit against the board relating to any aspect of the diversion program.

(3) Claims in defense to a disciplinary action, based on a complaint that led to the registered nurse's participation in the diversion program, that he or she was prejudiced by the length of time that passed between the alleged violation and the filing of the accusation. The waiver shall be limited to information necessary to document the length of time the registered nurse participated in the diversion program.

SEC. 22. Section 3501 of the Business and Professions Code is amended to read:

3501. As used in this chapter:

(a) "Board" means the Medical Board of California.

(b) "Approved program" means a program for the education of physician assistants that has been formally approved by the committee.

(c) "Trainee" means a person who is currently enrolled in an approved program.

(d) "Physician assistant" means a person who meets the requirements of this chapter and is licensed by the committee.

(e) "Supervising physician" means a physician and surgeon licensed by the board or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.

(f) "Supervision" means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.

(g) "Committee" or "examining committee" means the Physician Assistant Committee.

(h) “Regulations” means the rules and regulations as contained in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.

(i) “Routine visual screening” means uninvvasive nonpharmacological simple testing for visual acuity, visual field defects, color blindness, and depth perception.

(j) “Program manager” means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 23. Section 3534.1 of the Business and Professions Code is amended to read:

3534.1. The examining committee shall establish and administer a diversion program for the rehabilitation of physician assistants whose competency is impaired due to the abuse of drugs or alcohol. The examining committee may contract with any other state agency or a private organization to perform its duties under this article. The examining committee may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. As used in this article, “committee” means a diversion evaluation committee. A committee created under this article operates under the direction of the diversion program manager, as designated by the executive officer of the examining committee. The program manager has the primary responsibility to review and evaluate recommendations of the committee.

SEC. 23. Section 3534.3 of the Business and Professions Code is amended to read:

3534.3. Each committee has the following duties and responsibilities:

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

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

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

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

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

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

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

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

SEC. 24. Section 3534.4 of the Business and Professions Code is amended to read:

3534.4. Criteria for acceptance into the diversion program shall include all of the following: (a) the applicant shall be licensed as a physician assistant by the examining committee and shall be a resident of California; (b) the applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may affect his or her ability to practice medicine safely or competently; (c) the applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action; (d) the applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program; (e) the applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program; and (f) the applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

An applicant may be denied participation in the program if the examining committee, the program manager, or a committee determines that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety, or welfare.

SEC. 25. Section 3534.9 of the Business and Professions Code is amended to read:

3534.9. If the examining committee contracts with any other entity to carry out this section, the executive officer of the examining committee or the program manager shall review the activities and performance of the contractor on a biennial basis. As part of this review, the examining committee shall review files of participants in the program. However, the names of participants who entered the program voluntarily shall remain confidential, except when the review reveals misdiagnosis, case mismanagement, or noncompliance by the participant.

SEC. 26. Section 4371 of the Business and Professions Code is amended to read:

4371. (a) The executive officer of the board shall designate a program manager of the pharmacists recovery program. The program manager shall have background experience in dealing with substance abuse issues.

(b) The program manager shall review the pharmacists recovery program on a quarterly basis. As part of this evaluation, the program manager shall review files of all participants in the pharmacists recovery program.

(c) The program manager shall work with the contractor administering the pharmacists recovery program to evaluate participants in the program according to established guidelines and to develop treatment contracts and evaluate participant progress in the program.

SEC. 27. The responsibilities imposed on a licensing board by this act shall be considered a current operating expense of that board, and shall be paid from the fund generally designated to provide operating expenses for that board, subject to the appropriation provisions applicable to that fund.