

Introduced by Senator Rosenthal

February 22, 1995

An act to amend Sections 125.9, 803.2, 803.5, 804, 2225.5, 2305, 2317, and 2416 of, to amend and repeal Section 803 of, to add Section 802.1 to, the Business and Professions Code, and to amend Section 43.96 of the Civil Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 609, as introduced, Rosenthal. Healing arts: discipline: reporting.

Existing law provides for the licensure and discipline of various healing arts professionals, administered by licensing boards. Existing law authorizes any licensing board, with certain exceptions, to establish a system for the issuance of citations to licensees and for the imposition of fines. Under existing law, the administrative fine that may be imposed pursuant to this authority is limited to \$2,500 for each inspection or investigation. Existing law provides that these fines when collected be deposited in the continuously appropriated special fund of the particular board imposing the fine.

This bill would authorize the fine for violations involving fraudulent billing to be \$2,500 per violation or count, thereby making an appropriation by expanding the source of funds to be deposited in the continuously appropriated funds.

Existing law requires the reporting of any settlement agreement or arbitration award over prescribed amounts to the appropriate licensing board within certain time limits.

This bill would require a physician and surgeon to report to the Medical Board of California the bringing of an indictment or information charging a felony against him or her or the conviction of any felony, or certain misdemeanors. This bill would require the physician and surgeon charged with any crime to report to the prosecuting attorney and the clerk of the court at the first court appearance, that he or she is a licensed physician and surgeon. This bill would provide that failure to make these reports is unprofessional conduct and a public offense punishable by a fine not to exceed five thousand dollars (\$5,000), thereby imposing a state-mandated local program by creating a new crime.

Existing law requires certain court judgments against specified licensed health care professionals to be reported to the appropriate licensing agency by the clerk of the court, and provides that these provisions shall remain operative if the Medical Board of California and the Board of Podiatric Medicine each adopt certain regulations relating to disclosure of information regarding these judgments to inquiring members of the public. Existing law, that would become operative on July 1, 1995, only if those regulations are not adopted, would require the disclosure of information regarding those judgments.

This bill would repeal the provisions that make the disclosure requirements operative only if the regulations are not adopted, thereby requiring the disclosure. This bill would also require every insurer providing professional liability insurance to a physician and surgeon to send a complete report to the Medical Board of California regarding certain judgments against a licensee within certain time limits.

Existing law also requires employers who pay judgments or settlement or arbitration awards against licensees employed by that employer to report those judgments.

This bill would revise the definition of employer for those purposes to include a public entity, thereby imposing a state-mandated local program.

Existing law requires certain prosecuting agencies to notify the appropriate licensing board of any filings against a licensee charging a felony, and requires the clerk of the court



in which a licensee is convicted of a crime to transmit a certified copy of the conviction to the applicable board.

This bill would require the prosecuting agency to also notify the clerk of the court of the filing against a licensee, thereby imposing a state-mandated local program.

Existing law requires every professional liability insurer that is required to make certain reports, and that has received copies of certain records and depositions to make those documents available for copying by the appropriate licensing board.

This bill would instead require the insurer to provide copies of those documents with the required report, or if confidentiality is required by court order, to provide documentation to that effect with the report.

Existing law authorizes the imposition of civil penalties, payable to the board, upon a physician and surgeon or podiatrist who fails or refuses to comply with a request for medical records of a patient that is accompanied by the patient's written authorization for release of the records to the board.

This bill would make these civil penalties also applicable to health care facilities, as defined, that fail or refuse to provide those records. By increasing the amounts to be deposited into a continuously appropriated fund, this bill would make an appropriation.

Existing law makes the revocation, suspension, or other discipline of a physician and surgeon by another state grounds for disciplinary action for unprofessional conduct in this state.

This bill would make any other restriction or limitation imposed upon a license by another state grounds for that discipline.

Existing law requires the Medical Board of California to provide representation in certain civil actions to persons hired or otherwise retained to provide expertise to the board in the evaluation of the conduct of a licensee, and requires that the board be liable for any judgment rendered against that person.

This bill would expand this requirement to also cover persons hired or retained to provide nonexpert testimony.



Existing law authorizes physicians and surgeons and podiatrists to conduct their professional practices in a partnership or group of physicians and surgeons or a partnership or group of podiatrists, respectively.

This bill would also authorize physicians and surgeons and podiatrists to conduct their professional practices in a partnership or group of physicians and surgeons and podiatrists.

Existing law requires any medical or podiatric society, licensed health facility, or certain state or local government agencies that receive complaints or other adverse information related to the professional competence or conduct of physicians and surgeons or doctors of podiatric medicine from the public to inform the complainant that the relevant board is the authority that may take disciplinary action against a licensee.

This bill would delete the reference to other adverse information.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 125.9 of the Business and
 2 Professions Code is amended to read:



1 125.9. (a) Except with respect to persons regulated
2 under Chapter 8 (commencing with Section 6850),
3 Chapter 11 (commencing with Section 7500), Chapter
4 11.5 (commencing with Section 7512), and Chapter 11.6
5 (commencing with Section 7590) of Division 3, or a
6 person holding a license specified in paragraph (1), (6),
7 or (7) of subdivision (b) of Section 9941, any board,
8 bureau, or commission within the department may
9 establish, by regulation, a system for the issuance to a
10 licensee of a citation which may contain an order of
11 abatement or an order to pay an administrative fine
12 assessed by the board, bureau, or commission where the
13 licensee is in violation of the applicable licensing act or
14 any regulation adopted pursuant thereto.

15 (b) The system shall contain the following provisions:

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

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

23 (3) In no event shall the administrative fine assessed
24 by the board, bureau, or commission exceed two
25 thousand five hundred dollars (\$2,500) for each
26 inspection or each investigation made with respect to the
27 violation, *or two thousand five hundred dollars (\$2,500)*
28 *for each violation or count if the violation involves*
29 *fraudulent billing submitted to an insurance company,*
30 *the Medi-Cal program, or Medicare.* In assessing a fine,
31 the board, bureau, or commission shall give due
32 consideration to the appropriateness of the amount of the
33 fine with respect to such factors as the gravity of the
34 violation, the good faith of the licensee, and the history of
35 previous violations.

36 (4) A citation or fine assessment issued pursuant to a
37 citation shall inform the licensee that if he or she desires
38 a hearing to contest the finding of a violation, that hearing
39 shall be requested by written notice to the board, bureau,
40 or commission within 30 days of the date of issuance of the



1 citation or assessment. If a hearing is not requested
2 pursuant to this section, payment of any fine shall not
3 constitute an admission of the violation charged.
4 Hearings shall be held pursuant to Chapter 5
5 (commencing with Section 11500) of Part 1 of Division 3
6 of Title 2 of the Government Code.

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

15 (c) The system may contain the following provisions:

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

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

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

26 (e) This section does not apply to any board, bureau,
27 or commission within the department with existing
28 authority to establish, by regulation, a system for the
29 issuance, to a licensee, of a citation which may include an
30 order of abatement or an order to pay an administrative
31 fine, even if the system of citation does not affect or apply
32 to all activities engaged in by a licensee. Nothing in this
33 section expands or limits that authority.

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

37 SEC. 2. Section 802.1 is added to the Business and
38 Professions Code, to read:



1 802.1. (a) A physician and surgeon shall report any of
2 the following to the Medical Board of California on a form
3 and within the time limits prescribed by the board:

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

6 (2) The conviction of the physician and surgeon,
7 including any verdict of guilty, or plea of guilty or no
8 contest, of any felony, or any misdemeanor committed in
9 the course of the practice of medicine, or in any manner
10 such that the patient of the physician and surgeon was the
11 victim.

12 (b) A physician and surgeon charged with any crime
13 shall immediately report in writing, at the first court
14 appearance, the fact that he or she is a physician and
15 surgeon licensed in the State of California. The report
16 shall be made to the prosecuting attorney and to the clerk
17 of the court where the charges have been filed.

18 (c) Failure to make a report required by this section
19 shall be considered unprofessional conduct and a public
20 offense punishable by a fine not to exceed five thousand
21 dollars (\$5,000).

22 SEC. 3. Section 803 of the Business and Professions
23 Code, as amended by Section 3 of Chapter 1267 of the
24 Statutes of 1993, is repealed.

25 ~~803. Within 10 days after a judgment by a court of this~~
26 ~~state that a person who holds a license, certificate, or~~
27 ~~other similar authority from the Board of Behavioral~~
28 ~~Science Examiners or from an agency mentioned in~~
29 ~~subdivision (a) of Section 800 (except a person licensed~~
30 ~~pursuant to Chapter 3 (commencing with Section 1200))~~
31 ~~has committed a crime, or is liable for any death or~~
32 ~~personal injury resulting in a judgment for an amount in~~
33 ~~excess of thirty thousand dollars (\$30,000) caused by his~~
34 ~~or her negligence, error or omission in practice, or his or~~
35 ~~her rendering unauthorized professional services, the~~
36 ~~clerk of the court which rendered the judgment shall~~
37 ~~report that fact to the agency that issued the license,~~
38 ~~certificate, or other similar authority.~~

39 ~~This section shall remain in effect until July 1, 1995. If~~
40 ~~the Division of Medical Quality and the Board of Podiatry~~



1 ~~Medicine each adopt regulations, regarding disclosure of~~
2 ~~the information received pursuant to this section to~~
3 ~~inquiring members of the public, by July 1, 1995, this~~
4 ~~section shall remain in effect after July 1, 1995. If the~~
5 ~~Division of Medical Quality and the Board of Podiatric~~
6 ~~Medicine do not adopt those regulations, this section shall~~
7 ~~become inoperative July 1, 1995, and, as of January 1, 1996,~~
8 ~~is repealed, unless a later enacted statute, which becomes~~
9 ~~effective on or before January 1, 1996, deletes or extends~~
10 ~~the dates on which it becomes inoperative and is~~
11 ~~repealed.~~

12 SEC. 4. Section 803 of the Business and Professions
13 Code, as added by Section 4 of Chapter 1267 of the
14 Statutes of 1993, is amended to read:

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

29 (b) *Every insurer providing professional liability*
30 *insurance to a physician and surgeon licensed pursuant to*
31 *Chapter 5 (commencing with Section 2000) shall send a*
32 *complete report to the Medical Board of California as to*
33 *any judgment in excess of thirty thousand dollars*
34 *(\$30,000) of a claim for damages for death or personal*
35 *injury caused by that licensee's negligence, error, or*
36 *omission in practice, or rendering of unauthorized*
37 *professional services. The report shall be sent within 30*
38 *calendar days after entry of judgment.*

39 (c) Notwithstanding any other provision of law, the
40 Medical Board of California and the Board of Podiatric



1 Medicine shall disclose to an inquiring member of the
2 public information received pursuant to subdivision (a)
3 regarding felony convictions of, and judgments in excess
4 of thirty thousand dollars (\$30,000) against, a physician
5 and surgeon or doctor of podiatric medicine. The
6 Division of Medical Quality and the Board of Podiatric
7 Medicine may formulate appropriate disclaimers or
8 explanatory statements to be included with any
9 information released, and may, by regulation, establish
10 categories of information that need not be disclosed to the
11 public because that information is unreliable or not
12 sufficiently related to the licensee's professional practice.

13 ~~(e) This section shall become operative on July 1, 1995,~~
14 ~~only if the board and the Board of Podiatric Medicine do~~
15 ~~not adopt regulations regarding disclosure of the~~
16 ~~information received pursuant to this section to inquiring~~
17 ~~members of the public by July 1, 1995.~~

18 SEC. 5. Section 803.2 of the Business and Professions
19 Code is amended to read:

20 803.2. Every entry of judgment, settlement
21 agreement, or arbitration award over thirty thousand
22 dollars (\$30,000) of a claim or action for damages for
23 death or personal injury caused by the negligence, error,
24 or omission in practice, or the unauthorized rendering of
25 professional services, by a physician and surgeon or
26 doctor of podiatric medicine licensed pursuant to
27 Chapter 5 (commencing with Section 2000) or the
28 Osteopathic Initiative Act, when that judgment,
29 settlement agreement, or arbitration award is entered
30 against, or paid by, the employer of that licensee and not
31 the licensee himself or herself, shall be reported to the
32 appropriate board by the entity required to report the
33 information in accordance with Sections 801, 802, and 803
34 as an entry of judgment, settlement, or arbitration award
35 against the negligent licensee.

36 "Employer" as used in this section means a professional
37 corporation, a group practice, a health care facility or
38 clinic licensed or exempt from licensure under the Health
39 and Safety Code, a licensed health care service plan, a
40 medical care foundation, an educational institution, a



1 professional institution, a professional school or college, a
2 general law corporation, *a public entity*, or a nonprofit
3 organization that employs, retains, or contracts with a
4 licensee referred to in this section. Nothing in this section
5 shall be construed to authorize the employment of, or
6 contracting with, any licensee in violation of Section 2400.

7 SEC. 6. Section 803.5 of the Business and Professions
8 Code is amended to read:

9 803.5. (a) The district attorney, city attorney, or
10 other prosecuting agency shall notify the Medical Board
11 of California, the California Board of Podiatric Medicine,
12 or other appropriate allied health board, *and the clerk of*
13 *the court in which the charges have been filed*, of any
14 filings against a licensee of that board charging a felony
15 immediately upon obtaining information that the
16 defendant is a licensee of the board. The notice shall
17 identify the licensee and describe the crimes charged and
18 the facts alleged. The prosecuting agency shall also notify
19 the clerk of the court in which the action is pending that
20 the defendant is a licensee, and the clerk shall record
21 prominently in the file that the defendant holds a license
22 from one of the boards described above.

23 (b) The clerk of the court in which a licensee of one of
24 the boards is convicted of a crime shall, within 48 hours
25 after the conviction, transmit a certified copy of the
26 record of conviction to the applicable board. Where the
27 licensee is regulated by an allied health board, the record
28 of conviction shall be transmitted to that allied health
29 board and the Medical Board of California.

30 SEC. 7. Section 804 of the Business and Professions
31 Code is amended to read:

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

36 (b) A report required to be made by Sections 801 and
37 802 shall be deemed complete only if it includes the
38 following information: (1) the name and last known
39 business and residential addresses of every plaintiff or
40 claimant involved in the matter, whether or not each



1 plaintiff or claimant recovered anything; (2) the name
2 and last known business and residential addresses of
3 every physician or provider of health care services who
4 was claimed or alleged to have acted improperly,
5 whether or not that person was a named defendant and
6 whether or not any recovery or judgment was had against
7 that person; (3) the name, address, and principal place
8 of business of every insurer providing professional
9 liability insurance as to any person named in (2), and the
10 insured's policy number; (4) the name of the court in
11 which the action or any part of the action was filed along
12 with the date of filing and docket number of each action;
13 (5) a brief description or summary of the facts upon
14 which each claim, charge or judgment rested including
15 the date of occurrence; (6) the names and last known
16 business and residential addresses of every person who
17 acted as counsel for any party in the litigation or
18 negotiations, along with an identification of the party
19 whom said person represented; (7) the date and amount
20 of final judgment or settlement; and (8) any other
21 information the agency to whom the reports are to be
22 sent may, by regulation, require.

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

29 (d) Every professional liability insurer that makes a
30 report under Section 801, and ~~that~~ has received a copy of
31 any written patient medical *or hospital* records prepared
32 by the treating physician or the staff of the treating
33 physician or hospital, describing the medical condition,
34 history, care, or treatment of the person whose death or
35 injury is the subject of the claim prompting the Section
36 801 report, or a copy of any depositions in the matter that
37 discuss the care, treatment, or medical condition of the
38 person, shall ~~make~~ *provide with the report copies of* the
39 records and depositions ~~—available for copying by the~~
40 ~~appropriate board upon written request,~~ except when



1 confidentiality is required by court order. *If*
2 *confidentiality is required by court order and, as a result,*
3 *the insurer is unable to provide the records and*
4 *depositions, documentation to that effect shall*
5 *accompany the original report.* The applicable board
6 may, upon prior notification of the parties to the action,
7 petition the appropriate court for modification of any
8 protective order to permit disclosure to the board. A
9 professional liability insurer shall maintain the records
10 and depositions referred to in this subdivision for at least
11 one year from the date of the Section 801 report.

12 SEC. 8. Section 2225.5 of the Business and Professions
13 Code is amended to read:

14 2225.5. (a) A licensee *or health care facility* ~~who~~ *that*
15 fails or refuses to comply with a request for medical
16 records of a patient, that is accompanied by that patient's
17 written authorization for release of records to the board,
18 within 15 days of receiving the request and authorization,
19 shall pay to the board a civil penalty of one thousand
20 dollars (\$1,000) per day for each day that the documents
21 have not been produced after the 15th day, unless the
22 licensee is unable to provide the documents within this
23 time period for good cause.

24 (b) A licensee *or health care facility* ~~who~~ *that* fails or
25 refuses to comply with a court order mandating the
26 release of records to the board shall pay to the board a civil
27 penalty of one thousand dollars (\$1,000) per day for each
28 day that the documents have not been produced after the
29 date by which the court order requires the documents to
30 be produced, unless it is determined that the order is
31 unlawful or invalid.

32 (c) Imposition of the civil penalties authorized by this
33 section shall be in accordance with the Administrative
34 Procedure Act (Chapter 5 (commencing with Section
35 11500) of Division 3 of Title 2 of the Government Code).

36 (d) *For purposes of this section a "health care facility"*
37 *means a clinic or health facility licensed or exempt from*
38 *licensure pursuant to Division 2 (commencing with*
39 *Section 1200) of the Health and Safety Code.*



1 SEC. 9. Section 2305 of the Business and Professions
2 Code is amended to read:

3 2305. The revocation, suspension, or other discipline
4 *or other restriction or limitation imposed* by another state
5 ~~of~~ *upon* a license or certificate to practice medicine issued
6 by the state, or the revocation, suspension, or restriction
7 of the authority to practice medicine by any agency of the
8 federal government, to a licensee under this chapter shall
9 constitute grounds for disciplinary action for
10 unprofessional conduct against such licensee in this state.

11 SEC. 10. Section 2317 of the Business and Professions
12 Code is amended to read:

13 2317. If a person, not a regular employee of the board,
14 is hired, under contract, or retained under any other
15 arrangement, paid or unpaid, to provide expertise *or*
16 *nonexpert testimony* to the Division of Medical Quality
17 or to the California Board of Podiatric Medicine in the
18 evaluation of the conduct of a licensee, and that person
19 is named as a defendant in an action for defamation,
20 malicious prosecution, or any other civil cause of action
21 directly resulting from opinions rendered, statements
22 made, or testimony given to, or on behalf of, the division
23 or committee or its representatives, the board shall
24 provide for representation required to defend the
25 defendant in that civil action. The board shall be liable for
26 any judgment rendered against that person, except that
27 the board shall not be liable for any punitive damages
28 award. If the plaintiff prevails in a claim for punitive
29 damages, the defendant shall be liable to the board for the
30 full costs incurred in providing representation to the
31 defendant. The Attorney General shall be utilized in
32 those actions as provided in Section 2020.

33 SEC. 11. Section 2416 of the Business and Professions
34 Code is amended to read:

35 2416. Physicians and surgeons and podiatrists may
36 conduct their professional practices in a partnership or
37 group of physicians and surgeons or a partnership or
38 group of podiatrists, respectively, *or as a partnership or*
39 *group of physicians and surgeons and podiatrists.*



1 SEC. 12. Section 43.96 of the Civil Code is amended
2 to read:

3 43.96. (a) Any medical or podiatric society, health
4 facility licensed or certified under Division 2
5 (commencing with Section 1200) of the Health and
6 Safety Code, state agency as defined in Section 11000 of
7 the Government Code, or local government agency that
8 receives written complaints ~~or other adverse information~~
9 related to the professional competence or professional
10 conduct of a physician and surgeon or doctor of podiatric
11 medicine from the public shall inform the complainant
12 that the Medical Board of California or the Board of
13 Podiatric Medicine, as the case may be, is the only
14 authority in the state that may take disciplinary action
15 against the license of the named licensee, and shall
16 provide to the complainant the address and toll-free
17 telephone number of the applicable state board.

18 (b) The immunity provided in Section 2318 of the
19 Business and Professions Code and in Section 47 shall
20 apply to complaints and information made or provided to
21 a board pursuant to this section.

22 SEC. 13. No reimbursement is required by this act
23 pursuant to Section 6 of Article XIII B of the California
24 Constitution for certain costs that may be incurred by a
25 local agency or school district because in that regard this
26 act creates a new crime or infraction, eliminates a crime
27 or infraction, or changes the penalty for a crime or
28 infraction, within the meaning of Section 17556 of the
29 Government Code, or changes the definition of a crime
30 within the meaning of Section 6 of Article XIII B of the
31 California Constitution.

32 However, notwithstanding Section 17610 of the
33 Government Code, if the Commission on State Mandates
34 determines that this act contains other costs mandated by
35 the state, reimbursement to local agencies and school
36 districts for those costs shall be made pursuant to Part 7
37 (commencing with Section 17500) of Division 4 of Title
38 2 of the Government Code. If the statewide costs of the
39 claim for reimbursement does not exceed one million



1 dollars (\$1,000,000), reimbursement shall be made from
2 the State Mandates Claims Fund.
3 Notwithstanding Section 17580 of the Government
4 Code, unless otherwise specified, the provisions of this act
5 shall become operative on the same date that the act
6 takes effect pursuant to the California Constitution.

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